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U. S. Department of Health and Human Services
Att: CMS-1321-FC
P.O. Box 8015
Baltimore, MD 21244-8015

Re: CMS-1321-FC
Final Rule on Medicare Program: Diabetes Outpatient Self-Management Training Services (DSMT) and Medical Nutrition Therapy (MNT)

RINs 0938-AO24 and 0938-AO11
71 Fed. Reg.48982, et seq. (August 22, 2006).

Dear Sir/Madam:

The National Association of Community Health Centers ("NACHC") appreciates the opportunity to submit comments regarding the final rule issued by the Centers for Medicare and Medicaid Services (CMS) on implementing the payment provisions of the Deficit Reduction Act of 2005 that relate to the furnishing of Diabetes Self-Management Training Services (DSMT) and Medical Nutrition Therapy (MNT) by FQHCs; section 5114 of the Deficit Reduction Act of 2005 ("DRA") (Pub. L.109-171). The addition of DSMT/MNT services to the list of Medicare covered billable visits is an appropriate and positive change to the Medicare Federally Qualified Health Center (FQHC) benefit. NACHC strongly supports the change and welcomes this opportunity to comment on the final rule.

<u>Background</u>

NACHC is a membership organization that represents Federally Qualified Health Centers nationally. At present, more than 1,000 FQHCs with more than 5,000 sites serve approximately 15 million patients across the country. The vast majority of these patients are impoverished individuals living in medically underserved areas. More than one million of these FQHC patients are Medicare recipients. Due to the limited number of covered billable services under the Medicare FQHC reimbursement formula, many FQHCs provide care to their communities without adequate reimbursement.

<u>DSMT/MNT Services as Billable FQHC Visits When Provided by a Qualified Provider of Such Services</u>

As CMS states in the preamble to this final rule, prior to the passage of Section 5114 of the DRA of 2005, CMS policy allowed FQHCs to treat the furnishing of DSMT or MNT services by

FQHCs as allowable FQHC costs. However CMS only allowed such services to be billable visits if they were provided by one of five FQHC providers: physicians, physician assistants, nurse practitioners, clinical psychologists, and clinical social workers. As CMS states accurately in the preamble to its proposed rule, Congress amended the relevant provision of the Medicare statute in the DRA of 2005 to make clear that such services offered by FQHCs must be treated as billable visits. CMS notes in its preamble that Congress made this statutory change to assure that coverage and adequate access to these services are available in the FQHC setting. NACHC applauds and strongly supports CMS' recognition of Congressional intent behind this statutory change and believes the new rule will result in FQHCs being better able to provide these important services to their diabetic patients.

Payment to FQHCs for Group Visits for DSMT/MNT Services

NACHC believes it is important that CMS clarifies in its final rule that payment will be made to an FQHC when it delivers DSMT services in a **group** setting. We note that CMS rule 42 C.F.R. § 410.141(c) provides that Medicare Part B covers initial DSMT training and that, as a general rule "9 hours of the training are furnished in a group setting consisting of 2 to 20 individuals who need not all be Medicare beneficiaries." As an exception to the rule, the regulation provides that Medicare covers training on an individual basis when no group session is available within 2 months of the date the training is ordered or when the beneficiary has special needs that will hinder effective participation in a group training session" Section 410.141(c) (1) (ii)

NACHC believes that when an FQHC provides DSMT training to a group of patients per the above regulation, the FQHC must be allowed to bill one visit for each of the individuals in that group, since in such a situation the DSMT trainer engages in a face-to-face encounter with each patient. As an example, if 10 individual patients were in such a group, the center would bill 10 individual visits. While CMS may view such a billing approach as a windfall for the center, such is not the case. Under FQHC's reasonable cost reimbursement formula these additional visits will result in a reduction in the centers per visit rate. We recognize that CMS may be inclined to allow the health center only one billable visit rather than multiple visits. We note, however, that such an approach is directly contrary to Medicare's FQHC reasonable cost methodology which reimburses on a per visit (face-to-face encounter) basis. There certainly are many instances in which health centers are unable to bill for services they deliver (such as various screenings) because these services do not require a face-to-face encounter. It would be inequitable and, likely, contrary to law, for CMS to pick and choose when it will apply the face-to-face encounter requirement as the basis for a billable visit.

NACHC is compelled to address an additional issue related to payments for DSMT group visits, and that is the concern that CMS may determine that DSMT services provided by an FQHC in a group setting do not qualify as a billable visit but only as an allowable cost. Such a conclusion by CMS would directly contradict and undercut the specific requirements and purpose of Section 5114 of the DRA, which, as CMS has acknowledged, is to provide greater access to these services to Medicare patients who require them. While such a construction by CMS would still allow such services to be treated as allowable cost, it would not result in any payment to the majority of health centers whose current per visit reimbursement is already limited under CMS's current FQHC per visit "cap." In short, NACHC maintains that should CMS determine that a

DSMT group training session (be it initial or follow-up training) by an FQHC does not qualify as a billable visit, such a conclusion would negate the clear effect and intent of Section 5114 of the DRA and would violate the Medicare FQHC cost based reimbursement principle.

DSMT/MNT Certification

The proposed rule allows FQHCs to bill for DSMT/MNT services when those services are provided by qualified providers. The language reads "FQHCs that are certified providers of DSMT and MNT services can receive per visit payments for covered services furnished by registered dieticians or nutrition professionals." 71 Fed. Reg. at 48999. The rule does not clearly state whether the entity (the health center) must be a certified DSMT/MNT provider or whether the individual provider must be certified. We request that CMS clarify this issue, that is, must the FQHC entity be certified or must the health center employee or contractor be certified or must they both be certified?

This statutory and regulatory change to the FQHC Medicare benefit is an important one for health centers and their patients in that it will allow health centers to more effectively serve their patients and without being financially penalized for doing so. Thank you for the opportunity to further illuminate the regulatory change.

Respectfully submitted,

Craig Kennedy
Director of Federal Affairs
National Association of Community Health Centers