

update

Public Sector Benefits Compliance News

November 30, 2018

New Law Addresses the Opioid Crisis

The Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment (SUPPORT) for Patients and Communities Act is comprised of approximately 70 bills aimed at addressing the national opioid crisis.¹ Passage of this sweeping legislation was a notable bipartisan effort in response to the opioid crisis, which was declared a national public health emergency in 2017.² Approximately 72,000 individuals are projected to have died from drug overdose in 2017, with the majority of those deaths involving opioids.³

Highlights of the SUPPORT Act

The SUPPORT Act takes many steps towards combatting the opioid epidemic. This section notes some key provisions, many of which are effective immediately. While the law does not directly affect group health plans, it may help plan participants with additional treatment options and help plans fight abusive billing practices.

Prescribing Authority

To help advance opioid addiction recovery, the law supports expanding how nurse practitioners and physician assistants prescribe medication-assisted treatment (MAT). MAT is the use of medications combined with behavioral therapies to treat the opioid use disorders. Some common examples of medications used in MAT treatment are naltrexone, methadone and buprenorphine.

The law also temporarily includes expansions giving prescribing rights to nurse anesthetists, clinical nurse specialists and midwives. In addition, the law requires E-prescribing for controlled substances in Medicare Part D plans.

The law also expands programs that authorize first responders to administer naloxone. Naloxone is a prescription drug designed to reverse opioid overdose. Naloxone can be administered as an injectable or through a pre-packaged nasal spray. Naloxone emergency kits are now more widely distributed in response to the opioid epidemic.

Preventing Predatory Practices

The law includes provisions aimed at protecting communities from the illegal supply and misuse of opioids, as well as from predatory practices that have a negative impact on patients and health plans.



Health Compliance News Highlights:

- The SUPPORT Act combines a broad range of funding, education, access expansion and law enforcement initiatives aimed at combating the opioid epidemic.
- It expands the number of clinicians that may prescribe medication-assisted treatment, and the ability of first responders to administer Naloxone a prescription drug designed to reverse opioid overdose.
- The law imposes criminal penalties on individuals who refer patients to fraudulent treatment centers or labs for kickbacks.

¹ The SUPPORT Act was signed into law on October 24, 2018 (Public Law No: 115-271). When it is available online, it will be accessible from the [govinfo website](https://www.govinfo website).

² See the [HHS press release](https://www.hhs.gov/press/20171116-01).

³ Statistics on [opioid overdose death rates](https://www.drugabuse.gov/overdose) are available on the [drugabuse.gov website](https://www.drugabuse.gov/overdose).

Specifically, the law attempts to eliminate “patient brokering,” a scheme in which opioid treatment facilities pay kickbacks to individuals who recruit new patients to the facilities. Once in the facility, the operator may recommend costly lab tests and screenings to the patients — sometimes as often as daily — and bill group health plans for the cost. The law imposes a fine of up to \$200,000 and imprisonment up to 10 years per occurrence for anyone who solicits or receives kickbacks, bribes or rebates for referring patients to a residential treatment center, sober home, clinical treatment facility or laboratory. The law does not apply to legitimate payment arrangements that do not base payments on numbers of patients recruited or numbers of tests performed.

In addition, the law authorizes the Food and Drug Administration to require drug manufacturers to use special safety packaging for opioids, such as sealing them in plastic blister packs and restricting doses. It also includes provisions targeting shipment oversight to help prevent the entry of illicit drugs into the United States.

Access to Treatment and Education

In an effort to help those struggling with opioid addiction, the law expands access to opioid treatment. Further, the law advances education to prevent opioid misuse and addiction, as well as to support opioid addiction recovery through the following measures:

- Allows Medicare to provide coverage for MAT and Opioid Treatment Programs through a demonstration program, which is generally a limited program with specific measurable goals;
- Promotes the development of alternative treatments for pain by the National Institutes of Health;
- Requires the Department of Health and Human Services (HHS) to issue guidance regarding the provision of MAT via telemedicine;
- Reauthorizes funding through the 21st Century Cures Act⁴ to continue to address the opioid crisis and provides for multiple grant programs for nonprofits and other entities, including funding for opioid recovery centers;
- Improves resources available to individuals transitioning from treatment programs to the workforce; and
- Creates a pilot program to help address workforce shortages due to the opioid crisis; and
- Allows state Medicaid programs to pay for treatment in residential behavioral hospitals (until 2023).

Reporting

The SUPPORT Act requires HHS to issue guidelines for additional reporting to the Center for Medicare & Medicaid Services (CMS) by group health plans. This appears to be in addition to reporting currently required to implement Medicare secondary payer rules.

Group health plans can expect to receive new HHS guidelines for additional reporting to CMS.

⁴ The 21st Century Cures Act (Public Law 114-255), which was enacted in 2016, includes a number of requirements designed to improve compliance with MHPAEA. Specifically, the law called on the Departments to issue a compliance guide and additional clarifying guidance related to NQTLs, as well as to solicit feedback regarding how to improve the disclosure request process under MHPAEA. In addition, the Departments were directed to provide greater transparency in enforcement activities. Public Law 114-255 is available online at the [Government Printing Office website](#). For more information about this law, see Segal Consulting's February 15, 2017 *Update*, “[21st Century Cures Act Enhances Mental Health Parity Oversight and Creates New Small Employer Health Reimbursement Arrangement](#).”

The law also calls for additional analysis and reporting by HHS and the Department of Labor regarding implementation of the Mental Health Parity Addiction Equity Act (MHPAEA).⁵

Implications for Group Health Plans

While the new law generally does not directly add new requirements for group health plans, it may influence benefits and programs available to members. In addition, the law provides additional tools to combat fraudulent practices in residential treatment centers and sober homes, which have driven up plan costs for laboratory tests.

Plan sponsors can continue to take steps to address opioid addiction, such as limiting prescriptions and/or limiting quantities for opioids and broadening access to MAT medications and alternative treatments for chronic pain, such as physical therapy.

Self-funded non-federal governmental plans that have not already opted out of compliance with the Mental Health Parity and Addiction Equity Act (MHPAEA) may want to consider whether doing so would be meaningful for providing them greater flexibility in coverage designs related to opioid addiction and MAT.

The SUPPORT Act may indirectly affect group health plans.

How Segal Can Help

Segal can assist employers in understanding the SUPPORT Act and its potential impact on their health care benefits. In addition, Segal has expert consultants who can help explore ways for plans to manage opioid use among our client populations and design effective mental health and substance use disorder coverage programs that comply with state and federal laws including MHPAEA.

Segal can assist self-funded governmental plans to consider the advantages and disadvantages of opting out of MHPAEA.

Questions?

For more information about the new law and how it may affect your plan, please contact your Segal consultant.

⁵ Segal Consulting's publications on MHPAEA, including a May 23, 2018 *Update*, "[Federal Agencies Issue Guidance and Increase Enforcement of Mental Health Parity and Addiction Equity Act](#)," can be accessed from the [Compliance News page](#) on the Segal website.

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