10-144 C.M.R. Chapter 101, MaineCare Benefits Manual
Chapters III, Section 45, Hospital Services

Summary of Public Comments and the Department's Responses
And List of Changes Made to the Final Rule

The Department of Health and Human Services held a public hearing on August 9, 2023. Written and verbal comments were accepted through August 19, 2023. Comments were received from the following people:

Table of Commenters

1. David Winslow, Vice President of Financial Policy, Maine Hospital Association
2. Nancy Cronin, Executive Director, Maine Developmental Disabilities Council
3. Katie Fullam Harris, Chief Government Affairs Officer, MaineHealth

Summary of Comments and Responses

1. **Comment:** Commenters 1 and 3 suggest "the unit must be reimbursed as a distinct psychiatric unit as a sub provider on the Medicare cost report" be struck from the Distinct Psychiatric Unit definition as they believe it does not accurately describe some of the units currently being reimbursed. Commenters 1 and 3 stated "Requiring a distinct psych unit to be a sub-provider on the Medicare cost report can have unintended consequences such as negatively impacting Medicare DSH payments, and a hospital's status as a 340B provider." Additionally, both commenters added that this requirement could have unintended consequences on DSH payments and a hospital's status as a 340B provider.

   Response: The Department thanks the commenters for their comments. Section 45.01-9 (Definition of a Distinct Psychiatric Unit) reads "The unit must be reimbursed as a distinct psychiatric unit as a sub provider on the Medicare cost report *or* must be comprised of beds reserviced for involuntary commitments under the terms of a contract with the Department…". Hospitals that do not wish to, or are not eligible to, have their distinct units reimbursed as a sub provider on the Medicare cost report may seek to contract with the state to take involuntary commitments in order to meet the definition of a Distinct Psychiatric Unit and be reimbursed as such from MaineCare.

2. **Comment:** Commenter 1 asks that MBM, Chapter III, Section 45.02-7 Cap on PIP Payments be struck in its entirety noting that this section of the policy has not been utilized since the early 2000's.

   Response: The Department thanks the commenter for the comment. The Department will take this recommendation into consideration for a future rulemaking. No changes were made to the rule as a result of this comment.

3. **Comment:** Commenter 1 noted MBM, Chapter III, Section 45.03-1(B)(1) establishes rates for Distinct Psychiatric and Substance Use Disorder Units and indicated no comments or questions.

Response: The Department thanks the commenter for the comment. No changes were made to the rule as a result of this comment.

4. **Comment:** Commenter 1 noted MBM, Chapter III, Section 45.03-1(B)(2) establishes a supplemental payment for Distinct Psychiatric Units in some rural areas which expires on June 30, 2025. The commenter is suggesting the expiration date be removed, noting the behavioral health system in Maine is currently experiencing great uncertainty and determining what will happen in June of 2025 is unnecessary and unwise.

   Response: The Department thanks the commenter for the comment. The Department is limiting the supplemental payment for a duration of two years due to funding appropriated for this effort and the Department's ongoing efforts related to both Hospital and behavioral health system reform. No changes were made to the rule as a result of this comment.

5. **Comment:** Commenter 1 pointed out the effective date of the new rates is July 1, 2023, but the implementation date is not until October 1, 2023. They asked that in the Department institute an interim payment mechanism in the event the implementation of the new rates goes past the October 1, 2023

   Response: The Department thanks the commenter for the comment. The changes to systems were effective October 1, 2023 retroactive to July 1, 2023. No changes were made to the rule as a result of this comment.

6. **Comment:** Commenter 1 advised they were pleased to find an annual inflation adjustment to the per diem base rates for the payment for the distinct psychiatric and substance use disorder units (see Section 45.03-1(B)(1)(d). However, they were unable to find the inflation index noted in the rule anywhere on the website. They are asking that the index be posted to the website in an easily accessible manner as they believe it is stated in the proposed rule.

   Response: The Department thanks the commenter for the comment, the proposed rule section 45.03-1(B)(1)(e) advised the base rates will be updated annually and posted on the Department's website, and that base rates will be updated annually based on the cited inflation provision in the rule located in section 45.02-1. This index is known as the economic trend factor taken from the Healthcare Cost Review from IHS Markit.

7. **Comment:** Commenter 2 stated they approve of the proposed rule but suggested that "the rules coverage should be broadened to include all hospital types that might have beds for psychiatric and substance use patients."

   Response: The Department thanks the commenter for the comment. As a result of this comment the Department has amended the rule to extend the proposed reimbursement methodology for distinct psychiatric units and distinct substance use disorder units to hospitals classified as critical access hospitals as well. The Department added a new provision – Section 45.04-1(C)(Distinct Psychiatric and Substance Use Disorder Units) – in the reimbursement section for Acute Care Critical Access Hospitals, for acute care critical access hospitals that have units that meet the definition of "Distinct Psychiatric Unit" and/or "Distinct Substance Use Disorder Unit". The Department also amended Definition 45.01-9 (Distinct Psychiatric Unit) to include acute care critical access hospitals.

8. **Comment:** Commenter 3 expressed concerns that the proposed rates are based on 2022 data with implementation in 2023. They noted this would put the rates a year behind in actual costs

each year. Commenter 3 is proposing the per diem rate increase be tied to the Medical Care Index rather than the Economic Trend Factor from IHS Markit. Relatedly, they advised the Medical Care Index better takes into account the pressures of wage inflation for inpatient psychiatric staff.

Response: The Department thanks the commenter for the comment. The use of the IHS Markit index is in keeping with provisions already in the rule. Using a different index for distinct psychiatric and substance use disorder units would be inconsistent with that provision and could create confusion. Additionally, the use of the IHS Markit index is consistent with Medicare's use of this index when updating hospital reimbursement. No changes were made to the rule as a result of this comment.

List of Changes Made to Final Rule
Based on Comments Received and OAG Legal Review

As a result of comments, the Department expanded the eligibility of hospitals who can claim for the distinct psychiatric units and distinct substance use disorder units to include acute care critical access hospitals.

- The adopted rule adds a new provision – Section 45.04-1(C)(Distinct Psychiatric and Substance Use Disorder Units) to the acute care critical access 45.04 provision

- Section 45.04-2 (Prospective Interim Payment) was also amended to exclude distinct psychiatric units and distinct substance use disorder units from the departmental prospective interim payment obligation.

- Additionally, the definition of Distinct Psychiatric Unit (Section 45.01-9) was amended to include acute care critical access hospitals.