

Health Policy and Legislation Alert

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Outlook for Action on Mental Health and Substance Use Disorder Initiatives

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Prompted by rising rates of overdose deaths, suicides and incidence of mental illness in at-risk populations, such as children, Congress has spent the better part of the year working in a bipartisan manner to develop and advance legislation that builds on the *SUPPORT for Patients and Communities Act* (P.L. 115-271), which was enacted in 2018 and allocated funding for prevention, treatment, recovery and enforcement as part of a comprehensive response to the opioid epidemic. This alert is an update to our [previous analysis](#) on these issues and provides an overview of Congress' and the Biden-Harris administration's continued focus on substance use disorder (SUD) treatment and mental health treatment legislation, as well as the outlook for additional action in the coming months.

House Passes Mental Health Legislation

On June 22, 2022, the House passed the *Restoring Hope for Mental Health and Well-Being Act* (H.R. 7666) by a vote of 402-20. The bill, which is supported by the [Biden-Harris administration](#), incorporated the *Medication Access and Training Expansion (MATE) Act* (H.R. 2067); the *Collaborate in an Orderly and Cohesive Manner (COCM) Act* (H.R. 5218); and the *Mainstreaming Addiction Treatment (MAT) Act* (H.R. 1384). In addition to expanding access to SUD prevention, treatment and recovery services, the bill reauthorizes and modifies through Fiscal Year (FY) 2027 programs such as the Community Mental Health Services Block Grant; the Pediatric Mental Health Care Access Grant; and the National Suicide Prevention Lifeline program, among others. The bill also addresses treatment for mothers, veterans, active military, students and individuals who suffer from eating disorders and aims to enhance transparency around pharmacy benefit managers (PBMs) by establishing new reporting requirements for PBMs operating in the commercial market.

Next Steps for Senate Finance Committee Package

Senate Finance Committee members continue to draft various components of a bipartisan mental health package following the panel's [February announcement](#) of next steps on the effort. In late May, Committee leadership, along with Sens. Ben Cardin (D-MD) and John Thune (R-SD), released a [discussion draft](#) of the package's telehealth section. The draft, the first released by the Committee since its

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announcement of the initiative, would direct Medicare and Medicaid to promote and support provider use of telehealth; establish benefit transparency to inform Americans with Medicare about tele-coverage; and remove Medicare's in-person visit requirement for mental health tele-treatment. The bill also would maintain access in certain circumstances to audio-only mental health coverage under Medicare and incentivize states to use CHIP programs to "establish local solutions to serve behavioral health needs in schools, including through telehealth." Finance Committee Chair Ron Wyden (D-OR) also noted in the announcement of the draft legislation that the measure "creates a 'bill of rights' for information on the availability of telehealth for mental health care."

On June 15, the Committee unveiled **draft legislation** spearheaded by Sens. Carper (D-DE) and Cassidy (R-LA) for the youth mental health component of the package. The draft would allow all providers to receive Medicaid reimbursement for behavioral and physical health services delivered on the same day; clarify Medicaid guidance to states on allowable payments, the reduction of administrative burdens, and coverage of foster youth; and facilitate out-of-state provider enrollment in other state's Medicaid program. The draft also aims to "improve enforcement and oversight" of the Medicaid Early and Periodic Screening, Diagnostic and Treatment (EPSDT) program.

Notably, certain provisions from the telehealth and youth mental health draft bills were included in the *Bipartisan Safer Communities Act* (P.L. 117-159), which became law on June 25. Nevertheless, Chair Wyden has stated that "there will still be room" for a separate mental health package, especially given that the Act does not address SUD. Chair Wyden noted on July 20 that proposals for three other issue areas—strengthening the workforce; increasing integration, coordination and access to care; and ensuring parity between behavioral and physical health care—are forthcoming and will be part of the broader package, the passage of which would mark a major milestone for mental health and SUD.

Another unresolved issue with respect to telehealth concerns whether the Drug Enforcement Administration (DEA) and the Department of Health and Human Services (HHS) will extend a waiver allowing providers to prescribe controlled substances, such as those used in medication-assisted treatment (MAT), without an in-person consult. The waiver is scheduled to expire at the end of the COVID-19 public health emergency (PHE); policymakers could allow the flexibility to end, make the waiver permanent, or pursue a narrower fix just for drugs used in SUD treatment. Recently, Sen. Mark Warner (D-VA) sent a **letter** to the Department of Justice and the DEA, asking the agencies to outline their plan for ensuring continuity of care for patients who have been prescribed controlled substances via telehealth during the COVID-19 pandemic.

Update on Senate HELP Mental Health Legislation

In addition to the actions by the Senate Finance Committee, earlier this year, the Senate Committee on Health, Education, Labor and Pensions (HELP) also **announced** a bipartisan effort to "reauthorize, improve, and expand federal mental health and substance use disorder programs." The HELP Committee has held multiple hearings on these topics this year, including a March hearing titled "Strengthening Federal Mental Health and Substance Use Disorder Programs: Opportunities, Challenges, and Emerging Issues" and a June hearing titled "Supporting Students and Schools: Promising Practices to Get Back on Track." Originally slated for an early summer release, the draft bipartisan package is still under development. HELP Committee

Chair Patty Murray (D-WA) confirmed at a recent hearing on fentanyl that she is negotiating a “very robust” bill with Ranking Member Richard Burr (R-NC).

Youth Residential Treatment Facilities

Congress has also been engaged in oversight efforts related to mental health services. Recently, Sens. Wyden and Murray sent joint letters to four major companies operating youth residential treatment facilities (RTFs) regarding reports of abuse and neglect. The letters demand that the companies’ CEOs “provide information about any instances of abuse or neglect; any complaints, inspections, and investigations; funding sources; and details about their policies and use of restraint and seclusion.” Also referenced in the letters is a January 2022 [report](#) from the Government Accountability Office (GAO), which found that incidents in youth RTFs persist primarily due to state and local agency inaction.

Guidance on Medicaid Re-Entry for Incarcerated Individuals

In addition to the legislative developments, the Biden-Harris administration has continued to implement the *SUPPORT Act* and advance other initiatives as part of the ongoing focus on unmet mental health needs and challenges posed by substance use disorders. Section 5032 of the *SUPPORT Act* required the Centers for Medicare and Medicaid Services (CMS) to issue guidance to states outlining opportunities for Medicaid demonstrations to improve continuity of care for individuals transitioning from incarceration to the community. In October 2020, CMS established the Medicaid Reentry Stakeholder Group, as mandated by the Act, but the agency has yet to issue letters to State Medicaid Directors. Since passage of the *SUPPORT Act*, a number of states have submitted Medicaid Section 1115 waivers to CMS to finance transitional care for incarcerated individuals re-entering the community, who are known to be at a high risk of drug overdoses.

FDA Renews Focus on Opioids and SUD with Release of its Overdose Prevention Framework

More recently, on August 30, the Food and Drug Administration (FDA) [released](#) its Overdose Prevention Framework, which is based on four key priority areas: 1) supporting primary prevention by eliminating unnecessary initial prescription drug exposure and inappropriate prolonged prescribing; 2) encouraging harm reduction through innovation and education; 3) advancing development of evidence-based treatments for substance use disorders; and 4) protecting the public from unapproved, diverted, or counterfeit drugs presenting overdose risks.

In unveiling the framework, FDA announced that it intends to re-examine the role of opioid analgesic prescriber education, including the need for a mandatory unified, national-level education program to inform opioid analgesic prescribers on managing pain with the goal of making education efforts more effective in optimizing appropriate prescribing and alternative interventions for treating pain. FDA also stated that the agency is exploring the need for potential new authorities for opioid approval standards, including whether drug developers seeking to market new opioid analgesics should be required to demonstrate that their products offer material safety advantages over such existing approved products. FDA also stated its intent to publish draft guidance for development of non-addictive treatments for chronic pain among

other actions related to this framework and the focus on opioid and SUD issues more broadly.

Outlook

Congress and the Biden-Harris administration continue to actively engage on mental health and SUD issues in response to the national crisis. While Democrats have prioritized the passage of partisan legislation prior to the midterm elections, there may still be bipartisan action later this year on pending mental health proposals in both chambers. Congress is expected to pass a Continuing Resolution (CR) before the end of September to keep the government funded into the next fiscal year and other legislation, such as the FDA user fee reauthorization and various other health care provisions, could potentially be attached to this spending measure. A year-end health care package also could come together during the post-election lame duck period. Stakeholders interested in mental health and SUD issues should pay close attention to the relevant committees as the remainder of the 117th Congress plays out in the weeks and months ahead in addition to the ongoing actions by the Biden-Harris administration.

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