THORN RUN PARTNERS
GOVERNMENT RELATIONS

Memorandum *April 8, 2020*

SUBSTANCE USE AND MENTAL HEALTH POLICIES IN THE CARES ACT

INTRODUCTION

President Donald Trump signed the Coronavirus Aid, Response, and Economic Security (CARES) Act (H.R. 748) on March 27, 2020. The $2.2 trillion package followed two other COVID-19-related packages and provides expanded unemployment insurance, tax credits for affected industries, payments to the American public, and more. While the law does not make substance use disorders (SUD) and mental health a centerpiece, it contains several measures related to SUD and mental health care, including providing additional funding to the Substance Abuse and Mental Health Services Administration (SAMHSA), includes mental health services in telehealth grant programs, and easing disclosure requirements for substance abuse-related medical records. The first two COVID-19 relief packages did not include SUD and mental health policies.

CORONAVIRUS III

Providers

The CARES Act expands and provides new funding for the Community Mental Health Services Demonstration Program. The Certified Community Behavioral Health Centers (CCBHC) made possible by the program are responsible for directly providing (or contracting with partner organizations to provide) nine required types of services: (1) crisis mental health services; (2) screening, assessment and diagnosis, including risk assessment; (3) patient-centered treatment planning; (4) outpatient mental health and substance use services; (5) primary care screening and monitoring of key health indicators/health risk; (6) targeted case management; (7) psychiatric rehabilitation services; (8) peer support and family supports and (9) intensive, community-based mental health care for members of the armed forces and veterans. The legislation reauthorizes the program until November 30, 2020 and expands the demonstration program to two additional states. It also appropriates at least $250 million from a $425 million appropriation for SAMHSA for responding to the crisis.

The Act also provides an extension through November 30 and supplemental funding for Community Health Centers (CHC). CHCs, which provide primary and preventative care services, including some mental health services, received $1.32 billion in the package. This supplements a $4 billion annual appropriation.

Telehealth

The CARES Act reauthorized two Health Resources and Services Administration (HRSA) telehealth programs: the Telehealth Network and Telehealth Resource Centers grant programs. The CARES Act

makes a small but significant change to eligible entities for Telehealth Network Grants, adding providers that treat substance use disorders alongside outpatient mental health services.

Privacy

The CARES Act aligns 42 CFR Part 2 regulations on substance use disorder records with the Health Insurance Portability and Accountability Act (HIPAA), with initial patient consent, for the duration of the emergency. Part 2 regulations place strong privacy protections on patients with substance use disorder history.

The CARES Act also requires HHS to issue guidance on patient record sharing during the COVID-19 emergency. The guidance, which was published on April 2, stated that HHS will not penalize HIPAA-covered business associates for sharing patient information intended to assist the government combat COVID-19. The Office of Civil Rights (OCR) will exercise enforcement discretion and not impose penalties for violations for certain provisions of the HIPAA Privacy rule against health care providers or their business associates for good faith uses and disclosures of protected health information (PHI) for public health and health oversight activities during the nationwide public health emergency.

Home- and Community-Based Services

The CARES Act allows HCBS to be delivered in an acute care hospital setting. HCBS allow individuals to receive long-term care services in their own homes and communities, and the programs serve a variety of targeted populations, including those with mental illnesses. This provision — which is permanent, rather than temporary — allows individuals covered by HCBS to continue to receive the services identified in their service plan while hospitalized. This results in no gaps in needed care and smooth transitions between acute care settings and home- and community-based settings.

Workforce Programs

The bill makes conforming changes to health professions workforce programs (PHSA Title VII) and to nursing workforce development programs (PHSA Title VIII) by replacing "substance abuse" with "substance use disorder." It also reauthorizes those workforce programs through fiscal year 2025.

Appropriations

Congress appropriated $425 million for SAMHSA to respond to the COVID-19 pandemic, and the Agency has begun to accept applications for some of this new funding. Congress specified the following allocations for this funding:

- At least $250 million is designated for CCBHCs;
- At least $50 million for suicide prevention programs;
- At least $15 million is designated for tribal entities;
- $100 million is designated for noncompetitive grants, contracts, and cooperative agreements with public entities to address emergency substance abuse or mental health needs in local communities; and
- $10 million is not allocated to a specific fund.

The CARES Act also provides approximately $13.2 billion for the Elementary and Secondary School Emergency Relief Fund. The Department of Education will distribute this funding through grants to state educational agencies. Grant funding may be used to provide mental health services and supports to students.

In addition, CARES allows the Secretary of Veterans Affairs to enter into short-term agreements or contracts with telecommunications providers for the purpose of providing expanded mental health services to isolated veterans through telehealth or VA Video Connect. This provision applies during any public health emergency. The Secretary is directed to expand eligibility to include Veterans already receiving care but who may not be eligible for services through telehealth or VA Video Connect. Priority is given to Veterans in unserved and underserved areas, Veterans in rural areas, low-income Veterans, and Veterans considered to be at a heightened risk for suicide or other mental health concerns during isolation periods due to a public health emergency.

CMS GUIDANCE

CMS implemented the telehealth provisions of the Coronavirus Preparedness and Response Supplemental Appropriations Act and expanded telehealth with an 1135 waiver (fact sheet). While this legislation did not directly address SUD and mental health, it did expand telehealth in Medicare broadly, which may include mental health counseling. Under the waiver, Medicare can pay for office, hospital, and other visits furnished via telehealth regardless of geography. Providers may reduce or waive cost-sharing for telehealth visits paid by federal health care programs. Visits provided by telehealth are considered office visits and are reimbursed at the same rate as regular, in-person visits. First visits may be provided through telehealth for the duration of the public health emergency. CMS emphasizes that no federal approval is needed for state Medicaid programs to reimburse providers for telehealth services in the same manner or at the same rate that states pay for face-to-face services. The waiver went into effect March 6, 2020.

On April 2, CMS issued guidance identifying opportunities for telehealth delivery methods to increase access to Medicaid services and federal reimbursement for services and treatment for substance use disorders under Medicaid using services delivered via telehealth, including in school-based health centers. The guidance stems from statutory language included in section 1009(b) of the SUPPORT Act (P.L. 110-271); however, it has particular relevance during the COVID crisis. For example, the guidance notes that states have significant flexibility in how they elect to cover and reimburse for services provided to Medicaid-eligible individuals who have been diagnosed with SUDs. Appendix A of the guidance provides examples of how states are currently utilizing telehealth delivery methods to furnish services to Medicaid beneficiaries, and Appendix B identifies other existing Federal funding streams that may compliment Medicaid's federal funding.