

THE 21ST CENTURY CURES ACT REFORMS TO THE MENTAL HEALTH SYSTEM: PART 1

Title VIII: What Does It Mean for States

This is the first article in a series on the 21st Century Cures Act (the "Act"), which was signed into law on December 13, 2016, and includes significant mental health reforms and funding to help combat mental health and substance abuse disorders, in addition to other changes. Specific funding includes \$1 billion for State Targeted Response to the Opioid Crisis Grants, as well as the reauthorizing of funding to states for existing Community Mental Health Services Block Grants ("MHBG") and Substance Abuse Prevention and Treatment Block Grants ("SABG") (collectively referred to as "Block Grants"). This article specifically focuses on Title VIII of the Act (Sections 8001, 8002, 8003 and 8004), which addresses the Block Grants and modifies state plan requirements for states to be eligible for Block Grants, and may impact how states administer current programs. The Block Grants are authorized under Public Health Service Act ("PHSA") Title XIX Part B, Subpart I (MHBG) and Subpart II (SABG).

Over the next few weeks, we will publish a series of articles summarizing the various mental health reforms under the Act. The articles in our series are located [here](#).

COMMUNITY MENTAL HEALTH SERVICES BLOCK GRANT (TITLE VIII - SECTION 8001)

MHBGs are given to states for comprehensive community mental health services to address the needs of children with "serious emotional disturbance" or ("SED") and adults with "serious mental illness" or ("SMI"). Children with SED refers to persons from birth to age 18 and adults with SMI refers to persons age 18 and over who: (1) currently meet or at any time during the past year have met criteria for a mental disorder - including within developmental and cultural contexts - as specified within a recognized diagnostic classification system (e.g., most recent editions of DSM, ICD, etc.); and (2) display functional impairment, as determined by a standardized measure, which impedes progress towards recovery and substantially interferes with or limits the person's role or functioning in family, school, employment, relationships or community activities.¹ According to the National Institutes of Health, in 2014, there were an estimated 9.8 million adults in the United States with SMI or approximately 4.2 percent of all U.S. adults.²

To be eligible for MHBG funding, a state must submit a plan to the Secretary of Health and Human Services ("HHS Secretary") every two years for approval explaining how the state intends to meet the MHBG plan criteria set forth under PHSA Section 1912 (b). Section 8001 amends the plan criteria, which results in the additions of several new criteria, and will require states to review their current programs and services and make any necessary changes to meet the updated minimum plan criteria. As revised by the Act, states will be required to describe how the state meets criteria that include:

- Identifying a single state agency responsible for administration of the program covered by the MHBG;
- Providing for a community-based system of care for individuals with mental illness with available services and resource that are to include services for individuals with co-occurring disorders;
- Addressing how state and local entities coordinate services such as, health, medical, rehabilitation, educational, law enforcement and social services to maximize efficiency, effectiveness, quality and the cost-effectiveness of services for best outcomes;
- Describing how the state promotes evidence-based practices, including evidence-based programs that address the needs of individuals with early SMI (regardless of the age of onset);
- Providing information on case management services;
- Describing activities that are aimed at engaging adults with SMI and children with SED in making health care decisions and that are intended to enhance communication among individuals, families, caregivers and treatment providers;

- Outlining, as appropriate to the state's use of MHBG funds, initiatives to reduce hospitalizations and hospital stays, efforts to reduce suicide, activities to integrate mental health and primary care, and recovery support services;
- Estimating the incidence and prevalence of adults with SMI and children with SED and expanding upon the data to be provided about programs and services by adding outcome measures to the existing quantitative target data; and
- Establishing goals and objectives for the duration of the plan period.

The Act reauthorizes funding for MHBG at the last appropriated level of \$532,571,000 for fiscal years 2018-2022. Although states have flexibility to use MHBG funds to address the unique needs of the state, Section 8001 modifies how states utilize MHBG funding by requiring that at least 10 percent of the funds received each fiscal year are allocated to support programs addressing the needs of individuals with early SMI. The 10 percent is to include psychotic disorders and apply to all individuals with SMI, regardless of the age of onset. If states do not spend the 10 percent by the end of the fiscal year for which the funds are granted, states will have the option to spend at least 20 percent of the MHBG by the end of next fiscal year.

SUBSTANCE ABUSE PREVENTION AND TREATMENT BLOCK GRANT (TITLE VIII - SECTION 8002)

The SABG enables states to provide substance abuse treatment and preventive services through a variety of means and places special emphasis on the provision of treatment to pregnant women and women with dependent children, intravenous drug users and individuals with HIV and tuberculosis. The SABG is distributed by formula (which takes into account population at risk, cost of services and available resources) to all states and territories and is administered by the Substance Abuse and Mental Health Services Administration within the Department of Health and Human Services. The Act reauthorizes funding through appropriation of approximately \$1.8 billion for fiscal years 2018-2022 to carry out the SABG. Under the Act, each state must distribute SABG funds in accordance with a required state plan for providing substance use disorder prevention and treatment services.

Section 8002 of the Act amends PHSA Section 1932(b), which provides specific criteria for a state plan by preserving existing requirements for the content of the state plan and adding new requirements. Specifically, states are now required to submit a plan that, at a minimum: (i) identifies a single state agency responsible for administering the grant; (ii) provides information on the need for substance use disorder prevention and treatment services in the state; (iii) provides aggregate information on the number of individuals in treatment within the state; (iv) provides a description of the system that is available to provide services by modality, including the provision of recovery support services; (v) provides a description of the state's comprehensive statewide prevention efforts; (vi) provides a description of the financial resources available; (vii) describes the existing substance use disorders workforce and workforce trained in treating co-occurring substance use and mental disorders; (viii) includes a description of how the state promotes evidence-based practices; and (ix) describes how the state integrates substance use disorders services and primary care services. Additionally, it repeals PHSA Section 1929, which permitted the HHS Secretary to make SABG funding available to a state only if the state submitted a statement of need for authorized activities.

Section 8002 also amends PHSA Section 1930, which requires a state to maintain spending on substance use disorders services and allows the HHS Secretary to waive the requirement under specific circumstances. If a state fails to maintain appropriate spending at the required levels (absent a waiver), it can request a negotiated agreement rather than have its SABG funding reduced. In addition, Section 8002 eliminates a separate maintenance "of effort" requirement related to tuberculosis and HIV.

Lastly, Section 8002 also amends PHSA Section 1928(b) by replacing a requirement for a state to make available continuing education with more robust requirements for states to ensure opportunities for ongoing professional development. Specifically, a state must ensure that prevention, treatment and recovery personnel operating in the state's substance use disorder prevention, treatment and recovery systems have an opportunity to receive training on an ongoing basis with respect to: (i) recent trends in substance use disorders in the state; (ii) improved methods and evidence-based practices for providing substance use disorders prevention and treatment services; (iii) performance accountability; (iv) data collection and reporting requirements; and (v) any other matters that would serve to further improve the delivery of substance use disorder prevention and treatment services within the state.

Joint Applications for Block Grants. States have the option to submit a joint application to the HHS Secretary for Block Grants but must meet the requirements for both MHBG and SABG.

Waiver of Application Deadlines. In the event of a public health emergency, the HHS Secretary may grant an extension of, or waive, application deadlines or compliance with other requirements of Block Grants.

Study of Block Grant Fund Distribution. The Act requires the HHS Secretary to conduct a study of the MHBG and SABG funds distributed. The study must specifically include analysis of whether funding reflects the needs for services under the grants in the states and provide any recommendations for alternatives. The study is to be submitted to various Congressional Committees within two years of the Act's effective date.

If you would like further guidance, please contact:

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¹ United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA), FFY 2017-2018 Block Grant Application *available here*. For purposes of block grant planning and reporting, SAMHSA has clarified the definitions of SED and SMI, which were originally defined in federal regulation. See 58 Fed. Reg. 96, 29422, 29425, (May 20,1993).

² <https://www.nimh.nih.gov/health/statistics/prevalence/serious-mental-illness-smi-among-us-adults.shtml>.

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