September 28, 2022

The Honorable Richard Neal
U.S. House Committee on Ways and Means
Washington, DC 20510

The Honorable Kevin Brady
U.S. House Committee on Ways and Means
Washington, DC 20510

Re: Markup of Worker and Family Support and Health Legislation

Dear Chair Neal and Ranking Member Brady:

On behalf of the American Society of Addiction Medicine (ASAM), a national medical specialty society representing more than 7,000 physicians and associated health professionals who specialize in the prevention and treatment of addiction, thank you for the opportunity to submit a letter for the record regarding the worker and family support and health legislation that was the subject of your committee's legislative markup on September 21, 2022. While ASAM greatly appreciates your efforts to improve access to mental health and substance use disorder (SUD) care, ASAM also urges further legislative clarifications to ensure that Medicare beneficiaries with a primary diagnosis of SUD or with no co-occurring mental health condition can access critical SUD services under Medicare.

Multiple national population surveys have found that about half of those who experience a mental illness during their lives will also experience SUD, and vice versa.[1] This means that the other half of people with SUD may never experience a co-occurring mental illness. Based on committee member comments made during the September 21st markup, we believe that the committee's legislative intent includes improving access to SUD services for those Medicare beneficiaries as well. Therefore, ASAM respectfully makes the following requests.

[1] NIDA. 2021, April 13. Part 1: The Connection Between Substance Use Disorders and Mental Illness. Retrieved from https://nida.nih.gov/publications/research-reports/common-comorbidities-substance-use-disorders/part-1-connection-between-substance-use-disorders-mental-illness on 2022, September 25

Committee Print 117-1. Improvements to Medicare Inpatient and Outpatient Mental Health Services

Section 1. Improvements to Medicare Prospective Payment System for Psychiatric Hospitals and Psychiatric Units

Please amend the proposed 42 U.S.C. 1395ww(s)(5)(B)(iii) so that it references proper terminology for SUD treatment by replacing "detoxification services for substance abuse," with "withdrawal management for substance use disorder and initiation of treatment, including addiction medication."

Section 2. Ensuring Adequate Coverage of Outpatient Mental Health Services Under the Medicare Program

Existing Medicare regulations indicate that partial hospitalization services - on which the proposed coverage of intensive outpatient (IOP) services are based - are for beneficiaries who "have a mental health diagnosis."[2] Although SUD is included as a mental health diagnosis in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), existing Medicare guidance for partial hospitalization services implies that the benefit is not for beneficiaries with primary SUD or with no co-occurring mental health condition.[3] Thus, ASAM respectfully requests that the legislative text be amended to include a directive to the Centers for Medicare & Medicaid Services (CMS) to revise its regulations to ensure that both IOP and PHP are effectively covered for individuals with a primary diagnosis of SUD or with no co-occurring mental health condition, consistent with the most recent version of the American Society of Addiction Medicine's *The ASAM Criteria*.

Further, while it is true that IOP services may be offered in any setting that meets state licensure and standards, these services are most often provided in freestanding SUD specialty settings that are not covered Medicare providers. Thus, ASAM respectfully requests that the legislative text be amended to authorize IOP services delivered in "freestanding community-based substance use disorder treatment facilities."[4] Alternatively, the legislative text could be amended to authorize IOP services delivered in "opioid treatment programs or other settings as determined appropriate by the Secretary." For purposes of alignment and continuity of care, the amended text should also authorize partial hospitalization services to be delivered in all facilities ultimately proposed for IOP services.

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[2] 42 C.F.R. § 410.43(c)(5)

[3] Legal Action Center. Comments to CMS's proposed CY 2023 Physician Fee Schedule rule, https://www.lac.org/assets/files/LAC-Comments_PFS-2023-2022.09.01.pdf. Page 8.

[4] Suggested definition for "freestanding community-based substance use disorder treatment facilities" is as follows: "(i) is legally authorized to provide [intensive outpatient] [partial hospitalization] substance use disorder services under the law of the State (or under a State regulatory mechanism provided by State law) in which the facility is located; and (ii) meets such other requirements as the Secretary may impose to assure the quality of the [intensive outpatient][partial hospitalization] substance use disorder services provided."

Committee Print 117-2. Improvements to the Medicare Program Related to Physician Services and Education

Section 1. Coverage of Marriage and Family Therapists and Mental Health Counselor Services Under Part B of the Medicare Program

The existing legislation proposes Medicare coverage of Mental Health Counselors (MHCs) as Medicare providers. To ensure inclusion of professional counselors who primarily care for beneficiaries with SUD, ASAM respectfully requests that the legislative text be amended to reference a broader term, such as "Professional Counselor," instead of "Mental Health Counselor." MHCs should continue to be referenced as one of the types of licensure/certification included, and otherwise qualified licensed or certified SUD counselors[5] – including addiction counselors and alcohol and drug counselors – should also be referenced under the proposed 42 U.S.C. 1395x(lll)(4)(B). Relatedly, the legislative text should be further amended so that the required degree under the proposed 42 U.S.C. 1395x(lll)(4)(A), as well as the two years of clinical supervised experience under the proposed 42 U.S.C. 1395x(lll)(4)(C), include mental health "or substance use" counseling. Finally, ASAM suggests that the legislative text be amended to ensure that these counselors, as well as marriage and family therapists and clinical social workers, are not excluded from inpatient settings and skilled nursing facilities.

Sections 2 and 3. Outreach and Reporting on Certain Behavioral Health Integration Services/Opioid Use Disorder Treatment Services Furnished by Opioid Treatment Programs

According to a recent government report,[6] most Medicare beneficiaries receive medications for opioid use disorder in office-based settings, not opioid treatment programs (OTPs). In fact, most U.S. counties do not have an OTP.[7] Thus, please expand the legislation's outreach and education to include the office-based bundled payments under the Medicare Physician Fee Schedule for SUD treatment (G2086-G2088).

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[5] At the state level, licensure/certification of professional counselors can be distinct and separate from licensure/certification of SUD counselors. *See* https://www.counseling.org/knowledge-center/licensure-requirements/overview-of-state-licensing-of-professional-counselors. For licensure/certification requirements for SUD counselors, see SAMHSA's A National Review of State Alcohol and Drug Treatment Programs and Certification Standards for Substance Abuse Counselors and Prevention Professionals. http://adaiclearinghouse.net/downloads/National-Review-of-State-Alcohol-and-Drug-Treatment-Programs-and-Certification-Standards-211.pdf

[6] U.S. Dep't of Health & Human Services Office of Inspector General, *Opioid Overdoses and the Limited Treatment of Opioid Use Disorder Continue to be Concerns for Medicare Beneficiaries* (Sept. 2022), https://oig.hhs.gov/oei/reports/OEI-02-22-00390.pdf.

[7] Joudrey PJ, Chadi N, Roy P, Morford KL, Bach P, Kimmel S, Wang EA, Calcaterra SL. Pharmacy-based methadone dispensing and drive time to methadone treatment in five states within the United States: A cross-sectional study. Drug Alcohol Depend. 2020 Mar 27;211:107968. doi: 10.1016/j.drugalcdep.2020.107968. Epub ahead of print. PMID: 32268248; PMCID: PMC7529685.

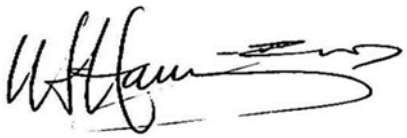
Committee Print 117-4. Improved Information in Provider Directories, Plan Definitions, and Crisis Services for Private Insurance Plans

Section 2. Ensuring Mental Health and Substance Use Disorder Benefits are Defined Pursuant to External Benchmarks Based on Nationally Recognized Standards

Decades ago, experts in addiction care recognized the imperative to bring standardization and consistency in the coverage and delivery of SUD treatment, consistent with other chronic medical conditions. Building on early efforts to develop such standardization and consistency, ASAM established an evidence-based set of guidelines for patient placement, continued stay, and transfer of patients with addictive, substance related and co-occurring conditions. Now referred to as *The ASAM Criteria*, these standards provide a consistent way to assess a person's biopsychosocial circumstances and identify an appropriate level of care based on individual needs. Use of *The ASAM Criteria* for patient assessment and placement can increase patient engagement, improve outcomes, and reduce both underutilization and overutilization of medical care. [8,9] Thus, ASAM respectfully requests that the legislation be amended to require the Secretary to provide guidance – under the Public Health Service Act, Internal Revenue Code, and Employee Retirement Income Security Act – on the generally accepted standards of care for SUD treatment, which includes *The ASAM Criteria*.

Thank you for the opportunity to share ASAM's input and for considering these requests. ASAM looks forward to working with you and your colleagues to strengthen the committee's proposed legislation for Medicare beneficiaries with a primary diagnosis of SUD or with no co-occurring mental health condition. If you have any questions or concerns, please contact Kelly Corredor, ASAM's Chief Advocacy Officer, at kcorredor@asam.org.

Sincerely,



William F. Haning, III, MD, DLFAPA, DFASAM
President, American Society of Addiction Medicine

[8] Stallvik M, Gastfriend DR, Nordahl HM. Matching patients with substance use disorder to optimal level of care with the ASAM Criteria l of Substance Use, 20(6), 389–398. https://www.tandfonline.com/doi/abs/10.3109/14659891.2014.934305. Accessed September 26, 2022

[9] Magura S, Staines G, Kosanke N, et al. Predictive validity of the ASAM Patient Placement Criteria for naturalistically matched vs. mismatched alcoholism patients. Am J Addict. 2003;12(5):386–397. https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1521-0391.2003.tb00482.x?sid=nlm%3Apubmed. Accessed September 26, 2022.