

# ALCOHOLISM & DRUG ABUSE WEEKLY

News for policy and program decision-makers

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## IN THIS ISSUE...

Our lead stories this week look at a 1996 federal policy banning health care providers from billing Medicare or Medicaid for 5 years despite being in recovery from prescription drug abuse and practicing medicine in good standing from their medical boards, and at the ever-present need for “beds” — residential treatment — for substance use disorders.

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DEA doubles down on telehealth limits with “special registry”

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## Case studies: Formerly addicted doctor and nurse can't bill Medicare or Medicaid

The federal Department of Health and Human Services (HHS) has a policy, called the exclusion program, of banning health care providers from billing Medicare or Medicaid for five years, even if they are in recovery, cooperate with the courts, are abstinent, pass regular drug tests, have their medical licenses back, and have never harmed a patient. Last week, *ADAW* interviewed two such providers — a doctor and a nurse — who agreed to go public with their stories.

*ADAW* obtained copies of letters sent by the Centers for Medicare & Medicaid Services (CMS) to both providers.

Both were convicted of felonies regarding the prescription and dispensing of controlled substances.

### Bottom Line...

*Two health care providers went to treatment for prescription opioid addiction, are sober and practicing medicine, but CMS is barring them from billing Medicare or Medicaid for 5 years under “OIG exclusion” policy.*

Under HHS Office of Inspector General (OIG) rules, this is the reason they were banned from billing Medicare or Medicaid for five years, long after they complied with the courts and were practicing medicine in good stead in their respective states.

The nurse, Chris Kyzar, developed an addiction to hydrocodone. At one point in his addiction he committed a fraudulent act that

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## Leaders say residential care can and must remain integral to continuum

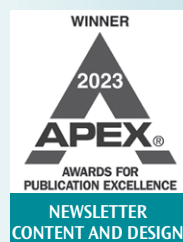
Despite a number of industry trends that would seem to diminish the future role of residential substance use treatment, several leaders in the treatment and research communities still foresee residential care remaining an integral component of the continuum of care.

These leaders told *ADAW* that the importance of residential treatment

is playing out in initiatives that range from San Francisco's shift away from a “Housing First” approach to a national outcomes project that is expected to document the value of a full continuum.

Residential treatment is “a critical intervention in the continuum of care that will remain a necessary element of patient care,” said Marvin Ventrell, president and CEO of the National Association of Addiction Treatment Providers. NAATP's nonprofit research arm released its first outcomes-monitoring research report in May, as part of an ambitious effort to document how treatment is being delivered and how

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Honorable Mention  
Spot News 2016



2016 Michael Q. Ford  
Journalism Award



## Former official comments

The special registry concept actually originated from the Ryan Haight Act itself; Congress required the DEA to create a special registry for all prescribers of controlled substances who prescribe by telemedicine. The DEA never proposed this registry, and in fact didn't even mention it in the NPRMs. However, apparently, some commenters had the idea, and now the DEA wants to hear about it.

Rob Kent, formerly counsel for the New York state Office of Addiction Services and Supports, and until this spring, counsel for the federal Office of National Drug Control Policy, told *ADAW* last week

that a special registry was “completely unnecessary.” With more than two years' experience of telehealth buprenorphine prescribing, the “world didn't fall apart,” he said.

“They [the DEA] could have put the special registry forward in the March proposal, but they chose not to,” said Kent.

Kent noted that even with the COVID-19 public health emergency over, the buprenorphine rule could have been extended under the opioid public health emergency, which still exists.

A special registry would have a chilling effect on prescribing, both from the view of the prescriber and

the patient, said Kent.

“We always hear about diversion, but how much buprenorphine which is prescribed for [opioid use disorder] OUD is actually being diverted?” asked Kent.

“This is a step backwards, and it raises legal issues about whether something like this can even be done.”

## Details on listening sessions

The listening sessions will be held on Tuesday, Sept. 12, 2023, and Wednesday, Sept. 13, 2023, can be found at <https://www.federalregister.gov/documents/2023/08/07/2023-16889/practice-of-tele-medicine-listening-sessions>. •

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patients are responding (see “Inaugural outcomes study released by NAATP,” *ADAW*, May 22, 2023; <https://onlinelibrary.wiley.com/doi/10.1002/adaw.33780>).

A key element to maintaining the role of residential treatment, Ventrell contends, involves an accurate assessment of need conducted by professional staff. He compared the importance of maintaining multiple levels of care for substance use disorder to the diversity of possible responses around a diagnosis of prostate cancer, ranging from surgery at the most intensive to vigilant monitoring on the opposite end of the spectrum.

“Our [outcomes] project will validate the different interventions,” Ventrell said.

So while advances in treatment technology and medication interventions for addiction might signal that fewer individuals will need a residential level of care, the complexity of the illness would still suggest the importance of access to the most intensive level of service, industry leaders have said.

## San Francisco's shift

In San Francisco, where decay and despair reflected in rampant open drug use on the streets have led in recent months to a public

outcry for change, a transformation in addressing the needs of the marginalized is taking shape. At the center of this shift is a comprehensive effort by The Salvation Army to establish a continuum of support that includes a heavy dose of residential care for substance use disorders.

The organization's “The Way Out” initiative ([thewayoutsf.org](http://thewayoutsf.org)) is led by two individuals (one of whom has a substance use history) who formerly worked together to pioneer several treatment-focused programs in San Francisco's adult probation operation. Initiative executive director Steve Adami, who himself was paroled to a residential program after release from incarceration, said he knows few people who have been in his shoes and did not need residential care at some point as part of their recovery journey.

The Way Out embodies a shifting paradigm away from a “Housing First” mindset that Adami and others have said has failed to address the core issues contributing to chronic homelessness. Its leaders describe their mission as one of creating a recovery-focused system of care that includes residential treatment, transitional housing and other supports (see “S.F. seeks improved recovery programs amid a philosophical

tug-of-war,” *ADAW*, Nov. 14, 2022; <https://onlinelibrary.wiley.com/doi/10.1002/adaw.33615>).

Adami and The Way Out deputy director Destiny Pletsch explained that a combination of city grants and private funds allows the initiative to operate outside the bureaucratic hurdles to care brought on by the Medi-Cal health plan requirements. This allows The Salvation Army to guarantee treatment on demand within a campus location that houses a social model detox program, residential treatment beds and a family shelter.

Adami said that at present, the detox program has a bed capacity of 40, half of which are being funded by the city. The residential treatment component currently has 96 beds, 56 of which are city funded. Leaders said they expect to scale the initiative over the next two years, hoping to reverse a trend that has seen substance use treatment admissions in San Francisco decline by more than 30% since the mid-2010s, Adami said.

The overall vision calls for duration of client participation in the continuum to range anywhere from weeks to up to three years. “We believe that treatment should be based on need, not on funding,” Adami said.

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“What residential treatment does is give you a sense of community,” he said. “The message people have been hearing on the streets is that people just need housing. Housing is not an evidence-based solution to addiction,” he said, as housing alone does not address the drivers of chronic homelessness.

The Way Out’s leaders see the tide gradually turning in the city, even with messaging from city government that has appeared to shift from a safe-use message to one promoting recovery. “We’re pushing the narrative that people can recover,” Pletsch said. “The Salvation Army is stepping into a leadership role.”

The Way Out also includes a transitional housing component that currently serves 36 individuals and is expected to expand to a capacity of 100 by January 2024.

### Overcoming obstacles

“Due to higher levels of addiction severity, complexity, chronicity and a high risk for adverse events, ‘medical necessity’ will dictate that residential treatment stays are sometimes clinically necessary,” said leading national researcher John F. Kelly, Ph.D., the Elizabeth R. Spallin Professor of Psychiatry in Addiction Medicine at Harvard Medical School and director of the Recovery Research Institute at Massachusetts General Hospital.

“The duration of those residential stays for which government or insurance pays will depend on that medical necessity, but in other instances, both individuals, as well as their families, may elect to pay out-of-pocket for residential treatment to provide a more prolonged and uninterrupted focus that such a protected environment can give,” Kelly said.

The NAATP’s Ventrell said he agrees that payer determinations will remain critical to preserving the residential level of care. Without payer buy-in, a full continuum can’t be supported. This is why it remains crucial for the industry to arrive at a

## Coming up...

The **California Society for Addiction Medicine (CSAM) State of the Art Addiction Medicine Conference** will be held **August 30 - September 2** in San Diego, California. For more information, go to <https://csam-asam.org/>

The **Contemporary Drug Problems Conference** will be held **September 6-8** in Paris, France. For more information, go to <https://www.latrobe.edu.au/arcs/hs/events/contemporary-drug-problems-conference>

The **Cape Cod Symposium on Addictive Disorders** will be held **September 7-10** in Hyannis, Massachusetts. For more information, go to <https://www.capecodsymposium.com/>

The **NAADAC annual conference** will be held **October 6-12** in Denver, Colorado. For more information, go to <https://www.naadac.org/annualconference>

set of generally accepted standards of care, which in turn would lead to genuine value-based contracting in substance use treatment, he said.

One of NAATP’s current priorities in messaging to its members has involved encouraging more broad-based assessment of patient need based on the high prevalence of co-occurring mental health disorders. Programs need to consider in these cases the options of “treat it, refer it, or braid it,” Ventrell said, with the latter referring to coordinating care with a second treatment provider. A

need for coordinated care to address the complexities of co-occurring disorders speaks to the importance of the availability of residential levels of care, he said.

“For some individuals, a residential stay can be a lifesaver and a turning point,” Kelly said. “Family members too, who can often become severely ill themselves through the chronic stress of a loved one suffering from addiction, are often helped immensely and gain great relief from the protection that a residential setting can provide for their loved one.” •

## In case you haven’t heard...

Netflix has released a new series, called *Painkiller*, which professes to detail the guilt of the Sackler family going back to the 1950s, when Purdue Pharma, along with nearly all other pharmaceutical companies, learned that the best way to sell medications to physicians was to sell them directly to physicians. Complete with dramatic music and commentary by people who have lost loved ones to the opioid epidemic—which the series blames on Purdue, OxyContin and the Sacklers—the series sounds like a documentary with an agenda. Judy Berman of Time magazine wrote this in her Aug. 10 review: “Based on Keefe’s *New Yorker* exposé, “[The Family That Built an Empire of Pain](#),” and the book *Pain Killer* by Barry Meier, *Painkiller* presents a prismatic view of the devastation wrought by OxyContin over the past quarter-century.” But Berman added that these accounts, as well as many others she names, are much more enlightening. “Neither as moving nor as informative as any of the above nonfiction accounts, *Painkiller* is a flawed vehicle for a vital message about lethal corporate malfeasance in health care and our government’s failure to protect us from it. The best it can do is entice us to seek out better information.” We heard the producer on National Public Radio last week gloating that he expected Richard Sackler to be much more hurt by his name being removed from the museums and concert halls he donated money to than by the \$8 billion he paid to avoid any future civil lawsuits—a deal that has yet to be sealed by the courts. If you want to see *Painkiller*, go to <https://www.netflix.com/title/81095069>.