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Opioid Response Package Awaits President's Signature

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Summary

Congress passed the SUPPORT for Patients and Communities Act (H.R. 6), sending the agreement to the president for signature. The bill covers a wide range of issues, including:

- expanding access to services through Medicare and Medicaid
- improving drug safety
- reducing the availability of opioids
- strengthening law enforcement
- enhancing prevention and treatment efforts

This *Issue Brief* focuses on grant provisions in the agreement, highlighting new programs, changes to existing ones, and Medicaid reforms.

Background

Until a few years ago, there were only a handful of programs—with modest funding—to address prescription drug abuse. Since fiscal year (FY) 2015, Congress has created new programs and increased grant funding each year. Congress provided a $2 billion plus (223%) funding boost in FY 2018 (see *Budget Brief 18-06* for funding details). It further increased funding—by a small amount—for programs within the Department of Health and Human Services (HHS) in FY 2019 (see *Budget Brief 18-16*). Other agencies that fund efforts—such as the Department of Justice (DOJ)—are operating under a continuing resolution through December 7, 2018.

The SUPPORT for Patients and Communities Act builds on reforms enacted in 2016 as part of the Comprehensive Addiction and Recovery Act (CARA) and the 21st Century Cures Act (Cures Act). It covers multiple federal agencies and includes a host of policy changes, establishes new grant programs, and reauthorizes existing ones. The Medicaid changes include new requirements and, in some instances, opportunities for additional funding. A section-by-section summary is available here.

New and Reauthorized Grants

Table 1 at the end of this brief provides details on the 21 new programs authorized in the agreement. The grants would be administered by several federal agencies, although most are within HHS. Apart from grants within the Centers for Medicare & Medicaid Services (CMS)—which are funded by Medicaid or the Medicare Trust Fund—all would require an appropriation through the annual budget process. Since Congress has finalized the HHS budget for FY 2019, any such funding would not likely occur until FY 2020.

Almost all grants are competitive, and states are eligible for many. There are two new formula grants:

- Grants to States to Improve and Coordinate Their Response to Ensure the Safety, Permanency, and Well-Being of Infants Affected by Substance Use – Authorizes the secretary of HHS to make grants—using funds appropriated for Child Abuse Prevention and Treatment Act (CAPTA) state grants—to help states implement plans of care for substance-exposed infants, which was a new requirement in CARA. After tribal and technical assistance set-asides, each state receives a base amount, with remaining funds allocated based on relative shares of births. The FY 2018 and FY 2019 budgets included a $60 million set-aside within CAPTA state grants for this purpose; this bill amends authorizing legislation to create the new program.
- Pilot Program to Help Individuals in Recovery from a Substance Use Disorder Become Stably Housed – Authorizes such sums as necessary to assist states in providing individuals in recovery temporary housing for up to two years. The bill requires the secretary of the Department of Housing and Urban Development (HUD) to establish the formula no later than 60 days after enactment. It specifies that the formula must provide funds to states with drug overdose deaths above the national average, with priority given to states with the greatest need based on unemployment, labor force participation, and drug overdose deaths.

Table 2 provides details on program reauthorizations. The SUPPORT for Patients and Communities Act would reauthorize State Targeted Response to the Opioid Crisis, which expired at the end of FY 2018. It also reauthorizes several HHS grants that are not set to expire soon, mainly to increase their authorization levels to be more in line with recent appropriations. Of note, the agreement would make the following changes to existing programs:

- State Targeted Response to the Opioid Crisis – Expands eligibility to tribes and includes two new set-asides (which have been added to recent appropriations bills): up to 15% for states with the highest age-adjusted mortality rate due to opioid disorder and 5% for tribes; authorizes $500 million annually for FYs 2019-2023, although Congress appropriated $1.5 billion in FY 2019.
- Building Communities of Recovery – Increases maximum federal share (from 50% to 85%) and requires the secretary of HHS to give special consideration to the needs of rural areas.
- Opioid Overdose Prevention and Surveillance – Provides specific language for this program (current law provides authority under general Centers for Disease Control and Prevention [CDC] activities) and includes activities to improve Prescription Drug Monitoring Programs (PDMPs).

Medicaid Reforms

The agreement includes many reforms to Medicaid, focused largely on improving access, preventing substance use disorder, and enhancing treatment and recovery services.

Eligibility and enrollment. The bill includes new requirements for at-risk youth. First, it facilitates access to Medicaid after an individual under age 21 (or former foster care youth up to age 26) is released from prison or jail. Specifically, it requires states to redetermine eligibility prior to release—without requiring a new application—and, if still eligible, restore coverage. This provision is effective one year after enactment.

Second, it requires states to ensure that all former foster care youth (up to age 26) keep their Medicaid coverage if they move to a different state. The provision is effective for those who turn 18 on or after January 1, 2023, although states may adopt it sooner.

Services. The table below outlines changes in the bill to expand services provided by Medicaid and the Children's Health Insurance Program (CHIP). Most notably, the bill repeals for five years (FYs 2019-2023) the current prohibition on the use of Medicaid funds to pay for substance use disorder treatment at inpatient mental health facilities with more than 16 beds. Specifically, it provides states the option of claiming Medicaid for up to 30 days in a 12-month period for individuals with a substance use disorder (not just an opioid use disorder). States must meet specified requirements, including covering certain outpatient and inpatient levels of care, and maintaining state spending for eligible individuals in Institutions for Mental Diseases (IMDs) and outpatient and community-based settings (at levels for the most recent year prior to enactment). States currently offering such services through a Section 1115 waiver may continue to do so.

New Medicaid Services Requirements

Provision	Effective Date
Institutions for Mental Diseases (IMDs)	
• Codifies that states can use managed care to cover inpatient care in IMDs for 15 days	Upon enactment
• Allows pregnant and postpartum women who are receiving care at IMDs for substance use disorders to receive Medicaid-covered care outside of the IMD, such as for prenatal services	Upon enactment*
• Provides state option for removing the IMD exclusion for beneficiaries aged 21-64 with substance use disorders	FYs 2019-2023
~ Allows Medicaid reimbursement for up to 30 days of care during a 12-month period	
~ Specifies state requirements, including certain spending requirements	
Neonatal Abstinence Syndrome	
• Allows states to make Medicaid services available on an inpatient or outpatient basis at a residential pediatric recovery center to infants with neonatal abstinence syndrome	Upon enactment
Children's Health Insurance Program (CHIP)	
• Requires CHIP programs to cover mental health benefits, including substance use disorder services for pregnant women and children; states would not be allowed to impose financial or utilization limits on mental health treatment that are more restrictive than limits placed on physical health treatment	One year after enactment*
Medication-Assisted Treatment (MAT)	
• Requires states to cover all FDA-approved drugs for MAT, with an exception for states that lack provider capacity (as determined by the secretary of HHS)	FYs 2021-2025

*Allows additional time if state legislation required.

Demonstration projects. The bill includes one new demonstration project and changes to existing ones:

- Demonstration Project to Increase Substance Use Provider Capacity Under Medicaid – Under this new program, the secretary would award planning grants, totaling $50 million, to at least 10 states to assess current provider capacity, identify gaps in treatment, and develop strategies to increase capacity. The secretary would then select up to five of these states to receive an 80% federal matching rate during the following 36 months for increases in substance use disorder services over what the state provided in 2018. In awarding these grants, the secretary must ensure geographic diversity and give preference to states with substance use disorder prevalence comparable to or higher than the national average. This program is effective within six months of the bill's enactment.
- Medicaid Health Homes – The bill would extend the 90% federal matching rate for new Medicaid health home activities targeted to beneficiaries with substance use disorders from eight to 10 quarters for plan amendments improved on or after October 1, 2018.
- Electronic Health Record Technology – Amends the models tested under the Center for Medicare & Medicaid Innovation to include testing of incentive payments for behavioral health providers for certified electronic health record technology, effective upon enactment.

Prescription drug oversight. The next table highlights provisions to help prevent substance use disorder, including expanding the use of PDMPs and new requirements for monitoring prescription drug usage.

Medicaid Prescription Drug Oversight Provisions

Provision	Effective Date
Prescription Drug Monitoring Programs (PDMPs)	
• Directs states to facilitate reasonable access to PDMPs for providers and managed care organizations (to the extent permitted under state law)	Upon enactment
• Requires Medicaid providers to check PDMPs prior to prescribing a controlled substance; encourages providers to integrate PDMP usage into clinical workflow	October 1, 2021
• Establishes minimum criteria for qualified PDMPs, provides 100% federal matching to implement for FYs 2019-2020 (if state has agreements with contiguous states for providers to access PDMPs), requires states to annually report on compliance and aggregate trends (beginning with data for 2023)	See description
Other Requirements	
• Requires states to have safety edits for opioid refills and an automated claims review process to identify refills in excess of state limits, monitor concurrent prescribing of certain drugs, monitor anti-psychotic prescribing for children, and implement a process to identify potential fraud or abuse of controlled substances	FY 2020

Quality measures. The agreement requires states to report annually on behavioral health quality measures in CMS's adult core set, beginning with the 2024 report. These measures currently are voluntary.

Reports and guidance. The SUPPORT for Patients and Communities Act requires HHS and other federal entities to release reports or guidance on a variety of topics. Several focus on requiring HHS to provide states with options for leveraging additional federal funds, including:

- Guidance on state options for federal reimbursement for substance use disorder and treatment using telehealth
- Recommendations for improving Medicaid coverage and payment for medication-assisted treatment, non-opioid pain management, and substance use disorder treatment services
- Guidance on how states can use Section 1115 demonstrations to improve health care transitions for individuals being released from prison or jail
- Report on strategies for states to provide housing-related services and supports to beneficiaries with substance use disorder who are at risk of homelessness
- Guidance on financing options to improve care for infants with neonatal abstinence syndrome

Table 3 at the end of the brief provides details.

Offsets. The bill includes several offsets, one related to Medicaid. Specifically, it would allow states to retain medical loss ratio (MLR) remittances from managed care plans for the Affordable Care Act (ACA) expansion group at their regular federal matching rate (instead of the enhanced matching rate) if they establish an 85% MLR after FY 2020 and before FY 2024.

Human Services

The bill includes the following changes to human services programs, primarily focused on family-focused residential treatment:

- Requires HHS to develop guidance identifying opportunities to support family-focused residential treatment programs in Medicaid, Title IV-E, and other programs (no later than 180 days after enactment).
- Provides a $15 million mandatory appropriation in FY 2019 under Promoting Safe and Stable Families for HHS to conduct an evaluation of a family recovery and reunification replication project.
- Clarifies that the new Title IV-E prevention services options included in Family First Prevention Services Act (FFPSA) will not supplant services funded by other programs and that states are considered payers of last resort.
- Creates a new grant program for developing, enhancing, or evaluating family-focused residential treatment programs to increase the number of evidence-based programs that will qualify for funding under FFPSA; authorizes $20 million in FY 2019 (see Table 2).
- Requires HHS to provide states with technical assistance and guidance to support implementation of the plans of safe care for substance-exposed infants (including outlining state flexibility and supporting efforts to develop information technology systems), in addition to the new grant program previously mentioned.

Next Steps

The president has indicated he will sign the legislation, although the timing is uncertain. Once enacted, the Medicaid and other mandatory program changes will take effect based on the prescribed timelines. For most programs, the bill provides authorizations, so actual funding will be determined by the annual budget process. As previously mentioned, Congress has already enacted a FY 2019 budget for HHS; however, other departments—such as DOJ—are operating under a short-term continuing resolution and could see changes based on this agreement.

Table 1

New Grant Programs

Agency/Program	Eligibility	Formula (F)/ Competitive (C)	Matching Requirement	Funding Authorized
DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS):				
Administration for Children and Families				
Grants to States to Improve and Coordinate Their Response to Ensure the Safety, Permanency, and Well-Being of Infants Affected by Substance Use	States, tribes	F	None	No new funds (part of Child Abuse Prevention and Treatment State Grants)
Building Capacity for Family-Focused Residential Treatment	States, local governments, tribes, non-profits, institutions of higher education (IHEs), others	C	None	Authorizes $20 million, FY 2019
Centers for Medicare & Medicaid Services				
Demonstration Project to Increase Substance Use Provider Capacity Under Medicaid	State Medicaid agencies	C	Planning grants: none; Post-planning grants: 20% state share	Planning grants (first 18 months): appropriates $50 million; post-planning grants (subsequent 36 months): based on qualified expenditures
Grants to Provide Technical Assistance to Outlier Prescribers of Opioids	Organizations that meet certain criteria	C	None	Appropriates $75 million, available until expended
Opioid Use Disorder Treatment Demonstration	Physicians, hospitals, health centers, health clinics, others	C	None	Appropriates $10 million annually, FYs 2021-2024
Health Resources and Services Administration				
Loan Repayment Program for Substance Use Disorder Treatment Workforce	Substance use disorder treatment professionals in mental health professional shortage areas or counties hardest hit by drug overdoses	N/A	N/A	$25 million annually, FYs 2019-2023
Substance Abuse and Mental Health Administration				
Comprehensive Opioid Recovery Centers	Entities that provide treatment services for individuals with substance use disorder	C	None	$10 million annually, FYs 2019-2023
Program to Support Coordination and Continuation of Care for Drug Overdose Patients	State alcohol or drug agencies, entities that offer drug treatment services in consultation with state agency, tribes	C	None	Such sums as necessary, FYs 2019-2023
Youth Prevention and Recovery Initiative	States, local governments, IHEs, tribes, non-profits	C	None	$10 million annually, FYs 2019-2023
Grants to Improve Trauma Support Services and Mental Health Care for Children and Youth in Educational Settings	State educational agencies, local educational agencies, tribes	C	Supplement, not supplant	$50 million annually, FYs 2019-2023
Services for Families and Patients in Crisis	Non-profits	C*	None	Not specified
Sobriety Treatment and Recovery Teams	States, local governments, tribes	C*	None	Not specified
Emergency Department Alternatives to Opioids Demonstration	Certain hospitals and emergency departments	C	None	$10 million annually, FYs 2019-2021
HHS (agency not specified)				
Grants to Enhance Access to Substance Use Disorder Treatment (curriculum development)	Accredited schools of allopathic medicine or osteopathic medicine, teaching hospitals	C*	None	$4 million annually, FYs 2019-2023
Pilot Program for Public Health Laboratories to Detect Fentanyl and Other Synthetic Opioids	Federal, state, and local agencies	C*	None	$15 million annually, FYs 2019-2023
Grant Program to Support Individuals in Recovery Transition to Independent Living and the Workforce (CAREER Act)	Entity that offers treatment or recovery services and partners with state and local stakeholders	C	None	$5 million annually, FYs 2019-2023
Program to Support Emergency Room Discharge and Care Coordination for Drug Overdose Patients	States, tribes, other entities	C	None	$10 million annually, FYs 2019-2023
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT:				
Pilot Program to Help Individuals in Recovery from a Substance Use Disorder Become Stably Housed	States	F	None	Such sums as necessary, FYs 2019-2023
DEPARTMENT OF JUSTICE:				
Access to Increased Drug Disposal	States (five)	C	None	Such sums as necessary
DEPARTMENT OF LABOR:				
Pilot Program for Addressing Economic and Workforce Impacts of the Opioid Crisis	State workforce agency, territories, tribes (to make subgrants to local entities)	C	None	Secretary may use up to $100 million annually from National Dislocated Worker Grants, FYs 2019-2023
APPALACHIAN REGIONAL COMMISSION (ARC):				
Drug Abuse Mitigation Initiative	Individuals or entities in the Appalachian region	C*	50% (30% if in county with at-risk designation; 20% with distressed designation)	Part of existing authorization for ARC

*Appears to be competitive, but legislative text doesn't provide details.

Table 2

Grant Reauthorizations

Agency/Program/CFDA (if available)	Eligibility	Formula (F)/ Competitive (C)	Matching Requirement	FY 2018 Funding	Last Authorization	Funding Authorized
DEPARTMENT OF HEALTH AND HUMAN SERVICES:						
Centers for Disease Control and Prevention						
Opioid Overdose Prevention and Surveillance (93.136)*	States, local governments, tribes	C	None	$475.6 million	Under general CDC activities	$496 million annually, FYs 2019-2023*
Prenatal and Postnatal Health	States, local governments, academic institutions, health centers, and other public and non-profit entities; bill adds tribes	Not specified	Not specified	Not specified	Such sums as necessary, FYs 2001-2005	Such sums as necessary, FYs 2019-2023
Surveillance and Education Regarding Hepatitis C (bill changes to Surveillance and Education Regarding Infections Associated with Illicit Drug Use and Other Risk Factors)	Public and non-profit entities	Not specified	Not specified	Not specified	Such sums as necessary, FYs 2001-2005	$40 million annually, FYs 2019-2023
Health Resources and Services Administration						
Program for Education and Training in Pain Care	Health profession schools, hospices, other public and private entities; bill adds tribal health programs	C	None	$0	Such sums as necessary, FYs 2010-2012	Such sums as necessary, FYs 2019-2023
Mental and Behavioral Health Education and Training Grants	Certain institutes of higher education	C	None	$27 million	$50 million annually, FYs 2018-2022	$50 million annually, FYs 2019-2023
Substance Abuse and Mental Health Services Administration						
State Targeted Response to the Opioid Crisis (93.788)	States; bill adds tribes	F	None	$1.5 billion	$500 million annually, FYs 2017-2018	$500 million annually, FYs 2019-2021
First Responder Training (93.243)	States, local governments, tribes	C	None	$36 million	$12 million annually, FYs 2017-2021	$36 million annually, FYs 2019-2023
Building Communities of Recovery (93.243)	Certain community organizations	C	Increases maximum federal share from 50% to 85%	$5 million	$1 million annually, FYs 2017-2021	$5 million annually, FYs 2019-2023
Residential Treatment Programs for Pregnant and Postpartum Women (93.243)	States, territories, local governments, tribes, institutions of higher education, non-profits	C	Varies by grant year	$29.9 million	$17 million annually, FYs 2017-2021	$29.9 million annually, FYs 2019-2023
National Child Traumatic Stress Network (93.243)	Public and non-profit entities, tribes	C	None	$53.9 million	$46.9 million annually, FYs 2018-2022	$63.9 million annually, FYs 2019-2023
OFFICE OF NATIONAL DRUG CONTROL POLICY:						
Drug-Free Communities Program (93.276)	Community-based coalitions	C	100%-150% match	$99 million	$129 million, FY 2012	$99 million annually, FYs 2018-2023
High-Intensity Drug Trafficking Area Program (95.001)**	State, local, and tribal law enforcement agencies	C	None	$280 million	$280 million, FY 2011	$280 million annually, FYs 2018-2023
DEPARTMENT OF JUSTICE:						
Comprehensive Opioid Abuse Grant Program (16.838)	States, local governments, tribes	C	None	$145 million	$103 million annually, FYs 2017-2021	$330 million annually, FYs 2019-2023
Drug Court Program (16.585)	States, state courts, local government, local courts, tribes	C	25% of total	$75 million	$70 million, FY 2006	$75 million annually, FYs 2018-2023
COPS Anti-Meth Program (16.710)	State law enforcement agencies	C	None	$8 million	None	Requires set-aside of COPS appropriation, beginning in FY 2019
COPS Anti-Heroin Task Force Program (16.710)	State law enforcement agencies	C	None	$32 million	None	Requires set-aside of COPS appropriation, beginning in FY 2019

*Funding authorization is for state grants, CDC activities, and training/technical assistance.

**Agreement authorizes a new set-aside of up to $10 million for supplemental grants to areas that have experienced high seizures of fentanyl and new psychoactive substances.

Table 3

Requirements for Federal Medicaid Guidance and Reporting

Topic	Effective Date
Peer Support Services	
• Requires Government Accountability Office (GAO) to report on peer support services under Medicaid, including information on state coverage and expenditures as well as recommendations for improving services	Two years after enactment
Treatment	
• Requires GAO study on gaps in Medicaid coverage for pregnant and postpartum women with substance use disorder	One year after enactment
• Requires Medicaid and CHIP Payment and Access Commission (MACPAC) to report on state utilization control policies for medication-assisted treatment	One year after enactment
• Requires GAO report on barriers to providing substance use disorder treatment medication under Medicaid and state options for addressing barriers	15 months after enactment
• Requires HHS to annually report (through CY 2024) comprehensive data by state and territory on the prevalence of substance use disorders in Medicaid population and services provided for treatment, using data from the Transformed Medical Statistical Information System (T-MSIS)	One year after enactment
• Requires HHS action plan with recommendations on changes to Medicare and Medicaid to enhance the treatment and prevention of opioid addiction, and the coverage and payment of medication-assisted treatment for opioid addiction	June 1, 2020
• Requires MACPAC study on state requirements and standards for IMDs, including recommendations on improvements	January 1, 2020
• Requires HHS guidance to improve care for infants with neonatal abstinence syndrome and their mothers, including recommendations for states on financing options	One year after enactment
Telehealth	
• Requires HHS to issue guidance on state options for federal reimbursement of expenditures for substance use disorder services and treatment using telehealth	One year after enactment
• Requires GAO report on children's access to services and treatment for substance use disorders under Medicaid	One year after enactment
• Requires HHS report on best practices and solutions for reducing barriers to using telehealth services for pediatric populations under Medicaid	One year after enactment
Non-Opioid Pain Treatment and Management	
• Requires HHS to issue guidance on Medicaid items and services for non-opioid pain treatment and management	January 1, 2019
Criminal Justice	
• Requires HHS to convene a group to develop best practices for states to ease the health care-related transition of inmates to the community	Six months after enactment
• Requires HHS to work with states on innovative strategies—including demonstrations—to facilitate Medicaid enrollment and improve care transitions	One year after enactment
Housing-Related Services	
• Requires HHS to report on innovative initiatives and strategies that states may use under Medicaid to provide housing-related services and supports to beneficiaries with substance use disorder who are at risk of homelessness	One year after enactment
• Requires HHS to provide technical assistance to states seeking to provide housing-related supports and services and care coordination services under Medicaid to beneficiaries with substance use disorders	180 days after enactment (action plan to Congress)
At-Risk Youth	
• Directs HHS to publish guidance on how states can remove barriers, track coverage status, and provide outreach to former foster care youth	One year after enactment
Prescription Drug Monitoring Programs (PDMPs)	
• Requires CMS guidance on best practices on the uses of PDMPs and privacy protection	October 1, 2019
• Requires HHS to develop model state practices for utilizing data-sharing agreements	October 1, 2020
• Requires CMS to issue guidance on how states can increase PDMP usage by providers	October 1, 2023