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Federal Legislation to Address the Opioid Crisis: Medicaid Provisions in the SUPPORT Act

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On October 24, 2018, President Trump signed into law, the Substance Use Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities (SUPPORT) Act. The comprehensive, bipartisan legislation to address the opioid epidemic, which passed overwhelmingly in both the House and Senate, tackles many aspects of the epidemic, including treatment, prevention, recovery, and enforcement. While very broad in scope, the final legislation contains a number of provisions related to Medicaid's role in helping states provide coverage and services to people who need substance use disorder (SUD) treatment, particularly those needing opioid use disorder (OUD) treatment.

Medicaid Provisions in the SUPPORT Act

The Medicaid-related provisions in the SUPPORT Act are summarized in Table 1. These include:

Services. The most controversial measure in the bill amends the long-standing prohibition against the use of federal Medicaid funds for services in "institutions for mental disease" (IMDs) for nonelderly adults by creating a state option from 10/1/19 to 9/30/23 to cover those services up to 30 days in a year for individuals with a substance use disorder. To be eligible to receive federal matching funds, states must meet maintenance of effort and other requirements. Proponents of this provision argue that the measure is necessary to enable Medicaid to provide services across the full care continuum, while opponents maintain that states already are covering Medicaid IMD SUD services through waivers. CBO estimated a cost of $1.048 billion over ten years for this provision, the single most costly provision in the bill. The bill also codifies the Medicaid managed care regulation that allows Medicaid funds for managed care capitation payments that include IMD services up to 15 days per month.

The SUPPORT Act also requires state Medicaid programs to cover medication-assisted treatment (MAT), including all FDA-approved drugs, counseling services, and behavioral therapy, from October 2020 through September 2025, unless a state certifies to the Secretary's satisfaction that statewide implementation is infeasible due to provider shortages. Most states cover buprenorphine and naltrexone, while fewer cover methadone. In addition, the SUPPORT Act extends the 90% enhanced federal match for Medicaid health home services focused on care coordination for beneficiaries with SUD from 8 to 10 quarters for states that elect that option.

In addition, it creates a state plan option to provide residential pediatric recovery center services to infants with neonatal abstinence syndrome.

Eligibility and Enrollment. The SUPPORT Act prohibits states from terminating Medicaid eligibility for an individual under age 21 or former foster care youth up to age 26 while incarcerated and requires states to redetermine eligibility prior to release without requiring a new application and restore coverage upon release. While Medicaid does not pay for health care services during incarceration, this measure is intended to facilitate access to coverage and care after release from prison or jail. The SUPPORT Act also requires states to cover former foster care youth up to age 26 from any state. This eliminates the need for states to get a Section 1115 waiver to cover former foster care youth from other states.

Demonstrations. The SUPPORT Act authorizes new demonstrations to help states increase Medicaid SUD provider capacity. The HHS Secretary would award 18-month planning grants, totaling $50 million, to 10 states, giving preference to those with average or higher SUD prevalence, particularly opioid use disorder. The Secretary would then select up to 5 states to receive enhanced federal matching funds for Medicaid SUD treatment services during the 36 month waiver implementation. The bill also requires the Secretary to issue guidance on how states can use Section 1115 demonstrations to improve health care transitions for individuals being released from prison or jail, including assistance with Medicaid enrollment and coverage of services 30 days prior to release.

Prescription Drug Oversight. The SUPPORT Act requires states to have drug utilization review safety edits in place for opioid refills, monitor concurrent prescribing of opioids and other drugs, and monitor antipsychotic prescribing for children. The bill also requires states to have Medicaid providers check prescription drug monitoring programs before prescribing controlled substances and offers enhanced federal matching funds for implementation activities if states have agreements with contiguous states for providers to access these programs.

Quality Measures. The SUPPORT Act requires state Medicaid programs to report annually on behavioral health quality measures in CMS's adult core set beginning with 2024. These measures currently are voluntary.

Guidance and Studies. The SUPPORT Act directs the HHS Secretary to issue guidance on Medicaid-covered services and payment models for infants with neonatal abstinence syndrome and their families, state options for SUD telehealth services and Medicaid services for non-opioid pain management. It further requires the Secretary to make recommendations to improve Medicaid coverage and payment for MAT, non-opioid pain management, and SUD treatment services; report to Congress on best practices for reducing children's barriers to Medicaid SUD telehealth services; report state-level data on Medicaid SUD prevalence and treatment services; and report and provide technical assistance to states on Medicaid housing-related services and supports for enrollees with SUD. The Secretary also must issue guidance on state options to use Medicaid funds for family-focused residential treatment programs. The bill also requires GAO to study gaps in Medicaid coverage for pregnant and postpartum women with SUD, Medicaid peer support services, children's access to SUD services including telehealth, Medicaid

SUD payment rates, and barriers to providing SUD treatment medication under various distribution models, and directs MACPAC to study IMDs that receive Medicaid payments and state Medicaid MAT utilization control policies.

The SUPPORT Act includes several offsets, including one Medicaid offset. The Medicaid offset allows states to retain medical loss ratio (MLR) remittances from managed care plans for the ACA expansion group at their regular FMAP, instead of the enhanced FMAP, if they establish an 85% MLR after FY 2020 and before FY 2024.

Table 1: Medicaid Provisions in the SUPPORT Act, H.R. 6

Topic	Section	Summary
Eligibility and Enrollment for Criminal Justice Involved Youth	1001	**Prohibits state Medicaid programs from terminating eligibility for an individual under age 21 or former foster care youth up to age 26 while incarcerated**. State must redetermine eligibility prior to release, without requiring a new application, and if still eligible, restore coverage upon release. Effective 1 year after enactment.
Eligibility and Enrollment for Former Foster Care Youth Across State Lines	1002	**Requires states to ensure that Medicaid foster care youth who were enrolled at age 18 can retain coverage in any state until age 26**. Effective for those who turn 18 on or after 1/1/23. HHS Secretary must issue guidance on best practices for ensuring streamlined timely Medicaid access and conducting outreach to former foster care youth within 1 year of enactment.
Demonstrations to Increase Medicaid SUD Provider Capacity	1003	**Authorizes demonstrations to increase Medicaid SUD provider capacity, beginning within 6 months of enactment**. In the first 18 months, Secretary shall award planning grants to at least 10 states, totaling $50 million, ensuring geographic diversity and giving preference to states with SUD, particularly opioid use disorder, prevalence comparable to or higher than the national average. In the remaining 36 months, Secretary shall select up to 5 of these states to receive enhanced federal matching funds for a portion of state spending on Medicaid SUD treatment services.
Prescription Drug Utilization Review Requirements for Opioids and Children's Antipsychotics	1004	**Requires state Medicaid programs to have drug utilization review safety edits for opioid refills and an automated claims review process to identify refills in excess of state limits, monitor concurrent prescribing of opioids and benzodiazepines or antipsychotics, and require managed care plans to have these processes in place as of 10/1/19.** States also must have a program to monitor and annually report on antipsychotic prescribing for children generally and those in foster care and a process to identify potential controlled substance fraud or abuse by Medicaid enrollees, providers or pharmacies. Exempts those receiving cancer treatment or hospice/palliative care, in long-term care facilities, and those whom state elects to exempt. Secretary shall waive requirements during natural disasters and for emergency services. Also adds excessive utilization to existing drug utilization review criteria as of 10/20/18.
HHS Guidance on Services and Payment Models for Infants with Neonatal Abstinence Syndrome and Parents with SUD; GAO Study on Medicaid Gaps for Pregnant Women with SUD	1005	**Requires HHS Secretary to issue guidance within 1 year of enactment to improve care for infants with neonatal abstinence syndrome and their families**. Guidance will include best practices for innovative or evidence-based payment models for parents with SUD and infants with NAS; recommendations on financing options for parents with SUD, infants with NAS, and home visiting services; technical assistance to states for additional flexibilities and incentives related to screening, prevention, and post-discharge services, including parenting supports; and suggested terminology and ICD codes to identify infants with NAS and neonatal withdrawal syndrome. Also requires GAO to study gaps in Medicaid coverage for pregnant and postpartum women with SUD within 1 year of enactment.
SUD Health Homes Enhanced FMAP Expansion; Required MAT Coverage	1006	**Extends enhanced federal matching rate for new Medicaid health home activities targeted to beneficiaries with SUD from 8 quarters to 10 quarters for SPAs approved on or after 10/1/18.** States receiving the extended enhanced FMAP must report on the access to and quality of health home services provided to eligible individuals and total expenditures for these services. HHS Secretary to post online best practices for SUD focused health homes by 10/1/20. **Also requires state Medicaid programs to cover all FDA-approved MAT drugs, from 10/1/20-9/30/25**, including methadone, licensed biological products to treat opioid use disorder, and counseling services and behavioral therapy, unless state certifies to Secretary's satisfaction that statewide implementation for all Medicaid eligible individuals would not be feasible due to provider or facility shortage.

Provider Agreements for Residential Pediatric Recovery Centers	1007	**Creates Medicaid state plan option to provide residential pediatric recovery centers for inpatient or outpatient services for infants under age 1 with NAS and their families, as of date of enactment.**

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GAO Report on Peer Support Services	1008	**Directs GAO to report within 2 years of enactment on Medicaid peer support services**, including coverage mechanisms, populations, payment models, and spending, and make legislative and administrative recommendations to improve services and access.
HHS Guidance and GAO and Secretary Reporting on SUD Telehealth Services	1009	**Directs Secretary to issue guidance within 1 year of enactment on state options for federal Medicaid reimbursement for SUD services using telehealth**, to address needs of high risk individuals, including at least AI/ANs, adults under 40, individuals with history of nonfatal overdose, and individuals with a co-occurring serious mental illness and SUD; SUD provider education using hub and spoke model, through managed care contracts, through administrative claiming for disease management activities, and under DSRIP; and services in school-based health centers. **Directs GAO to report within 1 year of enactment on children's access to Medicaid SUD services**, including options to increase telehealth SUD providers in school-based health centers, particularly in rural or underserved areas, and Medicaid SUD provider reimbursement rates. **Directs Secretary to report to Congress within 1 year of enactment on best practices for reducing barriers to telehealth SUD services for Medicaid children.**
Enhancing Patient Access to Non-Opioid Treatment Options	1010	**Directs HHS Secretary to issue guidance on mandatory and optional Medicaid services for non-opioid pain treatment and management by 1/1/19.**
GAO Study on MAT Drug Distribution Models	1011	**Directs GAO to report within 15 months of enactment on barriers to providing SUD medications under various drug distribution models and options for Medicaid programs to remove or reduce the barriers.**
Other Medicaid Services for Pregnant Women in IMDs	1012	**Authorizes Medicaid payments for services provided outside IMDs for pregnant and postpartum women receiving IMD SUD services, as of date of enactment.**
IMD Managed Care Capitation Payments	1013	**Codifies Medicaid managed care regulation allowing capitation payments to include IMD services up to 15 days per month.**
MACPAC Report on MAT Utilization Controls	1014	**Directs MACPAC to report on state Medicaid program policies for MAT utilization control**, including managed care and FFS, and identify policies that limit access by limiting quantities without evaluating the potential for fraud, waste, or abuse, within 1 year of enactment.
Medicaid Data on SUD Prevalence and Services	1015	**Directs HHS Secretary to publish online report with state-level data on SUD prevalence in Medicaid population and receipt of Medicaid SUD treatment services through managed care, FFS, and alternative payment models, within 1 year of enactment and updated annually through 2024.**
Prescription Drug Monitoring Program	1016	**Directs state Medicaid programs to facilitate reasonable access to prescription drug monitoring programs for Medicaid providers and MCOs, to the extent allowed under state law, as of date of enactment.**
HHS Report on Housing-Related Services and Supports for Enrollees with SUD at Risk of Homelessness	1017	**Directs HHS Secretary to report on Medicaid initiatives and strategies to provide housing-related services and supports to enrollees with SUD who are at risk of homelessness within one year of enactment.**
Technical Assistance on Housing-Related Services and Supports to Enrollees with SUD	1018	**Directs HHS Secretary to provide technical assistance to states seeking to provide Medicaid housing-related services and supports and care coordination services to enrollees with SUD** and issue an action plan to do so within 180 days of enactment.
State Reporting on Adult Behavioral Health Quality Measures	5001	**Requires state Medicaid programs to report annually on behavioral health quality measures in CMS's adult core set beginning with 2024**.
IMD Payment MACPAC Study	5011-5012	**Directs MACPAC to study Medicaid payments to IMDs in a representative sample of at least 2 states by January, 2020,** including the number of IMDs, facility type, and any coverage limits; services provided and clinical assessment, reassessment, and discharge processes; any federal waivers and other Medicaid funding sources such as supplemental payments; state certification, licensure, and accreditation requirements; state quality, clinical, and facility standards; and recommendations for Congress and CMS to improve care, standards, and data collection.
Demonstrations to Facilitate Medicaid Enrollment and Provide Services Within 30 days of Incarceration Release	5031-5032	**Requires HHS Secretary to issue a state Medicaid director letter within 1 year of enactment regarding Section 1115 demonstrations to improve transitions for individuals moving from incarceration to the community,** including systems for assistance and education about Medicaid enrollment and providing health care services 30 days prior to release, based on best practices identified by Secretary-convened stakeholder group.

Topic	Section	Summary
Prescription Drug Monitoring Programs for Controlled Substances	5041-5042	**Requires state Medicaid programs to have providers check prescription drug monitoring program for enrollee's prescription drug history before prescribing a controlled substance, as of 10/1/21.** Establishes criteria for PDMPs. Exempts enrollees who are receiving cancer treatment or hospice/palliative care, in long-term care or other facilities with single pharmacy contract, and those whom state elects to exempt. Secretary shall waive PDMP requirement for natural disasters and emergency services. States shall receive 100% FMAP for fiscal years 2019 and 2020 for PDMP implementation activities if state has agreements with contiguous states for providers to access PDMP. Secretary shall issue guidance on PDMP best practices by 10/1/19; shall determine which providers should be exempt from PDMP requirements by 10/1/20; and issue model practices, including MCO and pharmacy benefit manager access to enrollee data and beneficiary protections, to assist states with using PDMP data sharing agreements for monitoring fraud, waste and abuse; improving health care for those who transition in and out of Medicaid, may have other coverage in addition to Medicaid, or pay for prescriptions with cash; or other purposes by 10/1/20. GAO shall report on PDMP operations by 10/1/20. CMS shall publish guidance on increasing provider use of and best practices for PDMPs by 10/1/23. States shall report annually to Secretary on PDMP use and trends beginning in 2023.
HHS Recommendations to Improve Coverage and Payment for MAT, Non-Opioid Pain Management, and SUD Treatment Services	6031-6032	**Directs HHS Secretary to develop, *inter alia,* Medicaid action plan and recommendations,** including (1) review of coverage and payment of FDA-approved MAT and other therapies that manage pain and treat and minimize addiction risk to determine whether these policies have contributed to the opioid crisis; (2) payment and service delivery models to be tested by CMMI and other federal demonstrations, including value-based models, that may encourage MAT use and other therapies that manage pain and minimize addiction risk; (3) data collection to facilitate research and policy making regarding opioid addiction prevention and treatment coverage and payment; (4) review of access to MAT and other therapies that manage pain and treat and minimize addiction risk, including access for rural or medically underserved communities; and (5) review of coverage or payment barriers to patient access to FDA-approved non-opioid medical devices to manage pain, monitor SUD withdrawal and prevent overdoses, and treat SUD. Secretary shall convene stakeholder meeting and issue RFI within 3 months of enactment and issue report to Congress by 6/1/20.
IMD Payment for SUD Services	5051-5052	**Creates 5-year state plan option, from 10/1/19 to 9/30/23, for states to use Medicaid funds for IMD and other medically necessary services for nonelderly adults ages 21-64 with at least one SUD for up to any 30 days in a 12-month period.** Eligible IMDs must provide at least two forms of medication-assisted treatment for OUD. States must maintain funding for eligible individuals in IMDs and outpatient and community-based settings at least at levels for most recent fiscal year prior to enactment. State shall notify the Secretary of how it will ensure appropriate clinical screening to determine level of care, length of stay, and appropriate care settings; provide outpatient, inpatient, and residential services at multiple levels of care; and ensure successful transitions to lower levels of care. Authorizes Medicaid payments for services provided outside IMDs for individuals receiving IMD SUD services..
Guidance on SUD Services in Family-Focused Residential Treatment Programs	8081	**Directs HHS Secretary to issue guidance identifying opportunities for states to use Medicaid funds for family-focused residential treatment programs that allow children to reside with pregnant and post-partum women and parents/guardians receiving SUD treatment and to coordinate with Title IV-E funding, within 6 months of enactment.**