**BAART**
**Addiction Research and Treatment, Inc.**
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January 21, 2015

Angela Garner
Deputy Director
Division of State Demonstrations and Waivers
Center for Medicaid and CHIP Services, CMS
7500 Security Boulevard, Mail Stop S2-01-16
Baltimore, MD 21244-1850

**Re: Proposed California Amendment to Bridge to Health Reform Demonstration (No. 11-W-00193/9), Drug Medi-Cal Organized Delivery System Waiver**

Dear Ms. Garner:

I write on behalf of the 598 patients who receive substance use disorder treatment services at our opiate treatment program located at 1235 E Street in Fresno. We are strongly opposed to sections of the California Bridge to Reform Demonstration (No. 11-W-00193/9) Amendment for Drug Medi-Cal Organized Delivery System Waiver, submitted by the California Department of Health Care Services. Our concern, based on 36.5 years, is that waiving federal access protections and granting Fresno county authority to establish reimbursement rates will result in decreased access to critical, life-saving treatment services.

Specifically, the current proposal will waive beneficiary freedom of choice, equality in amount, duration and scope, state wideness and reasonable promptness, some of which form the basis of a lawsuit 20 years ago called Sobky Vs. Smoley. Before that lawsuit, Fresno county limited access to our services by limiting DMC slots. After the lawsuit, the Fresno county did not comply and the state entered into direct contracts with providers here. As a result, significantly more people have entered treatment and beneficiaries can access medically-necessary treatment on demand,

without the waiting lists that were standard practice before the lawsuit. This waiver is likely to overturn that lawsuit and cause the California and Fresno county to regress back more than 20 years. We ask that CMS ***NOT*** do anything that may undermine the permanent injunction that was based on overwhelming evidence of county efforts to limit access. Instead, we suggest CMS require California to carve-out opiate treatment providers from this waiver. Such carve-out will not preclude Fresno county from contracting with our program and offering OTP services to residents of Fresno county.

After Sobky v. Smoley, Fresno county was so unhappy with that decision that they decided to open their own methadone clinic, to show us how it should be done. They operated it for approximately 3 years before parceling out the few clients they had to the existing programs in Fresno.

The provisions for state oversight do not provide strong nor swift state intervention when a county fails to provide adequate access.

California's Proposition 36 is a good example of how county control over treatment will result in limited access. Under Prop 36, Fresno county "referred" only a few of our existing patients. They referred no new clients to our NTP program. UCLA was hired by the state to evaluate Prop 36.

After twenty years of success, California's proposed Organized Delivery System would now give back primary responsibility to choose providers, to set rates, and to control access to narcotic treatment programs to all California counties, including those that illegally denied care for many years.

Thus, in this recent example of a county-managed "organized delivery system," referral to methadone maintenance was extremely limited. As a result, opioid-dependent participants had poor outcomes due to the services allowed by the county. All this despite the repeated recommendations of the evaluation team recommending stronger oversight and use of methadone treatment.

- Section 7. Financing of the Special terms and Conditions says counties will propose county-specific rates and the State will approve the rates. This will affect access and result in denial, delay, and limitation of services when rates are insufficient to attract sufficient providers to meet beneficiary needs and demands. This provision will also result in unequal treatment of beneficiaries based on the rates paid in different counties. Furthermore, the counties have proposed reverting from the current fee-for-service system to an antiquated cost-reimbursement system. The current system provides incentives for efficiency and aligns payment for services with evidence-based services, ensuring the best possible patient outcomes. Cost reimbursement, on the other hand, rewards inefficiency and greater costs with no connection to outcomes. That is why Congress and most every other payor has moved away from cost reimbursement systems.

In summary, BAART Programs requests that narcotic treatment programs be exempted from the Organized Delivery System waiver for the above stated reasons.

If you would like more information, please do not hesitate to contact me. Thank you for your consideration.

Sincerely,

Sue Ewert, MS, CRC
Clinic Director
BAART Programs
E Street Clinic