

# Understanding and Addressing the Problems of Substandard Recovery and Sober Homes 2018



The opioid crisis has led to **a pressing need for quality, evidence-based treatment options** to keep pace with the growing number of individuals suffering with opioid and other substance use disorders.



Health insurance providers carefully review quality and other available information to help **ensure that their enrollees have access to providers and treatment facilities that deliver quality care.**



**Concrete actions by policymakers are needed** to address fraudulent and substandard treatment providers and facilities that are not serving the best interests of vulnerable patients struggling with addiction.

## Introduction

Untreated substance use disorders (SUD) have a significant impact on individuals, families, communities, our economy, and society. In the past year alone, 20.1 million Americans suffered from a substance use disorder with more than 2 million addicted to opioids.<sup>1</sup> Substance use and addiction, including use of alcohol and illicit drugs and the misuse of prescription drugs, is estimated to account for more than \$740 billion annually in costs related to crime, lost productivity, and health care.<sup>2</sup> On an average day, at least 78 people will die from an opioid-related overdose, 3,900 people will use a prescription opioid outside of legitimate medical purposes, and 580 people will try heroin for the first time.<sup>3</sup>

The opioid crisis has led to a pressing need for quality, evidence-based treatment options to keep pace with the growing number of individuals suffering with opioid and other substance use disorders. Yet fraudulent practices threaten to undermine efforts to provide access to quality, accredited treatment facilities. For example, there is growing concern over “body brokers” who target and exploit vulnerable individuals and steer them – through deceptive advertising and marketing practices – to substandard recovery or sober homes. These substandard homes are associated with clinicians or treatment centers that may not provide evidence-based addiction treatment, frequently bill for excessive or unnecessary tests, and



may fraudulently bill multiple insurers for a single patient’s services.<sup>4</sup> This has the potential to harm patients who are at a vulnerable stage of treatment and recovery.

Policymakers and stakeholders must work together to address these fraudulent practices and protect patients from substandard and potentially harmful care received through these arrangements.

## Health Insurance Providers’ Commitment to Quality, Evidence-Based Treatment

Health insurance providers are committed to implementing programs that promote patient access to affordable, quality, evidence-based treatments and care that address addiction as a chronic condition. In response to the ongoing opioid epidemic, insurance providers, in collaboration with clinicians and other stakeholders, have played a leadership role, working on the front lines of the health care system to implement a comprehensive approach focused on prevention, education, early intervention, treatment and recovery support to meet the needs of patients who are struggling with opioid and other substance use disorders.

The strategies used by health insurance providers include educating and supporting physicians on evidence-based protocols and treatment plans for SUD patients; leveraging data analytics to proactively identify patients who may be at risk for SUDs and who could benefit from early intervention; implementing case management programs for SUD patients; and providing access to evidence-based medication-assisted treatment (MAT), counseling, peer support services, and community-based recovery support.

## Fraudulent Recovery Housing/ Sober Homes and Associated Treatment Centers: Hurting Patients, Exploiting the System

Addressing the ongoing opioid epidemic is dependent on having quality, evidence-based treatment options to keep pace with the growing number of individuals suffering with opioid and other substance use disorders. However, certain entities have emerged in response to the opioid

1 Fraud’s Newest Hot Spot: The Opioid Epidemic and the Corresponding Rise of Unethical Addiction Treatment Providers. Health Affairs Blog. April 26, 2018

2 National Institute on Drug Abuse. <https://www.drugabuse.gov/related-topics/trends-statistics#supplemental-references-for-economic-costs>

3 <https://www.getsmartaboutdrugs.gov/sites/getsmartaboutdrugs.com/files/files/OPIOID%20FACT%20SHEET.pdf>

4 New York Times, In Pursuit of Liquid Gold, December 27, 2017. <https://www.nytimes.com/interactive/2017/12/27/business/urine-test-cost.html>

crisis that are not serving the best interests of vulnerable patients. Problems with poor care and potentially fraudulent billing practices taking place in some recovery/sober homes and affiliated treatment centers have been highlighted by government agencies<sup>5</sup> and the media.<sup>6</sup>

The relationships and financial motivations of these facilities have exploited the health care system. These entities reap high profits and evade law enforcement, slipping through the cracks. By the time the fraud is identified, and law enforcement intervenes, the facilities have closed, moved, and reappeared elsewhere with a new name, starting the process over again. Often, the patients are left untreated and, depending on where the facilities were located, far from home, harming patients and potentially leading to fatal results.

## **BODY BROKERS AND CALL AGGREGATORS**

The term “body brokers” refers to unregulated individuals who act as a paid marketing and referral channel to get insured patients sent to targeted facilities. These facilities are organized and designed to generate quick profits rather than assist patients with treatment and recovery from an SUD.

Likewise, “call aggregators” are sales representatives who work in call centers owned or paid by these facilities to refer patients. Advertisements direct people to these call centers for assistance in finding a treatment facility. With both body brokers and call aggregators, patients are steered by non-medical sales representatives with a financial interest to these profit-driven and corrupt recovery/sober homes and affiliated treatment centers that may not be providing evidence-based care and are often out-of-state and far from family support.<sup>7,8</sup>

## **SUBSTANDARD RECOVERY HOUSING/SOBER HOMES**

Recovery and sober homes are commercially-run residences where individuals live while attending support group meetings and seeking treatment. Many recovery and sober homes offer individuals struggling with addiction a living arrangement supportive of recovery. However, others are affiliated with clinicians or treatment centers

that do not provide evidence-based addiction treatment. These types of facilities bill for treatments, tests, and other services or procedures that may not be clinically appropriate, bill for excessively frequent urine drug screening tests, and may fraudulently bill multiple insurers for a single patient’s services. Further, there are reports that some have billed insurers for services that are not even provided. Not only is this abuse of the system, but patients may be left vulnerable, without any treatment at all, while the sober home bills for services and treatments not provided.

Improperly run recovery/sober homes can lead to patient substance use relapse and overdose, among other risks. Some recovery/sober homes may even be exacerbating the addiction crisis by perpetuating access to drugs that keep people addicted, rather than assisting them in recovery, as a tactic to generate additional profits.

## **UNCERTAIN QUALITY OF SUD TREATMENT**

A top priority in serving patients with SUDs is making sure they receive evidence-based treatment and care from quality providers. To address this need, health insurance providers look to independent experts, medical evidence, and government partners to develop comprehensive programs to address care needs. This includes carefully reviewing quality metrics, evidence-based guidelines, credentialing, and other critical information to ensure that their enrollees have access to providers and treatment facilities that deliver quality care.

One challenge that all stakeholders are facing is that the quality measurement infrastructure in SUD treatment is less mature than in medical and surgical care. While much of the data collection efforts have focused on the extent of the opioid addiction crisis and numbers of deaths due to overdose, significantly less is known about the effect of various treatment approaches on long-term recovery rates. Additionally, where there is evidence of safety and effectiveness, such as with respect to MAT for opioid use disorder, practice is not always consistent with that evidence. For example, most recovery and sober homes do not allow people receiving MAT to live in their facilities, citing their abstinence-only philosophy and misconception that opioid maintenance medications are akin to using

5 Substance Use Disorder: Information on Recovery Housing Prevalence, Selected States’ Oversight, and Funding. U.S. Government Accountability Office. March 2018

6 Fraud’s Newest Hot Spot: The Opioid Epidemic and the Corresponding Rise of Unethical Addiction Treatment Providers. Health Affairs Blog. April 26, 2018. See also New York Times, In Pursuit of Liquid Gold, December 27, 2017. <https://www.nytimes.com/interactive/2017/12/27/business/urine-test-cost.html>

7 Bipartisan E&C Leaders Question Call Aggregators About Their Practices and Reports of Patient Brokering. May 30, 2018. <https://energycommerce.house.gov/news/press-release/bipartisan-ec-leaders-question-call-aggregators-about-their-practices-and-reports-of-patient-brokering/>

8 The addict brokers: Middlemen profit as desperate patients are ‘treated like paychecks.’ STAT. May 28, 2017. <https://www.statnews.com/2017/05/28/addict-brokers-opioids/>

opioids.<sup>9</sup> This can leave patients without the care they need to achieve long-term recovery from their addiction.

### THIRD-PARTY PAYMENTS

A separate but related issue involves some SUD treatment facilities that are steering patients into individual commercial coverage even when they are eligible for Medicare or Medicaid or into commercial plans in states where the patients do not live. This is part of a strategy to increase reimbursement received by the treatment facility. Under this scenario, an SUD treatment facility pays private insurance premiums through a financially interested third party, such as a broker or patient assistance program, for patients with SUD. This is solely done to pad the profits of the facility with higher, often out-of-network, reimbursement rates paid by commercial insurers.<sup>10</sup> This inappropriate steering raises overall health system costs and premiums for the commercial population. The federal government recently examined this practice of third party payments at kidney dialysis clinics and found that these types of payments also expose patients to higher out-of-pocket costs and the risk of a coverage gap when the third party later stops paying premiums.<sup>11</sup>

### Recommendations

To protect patients from fraud and substandard care in residential and SUD treatment programs, we offer recommendations where federal and state policymakers can address this problem, and commend Congress and the Administration for including some of these recommendations in the recently enacted opioid legislation.<sup>12</sup>

### ELIMINATE DECEPTIVE ADVERTISING BY SUD TREATMENT PROVIDERS

The "SUPPORT for Patients and Communities Act" makes deceptive advertising with respect to opioid treatment programs and opioid treatment products unlawful and

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provides authority to the Federal Trade Commission (FTC) to enforce penalties against individuals “who engage in unfair or deceptive practices with respect to any substance use disorder treatment service or product.” Policymakers should take additional steps by empowering state attorneys general (AGs) to bring actions in federal court to help curb abuses.<sup>13</sup> Through these new authorities the FTC and state AGs could help stop unscrupulous SUD treatment providers from false and misleading advertising that targets patients with SUDs and promises results that cannot be achieved. There should also be greater transparency concerning any financial relationships (ownership, investment, charitable contributions, or compensation) of body brokers and call aggregators who make referrals to SUD treatment facilities.

### INCREASE PENALTIES FOR BODY BROKERS

The SUPPORT Act also establishes criminal penalties for individuals who knowingly and willfully pay or receive kickbacks in return for referring a patient to a recovery home, clinical treatment facility or laboratory.<sup>14</sup> Similar

9 Many ‘Recovery Houses’ Won’t Let Residents Use Medicine to Quit Opioids. National Public Radio. September 12, 2018. <https://www.npr.org/sections/health-shots/2018/09/12/644685850/many-recovery-houses-wont-let-residents-use-medicine-to-quit-opioids?t=1536772164538>

10 The addict brokers: Middlemen profit as desperate patients are ‘treated like paychecks.’ STAT. May 28, 2017. <https://www.statnews.com/2017/05/28/addict-brokers-opioids/>. See also Father and Son Plead Guilty to Defrauding Numerous State Affordable Care Act Programs. The United States Attorney's Office, District of Connecticut. October 12, 2018. <https://www.justice.gov/usao-ct/pr/father-and-son-plea-guilty-defrauding-numerous-state-affordable-care-act-programs>.

11 Conditions for Coverage for End-Stage Renal Facilities: Third Party Payment Rule, December 14, 2016.

12 H.R. 6 – The Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment (SUPPORT) for Patients and Communities Act, signed into law on October 24, 2018.

13 H.R. 6 – Opioid Crisis Response Act of 2018, as amended and passed by the U.S. Senate on September 17, 2018. Included section 4203 which was not included in the final version in its entirety.

14 H.R. 6 – The SUPPORT Act, signed into law on October 24, 2018. (section 8121).

legislation has been considered or enacted at the state level.<sup>15</sup> It is critical that such legislation as implemented, apply to referrals to all types of SUD treatment facilities and related laboratories (e.g., non-medical residential treatment facilities in addition to clinical treatment facilities) to fully protect patients. A more expeditious process for reporting fraudulent behavior is needed so that law enforcement agencies can take action. 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 or even in a different state.

## **DEVELOP BEST PRACTICES FOR RECOVERY/SOBER HOMES**

The SUPPORT Act also includes the development of sober home or recovery home “best practices” by the U.S. Department of Health and Human Services (HHS).<sup>16</sup> Additionally, receipt of federal grant funding for SUD initiatives should be dependent upon the adoption of these best practices. The development of best practices for recovery/sober homes is consistent with the recommendation of the President’s Commission on Combating Drug Addiction and the Opioid Crisis as well as many state-based commissions that have looked into this issue. The Office of the National Drug Control Policy (ONDCP) and other federal agencies have also worked with stakeholders to develop quality standards and best practices for recovery residences.<sup>17</sup>

## **ESTABLISH NEW OVERSIGHT STRUCTURE FOR RECOVERY/SOBER HOMES**

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 SUD.<sup>18</sup> 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

<sup>15</sup> Florida Bill: HB 807 from 2017 (pp. 45-47). Statute: 817.505 Patient Brokering (passed), California Bill SB1268 (not enacted).

<sup>16</sup> H.R. 6 – The SUPPORT Act, signed into law on October 24, 2018.

<sup>17</sup> [https://www.whitehouse.gov/sites/whitehouse.gov/files/images/Final\\_Report\\_Draft\\_11-1-2017.pdf](https://www.whitehouse.gov/sites/whitehouse.gov/files/images/Final_Report_Draft_11-1-2017.pdf)

<sup>18</sup> Substance Use Disorder: Information on Recovery Housing Prevalence, Selected States’ Oversight, and Funding. U.S. Government Accountability Office. March 2018.

“unscrupulous behavior and potential insurance fraud related to recovery housing.”

A new oversight infrastructure should be established to identify indicators of potentially fraudulent and disreputable operators of sober homes and recovery housing. Minimum quality standards should address operations, applicable services, resident fees, physical space, and resident rights and expectations. Standards should acknowledge the multiple levels of care within the recovery housing model, each with different oversight needs. Standards should also address criteria for allowing patients receiving MAT to be admitted to recovery homes, as many currently do not accept individuals on MAT despite evidence that it improves patients’ potential success in opioid use disorder treatment and recovery.

### **In addition to minimum quality standards for recovery housing, the new oversight structure should include:**

- 1. Requirements to ensure that states adhere to the minimum standards**
- 2. Licensure requirements addressing the qualifications of individual providers and treatment facilities**
- 3. Prohibitions on individuals with a felony record (or certain felons) from having a financial interest, ownership interest, or role in operating a rehabilitation facility**
- 4. Requirements for full disclosure of ownership interests in sober living homes, rehabilitation facilities, and labs**
- 5. Prohibitions on 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.**

## **PROMOTE QUALITY MEASURE DEVELOPMENT FOR SUD TREATMENT AND ACCREDITATION/CERTIFICATION FOR SUD FACILITIES**

Given that much of the data fueling the national narrative on opioids focuses on the severity of the epidemic, a parallel effort is needed to track and evaluate providers and treatment approaches and their impact on quality of care and patient outcomes such as addiction recovery rates. As such, additional resources are needed, possibly through a new SAMHSA or other targeted grant program, to accelerate development of robust quality measures for SUD treatment to better evaluate provider and facility quality and treatment effectiveness.

Additionally, adoption of quality measures and standards should be used to promote accountability through certification and/or accreditation programs. SAMHSA includes evidence-based practices and accreditation among their “five signs of quality treatment”<sup>19</sup> and several organizations, including the Commission on Accreditation of Rehabilitation Facilities (CARF), the National Alliance for Recovery Residences (NARR), and the American Society of Addiction Medicine (ASAM) are involved in these important efforts. These efforts range from developing outcome measures and results-based care models to developing certification and accreditation programs for recovery housing and opioid treatment programs. A stronger quality measurement and accreditation/certification infrastructure for SUD treatment would also make it easier to identify ineffective and/or fraudulent SUD providers.

## **PROHIBIT INAPPROPRIATE STEERING AND THIRD-PARTY PREMIUM PAYMENTS MADE BY FINANCIALLY-INTERESTED PARTIES**

Just as there is a general prohibition against third-party payments in federal programs with only clearly-specified exceptions, it is important that guardrails be in place in the commercial market to ensure that payments made by third-party entities are truly in the best interests of the patient. These patient assistance programs should not be motivated by financial gain for the provider or facility and should not expose patients to higher out-of-pocket costs and the risk of a coverage gap when the third party later stops paying premiums.

HHS should issue revised regulations that address patient steering in the individual market and prohibit third-party payments made directly or indirectly by a financially-

interested party. The regulation should allow for good faith assistance to members by non-profits but prevent third-party premium payments that are designed to ultimately generate a profit for the organization making the payment. Additionally, third-party payments should remain in place for at least a year to ensure that there is sufficient support for a patient beyond the initial treatment period. Some states have also proposed third-party payment restrictions by requiring financially interested third parties to disclose their premium payments to patients and health insurers and limit the amount of reimbursement they can collect.<sup>20</sup>

## **FACILITATE FRAUD DETECTION BY REMOVING BARRIERS TO SHARING SUD TREATMENT INFORMATION**

Under current federal regulations (42 CFR Part 2), access to critical patient substance use disorder information is limited, which can impede coordination of behavioral and medical care. This makes it more difficult to identify contraindicated prescriptions, help with transitions of care, and also affects a health plan’s ability to identify fraudulent practices. For example, it is unclear whether federal funding, such as grants to states for recovery housing or other SUD treatment options, would trigger the restrictions of 42 CFR Part 2 and subsequently impede access to SUD-related records needed for fraud investigations.

Policymakers should continue to work towards aligning these federal regulations specific to substance use disorder information with the Health Insurance Portability and Accountability Act’s (HIPAA) existing privacy requirements for uses and disclosures of individuals’ health information for treatment, payment, and health care operations. This alignment would ensure that the medical records of patients with SUD are treated the same as the medical records of patients with other chronic illnesses and make it easier to identify fraudulent providers.

## **SUPPORT DEVELOPMENT OF CROSS-INDUSTRY RESPONSES TO FRAUDULENT URINE DRUG TESTING SCHEMES**

The Healthcare Fraud Prevention Partnership (HFPP) has begun a long-term project to combat fraud and abuse in laboratory services and has identified urine drug testing schemes as an area of high concern. The HFPP has singled out the use of overly broad urine drug screening panels and excessive or improper urine drug testing

19 Finding Quality Treatment for Substance Use Disorders. SAMHSA. <https://store.samhsa.gov/shin/content/PEP18-TREATMENT-LOC/PEP18-TREATMENT-LOC.pdf>

20 California Bill SB 1156 from 2018, Vetoed on September 30, 2018.

as fraudulent practices designed to maximize provider reimbursement. The HFPP also identified sober homes and pain clinics that profit from urine drug testing as areas of concern.

Policymakers should support and encourage this ongoing work by the HFPP, which intends to continue its efforts to combat fraud and abuse in laboratory services. By looking into areas such as oversight of laboratory services, information sharing to enhance fraud detection, provider education to reduce fraud, and development of cross-industry responses to urine drug testing schemes, the HFPP hopes to curb fraud and improve patient care.<sup>21</sup>

## Conclusion

Health insurance providers have played an important role in implementing a comprehensive approach to addiction that focuses on prevention, education, early intervention, treatment, and recovery support to meet the needs of patients struggling with opioid and other substance use disorders. While many clinicians and facilities share insurance providers' commitment to quality, evidence-based care, a growing number of substandard and fraudulent addiction treatment providers and facilities are taking advantage of regulatory loopholes that threaten the health and well-being of patients suffering from addiction. Continued concrete actions by policymakers to address deceptive advertising, unlawful referrals, the current lack of quality oversight, and other deficiencies, will help ensure that safe and effective treatment options are available to individuals struggling with addiction.

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21 Examining Clinical Laboratory Services: A Review by the Healthcare Fraud Prevention Partnership. May 2018. <https://hfpp.cms.gov/HFPP-White-Papers/HFPP-Clinical-Lab-Services-White-Paper.pdf>