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TSUNAMI WARNING: THE NECESSITIES AND ADVANTAGES OF ADDING LICENSED MENTAL HEALTH COUNSELORS AS MEDICARE MENTAL HEALTH CARE PROVIDERS

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“A healthcare workforce that is not prepared to address [the mental health] problems or the special needs of an aging population is a compelling public health burden.”

The Institute of Medicine’s 2012 warning regarding the insufficient size of the mental health workforce currently available to seniors.¹

There is a coming crisis in the availability of sufficient numbers of mental health care personnel to assist our nation’s seniors. Over the next twenty years, more than seventy million baby boomers will become eligible for Medicare. Mental health studies establish that this growing demographic will face serious mental health care issues while relying upon Medicare as their primary source of medical insurance. Nevertheless, under current Medicare provider provisions, the existing pool of mental health care practitioners is too small to meet the needs of the rapidly increasing senior population. Much can be done to immediately increase seniors’ access to quality mental health care by simply adding the more than 100,000 licensed mental health counselors as Medicare providers. This is an easy and necessary solution to an otherwise avoidable crisis in senior health care.

It is indisputable that our nation’s senior population is growing at an astounding pace. Between 2000 and 2010, the population of individuals 65 and older in the United States grew by 15.1 percent.² This was dramatically faster than the growth of the total United States population over the same period, which was a mere 9.7 percent by comparison.³

† Visiting Lecturer of Lawyering Process, Denver University Sturm College of Law. Dedicated to my parents; may you age with grace, dignity, and great purpose. Many thanks to my Editor and Teaching Assistant, Renee Sheeder, who has tremendous patience and who was instrumental in getting my citations in proper order.


3. U.S. Census Bureau, supra note 2; Brandon, supra note 2.
During the same period, the 65 to 69 year old sub-group grew at an even faster rate, increasing by 30.4 percent. In 2010, “[p]eople age 65 and older” (hereinafter “seniors”) made up 13 percent of the total population, the highest percentage of the demographic in United States history.

Colorado was no exception to this trend. Of the four geographic regions determined by the U.S. Census Bureau, the West had the fastest growth in the senior population, increasing from 6.9 million in 2000 to 8.5 million in 2010. In 2010, Colorado’s senior population was 10.9 percent of the total state population, or approximately 549,625 individuals. This represented a 32.1 percent increase in the demographic from 2000. A year later, in 2011, Colorado’s senior population was 11.3 percent of the total state population, or approximately 578,000 individuals.

Experts believe that this wave of aging adults will only grow larger and more intense over the next two decades, anticipating what some are calling a “silver tsunami” of aging baby boomers. Noting that the dramatic increase in the senior population over the last ten years did not yet include the coming “bulge” of baby boomers, the first of which turned 65 in 2011, the U.S. Census Bureau ominously predicted that the continued growth of the senior demographic over the next two decades will be “unprecedented.” Indeed, the American Medical Association predicts that, starting in 2011, the number of baby boomers turning 65 will increase at a staggering rate of 3 to 4 million per year. Ultimately,
the Census Bureau predicts that, by 2030, the total senior population will stand at 72.1 million.\textsuperscript{17}

The dramatic increase in the number of seniors and the high prevalence of serious mental health issues within the demographic will significantly increase the demand for mental health services for seniors.\textsuperscript{18} Presently, the Institute of Medicine estimates that between 5.6 and 8 million American seniors have at least one mental health issue, which is roughly 14 to 20 percent of the current senior population.\textsuperscript{19} Other estimates suggest the prevalence of mental health issues in seniors may be as high as 25 percent.\textsuperscript{20} Multiplying the estimated rate of mental health issues among seniors and the exploding population numbers in the demographic, there may be as many as 18 million seniors with mental health care issues at the crest of the senior population wave.\textsuperscript{21} Further, unlike prior generations of seniors who were less likely to access mental health services, baby boomers have consistently used mental health services at a higher-than-average rate and are anticipated to continue the same pattern of use as they become eligible for Medicare.\textsuperscript{22}

The mental health issues affecting these seniors are serious and potentially life-threatening but can be effectively treated if seniors have sufficient access to mental health care. The most commonly diagnosed mental health issues in seniors are depression, dysthymia, and dementia-related problems.\textsuperscript{23} Depression, when left untreated, can lead to unnecessary and costly hospitalizations,\textsuperscript{24} poor outcomes following acute medical events such as a stroke,\textsuperscript{25} decline in physical function,\textsuperscript{26} and poor outcomes following acute medical events such as a stroke, and can significantly increase the demand for mental health services for seniors.\textsuperscript{27} The prevalence of serious mental health issues within the demographic will significantly increase the demand for mental health services for seniors.\textsuperscript{28}

\textsuperscript{17} INST. OF MED., supra note 1, at 1.


\textsuperscript{19} See INST. OF MED., supra note 1, at 4; The National Academies, supra note 18; Young, supra note 14.

\textsuperscript{20} Nancy T. McCall et al., The Prevalence of Major Depression or Dysthymia Among Aged Medicare Fee-for-Service Beneficiaries, 17 INT’L J. GERIATRIC PSYCHIATRY 557, 560 (2002).

\textsuperscript{21} 72 million seniors multiplied by 25% equals 18 million seniors with a mental health issue.

\textsuperscript{22} “Medicare is the government financed health insurance program for seniors and others receiving Social Security benefits. All persons aged 65 and over are eligible for Social Security benefits, and disabled persons who have received Social Security for 24 months are eligible for Medicare.” Senior Hot Topics: Medicare, COLO. GERONTOLOGICAL SOC’Y http://www.senioranswers.org/index.php?q=medicare (last visited Mar. 4, 2013); INSTITUTE OF MEDICINE, supra note 1, at 6.


\textsuperscript{24} The Nat’l Acads., supra note 18; Young, supra note 14 (citing the Institute of Medicine Report, The Mental Health and Substance Use Workforce for Older Americans: In Whose Hands?).


\textsuperscript{26} Id. See also DEF’T OF HEALTH AND HUMAN SERVS., supra note 23, at 345.
ity rates, and suicide. Of particular concern, seniors have the highest suicide rate of any age demographic, accounting for sixteen percent of all suicides nationally. Colorado is no stranger to these high suicide rates, registering the sixth highest suicide rate in the nation in 2009, the majority of which involved Colorado seniors. Nevertheless, numerous studies establish that mental health treatments, particularly psychotherapy and drug treatment, are largely effective in treating mental illness in seniors.

Despite the imminent wave of seniors with serious mental health care needs, Medicare inexplicably does not cover the services provided by the 115,080 licensed mental health counselors currently employed in the U.S. workforce. Instead, Medicare’s mental health reimbursement policies are limited to the services of psychiatrists, psychologists, and licensed clinical social workers. The enormous coming demand for services, coupled with Medicare’s inexcusable exclusion of hundreds of thousands of licensed mental health counselors, all but assures a coming disaster in access to mental health services for seniors.

27. Crystal et al., supra note 25, at 1721.
30. TRIWEST GROUP, THE STATUS OF BEHAVIORAL HEALTH CARE IN COLORADO: 2011 UPDATE 99-100 (2011) (highlighting the efforts made by the Office of Suicide Prevention, significant investments in suicide prevention by the Colorado Trust, the creation of the suicide crisis Lifeline, and new outreach programs like Project Safety Net). But see THE COLO. HEALTH FOUND., supra note 29 (ranking Colorado ninth out of fifty states for senior mental health based on the number of self-reported days of poor mental health by Colorado seniors).
31. See, e.g., Crystal et al., supra note 25, at 1719 (citing a 1991 report and a 1997 report from the National Institutes of Health); DEP’T OF HEALTH AND HUMAN SERVS., supra note 23, at 344–45, 352, 354.
33. Thriveworks: Counseling & Life Coaching, supra note 32.
34. Noting the “conspicuous lack of national attention . . . to ensuring sufficient numbers of personnel for the rapidly growing elderly population,” the Institute of Medicine recently concluded that, “[a] healthcare workforce that is not prepared to address either [Mental Health/Substance Abuse] problems or the special needs of an aging population is a compelling public health burden.” INST. OF MED., supra note 1, at 1,11. See also Young, supra note 14 (quoting Dan G. Glazer, committee chair and co-author of the Institute of Medicine Report, as saying “This [IOM] report is a wake-up call that we need to prepare now or our older population . . . will suffer the consequences.”). In addition, the Institute went on to note that, “[t]he workforce prepared to care for geriatric [Mental Health/Substance Abuse] is inadequate in sheer numbers, with the growth of the population threatening to exacerbate this.” INST. OF MED., supra note 1, at 8, 11 (further concluding “[a] pre-
This coming crisis in care is easily avoidable, however. Allowing Medicare reimbursement for licensed mental health counselors would substantially increase the availability of quality mental health treatment for seniors. Indeed, recognizing the urgent need for more mental health providers for seniors, the Institute of Medicine recently called for an immediate change to Medicare payment policies to include reimbursement for counseling in its 2012 report, *The Mental Health and Substance Use Workforce for Older Americans: In Whose Hands?* Adopting the Institute’s recommendation would immediately add more than 100,000 mental health professionals to the national pool available to seniors. It is a sensible recommendation that would go far to prevent the coming crisis in seniors’ access to mental health care services.

Further, adding licensed mental health counselors as Medicare providers makes even more sense considering the high quality of care that mental health counselors will provide to seniors. Comparing the licensing credentials of mental health counselors with other Medicare mental health providers, it is clear that mental health counselors are as qualified, if not more qualified, to provide quality mental health services to seniors, as the current Medicare providers. "Take, for example, a comparison between the licensing qualifications for mental health counselors, currently excluded as Medicare providers, and the licensing requirements for clinical social workers, currently included as Medicare providers. These two types of mental health professionals are so similar in educational and professional training that the licensing requirements are nearly identical for both." For instance, both occupations require a master’s
degree, significant clinical experience hours under the supervision of a licensed professional, successful completion of a core competency exam, obtaining a professional state license, and annual continuing education. If anything, licensed mental health counselors are potentially more qualified to provide mental health services than are clinical social workers, given that the educational training for counselors focuses primarily on counseling theories and techniques and often takes longer to complete than the educational training for social workers. Such comparisons make clear that the current Medicare payment provisions, favoring some mental health professionals while excluding licensed mental health counselors from the ‘primary mental health provider’ category, is a false analogy to the professional training of mental health counselors.


41. Counselors must obtain between 2,000-4,000 hours of supervised clinical experience, depending on the state. COUNSELORS, supra note 40. See also COUNSELOR-LICENSE, supra note 40; NAT’L BD. FOR CERTIFIED COUNSELORS, supra note 40. Social workers must obtain 3,000 hours of supervised clinical experience. SOCIAL WORKERS, supra note 40.

42. Counselors must complete one of two, state-recognized exams, either the National Counselor Examination (NCE) or the National Clinical Mental Health Counseling Examination (NCMHCE). See COUNSELORS, supra note 40; NAT’L BD. FOR CERTIFIED COUNSELORS, supra note 40. See also SOCIAL WORKERS, supra note 40.

43. COUNSELORS, supra note 40; COUNSELOR-LICENSE, supra note 40. See also SOCIAL WORKERS, supra note 40.


45. Compare COUNSELORS, supra note 40 ("Counseling programs prepare students to recognize symptoms of mental and emotional disorders and to use effective counseling strategies.") and COUNSELOR-LICENSE, supra note 40 ("Some mental health counselors help people who have normal cognitive processes cope with difficult life events, for example, physical illness, death of loved ones, and relationship problems or divorce. Others help people manage serious medical illnesses like bipolar disorder. Counselors need to know when to refer clients or patients for additional resources and how to identify when abuse may be happening or when there is a risk of suicide or other violence.") with SOCIAL WORKERS, supra note 40 ("MSW programs prepare students for work in their chosen specialty and develop the skills to do clinical assessments, manage a large number of clients, and take on supervisory duties."); and SOCIAL WORKERS, supra note 40, under Tab What They Do ("Clinical social workers [ ] diagnose and treat mental, behavioral, and emotional issues.").

46. Compare COUNSELORS, supra note 40 (noting that a master’s degree is required, typically taking 2 years, without an option to earn in less time based on undergraduate study, coupled with potentially higher amount of required clinical experience hours) with SOCIAL WORKERS, supra note 40 ("MSWs generally take 2 years to complete. Some programs allow those with a BSW to earn their MSW in 1 year.").
health counselors, are an illogical and detrimental impediment to greater access to services.\(^{47}\)

When viewed in terms of the pressing need for increased access and the comparative quality of service that licensed mental health counselors provide, one is hard pressed to find a justifiable reason for the continued exclusion of licensed mental health counselors as Medicare providers. One plausible, though ethically suspect, explanation for the continued exclusion of mental health counselors as Medicare providers is the apparent prevalence of “turf wars” between the different mental health trade associations.\(^{48}\) This is not too far of a stretch, when one considers that, during previous legislative attempts to add licensed mental health counselors as Medicare providers, opposition appears to have come almost exclusively from competing mental health trade associations.\(^{49}\) If such pernicious turf wars do exist, they are inexcusable. The mental health issues affecting seniors are serious and severe, and the increasing demand for mental health services is rapidly threatening to outpace supply.\(^{50}\)

Addressing the coming crisis in senior access to mental health care services is an urgent concern which is easily and quickly addressed.

\(^{47}\) In addition, the arbitrary distinction does not provide cost-savings to Medicare, as counselors provide mental health care at a cheaper rate than psychiatrists and psychologists. See COUNSELOR-LICENSE, supra note 40; Medicare Mental Health Counseling Bill Introduced in the U.S. Senate, AM. MENTAL HEALTH COUNSELORS ASS’N, (Mar. 17, 2011), http://www.amhca.org/news/detail.aspx?ArticleId=295.

\(^{48}\) This is even more plausible given the significant number of Medicare dollars at stake. See, e.g., INST. OF MED., supra note 1, at 112–13 (noting that, in 2009, psychiatrists received an estimated $200 million in Medicare reimbursement for senior mental health services, and that psychologists, social workers, and other “nonphysician [Mental Health/Substance Abuse] service providers” received an estimated $243 million in Medicare reimbursement for senior mental health services). See also DEP’T OF HEALTH AND HUMAN SERVS., supra note 23, at 415–16 (noting that Medicare spent $10 billion on mental health care services in 1996 to cover 30.6 million individuals).

\(^{49}\) For example, see Scott Barstow et al., Medicare and Counselors: Frequently Asked Questions, COUNSELING TODAY (Jan. 7, 2006), http://ct.counseling.org/2006/01/ct-online-medicare-and-counselors-frequently-asked-questions, noting the following opposition to the 2005 version of the Senior Mental Health Access Improvement bill:

The only groups we know of opposing Medicare coverage of licensed professional counselors and marriage and family therapists are the American Psychiatric Association and the National Association of Social Workers. The opposition of these two groups is disappointing, if not surprising. The American Psychiatric Association has a long history of opposing efforts to expand direct access to nonphysician providers (including psychologists, clinical social workers and licensed professional counselors) under Medicare and other public health programs.

The National Association of Social Workers appears to share the American Psychiatric Association’s desire to protect its members’ “turf” at the expense of patient access to services. This is despite the strong similarities in counselor and social work training standards and the fact that clinical social workers are routinely licensed with significantly less actual graduate coursework than licensed professional counselors. Many — if not most — graduate programs in social work give students as much as a full year of credit for bachelor’s level coursework.

\(^{50}\) See supra notes 2–31 (discussing the rapidly increasing demand for mental health services and the severity of mental health issues facing seniors).
Indeed, the legislative vehicle for doing so has already been drafted. The Seniors Mental Health Access Improvement Act, which was introduced in three prior Congressional sessions, would have added licensed mental health counselors as Medicare providers and would have allowed licensed mental health counselors to bill Medicare at the same reduced rate as clinical social workers. Had it been adopted, the Act would have immediately addressed the access problem, providing seniors with high quality mental health service at a low cost.

In past legislative efforts, the Seniors Mental Health Access Improvement Act has struggled due to a lack of cosponsors. Notably in this regard, the Seniors Mental Health Access Improvement Act has never drawn the support of a single Colorado cosponsor. This is puzzling, given Colorado’s significant efforts to improve access to mental health care services at the state level. Recognizing the pending mental health access crisis that will substantially affect our seniors, it is imperative that Colorado Members of Congress introduce, cosponsor, and pass a new version of the Seniors Mental Health Access Improvement Act in the present Congressional Session. In addition, it is equally important that every Colorado citizen affected by the access to care issue, either as a senior, as a family member of a senior, or as a mental health professional, contact their elected representatives and urge them to support a new

Variations of the Act were introduced in Congress in 2005, 2009, and 2011, though the Act was never introduced in both chambers within the same Congressional session. In 2006, the Act was introduced in the House and had four cosponsors, which did not include any Colorado Representatives. Seniors Mental Health Access Improvement Act of 2005, H.R. 5324, 109th Cong. (2005). The Act was later added as part of a Deficit Budget Reconciliation bill in the Senate. Senate passes Medicare reimbursement for MH Counselors, MENTAL HEALTH WEEKLY, Nov. 21, 2005, at 1. In 2009, the Act was introduced in the House and had 21 cosponsors, which did not include any Colorado Representatives. Seniors Mental Health Access Improvement Act of 2009, H.R. 1963, 111th Cong. (2009) (The bill was introduced March 24, 2009 and was referred to the Committee on Energy and Commerce and to the Committee on Ways and Means). Finally, in 2011, the Act was introduced in the Senate and had 8 cosponsors, which did not include either Colorado senator. Seniors Mental Health Access Improvement Act of 2011, S. 604, 112th Cong. (2011).

Under the bill, counselors would be reimbursed by Medicare at 75 percent of the psychologist rate. Seniors Mental Health Access Improvement Act of 2011, S. 604, 112th Cong. (2011). This is the same rate that clinical social workers bill for services under Medicare. 42 U.S.C. § 1395l(a)(1)(F) (2012) (enacted as part of the Social Security Act, § 1833(a)(1)).

Eric Mosel, Medicare Legislative Package Expected by End of 2012, AM. COUNSELING ASS’N (Mar. 2, 2012), http://www.counseling.org/news/news-release-archives/year/2012/2012/03/02/medicare-legislative-package-expected-by-end-of-2012 (“The more cosponsors we can get . . . the better our chances of getting a seat on the train at the end of the year . . . .”). See also AM. MENTAL HEALTH COUNSELORS ASS’N, supra note 47 (“The more cosponsors we have for the Seniors Mental Health Access Improvement Act, the more likely we are to gain its inclusion in larger Medicare legislation . . . .”).

See supra note 51.

version of the Act. We must act now to address the coming mental health access needs of our surging senior population.

The “silver tsunami” is upon us, and it is bringing with it an enormous tidal wave of mental health care issues that threaten to overwhelm the mental health care system. Higher ground exists in the form of the more than 100,000 licensed mental health counselors in the United States workforce who are qualified to deliver quality mental health care treatment to seniors but who are currently excluded from providing services under Medicare. Adding licensed mental health counselors as Medicare providers would immediately and significantly improve seniors’ access to mental health care. Passage of Seniors Mental Health Access Improvement Act would provide the much-needed access to care, ensuring that seniors successfully ride the wave of later life while, simultaneously, keeping the mental health care system well above water.

56. The main Capital Switchboard number is 202-224-3121. AM. MENTAL HEALTH COUNSELORS ASS’N, supra note 47. Colorado Senators, Michael Bennet and Mark Udall, can be contacted via their websites, http://www.bennet.senate.gov/contact and http://www.markudall.senate.gov/?p=contact. In addition, contact information for Colorado House Members can be located at http://www.govtrak.us/congress/members/CO.