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Centers for Medicare & Medicaid Services
Department of Health and Human Services
P.O. Box 8016
Baltimore, MD 21244-8016

Submitted via www.regulations.gov

**Re: CMS-10786 and CMS-R-153; Substance Use-Disorder
Prevention that Promotes Opioid Recovery and Treatment
(SUPPORT) for Patients and Communities Act Section 1003
Demonstration Evaluation**

To whom it may concern,

On behalf of the National Health Law Program (NHeLP), thank you for the opportunity to comment on the Centers for Medicare and Medicaid Services' (CMS) collection of information, which will inform the evaluation regarding the impact of state demonstrations to increase substance use disorder (SUD) provider capacity pursuant to Section 1003 of the SUPPORT Act. NHeLP is a the National Health Law Program (NHeLP) protects and advances the health rights of low income and underserved individuals by advocating, educating, and litigating at the federal and state level.

Workforce shortages in Medicaid are a key barrier for individuals with SUD, including opioid use disorder (OUD), to access life-saving treatment. Section 1003 demonstrations are key to reducing the overdose epidemic. Below you will find comments on several issues we believe are important for CMS to consider and essential in designing the demonstration's evaluation.

I. In crafting data collection tools for evaluation purposes, CMS should ensure it is surveying beneficiaries in addition to providers.

We urge CMS to incorporate beneficiaries' perspective into the evaluation of the demonstration. While we understand and support CMS's intention to survey and conduct focus groups of Medicaid SUD providers, we believe it is necessary to equally evaluate the extent to which Section 1003 demonstrations are enabling beneficiaries in participating states to access needed care and understand beneficiaries' needs and patterns of use of services. CMS (and participating states) should seek to understand whether patients in need of treatment are benefiting from the increased availability of providers, and whether barriers remain in place that prevent Medicaid beneficiaries with SUD from accessing care. In particular, CMS should focus on collecting information from beneficiaries that are part of underserved populations typically left behind in the conversation regarding access to SUD services, including Black, Indigenous, and people of color (BIPOC); LGBTQ+ individuals; children and youth (see further discussion below); among other populations.

CMS should develop surveys targeting beneficiaries in participating states that include questions about accessing SUD services in the past year, ease of access to such services, distance traveled and timely access to the services, and whether beneficiaries are still facing unaddressed barriers to accessing services. The surveys should also obtain information about instances when beneficiaries sought services but were denied or unable to receive them for any reason. Of course, these surveys should be anonymous and all measures should be taken to protect patient confidentiality and comply, at all times, with HIPAA and 42 C.F.R Part 2 governing provisions.

II. Survey and focus group questions should emphasize availability of community-based services and coordination between different placement levels.

Medically necessary SUD services are highly varied and a key goal of recent coverage expansion efforts has been to ensure Medicaid programs are covering the whole continuum of care by covering the services at all the different placement levels available under the ASAM criteria. Unfortunately, many states have emphasized residential and inpatient treatment at the expense of community-based services. Community-based services have long been recognized as the most effective settings for behavioral health treatment for the vast majority of individuals. CMS should use the opportunity afforded by Section 1003 and should evaluate

whether states are properly closing gaps in the availability of community-based SUD services and providers. In fact, we strongly believe a condition of participation in Section 1003 demonstrations and any demonstration aimed at increasing SUD provider capacity in Medicaid should be to ensure that all patients have the option of receiving services on an outpatient basis and in their communities before being offered inpatient residential treatment.

We urge CMS to more explicitly ask providers about the settings where they provide services and about the extent to which they are actively coordinating with other settings and levels of care. In particular, we recommend that residential providers be identified and asked whether they are correctly applying medical necessity criteria so that residential services are provided only in those cases where outpatient and community-based services would not be effective. Furthermore, the survey and focus-group questions should address the extent to which providers at all placement level are coordinating and referring patients to other necessary services, including medication-assisted treatment (MAT) and treatment for co-occurring conditions. Regarding MAT, we recommend that CMS specifically request information regarding the types of medications providers are treating beneficiaries with and whether, and to what extent, the demonstration has led to increase availability of opioid treatment programs (OTPs) in Medicaid, an important gap the SUPPORT Act seeks to address.

III. Survey and focus group questions should assess the extent to which utilization management limitations and medical necessity criteria are hampering access to services.

Surveys to both providers and beneficiaries, as well as provider focus groups, should collect information about barriers to SUD care beyond provider capacity. In particular, SUD services for Medicaid beneficiaries are often subject to utilization management controls, such as prior authorization, step therapy, and mandatory concurrent provision of behavioral health treatment, that in fact create additional barriers to accessing medically necessary and potentially life-saving care. Expanding provider capacity alone cannot solve the access problems if states are not also actively removing barriers to coverage. As such, CMS should use the evaluation of Section 1003 demonstrations to collect information about any additional perceived or actual barriers that either providers or beneficiaries are facing.

CMS should also evaluate how Section 1003 demonstrations enable providers to take advantage expanded authority and flexibilities to prescribe buprenorphine. For example, survey and focus-group questions should seek to collect information about whether non-

physician providers eligible to prescribe buprenorphine (Nurse Practitioners (NPs), Physician Assistants (PAs), Clinical Nurse Specialists (CNSs), Certified Registered Nurse Anesthetist (CRNAs), and Certified Nurse-Midwives (CNMs)) are actively participating in Section 1003 demonstrations. In addition, the surveys and focus groups should collect information about the number of patients each provider is treating with buprenorphine in order to understand the impact of the SUPPORT Act's provision expanding authority to treat up to 100 patients in the first year after the provider received the appropriate waiver from SAMHSA. This data is essential to inform potential, more permanent, changes to federal law governing authority to prescribe buprenorphine.

IV. CMS should evaluate the extent to which the demonstration has improved access to SUD services for individuals under 21, pursuant to Medicaid's Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) benefit.

Even though states have made progress in improving access to SUD care for adult Medicaid beneficiaries, significant gaps remain in provision of appropriate age-specific services for children and youth. Evidence indicates that adolescents and young adults are particularly vulnerable to drug use and misuse and are at heightened risk of developing a SUD.¹ In addition, most adults with SUD began using drugs when they were minors.² These statistics underscore the importance of ensuring that Medicaid beneficiaries under 21 have access to appropriate services to screen, prevent, and treat SUDs. Unfortunately, few Medicaid providers are actively treating children and youth with or at risk of SUD and those who do often lack clear guidance from the state and CMS about how to treat SUDs or the risk of SUDs in this population. As such, a key component of the evaluation of this demonstration must be to assess the extent to which the evaluation has improved access to care for minors.

We recommend that CMS incorporate questions about children and youth in the survey and focus-group questions for providers and that the survey and focus-groups collect information

¹ Substance Abuse and Mental Health Services Administration, *Key Substance Use and Mental Health Indicators in the United States: Results from the 2019 National Survey on Drug and Health, 2021*, <https://www.samhsa.gov/data/sites/default/files/reports/rpt29393/2019NSDUHFFR1PDFW090120.pdf>. See also Substance Abuse and Mental Health Services Administration, *Substance Misuse Prevention for Young Adults*, 2019, <https://store.samhsa.gov/sites/default/files/d7/priv/pep19-pl-guide-1.pdf>.

² Substance Abuse and Mental Health Services Administration, *The TEDS Report*, 2014, https://www.samhsa.gov/data/sites/default/files/WebFiles_TEDS_SR142_AgeatInit_07-10-14/TEDS-SR142-AgeatInit-2014.pdf.

regarding barriers providers are facing in treating minors with SUD. In particular, the evaluation of Section 1003 demonstrations should seek to answer whether providers are aware of federal or state guidance on the standard of care for children and youth with or at risk of SUD. CMS should also seek to ask whether providers whose scope of practice does not extend to SUD and who are not actively screening and/or treating individuals under 21 for SUDs have the tools to refer the beneficiary to another provider. X

The evaluation of Section 1003 also provides a good opportunity to analyze whether participating states (as a sample of the remaining states) are complying with all EPSDT requirements. As CMS is aware, the EPSDT requirement that states provide all Medicaid coverable services needed to correct or ameliorate a condition in a beneficiary under 21 extends to SUD services, regardless of whether the state Medicaid plan actually covers such services.³ Unfortunately, CMS and other federal agencies have provided limited guidance to states in this respect and, as a result, states have been inconsistently providing age-specific SUD services for children and youth.

While clarifying the EPSDT requirement around SUD services is outside the scope of the evaluation of Section 1003, this process nonetheless represents an excellent opportunity for CMS to ensure that states are investing in provider capacity in a way that targets all populations, including individuals under 21, to help the state meet its obligations under EPSDT. We urge CMS to incorporate into the survey and focus-group discussions, questions regarding the extent to which providers are treating individuals under 21 with or at risk of SUD and how services provided to minors differ from those provided to adults.

V. The evaluation should measure the extent to which the demonstration has addressed health disparities.

The evaluation of Section 1003 demonstrations must measure the effectiveness of the demonstrations in expanding access to culturally competent SUD care. The overdose epidemic impacts all populations in the U.S. and is increasingly harming BIPOC populations in a disproportionate way.⁴ This is particularly true because BIPOC communities bear the blunt of

³ Substance Abuse and Mental Health Services Administration & Centers for Medicare and Medicaid Services, Coverage of Behavioral Health Services for Youth with Substance Use Disorders, Jan. 26, 2015, <https://www.medicaid.gov/federal-policy-guidance/downloads/cib-01-26-2015.pdf>

⁴ Nirmita Panchal, et al., Substance Use Issues are Worsening Alongside Access to Care, KFF, 2021, <https://www.kff.org/policy-watch/substance-use-issues-are-worsening-alongside-access-to-care/>.

the “War on Drugs,” and are incarcerated or otherwise involved with the criminal justice system for drug-related offenses at higher rates than their white counterparts. The effect of this reality is that gaps in access to SUD treatment are more pronounced among BIPOC communities. CMS should ensure that funding tied to Section 1003 demonstrations is going to a diverse group of providers who are treating underserved and, in many cases, non-dominant communities, including BIPOC, LGBTQ+, and prenatal and postpartum individuals, among others. The survey and focus-group questions should evaluate whether providers are serving these non-dominant communities and whether the state has created incentives for SUD services to be delivered in underserved communities.

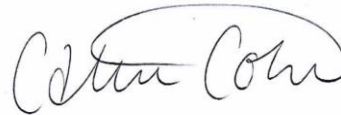
VI. Conclusion

Thank you for the opportunity to provide feedback on this important component of the SUPPORT Act. If you have any questions about our comments, please reach out to hernandez-delgado@healthlaw.org or cohen@healthlaw.org.

Sincerely,



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