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**Comments Regarding the Proposed 1115 Waiver for California's Drug Medi-Cal Program
Submitted by California Opioid Maintenance Providers.**

April 29, 2014

The California Opioid Maintenance Providers (COMP) have been actively involved in discussions with the Department of Health Care Services (DHCS) to express strong opposition to the Department's intent to apply for a waiver from federal rules ensuring access for Drug Medi-Cal (DMC) beneficiaries including freedom of choice and statewideness. DHCS first began a process to apply for a 1915(b) waiver in 2012. After some discussions, that initiative was terminated due to concerns about access raised initially by COMP. In 2013, after a series of television reports on fraud in the DMC Outpatient Drug Free program, DHCS once again announced plans to seek a 1915(b) waiver. DHCS soon decided to seek an 1115 waiver that will include restrictions on access by eliminating beneficiary freedom of choice of providers. COMP has continued to oppose any waiver that will empower counties to arbitrarily limit access through a waiver of the freedom of choice of beneficiaries.

COMP's chief concern is ensuring access to highly-effective, evidence-based methadone maintenance treatment. California counties have a long, documented history and many current examples of efforts to limit access to narcotic treatment programs that provide methadone maintenance treatment. (See attached White Paper). COMP has met numerous times with leadership of both DHCS and CHHS to describe the evidence of widespread discrimination against opiate treatment programs prevalent in the counties. DHCS does not believe the evidence is predictive of future behavior, despite current examples provided in detail.

In communicating our opposition to DHCS and CHHS, COMP has articulated the following points:

- DHCS wants to apply for a selective contracting waiver from federal rules because they claim it works well in the mental health program and does not limit access. However, many of the protections in place under the current Specialty Mental Health Services (SMHS) system emanate from the managed care model in that system. No such model exists in Substance Use Disorder (SUD) Treatment in CA.

- There is a great difference between mental health and substance use disorder treatment services. SUD generally and treatment services in particular are not well understood by policy makers or the public. SUD treatment continues to be burdened by mythology such as the predominant opinion that it results simply from a lack of will power or moral shortcomings. In fact many decades of scientific evidence proves unequivocally that SUD is a physiologic disorder which impacts neurochemistry.
- Further, it is an unfortunate reality but most counties have a constantly-revolving door of administrators and local politicians. There are many examples of members of a board of supervisors cutting funding for SUD treatment services in order to allocate more funding to mental health, jails or police if they are afforded any flexibility over the allocation of the funding.
- The history of the SUD treatment system is very different from that of the mental health system prior to the application for a waiver: there was no Sobky-like litigation due to stigma and concerted efforts to limit access. Hence, no reason to think that mental health services would be arbitrarily limited.
- A group of providers and county representatives worked for several months last year, developed a set of recommendations to revise the outdated DMC program standards that would accomplish many of the improvements sought by DHCS and submitted those recommendations to the DHCS. The intent is to increase the requirements for Drug Medical provider certification thus taking a “preventative” strategy to improving the quality of providers eligible to receive a DMC contract.
- Included in the recommendations are: making certification standards more rigorous, requiring license and annual inspections, require county certificate of need before licensure and/or certification, require accreditation from a national accrediting body and more.
- People seeking methadone treatment must present at the clinics in active withdrawal. The ability to enroll patients in the program that same day and to provide urgent medical care are enabled by freedom choice in providers for beneficiaries.
- Health and Safety Code Section 11839.3(a)(6) requires the state to license and inspect NTPs and provides the state “may not delegate without prior and specific statutory approval.” A waiver from federal law will require vast changes to California law and regulations.
- Finally, recent reports have highlighted DHCS’ failure to adequately ensure access in the specialty mental health program as evidenced by the concern from CMS culminating in a denial of DHCS’ application for a five-year extension (granting just two years) of that waiver and mandating improvements.

In summary, methadone maintenance treatment is fundamentally different from any other DMC modality and is different from specialty mental health services. Methadone maintenance programs are medical-model programs with licensed professional staff including physicians and nurses. Patients present with acute medical conditions that, if not treated as urgent care, are life-threatening circumstances including overdose and needle sharing (high rates of HIV and HCV). Methadone maintenance programs and patients endure greater stigma, discrimination and efforts to block access than other SUD or mental health services.

As such, methadone maintenance warrants special consideration and protections from CMS and the Single State Authority tasked with ensuring access.

COMP has alerted both DHCS and CHHS, that their effort to waive federal protections will unequivocally result in diminished access to methadone treatment due to counties' arbitrary restrictions. As such, COMP has asked DHCS and CHHS to identify specific mechanisms for enforcing access to methadone when counties impose such arbitrary limits, especially given the recent evidence of a failure by the state to enforce access in the mental health system. To date, DHCS and CHHS have not provided any information regarding how such enforcement will take place.

While DHCS seeks to garner broad support for a waiver by adding many DMC program improvements that can be accomplished through state regulatory and statutory changes, COMP will continue to strongly oppose any waiver that will negatively impact beneficiary access to methadone maintenance treatment.

COMP proposes that DHCS cease efforts to seek waiver of federal access protections and instead work with providers and other stakeholders to improve the program through state statutory and regulatory means. Many improvements can be made this way such as significantly more rigorous minimum provider qualifications including background checks and experience in the field, regular program evaluation, mandated fraud prevention programs, utilization review and enhanced integration with mental health services to ensure that "any door is the right door" when beneficiaries seek help.

Thank you for your attention to this matter. COMP requests that this response be included in any written documents summarizing the stakeholder process.