



Key Provisions of Mental Health Reforms and Funding to Address the Opiate Crisis in the Final Version of the 21st Century Cures Act

As approved by the House of Representatives and Senate in December 2016

On December 7, 2016, the U.S. Senate passed overwhelmingly (94-5) mental health reforms and funding to address the opiate crisis as part of the *21st Century Cures Act*. The House passed the *Cures Act* earlier (392-26), and President Obama will sign the legislation into law.

The legislation includes several important elements that align with NAPHS advocacy priorities.

Medicaid IMD Exclusion

While the final legislation does not include a full repeal of the Medication Institution for Mental Disease (IMD) exclusion for short-term psychiatric hospital care, it directs the Health and Human Services Secretary, acting through the Centers for Medicare and Medicaid Services (CMS) Administrator, to conduct a study and report on the provision of care to adults aged 21 to 65 enrolled in Medicaid managed care plans receiving treatment for a mental health disorder in an IMD. The report is due within three years and must include information on the number of individuals receiving treatment in IMDs, their lengths of stay, and how Medicaid managed care plans determine when to provide services in an IMD in lieu of other benefits, such as community-based mental health services [The cost of modifying the IMD had posed the major hurdle to further IMD changes in this legislation.]

NAPHS will continue to advocate for a full repeal of the IMD exclusion for all Medicaid beneficiaries who need short-term psychiatric hospital care.

1115 Waiver Authority

The *21st Century Cures Act* requires the CMS Administrator to issue a State Medicaid Director letter regarding opportunities to design innovative service delivery systems, including systems for providing community-based services, for adults with a serious mental illness or children with a serious emotional disturbance who are receiving medical assistance under title XIX of the *Social Security Act* (42 U.S.C. 1396 et seq.). The letter shall include opportunities for demonstration projects under section 1115 of such Act (42 U.S.C. 1315) to improve care for such adults and children.

Assistant Secretary for Mental Health and Substance Use

The *21st Century Cures Act* creates an Assistant Secretary for Mental Health and Substance Use. This will help to elevate mental health and substance use disorders within the Department of Health and Human Services and to emphasize the importance of treatment for serious behavioral health disorders. The authorities of the existing Substance Abuse and Mental Health Services Administration (SAMHSA) Administrator are transferred to the Assistant Secretary. Also created is a Chief Medical Officer (CMO) to assist the Assistant Secretary in evaluating and organizing programs within the agency and to promote evidence-based and promising best practices emphasizing clinical focus. The legislation requires the CMO to have real-world experience providing mental health care or substance use disorder treatment services and requires the CMO to coordinate with the Assistant Secretary for Planning and Evaluation

(ASPE) to assess the use of performance metrics and evaluation designs to evaluate SAMHSA programs.

In selecting the person who would serve as CMO, the Assistant Secretary gives preference to individuals who have a doctoral degree in medicine, osteopathic medicine or psychology; have clinical and research experience regarding mental health and substance use disorders; and have an understanding of biological, psychosocial, and pharmaceutical treatments of mental illness and substance use disorders.

National Mental Health and Substance Use Policy Laboratory

The legislation establishes the National Mental Health and Substance Use Policy Laboratory (NMHSUPL) within SAMHSA and moves the existing functions of the Office of Policy, Planning, and Innovation (OPPI) underneath it. The laboratory will identify, coordinate, and facilitate the implementation of policy changes likely to have a significant effect on mental health, mental illness, and the prevention and treatment of substance use disorders. The laboratory would also aim to provide leadership in identifying and coordinating policies and programs, including evidence-based programs, related to mental health and substance use disorders. The legislation authorizes the appropriation of \$14 million for the period of fiscal years 2018-2020 for grants.

Medicaid Same-Day Billing

The legislation clarifies that a facility can bill and be paid for a primary care visit and a behavioral visit on the same day. (The Centers for Medicare and Medicaid Services (CMS) had interpreted current requirements to prohibit same-day billing.)

Providing a Full-Range of EPSDT Services to Children in IMDs

Effective January 1, 2019, the legislation will allow IMDs serving young people under the age of 21 (through the so-called Psych Under 21 benefit) receiving Medicaid-covered inpatient psychiatric hospital services eligibility for the full range of early and periodic screening, diagnostic, and treatment services, including non-psychiatric medical services. Currently, CMS has interpreted the Psych Under 21 optional benefit to not allow for payment of non-psychiatric medical services for patients receiving treatment in a psychiatric hospital or PRTF. NAPHS had advocated for many years to change this interpretation.

Inter-Departmental Serious Mental Illness Coordinating Committee

The legislation creates a coordinating committee to evaluate federal programs related to SMI and provide recommendations to better coordinate mental health services for people with SMI. The committee is made up of HHS, the Centers for Medicare and Medicaid Services (CMS), the Department of Justice (DOJ), VA, DOD, HUD, the Department of Education, DOL, and the Social Security Administration (SSA), as well as patients, health care providers, researchers, a judge, and a law enforcement officer.

The committee will make recommendations to Congress for better coordination of mental health services for people with SMI or SED and will convene working groups on relevant issues. The committee will sunset after six years.

Compassionate Communication on HIPAA

The legislation includes a “Sense of Congress” that finds that clarification is needed regarding existing permitted uses and disclosures of health information under the *Health Information Portability and Accountability Act* (HIPAA) by healthcare professionals to communicate with caregivers of adults with serious mental illness (SMI) to facilitate treatment. In addition, the legislation requires the HHS Secretary to, within a year of finalizing updated rules related to the confidentiality of health records related to alcohol and drug abuse, convene relevant stakeholders to determine the effect of the regulation on patient care, health outcomes, and patient privacy. The legislation directs the Secretary through the Director of the Office for Civil Rights to clarify circumstances when a healthcare provider or covered entity may use or disclosure protected health information related to the treatment of an adult with a mental or substance use disorder. The legislation requires the HHS Secretary to identify or recognize private or public entities to develop model training and educational programs to educate healthcare providers, regulatory compliance staff, and others regarding the permitted use and disclosure of health information under HIPAA. The legislation authorizes appropriations of \$10 million for the period of fiscal years 2018-2022.

Strengthening Mental Health Care for Children and Adolescents

The legislation establishes eligibility requirements to receive grant funding for statewide or regional pediatric mental healthcare telehealth programs; fund infant and early childhood mental health promotion, intervention and treatment; and fund national child traumatic stress grants.

Suicide Prevention Programs

The legislation reauthorizes the Garrett Lee Smith Memorial Act and codifies the suicide prevention technical assistance center to provide information and training for suicide prevention, surveillance, and intervention strategies for all ages, particularly among groups at high risk. The legislation reauthorizes the appropriation at the last appropriated level of \$5,988,000 for each of fiscal years 2018-2022. The legislation reauthorizes the Youth Suicide Early Intervention and Prevention Strategies grants to states and tribes, and clarifies that states may receive continuation grants after the first grant is awarded. The legislation reauthorizes the appropriation of \$30 million for each of fiscal years 2018-2022.

Also, the legislation also establishes several suicide prevention programs, including youth and adult suicide prevention grants. The legislation authorizes the HHS Secretary to award grants to state and local governments to strengthen community-based crisis response systems or to develop, maintain, or enhance a database of beds at inpatient psychiatric facilities, crisis stabilization units, and residential community mental health and residential substance use disorder treatment facilities.

Mental and Behavioral Health Education Training Grants

The legislation reauthorizes grants to institutions of higher education or accredited professional training programs to support the recruitment and education of mental health care providers. The legislation creates a priority for programs that train psychology, psychiatry, and social work professionals to work in integrated care settings, and programs for paraprofessionals that emphasize the role of the family and the lived experience of the consumer and family-paraprofessional partnerships. The legislation requires the Administrator to include in the biennial report an assessment on the effectiveness of grants. The legislation reauthorizes the appropriation of sums as may be necessary for fiscal years 2017-2021. The legislation reauthorizes appropriations at the last appropriated level of \$50 million for each of fiscal years 2018-2022.

Workforce Development Reports

The legislation authorizes the HHS Secretary to establish a training demonstration program within the Health Resources and Services Administration (HRSA) to award five-year minimum grants. The legislation requires SAMHSA and HRSA to issue a report on national- and state-level projections for the supply and demand of mental health and substance use disorder health workers and trends within the mental health and substance use disorder provider workforce.

The legislation directs the HRSA Administrator to clarify the existing eligibility of child and adolescent psychiatrists for the National Health Service Corps (NHSC) Loan Repayment Program. This section does not expand participation in the NHSC.

Parity Transparency

The legislation calls for health plans to have greater transparency in how they are conforming to the requirements of the federal parity law (the *Mental Health Parity and Addiction Equity Act*). Specifically, the legislation requires the Departments of HHS, Labor, and Treasury to release a compliance program guidance providing illustrative examples of past findings of compliance and noncompliance with existing mental health parity requirements, including disclosure requirements and non-quantitative treatment limitations. The legislation requires HHS to seek public comment on ways to improve consumer access to documents about mental health and substance use disorder benefits which are required by law to be disclosed. The legislation requires HHS to issue new guidance documents to assist health plans comply with existing mental health parity requirements. The guidance documents will be subject to a comment period of no less than 60 days before being finalized. The legislation clarifies the authority of the Secretaries of HHS, Labor, and Treasury to audit a health plan in the case that such plan has been found to have violated existing mental health parity laws 5 times.

The legislation requires HHS to convene a public meeting within six months of enactment to produce an action plan for improved federal and state coordination related to the enforcement of mental health parity and addiction equity requirements. The action plan must take into consideration the recommendations of the President's Mental Health and Substance Use Disorder Parity Task Force [Final Report](#) released in October 2016. The action plan must identify specific, strategic objectives regarding how the various federal and state agencies charged with enforcement of mental health parity and addiction equity requirements will collaborate to improve enforcement; provide a timeline for when such objectives shall be met; and provide specific examples of how such objectives may be met.

The legislation requires the CMS Administrator to conduct an annual report for five years summarizing the results of all closed federal investigations completed during the preceding year with findings of any serious violation regarding compliance with existing mental health parity requirements. The legislation requires the Government Accountability Organization (GAO), within three years of enactment, to conduct a study on the enforcement of existing mental health parity requirements; including compliance with non-quantitative treatment limitations, an assessment of how the HHS Secretary has used its authority to conduct audits, a review of how the various federal and state agencies responsible for enforcing mental health parity requirements have improved enforcement in line with the stated objectives outlined in the action plan, and recommendations for additional enforcement, education, and coordination activities and legal authorities could better ensure compliance with existing mental health parity requirements.

The legislation clarifies the coverage of eating disorder benefits, including residential treatment, under existing mental health parity requirements.

Continuing Medicare Payment under HOPD Prospective Payment System for Services Furnished by Mid-Build Off-Campus Outpatient Departments of Providers (Site-Neutral)

The legislation provides for an exception to the *Bipartisan Budget Act of 2015 (BBA 15)* for those hospital outpatient departments (HOPDs) that were defined as "mid-build" prior to November 2, 2015. "Mid-build" is defined as a provider that had a binding written agreement with an outside, unrelated, party for the actual construction of the HOPD.

National Institutes for Health

The *21st Century Cures Act* directs about \$4.8 billion over 10 years for various research initiatives at the National Institutes of Health (NIH). The Food and Drug Administration (FDA) would also receive an extra \$500 million over the next nine years to carry out changes required by the bill to some of its drug and device approval processes.

Response to Opioid Crisis

The legislation provides \$1 billion over 2 years for grants to states to supplement opioid abuse prevention and treatment activities, such as improving prescription drug monitoring programs, implementing prevention activities, training for healthcare providers, and expanding access to opioid treatment programs. The legislation ensures accountability without increasing burden on states by requiring grantees to report on activities funded by the grant in the substance abuse block grant report.

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