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The Yet-To-Be-Enacted, So-Called Sweeping Opioid Legislation (and That Which Gets Swept Under the Rug)



On Wednesday, October 3, 2018, one year after President Trump declared the opioid epidemic to be a [national emergency](#), federal lawmakers united in support of extensive legislation crafted in direct response to the crisis. (That is, federal lawmakers except for the eight representatives in the House and [one senator](#) who opposed it.) Two weeks later, President Trump has yet to [sign the bill into law](#), a surprising delay given his [“statements”](#) urging Congress into action. **Dear President Trump: Where’s our opioid legislation?**

At 654 pages, the [SUPPORT for Patients and Communities Act](#) (the “SUPPORT Act”) establishes, authorizes, reauthorizes, and grows programs that target a broad spectrum of measures. For example, the SUPPORT Act:

- Reforms opioid prescribing, dispensing, and disposal practices via additional constraints, monitoring, and related oversight;
- Enhances the substance use disorder treatment workforce by creating a student loan repayment program for healthcare professionals, and by increasing the types of health care providers that can prescribe or dispense treatment for substance use disorders (such as certified nurses);
- Creates grants for community programs, especially those offering recovery support services (e.g., peer support programs), trauma support services and mental health care, and “services for families and patients in crisis;” and

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- Provides for additional access to substance use disorder services under federal health care programs (such as CHIP, Medicaid, and Medicare).

The SUPPORT Act represents a significant achievement for Americans struggling to contain the burgeoning opioid crisis, particularly for a Congress regularly plagued by partisanship. And yet, its passage does not come without controversy.

One contentious provision of the SUPPORT Act is its amendment to Medicaid's historical exclusion on the use of program funds for services provided in "IMDs." IMDs (an acronym for "Institutions for Mental Diseases") are inpatient facilities that primarily diagnose, treat, or care for persons living with mental illness. Specifically, under the SUPPORT Act, states would have the option of covering services for people with substance use disorders provided in an inpatient setting. There is a concern that the availability of Medicaid dollars to cover residential care will divert investment away from community-based care, and excessively (re) institutionalize mental health care consumers. Some stakeholders believe that there are better ways for states to [expand access to inpatient services](#) for Medicaid beneficiaries. The SUPPORT Act at least acknowledges the issue and, in an attempt at preemption, encourages states to maintain a continuum of services. For example, states must have in place a plan to determine an individual's appropriate level of care, length of stay, and setting for care. Further, states must ensure some level of funding for community-based care.

The SUPPORT Act also authorizes new spending, but without a mandate, the question is whether legislators will actually appropriate the funding required for these programs to flourish. The answer remains to be seen. Left subject to an annual appropriations process, there is unfortunately little real, enforceable commitment to a sustained, broad-based, health care-based intervention. By way of contrast, Senator Elizabeth Warren (D-Mass.) and Representative Elijah E. Cummings (D-Md.) earlier proposed [a bill committing \\$100 billion over ten years to fighting the opioid crisis](#), modeling a response after national interventions in the HIV crisis, such as the [Ryan White HIV/AIDS Program](#).

Further, Deputy Attorney General Rod Rosenstein recently "reminded" jurisdictions implementing and contemplating the implementation of [safe injection sites](#) that, "[providing a place for people to use heroin and other illegal substances is a violation of federal law.](#)" It is questionable how an effective response to the opioid crisis can be built on harmful drug strategies with their roots in the failed war on drugs. The SUPPORT Act largely avoids this particular current.

Deputy Attorney General Rosenstein's comments also force us to consider the interplay of federal priorities, policies, and investments. One program that stands out is the U.S. Department of Agriculture's Community Facilities Direct Loan and Grant Program, which provides funding to develop essential community facilities in rural areas. Earlier this year, the agency [announced](#) that it had set aside \$5,000,000 for projects that focus on the opioid epidemic in rural communities, such as mobile treatment clinics. Information on recent grantees, announced in September, is available [here](#), and includes some truly promising projects, such as funding for a treatment center in Kentucky to purchase a metal fabrication business. The business will be used to support people recovering from addiction in learning job skills, gaining work experience and financial independence. Further, both the current, unfinished Senate and House versions of the Farm Bill—the legislation that sets national policy on agriculture, nutrition, conservation, and related matters—would provide new language prioritizing the channeling of essential community facilities funding to facilities that provide prevention, treatment, and/or recovery services for substance use disorders.

So while the SUPPORT Act bucks the consensus portrait of a Congress unable to legislate its way out of a paper bag, the meaningful difference that it will make on the front lines of the epidemic remains to be seen. The SUPPORT Act and other

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efforts suggest much (although definitely not all) of the activity at the federal level is about enabling and facilitating state- and community-level mobilization. One question that then emerges is whether states are ready for this investment; whether state policies are receptive to innovation in this space and otherwise permit stakeholders to capitalize effectively on new energy, opportunities, and initiatives to address the opioid epidemic. Stay tuned; we're developing a [United States of Reform](#) that will highlight exciting efforts underway across the country that seek to do just that.

AIDSWatch

Are you living with or affected by HIV, interested in engaging in advocacy, but are unable to afford the cost of attending AIDSWatch 2019? [AIDSWatch](#), the nation's largest constituent-based HIV/AIDS advocacy event, is accepting [online applications for scholarships](#). Scholarships will cover hotel and travel accommodations. Join the hundreds of people living with HIV and their allies in Washington D.C. this upcoming spring and apply for a scholarship by November 1, 2018!

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