ABHW

Advancing Health Care Policy
for Mental Health and Addiction

December 16, 2019

The Honorable Diana DeGette
Member of Congress
United States House of Representatives
2111 Rayburn House Office Building
Washington, DC 20515

The Honorable Fred Upton
Member of Congress
United States House of Representatives
2183 Rayburn House Office Building
Washington, DC 20515

Dear Representatives DeGette and Upton:

The Association for Behavioral Health and Wellness (ABHW) appreciates the opportunity to respond to your request for information on Cures 2.0.

ABHW is the national voice for payers that manage behavioral health insurance benefits. ABHW member companies provide coverage to approximately 200 million people in both the public and private sectors to treat mental health, substance use disorders (SUDs), and other behaviors that impact health and wellness. Our responses below outline areas to improve access to quality treatment and coordinated care for individuals with mental health and SUDs.

ABHW is fully committed to addressing SUDs. In particular we are interested in curbing the opioid epidemic and supporting a continuum of evidence–based, person–centered care to treat individuals with an opioid use disorder (OUD), including medication assisted treatment (MAT). Our members work to identify and prevent addiction where they can; and where they cannot, they help individuals get treatment so that they can recover and lead full, productive lives in the community. As you continue your work to address SUDs, we encourage you to consider the following policy and legislative proposals.

42 CFR Part 2

ABHW is committed to aligning 42 CFR Part 2 (Part 2) with the Health Insurance Portability and Accountability Act (HIPAA) for the purposes of treatment, payment and health care operations (TPO) to allow appropriate access to patient information that is essential for providing whole-person care while protecting patient privacy.

The Overdose Prevention and Patient Safety (OPPS) Act, H.R. 2062, promotes coordinated care and expanded access to treatment. As you continue your work to address SUDs, we encourage the inclusion of H.R. 2062 legislative language in Cures 2.0. The OPPS Act would align Part 2 with HIPAA to allow for the transmission of SUD records for the purpose of TPO as well as enhance patient privacy and anti-discrimination protections. Once this is accomplished, we can truly promote integrated care and heightened patient safety, while providing health care providers with one federal privacy standard for all of medicine.

The recent Confidentiality of Substance Use Disorder Patient Records Notice of Proposed Rulemaking, issued by the Substance Abuse and Mental Health Services Administration (SAMHSA), proposed some helpful changes to patient consent, and clarified the ability of non-Part 2 providers to segregate any patient records received from Part 2 programs in order to avoid subjecting their own records to Part 2. The proposed rule did not fully address aligning Part 2 with HIPAA for the purposed of TPO. As a result, it remains important for Congress to consider H.R. 2062.

Expanding Access to Care and Addressing Workforce Shortages

Expanding access to care by addressing workforce shortages and barriers that limit available providers to treat behavioral health needs can improve health outcomes, overcome stigma, and reduce costs. ABHW recommends inserting the Mainstreaming Addiction Treatment Act of 2019 (H.R. 2482/S.2074) into Cures 2.0. This legislation would eliminate the Drug Enforcement Administration (DEA) X waiver to prescribe buprenorphine. It is important to remove regulatory hurdles to help reduce unmet needs for addiction treatment. In many areas ABHW members find it hard to locate a provider willing to provide MAT to the consumers they serve. Addressing this barrier would encourage more providers to prescribe medication for OUD and help individuals overcome addiction.

In addition, ABHW recommends recognizing mental health counselors (MHCs) and marriage and family therapists (MFTs) as covered Medicare providers to address the gaps in care for Medicare beneficiaries. Recognition of MHCs and MFTs would increase the pool of eligible mental health professionals by over 200,000 licensed practitioners. Studies have shown that these providers have the highest success and lowest recidivism rates with their patients as well as being the most cost effective.[1] Further, according to the American Association for Marriage and Family Therapy, marriage and family counseling costs are typically 60 percent that of psychiatrists and

[1] D. Russell Crane and Scott H. Payne, "Individual Versus Family Psychotherapy in Managed Care: Comparing the Costs of Treatment by the Mental Health Professions," *Journal of Marital & Family Therapy* 37, no. 3 (2011): 273-289.

80 percent of psychologists. Additionally, studies have supported the potential for a medical offset effect after family therapy.[2]

Including the Mental Health Access Improvement Act (H.R. 945/ S. 286) would recognize MHCs and MFTs as covered Medicare providers and help address the critical gaps in care while reducing rapidly increasing hospital costs. If this is not feasible, an alternate recommendation is expanding access to MHCs and MFTs in designated mental health shortage areas.

Addressing Fraud and Abuse in Substance Use Disorders Treatment

ABHW members have witnessed firsthand the fraud in some SUD treatment facilities in areas of licensure, accreditation, administrative and billing practices, quality, and enrollment. Our comments below outline the problems ABHW members have experienced with fraud and abuse as well as offer ideas to improve the quality of SUD treatment. These fraudulent activities usually occur in out-of-network SUD facilities and the inappropriate care they provide can have dire, and sometimes fatal outcomes.

Recovery Homes

ABHW supports the notion that recovery housing should have a clear operational definition that accurately delineates the type of services offered. While recently released guidelines by the SAMHSA encourage this, we believe changes to the definition and added oversight needs to be identified to truly hold unethical treatment centers accountable.

Efforts to address this issue should explicitly state that recovery homes are not treatment programs and individuals do not receive treatment at a recovery home. Additionally, it should be made clear that recovery homes can be a component of an individual's treatment and recovery and that any necessary treatment will be accessed in other settings and that all services should be coordinated. This level of specificity is critical so that recovery homes can be uniformly evaluated by consumers, providers, accrediting bodies, government, and payers. A clear delineation will help everyone know what to expect.

Licensure and Accreditation

While licensing is a function under state and other local jurisdictions, efforts are needed to ensure that all facilities are licensed and fully accredited to provide SUD treatment. ABHW members have found that some facilities do not have a valid license, a license does not exist at the address provided, a license is not for the services being

[2] https://link.springer.com/chapter/10.1007%2F978-3-319-03482-9_22

advertised, and/or the facility may be providing services for which they are not licensed.

Additionally, it is critical that facilities adopt quality standards and be held accountable to those standards through accreditation. Standards should take into account that there are several levels of care within the recovery housing model, each with different oversight needs.

Administration and Billing Practices

As more funding is directed toward treating SUDs it has drawn the interest of private equity and other profit driven providers. Several important clinical and billing issues need to be addressed. ABHW members have identified that fraudulent facilities may bill for the same diagnosis, same procedures, same units for every member, every day. Additionally, there is often misrepresentation of billed services such as an inpatient/hospital bill, but the facility is residential or intensive outpatient. These providers are often unable to substantiate billed services and lack adherence to federal and state regulations, policies, and/or procedures.

Quality

ABHW member companies continue to grapple with fraudulent claims and identifying deceptive practices. While there are efforts to roll back prior authorization, these and other utilization review tools are important to help ensure that patients aren't being preyed upon by fraudulent providers. These managed care techniques help provide checks and balances to ensure quality treatment and patient protections. ABHW member companies have identified improper practices such as, treatment not being rendered by a medical professional, inappropriate medical supervision of SUD treatment programs, clinical information provided during prior authorization is unclear or vague, excessive use of medically unnecessary services, unlicensed personnel rendering services, and facilities billing for levels of care that they are not licensed to perform.

Quality standards, best practices, and model policies need to be identified and widely disseminated and adopted to ensure individuals have appropriate and accurate information to make treatment decisions. Additionally, this will give payers a full picture of the medically necessary services rendered under appropriately licensed medical professionals. This will ensure the appropriate level of care and treatment needed to produce positive health outcomes and protect patients struggling with SUDs.

Enrollment

Patient brokering continues to be a part of fraudulent practices in pockets of the SUD treatment industry. This activity often results in kickback payments and targeting patients through deceptive marketing and advertising practices with paid travel and incentives to enroll in treatment, often outside of their state of residence and out–of–network. Once an individual is enrolled, facilities often bill for treatments, tests, and other services or procedures that may or may not be clinically appropriate and may not even be provided. We encourage efforts to identify this fraudulent behavior and procedures for law enforcement to address it in a timely manner.

ABHW is committed to working with Congress, the Administration, health care providers, and other stakeholders to shed light on this issue, prevent fraud, and protect patient lives.

Telehealth

There are continued challenges created by the Ryan Haight Act that prevent providers from prescribing medicine via telehealth services. Specifically, ABHW recommends that licensed community mental health and addiction providers, eligible to prescribe medications, gain access to a special registration process so that they may register with the DEA to prescribe medications, through telehealth, now commonly utilized in MAT practice, without a prior in-person encounter. We also suggest eliminating the requirement that in order to receive treatment, the patient physically be located in a DEA registered hospital or clinic or be in the physical presence of a DEA registered practitioner. Not all people have access to these types of entities and providers due to behavioral health provider shortages or physical difficulty traveling.

Thank you for the opportunity to comment on these important issues. We look forward to working with you to identify solutions and ensure quality, evidence-based mental health and SUD treatment in communities across our nation. Please feel free to contact Maeghan Gilmore, Director of Government Affairs at gilmore@abhw.org or 202.449.7658 with any questions.

Sincerely,

Pamela Greenberg

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