NAACOS RESOURCE ON 2018 OPIOIDS LAW

On October 24, 2018, the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment (SUPPORT) for Patients and Communities Act (H.R. 6) was signed into law, providing the second major piece of legislation in recent years to address the opioid overdose epidemic that kills roughly 115 Americans per day. The legislation received overwhelming bipartisan support, passing the House 393 to 8 and the Senate 98 to 1, and it includes several changes that impact the work of accountable care organizations (ACOs). A summary of all sections of the law is here, while the full text is here. Below are highlights.

ACCESS TO PATIENT RECORDS

NAACOS is part of a board coalition pushing hard to remove restrictions on providers' sharing of patient substance abuse treatment records. Currently, patients are required per a 1970s-era law to sign off on each individual provider who can view alcohol and drug treatment records, making it difficult for ACOs to provide holistic care for those patients. Despite advocacy from NAACOS and other stakeholders, language that would put the privacy of substance abuse treatment records on the same level as HIPAA, the Health Insurance Portability and Accountability Act of 1996, was not included in the final bill. While NAACOS and others continue to push for the update in future legislation, other changes to how patient records are handled were included in the recently passed law.

But the recently enacted law requires the U.S. Department of Health and Human Services (HHS) to develop best practices for displaying substance use disorder treatment information in electronic health records, when requested by the patient. HHS will also be required to notify providers annually about sharing treatment information during overdoses and to develop model training programs to better educate providers, patients, and families regarding permitted uses and disclosures of patient substance abuse treatment records (Sections 7051-7053).

Other parts of the new law also make the flow of patient data around substance use treatment easier. Changes clarify the states' ability to access and share data from prescription drug monitoring programs (PDMPs) with providers and managed care entities (Section 1016). Medicaid providers would be required to check PDMPs before prescribing a Schedule II controlled substance (Section 5042).

MEDICATION-ASSISTED TREATMENT

Medicare will start covering outpatient treatment programs for mediation-assisted treatment through bundled payments for holistic services, including necessary medications, counseling, and testing, by January 1, 2020 (Section 2005). Currently, outpatient treatment programs are not recognized as Medicare providers, and patients must pay out-of-pocket for services. In 13 states, the highest rate of opioid-related inpatient stays is among the over 65 population.

The law allows clinical nurse specialists, certified nurse midwives, and certified registered nurse anesthetists to prescribe mediation-assisted treatment, including buprenorphine, for five years (Section 3201). It also makes permanent the ability for physician assistants and nurse practitioners to prescribe treatment to 100 patients at a time and physicians to treat up to 275 patients. Another provision makes it

easier for physicians who recently graduated from medical school to obtain a waiver to prescribe mediation-assisted treatment (Section 3202).

HHS is required to review and make changes payments to hospital outpatient departments and ambulatory surgery centers to ensure there are no financial incentives to use opioids instead of evidence-based non-opioid alternatives (Section 6082).

INPATIENT TREATMENT

Congress also expanded inpatient coverage of substance abuse by allowing Medicaid to cover certain so-called "Institutions for Mental Diseases" (IMD) for up to 30 days for individuals aged 21 to 64 (Section 5052). To qualify, states must also cover certain outpatient and inpatient services. There was a decades-old ban known as the "IMD exclusion" on Medicaid payment for inpatient facilities with more than 16 beds to discourage institutionalization of people with mental illness. However, that ban is seen as exacerbating the nationwide shortage of treatment beds. Lawmakers also extend by six months Medicaid's enhanced matching rate for health homes that target patients with substance use disorders (Section 1006).

ELECTRONIC PRESCRIBING

Prescriptions for controlled substance covered under Medicare Part D or Medicare Advantage are required to be transmitted by electronic prescribing starting by January 1, 2021. HHS must create an electronic prior authorization system no later than January 1, 2021 (Section 2003).

TELEHEALTH

NAACOS has also urged Congress to remove restrictions on telehealth's use in treating addition, and different provisions encourage the use of telehealth for substance abuse treatment. In the new law, Congress demands that the Drug Enforcement Administration and HHS issue within a year a special registration that would allow providers to prescribe anti-addiction medications via telehealth (Section 3232). A 1990s law banned the prescribing of controlled substances via telehealth, including drugs that help wean patients of their addictions, but allowed the government to grant exceptions, which hasn't yet happened. The new law also makes Medicare patients' homes eligible sites to receive telehealth for the treatment of substance use disorders and co-occurring mental health disorders, beginning July 1, 2019 (Section 2001).

AUTHORIZED DEMOSTRATIONS

The SUPPORT Act also allows HHS to create several new demonstration projects, but since the law provides little in new money it's unclear how HHS would fund such work. Among the projects listed in the new law are:

- A program to test alternative pain management protocols in hospital emergency departments (Section 7091).
- A program to test comprehensive, evidence-based outpatient treatment, including care management and treatment planning, for Medicare beneficiaries with opioid use disorders (Section 6042).
- A Substance Abuse and Mental Health Services Administration grant program to establish or operate comprehensive opioid recovery centers (Section 7121).
- Grants to Federally Qualified Health Centers and rural health clinics to help offset the cost of training providers to dispense substance use disorder treatment medications (Section 6083).
- Enhancing the federal matching rate in Medicaid to expand substance use disorder treatment and recovery services (Section 1003).

OTHER NOTABLE PROVISIONS

Following calls from NAACOS and others, Congress exempted care coordination and value-based arrangements from criminal penalties for knowingly and willfully paying or receiving kickbacks in return for referring a patient to a recovery home or clinical treatment facilities (Section 8122).

Congress required that the "Welcome to Medicare" visit and annual wellness visits starting January 1, 2020, include a review of the beneficiary's current opioid prescriptions and screening for potential substance use disorders, including a referral for treatment as appropriate (Section 2002).

Another change provides resources for hospitals discharging patients who have presented with an opioid overdose, including connecting patients with peer-support specialists and referring to treatment and other services that best fit the patient's needs (Section 7081).

The law creates a six-year loan repayment program for medical professionals who treat substance use disorder in mental health professional shortage areas or counties that have been hardest hit by drug overdoses (Section 7071).

HHS is required to convene a technical expert panel to review quality measures related to opioid-use disorders, including care, prevention, diagnosis, outcomes and treatment. After identifying potential gaps, the panel will make recommendations for new measures to be incorporated into value-based care arrangements (Section 6093).

The Centers for Medicare & Medicaid Services' "Open Payments" or "sunshine" program that makes public payments from drug and device manufacturers to providers will be expanded to include physician assistants, nurse practitioners, clinical nurse specialists, certified registered nurse anesthetists, and certified nurse midwives (Section 6111).

HHS will identify and then annually notify clinicians deemed as outliers in their prescribing of opioids compared to others in their specialty or geographic area (Section 6065).

Questions about how hospital staff handled patients' pain will be removed from the Hospital Consumer Assessment of Healthcare Providers and Systems (HCAHPS) survey unless questions account for how patients were informed about the risk of opioids and non-opioid alternatives for pain management (Section 6104).