

**LEGISLATIVE AND REGULATORY DEVELOPMENTS IN THE
PROVISION OF SUBSTANCE USE DISORDER SERVICES:**

**New Opportunities for Providing Substance Use Disorder
Services in Outpatient Settings**

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In recent years, Congress and CMS have made concerted efforts to address ongoing addiction crises in the United States by expanding access to and coverage of substance use disorder treatment services. Specifically, there have been significant developments in the expansion of health care entities that provide substance use disorder ("SUD") services and obtain reimbursement from Medicare. For example, in October 2018, the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act ("SUPPORT Act") created a Part B benefit for opioid use disorder treatment services provided by an Opioid Treatment Program ("OTP"). OTPs provide medication-assisted treatment for patients with an opioid use disorder. OTPs must be certified by the Substance Abuse and Mental Health Services Administration ("SAMHSA"). The SUPPORT Act amended the Social Security Act to create a bundled payment for an episode of care of opioid treatment services. Opioid treatment services include, but are not limited to, certain medications, group therapy, and counseling.¹ Recent CMS rulemakings have further expanded Medicare coverage for SUD services. State Medicaid programs have also established specific enrollment processes and reimbursement requirements for SUD providers. Additionally, providers may be able to access significant sums of federal funding given to states for SUD treatments, medications, and support services. In 2022, the Biden Administration announced it would be awarding over \$1.6 billion through SAMHSA grant programs to help address the ongoing addiction and overdose crises.² "Expanding access to evidence-based treatment" of substance use disorders was specifically identified as a policy priority.³

Recent legislation and CMS rulemakings have expanded Medicare coverage of SUD treatment options. Last year, the Consolidated Appropriations Act, 2023 established Medicare coverage and payment for intensive outpatient program ("IOP") services in Hospital-based Outpatient Departments, Community Mental Health Centers ("CMHCs"), Rural Health Centers, and Federally Qualified Health Centers.⁴ IOPs provide outpatient mental health services to patients who require at least nine hours of services per week and do not require detoxification or the higher level intensity of care provided in a residential treatment facility.⁵ Additionally, in the recently released calendar year ("CY")

2024 outpatient prospective payment system ("OPPS") proposed rule, CMS plans to expand Medicare coverage of IOP services provided by OTPs.⁶ Specifically, CMS is proposing to adopt an add-on payment to the OTP weekly bundled payment for IOP services. The proposal will also expand the definition of opioid use disorder ("OUD") treatment services to include IOP services provided by OTPs so that these services are covered by the Medicare Part B OTP benefit. CMS is hopeful that these changes, if finalized, will address some of the barriers Medicare beneficiaries face when attempting to access opioid use disorder services. CMS also notes that many OTPs across the country are already providing IOP services.

CMS is continuing its recent expansion of coverage and provider flexibility for telehealth SUD services. In the CY 2020 physician fee schedule ("PFS") final rule, CMS allowed OTPs to provide SUD counseling and therapy using audio-video communication technology. During the COVID-19 public health emergency ("PHE"), CMS revised the OTP regulation in an interim final rule,⁷ to allow therapy and counseling using audio-only telephone calls if two-way interactive audio-video communication was not possible. In the CY 2022 PFS final rule, CMS expanded the allowable use of audio-only telehealth so that this flexibility for OTPs would continue to apply after the conclusion of the PHE. In the recent CY 2024 PFS proposed rule, CMS is proposing to continue to allow OTPs to bill Medicare through CY 2024 under Part B for periodic assessments using audio-only communication when video is not available.⁸ CMS believes this will ease the transition off of the PHE flexibilities that have been helping providers and beneficiaries. In the same proposed rule, CMS wants to allow Addiction Counselors who meet all licensing and certification requirements to be Mental Health Counselors ("MHCs") so that they can enroll and bill Medicare for MHC services.⁹ CMS clarified in the preamble of the proposed rule that it considers SUD services to be MHC services.

Government Insurance Coverage and Reimbursement Under Different Provider Types. Coverage rules for SUD services vary significantly depending on the provider type, the level of care provided, and the payer. To ensure that services are reimbursed, it is important that providers are aware of the payer's specific coverage rules for SUD. Providers interested in offering SUD treatment services also should understand the specific reimbursement requirements established by the patient's payer. Both inpatient and outpatient care for SUD are covered by Medicare if the services are reasonable and necessary, but there is no separate provider type for the provision of SUD services.¹⁰ For Medicaid, each state has its own specific requirements for providers to obtain reimbursement for SUD services provided to Medicaid beneficiaries. Many states require that providers enroll in the state Medicaid program and obtain certification or licensure from the state's licensing authority. States often require that a provider obtain certification allowing it to provide the level of care of mental health and substance abuse services it plans to offer. The levels of care for SUD services are usually based on the American Society of Addiction Medicine ("ASAM") levels of care. There are four outpatient levels of care (Outpatient Services, Opioid Treatment Program, Intensive Outpatient Services, and Partial Hospitalization Services), four residential/inpatient levels of care (Clinically Managed Low-Intensity Residential Services, Clinically Managed Population-Specific High-Intensity Residential Services, Clinically managed High-Intensity Residential Services, and Medically Monitored Intensive Inpatient Services), and four levels of withdrawal management

(Ambulatory Withdrawal Management without Extended On-Site Monitoring, Ambulatory Withdrawal Management with Extended On-Site Monitoring, Clinically Managed Residential Withdrawal Management, and Medically Monitored Inpatient Withdrawal Management).¹¹ Descriptions of these levels of care are available from the ASAM and CMS.¹²

If your organization provides SUD services, or is interested in providing SUD services, and you would like more information about how to obtain Medicare or Medicaid reimbursement for SUD services, or anything else discussed in this legal alert, please let us know.

¹ See CY 2020 PFS Final Rule, 84 Fed. Reg. 62568, 62630 (Nov. 15, 2019).

² See SAMHSA, *Biden-Harris Administration Awards More Than \$1.6 Billion in Funds for Communities Addressing Addiction and Overdose Crises* (Sep. 23, 2022), <https://www.samhsa.gov/newsroom/press-announcements/20220923/biden-harris-administration-awards-funds-communities-addressing-addiction-overdose-crises>.

³ Executive Office of the President: Office of National Drug Policy, *The Biden-Harris Administration's Statement of Drug Policy Priorities for Year One* at 1 (2021), <https://www.whitehouse.gov/wp-content/uploads/2021/03/BidenHarris-Statement-of-Drug-Policy-Priorities-April-1.pdf>.

⁴ Consolidated Appropriations Act, 2023, H.R. 2617, 117th Cong. § 4124 (2023).

⁵ *Id.* at § 4124(b)(2).

⁶ FY 2024 OPPS Proposed Rule at 49719 (Jul. 31, 2023).

⁷ 85 Fed. Reg. 19230, 19258 (Apr. 6, 2020).

⁸ FY 2024 PFS Proposed Rule, 88 Fed. Reg. 52262, 52414-15 (Aug. 7, 2023).

⁹ CY 2024 PFS Proposed Rule (display copy) at 335-36 (Jul. 13, 2023).

¹⁰ See MLN Matters, SE1604, *Medicare Coverage of Substance Abuse Services*, at 1-2 (rev. May 10, 2019).

¹¹ See ASAM, *What is The ASAM Criteria?*, (last visited August 10, 2023), <https://www.asam.org/asam-criteria/about-the-asam-criteria>.

¹² See *id.*

About Us

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