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INSIGHT

Changes to Behavioral Health Treatment During the COVID-19 Pandemic

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Physical distancing measures and temporary stay-at-home orders associated with the Coronavirus Disease 2019 (COVID-19) pandemic have required changes in service delivery for mental health and substance use (collectively known as *behavioral health*) treatment. Changes have surrounded relaxing privacy requirements required by the Health Insurance Portability and Accountability Act (HIPAA) Rules and increasing use of telehealth to deliver behavioral health treatment and services. Some states have also employed other methods of service delivery—such as mobile units—for treatments that cannot be administered via telehealth, such as medication-assisted treatment (MAT) for opioid use disorder (OUD).

Typically (i.e., outside of the pandemic), mental health treatment is administered in outpatient settings where patients visit providers in brick-and-mortar offices, clinics, hospitals, or specialty facilities. Treatment visits may occur on a regular basis (e.g., weekly, monthly); as a single, one-time visit (such as for an evaluation); or in discrete episodes as full-day or overnight situations as part of more intensive service like residential or partial hospitalization programs. As technology has advanced, some behavioral health treatment providers have utilized *telehealth* (or *telemedicine*) modalities such as video conferencing to deliver services. Some are providing behavioral health services via telehealth (*telebehavioral health*) through telehealth modalities such as live video and mobile health.

Substance use disorder treatment works similarly in most instances, with exceptions for interventions utilizing frequent administration of medications, such as MAT for OUD. In MAT using opioid replacement therapies such as methadone and buprenorphine, patients are required by law to attend in person for at least the initial visit for buprenorphine, and daily for methadone. Methadone is administered on a daily basis in federally certified opioid treatment programs (OTPs; also known as methadone clinics), with some short-term take-home doses allowed for stable patients.

Changes to Behavioral Health Services During the COVID-19 Pandemic

Congress and the Administration have initiated changes to behavioral health services in recognition of the need to continue treatment during the pandemic. The third COVID-19 supplemental appropriations act

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enacted by Congress—the CARES Act (P.L. 116-136)—provided $425 million to the Substance Abuse and Mental Health Services Administration (SAMHSA) within the Department of Health and Human Services (HHS). This included $110 million in the form of emergency grants for behavioral health services to states (and other grantees), with flexibility in how funds may be used. The CARES Act designated another $250 million for the Certified Community Behavioral Health Centers (CCBHC) program and $50 million for suicide prevention. SAMHSA issued some of these funds in the form of suicide prevention grants. SAMHSA operates a webpage dedicated to other initiatives and information related to the novel coronavirus pandemic, including a web page specific to MAT.

Changes to Telehealth

On March 13, 2020, the HHS Secretary implemented the Section 1135 waiver authority from the Social Security Act in an effort to ensure that sufficient health care services are available to individuals enrolled in the Medicare, Medicaid, and CHIP programs. Using this new authority, which was authorized by the Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020 (P.L. 116-123), and other COVID-19 related acts, the HHS Secretary waived or modified telebehavioral health-related participation requirements under programs administered by the Centers for Medicare & Medicaid Services (CMS). For instance, CMS announced that it would now reimburse for audio-only behavioral health telephone visits.

Other federal agencies have also addressed telebehavioral health services relative to their missions. For example, the Health Resources and Services Administration of HHS continues to administer demonstration programs aimed at assessing whether telehealth networks can improve access to behavioral health in rural and frontier communities under the Substance Abuse Treatment Network Grant Program and Evidence-Based Tele-Behavioral Health Network Grant Program. The Department of Veterans Affairs has also expanded telebehavioral health care services to veterans by entering into short-term agreements with telecommunications companies and through mobile applications such as COVID Coach and Mindfulness Coach. In conjunction with the federal government, some states have waived or modified laws and reimbursement policies on telebehavioral health during the COVID-19 pandemic.

Changes to Privacy Requirements

The HIPAA Privacy Rule governs covered entities' (health care plans, providers, and clearinghouses) and their business associates' use and disclosure of protected health information (PHI). The rule delineates when covered entities may permissibly use or disclose PHI without written authorization, while uses and disclosures that are not expressly permitted under the rule require an individual's prior written authorization. In addition, the HIPAA Security Rule governs the security and integrity of ePHI, and the Breach Notification Rule requires notification in certain cases of breaches involving unsecured PHI.

The Office for Civil Rights in HHS issued guidance in March announcing that it is exercising enforcement discretion and is not penalizing healthcare providers for noncompliance with requirements of the rules where the provider is providing telehealth services in good faith during the COVID emergency. In addition, although not limited to the emergency period, the CARES Act made changes to requirements governing confidentiality of substance use disorder records—promulgated in the "Part 2" Rule—which applies to individually identifiable patient information received or acquired by federally assisted substance use disorder programs. The changes allow for sharing of covered information in a manner more in alignment with HIPAA Privacy Rule requirements. These changes strive to balance improved care coordination for individuals with substance use disorders with the heightened privacy interest around this sensitive information.

Changes to Substance Use Disorder Treatment

The Controlled Substances Act includes limits on prescribing controlled substances by means of the internet. SAMHSA and the Drug Enforcement Administration (DEA) are allowing prescriptions for buprenorphine for OUD to a new patient via telemedicine without the typical need for an initial in-person examination for the duration of the public health emergency. DEA—the agency that provides registrations to operate OTPs (which it refers to as "narcotic treatment programs")—had previously published a proposed rule allowing these facilities to operate a mobile component to administer methadone. Typically, most individuals receiving methadone treatment must travel to brick-and-mortal OTPs on a daily basis to receive their dose (with some exceptions for stable and long-term patients outlined in 42 C.F.R. §8.12). During the pandemic, SAMHSA and DEA are allowing stable patients to receive up to 28 days of take-home medication. DEA is also allowing alternative methods for delivery of methadone to patients under stay-at-home orders, and interstate prescribing privileges for providers. DEA operates a web page with more information and resources related to the COVID-19 pandemic.

Considerations for Congress

Congress may consider continuing these changes, and possibly making some of them permanent. In the near term, lawmakers could consider other strategies to help preserve treatment capacity. For instance, one survey found that many behavioral health facilities are still in jeopardy of closing because of the pandemic. Some in the behavioral health field had called for some of these regulatory changes outlined here even prior to the COVID-19 pandemic. Data on outcomes associated with these adjustments to behavioral health service delivery could clarify if changes expanded treatment safely and effectively, and might identify unintended consequences. In this way, the temporary changes may provide insights Congress could consider in determining whether to permanently extend any of these policies.

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