Statement on
“Examining Advertising and Marketing Practices Within the Substance Use Treatment Industry”

Submitted to the
House Energy and Commerce Committee
Subcommittee on Oversight and Investigations

July 24, 2018

America’s Health Insurance Plans (AHIP) is the national association whose members provide coverage for health care and related services to millions of Americans every day. Through these offerings, we improve and protect the health and financial security of consumers, families, businesses, communities, and the nation. We are committed to market-based solutions and public-private partnerships that improve affordability, value, access, and well-being for consumers.

Health insurance providers are strongly committed to meeting the needs of patients with substance use disorders (SUD) and helping them address addiction as a chronic condition. We appreciate this opportunity to comment on the need for high quality treatment options for SUD patients and ensuring that this priority is not undermined by deceptive advertising and marketing practices in the substance use treatment industry.

With the expansion and ongoing challenges of the opioid epidemic in recent years, there is a pressing need for high quality, evidence-based treatment options to keep pace with the growing number of individuals who are afflicted with opioid and other substance use disorders. Some of the new options that have surfaced in response to the current crisis are not serving the best interests of patients.

Our statement focuses on the following:
• The importance of ensuring that SUD patients receive high quality health care services—including access to high quality, accredited treatment facilities;

• The threat posed by fraudulent activity in the substance use treatment industry, including deceptive advertising and marketing practices, that is harming patients;

• Concerns about third party premium payments that potentially expose SUD patients to higher costs and disruptions in their coverage and treatment; and

• Recommendations for protecting SUD patients from fraud and substandard care in residential treatment programs.

The Importance of Ensuring That SUD Patients Receive High Quality Treatment

Health insurance providers, in collaboration with clinicians and other stakeholders, have played a leadership role in addressing the opioid crisis including meeting the needs of patients who are struggling with opioid and other substance use disorders.

Working closely with our member plans, AHIP has launched a Safe, Transparent Opioid Prescribing (STOP) Initiative¹, through which we are supporting the widespread adoption of clinical guidelines for pain care and opioid prescribing. This initiative includes a STOP Measure² to assess adherence with the Centers for Disease Control and Prevention’s (CDC) guideline for opioid prescribing and a STOP Playbook³ outlining steps relating to prevention, early intervention, and treatment of opioid use disorders.

Our members are working on the front lines of the health care system to implement a comprehensive approach—focusing on prevention, education, early intervention, and treatment—to meeting the needs of SUD patients. The strategies employed by health insurance providers include providing evidence-based protocols to support physicians in developing treatment plans for SUD patients, implementing case management programs for SUD patients, leveraging data analytics to proactively identify patients who may be at risk for SUDs and who

¹ https://www.ahip.org/ahip-stop-initiative/
² https://www.ahip.org/the-stop-measure/
³ https://www.ahip.org/stop-playbook/
can benefit from early intervention, and providing access to evidence-based medication-assisted treatment (MAT), counseling, peer support services, and community-based support.

A top priority in serving SUD patients is making sure they receive evidence-based treatment and care from high quality providers. To address this need, health insurance providers rely on independent experts and government partners to carefully review quality metrics, outcomes measures, credentialing, and other critical information in an effort to ensure that their enrollees have access to providers and treatment facilities that deliver high quality care. However, it is important to note that the quality infrastructure and provider credentialing in mental health and substance use disorder treatment is less mature than in medical and surgical care, and there is a shortage of providers in these specialties, creating challenges for consumers and payers.

The Threat Posed by Fraudulent Activity in the Substance Use Treatment Industry

While health insurance providers and other stakeholders are working together to provide high quality care to SUD patients and support their recovery, our efforts are challenged by fraudulent activity in the substance use treatment industry.

We are particularly concerned about “body brokers” who target and exploit vulnerable individuals and steer them—through deceptive advertising and marketing practices—to substandard treatment facilities. Under these schemes, “brokers” are paid kickbacks to find and recruit individuals who are suffering from addiction, and send them to fraudulent “sober homes.” Insurance companies are then billed for treatments, tests, and other services or procedures that may or may not be clinically appropriate and, indeed, may not even be provided.

These “sober homes” are often associated with clinicians or treatment centers that do not provide evidence-based addiction treatment, frequently bill excessively for urine drug screening tests, and may be fraudulently billing multiple insurers for a single patient’s services. Even more alarming, there are reports that some “sober homes” may be exacerbating the crisis by perpetuating access to drugs that keep people addicted rather than assist them in recovery, as a tactic to generate additional profits.

These fraudulent, abusive practices not only put patients’ lives in grave danger, but they also make it more difficult for people to afford their coverage and care. These practices raise overall
health system costs and increase premiums for everyone, not just those who are sent to “sober homes.”

Health insurance providers support access to high quality, accredited treatment facilities and we are deeply concerned that fraudulent “sober homes” undermine that effort and put vulnerable patients at risk. This is a serious, potentially widespread issue that needs to be addressed with serious solutions. Our members are committed to working with Congress, the Administration, state policymakers, health care providers, and other stakeholders to shed light on this issue, prevent fraud, and protect patient lives.

**Concerns About Third Party Premium Payments**

Another serious issue affecting SUD patients is the growing prevalence of third party premium payments. Under these arrangements, certain treatment facilities are steering patients into commercial coverage, even in some cases when they are eligible for Medicare or Medicaid, as part of a strategy for increasing the reimbursement received by the treatment facility. These arrangements are motivated by the financial interests of the organization making the third party payment, and pose a significant threat to the health and financial well-being of the affected patients.

This practice raises overall health system costs and results in higher premiums for the entire commercial population, not just those with SUD needs. Moreover, patients are harmed when the third party group later stops paying premiums—leaving the patient financially exposed, at risk of a coverage gap.

To address this issue, we have asked the Secretary of Health and Human Services (HHS) to issue a revised rule addressing steering in the individual market and prohibiting third party payments made directly or indirectly by a financially-interested party. This regulation should be drafted in a way that does not prevent good faith assistance to members by non-profits, but rather should focus on preventing third party premium payments that are designed to ultimately generate a profit to the organization making the payment.
Recommendations for Protecting SUD Patients From Fraud and Substandard Care

To protect patients from fraud and substandard care in residential treatment programs, there are several areas where federal and state policymakers can work with stakeholders.

Eliminate Deceptive Advertising by Treatment Providers

It is critically important to ensure that SUD patients have access to high quality treatment options and are not exploited by unscrupulous treatment providers that use deceptive advertising and marketing practices. We strongly support the committee’s efforts to stop false and misleading advertising that targets SUD patients. Strong steps are needed to address this serious problem.

Best Practices for Recovery Housing

Legislation pending in Congress (H.R. 4684 / S. 2680) would provide for the development of recovery housing best practices by the Substance Abuse and Mental Health Services Administration (SAMHSA). The effectiveness of these proposals would be enhanced by making federal grant funding for SUD initiatives dependent upon the adoption of these best practices.

Additionally, the President’s Commission on Combating Drug Addiction and the Opioid Crisis recommended that the Office of National Drug Control Policy (ONDCP) and other federal agencies work collaboratively with the National Alliance for Recovery Residents (NARR), the National Association of State Alcohol and Drug Abuse Directors (NASADAD), and housing stakeholders to develop quality standards and best practices for recovery residences, including model state and local policies. While the outlook for this effort is uncertain, these stakeholders are positioned to make important contributions toward ensuring that recovery homes serve the best interests of individuals struggling with substance use disorders.

Quality Measurement Development and Accreditation for Treatment

Efforts are needed to ensure the adoption of quality standards and hold facilities accountable through accreditation. Several important clinical and billing issues need to be addressed through these efforts.

If a treatment facility or recovery home is not certified and accredited, they should be prohibited from billing for services rendered to a person in recovery. This step is needed to address the
current practice of these facilities billing for non-covered services and going after the patient for payment—a practice called balance billing, which threatens the financial well-being of patients.

Issues surrounding prior authorization and documentation requirements also need to be addressed. If a facility fails to obtain the required prior authorization for patient admittance because the facility failed to provide the required documentation, the facility should not be paid (and should be prohibited from balance billing the patient) until the required documentation is received.

Quality standards should address operations, applicable services, resident fees, physical space, and resident rights and expectations. Standards should take into account that there are several levels of care within the recovery housing model, each with different oversight needs. Standards also should address criteria for allowing patients receiving medication-assisted treatment (MAT) to be admitted to recovery homes, as many currently do not accept individuals on MAT. MAT is proven to improve individual’s potential success in opioid use disorder treatment and recovery.

New Oversight Structure for Recovery Housing

In a March 2018 report, the Government Accountability Office (GAO) highlighted concerns about the need for stronger oversight of supportive housing for individuals who are in recovery for substance use disorders. The GAO reported that the nationwide prevalence of recovery housing is unknown because there are no comprehensive data regarding the number of recovery homes in the United States. In four of the five states examined by GAO, state officials reported that law enforcement investigations have uncovered “unscrupulous behavior and potential insurance fraud related to recovery housing.”

To address these concerns, a new oversight structure is needed to identify indicators of potentially fraudulent and disreputable operators of recovery housing. The Sober Home Fraud Detection Act (S. 2828) provides a starting point for achieving this oversight, although additional requirements are needed to ensure that states adhere to minimum standards regarding oversight of recovery housing.

A new oversight structure also should include licensure requirements addressing the qualifications of individual providers or treatment facilities. Additional rules are needed in the

---

following areas: (1) prohibiting any individuals with a felony record (or certain felons) from having a financial interest, ownership interest, or role in operating a rehab facility; (2) requiring full disclosure of ownership interests in sober living homes, rehab facilities, and labs; and (3) prohibiting the referral of a patient receiving services at a rehabilitation facility or sober living home to a lab in which the rehabilitation facility or sober living home principals or family maintain any financial interest.

Increased Penalties for “Body Brokers”

Legislation is needed to increase penalties and/or prison sentences for “body brokers” involved in unlawful referrals and payments. This could be based on legislation introduced in the House (H.R. 5100) or a 2017 Florida sober home law. However, we note that H.R. 5100 only applies to clinical treatment facilities, meaning that non-medical residential treatment facilities may fall through the cracks under this approach.

In addition to increasing penalties, a mechanism is needed to facilitate the reporting of fraudulent behavior so law enforcement agencies can take action in a timely manner. The current process of reporting patterns to authorities and waiting for them to build a case against unscrupulous facilities can take years—and may not be concluded until after the facility has gone out of business or begins operating under a different license potentially in a different location.

Conclusion

Thank you for considering our views on these important issues. We look forward to working with the committee as you continue to explore solutions for meeting the needs of SUD patients and broader challenges facing the U.S. health care system.