Medicaid Section 1115 Waivers on Substance Use Disorders: A Review

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We stand up for the rights of the millions of people who struggle to access affordable, quality health care.

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Agenda

I. Introduction and Overview

I. Medicaid Coverage of SUD Services and Placement Levels

I. Review of Section 1115 SUD Waivers

I. Policy Considerations and Recommendations

Introduction and Overview

Overview of SUD Standard of Care

- Best practices in SUD treatment centers on Medication-Assisted Treatment (MAT).
- MAT is evidence-based and clinically driven practice for SUD treatment, particularly, opioid use disorders (OUD).
- MAT is often used in conjunction with other services and supports including:
  - Individual and group counseling, peer support, case management, permanent supported housing, individual placement and support, employment services, and other recovery services.
- The medications used for MAT each have guidelines for use and are approved by the FDA for use in treating adults with SUD or OUD.

Medication-Assisted Treatment

- MAT is highly effective in reducing overdose deaths, reducing the rate of engaging in risky activities, increasing the likely that someone will stay in treatment, and reducing the cost of SUD treatment.
- Medications used in MAT:
  - Methadone
  - Buprenorphine
  - Naltrexone
- Methadone and buprenorphine work on the opioid receptors in the brain and stop the person taking them from experiencing painful withdrawal symptoms.
- Naltrexone works as an opioid antagonist that blocks the effects of opioids by binding and blocking the receptions.

Medication-Assisted Treatment

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- Naltrexone works as an opioid antagonist that blocks the effects of opioids by binding and blocking the receptions.
- All 3 are effective but methadone and buprenorphine have stronger evidence supporting their effectiveness.
- All should have increased availability.

SUD Treatment for Youth

- Early screening is crucial: Screening, Brief Intervention, and Referral to Treatment (SBIRT) is standard of care
- MAT recommended for adolescents and young adults
- More emphasis on behavioral & family-based interventions.
- Additional supports: education, social, housing, employment

ASAM Guidelines & Criteria

- According to the American Society of Addiction Medicine (ASAM) National Practice Guidelines for the Use of Medications in the Treatment of Addiction Involving Opioid Use the clinical recommendations include:
  - Assessment and diagnosis of OUD through medical history review,
  - Screening for comorbid disorders like psychiatric disorders,
  - Physical examination
  - Diagnosis and referral to appropriate services
- Clinicians may then refer to the ASAM Criteria for placement.

Medicaid Coverage of SUD Services and Placement Levels

Medicaid Coverage of SUD Services

- Under traditional Medicaid, many services are covered by mandatory and several optional benefits categories.
  - Ex.: provider visit under mandatory physician benefit
  - Ex.: targeted case management services under optional case management benefit
- In expansion states, covered under essential health benefits (EHBs)
- SUPPORT Act (effective Oct. 2020) mandates coverage of MAT medications, counseling and BH services
- Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) benefit for youth under age 21.

The IMD Exclusion

- Federal Medicaid funds cannot pay for services in inpatient settings that fall into the definition of an Institution for Mental Disease (IMD).
  - IMD = any institution of 16+ beds primarily engaged in providing diagnosis, treatment, or care of persons with behavioral health conditions
- Statutory Exceptions:
  - Only applies to individuals under age 65
  - "Psych under 21" benefit
  - Payments to MCOs or PIHPs for short-term stays
- SUPPORT Act state plan option to cover services in IMD for people with SUD (available 2019 to 2023).

Section 1115 Waivers

- Provision that permits the Secretary of HHS to let states implement an experimental or demonstration project that is **likely to assist in promoting the objectives of the Medicaid Act.**
- If the Secretary finds:
  - An experiment or demonstration; and
  - Likely to assist in promoting the objectives of Medicaid
- Then the Secretary may:
  - Waive compliance with some specific statutory requirements
  - Only for the extent and for time period necessary.

IMD Exclusion Waivers

- Dear State Medicaid Director Letters from 2015 and 2017 invited requests to waive IMD exclusion (15-003 & 17-003).

- 31 waivers have been granted, even though:
  - IMD exclusion is outside Secretary's waivable authority (42 U.S.C. § 1396a)
  - Not experiments
  - Long-term policy changes instead of time-limited period necessary to carry out the experiment.

Review of Section 1115 SUD Waivers

Overview of Review

What we reviewed:

- Special Terms and Conditions for 31 Approved Demonstrations
- Proposals for 4 Pending Demonstrations

What we did not review (with some exceptions):

- State Plans and State Plan Amendments
- Implementation Plans for Approved Demonstrations
- Evaluations of Approved Demonstrations

IMD Exclusion Waivers

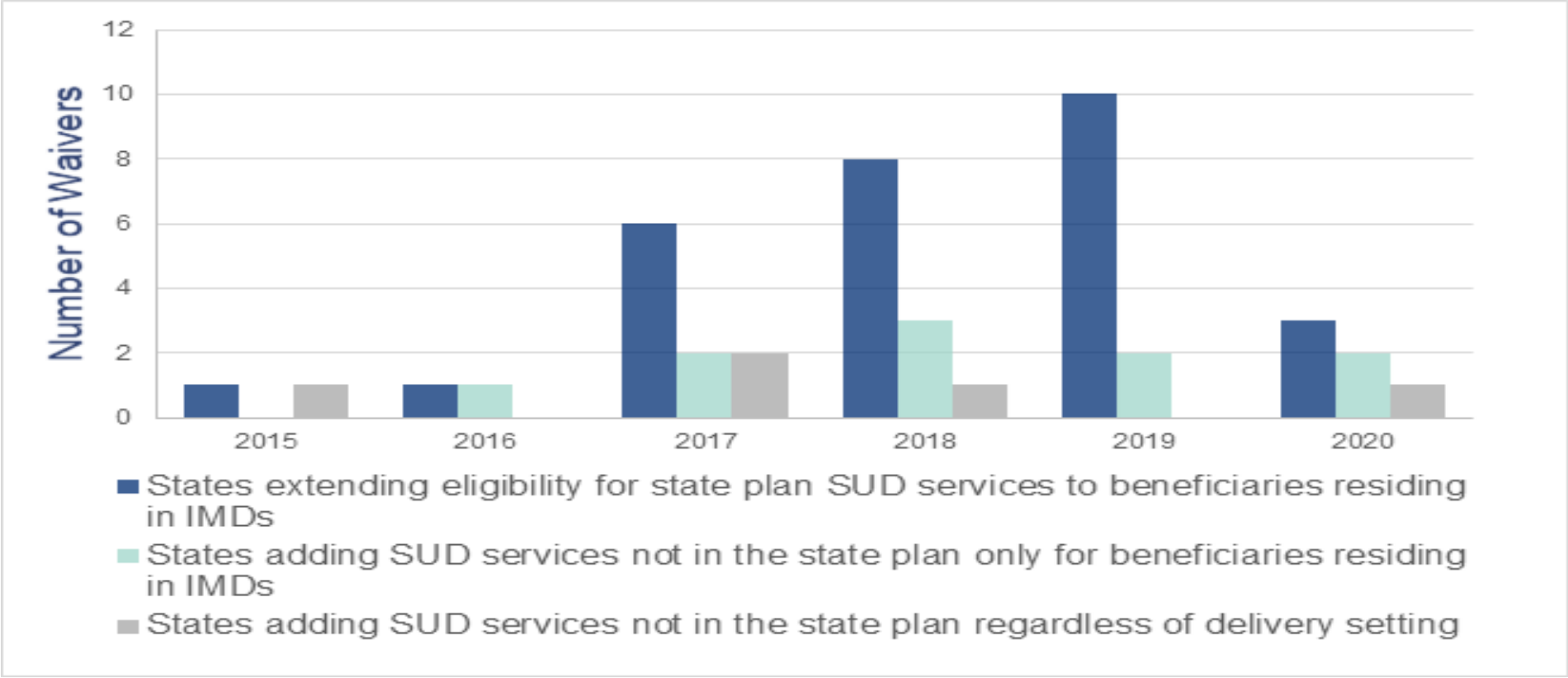
All 35 states reviewed have requested waiving the IMD exclusion

Three buckets (with overlap):

- States extending coverage of existing state plan SUD services to beneficiaries residing in IMDs - **30 states**
- States adding SUD services not in the state plan only for beneficiaries residing in IMDs - **10 states**
- States adding SUD services not in the state plan regardless of delivery setting - **5 states**

IMD Exclusion Waivers

We also identified some patterns when it comes to IMD exclusion waivers…



Medication-Assisted Treatment Provisions

Most demonstrations include provisions related to MAT:

- 29 approved waivers state MAT is covered for beneficiaries in IMDs
- 16 approved waivers require IMDs to provide or refer patients to MAT
- A couple of waivers included provisions to expand MAT outside of IMDs

Access to Continuum of Care and Community-Based Services

Most SUD 1115 waivers seek to ensure coverage of the whole ASAM continuum of care

- 21 demonstrations explicitly incorporated ASAM continuum of care
- The majority of these waivers sought to cover ASAM levels 3 and 4, while reportedly using SPAs for other levels of care
- 14 demonstrations explicitly provide for coverage of withdrawal management levels of care

Access to Continuum of Care and Community-Based Services

Expansion or maintenance of community-based services:

- The vast majority of demonstrations pledge to establish and implement policies to link residential and inpatient patients to community-based services
- Most demonstrations also incorporate language to establish a utilization management approach to monitor patient placement
- Only a handful of demonstrations go beyond these general requirements, which shows that the community-based piece of the ASAM continuum is not being prioritized

Policy Considerations and Recommendations

Key Observation #1: Section 1115 demonstrations may be unnecessary

States have implemented a variety of policies through 1115 demonstrations

Most of the policies that seek to expand coverage (without limitations) can be achieved through state plan amendments

Even residential treatment can be provided in smaller settings

Key Observation #2: States may be emphasizing residential services at the expense of other services

While the stated goal of many 1115 SUD demonstrations is to cover the whole continuum of care, community-based services provisions seem to be lacking

The number of demonstrations that are entirely focused on IMD exclusion waivers has been increasing every year

This trend stems from several tenuous policy changes made by the Trump administration, which loosened the requirements to obtain an IMD exclusion waiver

Key Observation #3: Waivers tend to conflate medical necessity with placement level criteria

Most of the demonstrations reviewed incorporated ASAM placement criteria as medical necessity to access services

However, states should be making clear that the ASAM criteria is used to determine the level of care and whether the specific service is medically necessary is a different question (though criteria may overlap)

SUD services may be the same irrespective of level of care (e.g. MAT!). Thus, states should ensure overall availability of, and remove barriers to, services as a first step

Conflation of terms may have a negative impact on access to EPSDT services

Key Observation #4: Waivers do not necessarily guarantee access to evidence-based care

Higher intake of residential services may not lead to better care considering the lack of regulation on these facilities

Residential settings have a questionable history when it comes to MAT access

Some states still implement barriers to accessing MAT and other SUD services, such as prior authorization, step therapy, etc.

Key Observation #5: Few waivers provide comprehensive SUD coverage for minors

Analysis shows that many gaps remain regarding SUD care for children and adolescents

Section 1115 is not the proper vehicle and states should utilize EPSDT to ensure all preventive and treatment services are provided

Recommendations

1. CMS should reject any Section 1115 SUD waiver proposal that does not strictly adhere to the Section 1115 requirements.

2. CMS should reject any Section 1115 SUD waiver proposal that does not strictly adhere to the Section 1115 requirements

3. Federal guidance should be provided to states clarifying that ASAM placement criteria should only be used to determine level of care, *after* medical necessity for a specific SUD service has been determined.

Recommendations

4. States should be required to demonstrate that they have submitted SPAs to remove all prior authorization, step therapy, quantity limits, and similar barriers to accessing MAT with buprenorphine and methadone prior to obtaining approval of any federal flexibilities through the appropriate use of Section 1115 waivers

5. CMS should provide further guidance to states regarding the standard of care for individuals under twenty-one with or at risk of developing a SUD.

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