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December 26, 2019

Office of Inspector General
Department of Health and Human Services
Attention: OIG-0936-AA10-P,
Room 5521 Cohen Building
330 Independence Avenue, SW
Washington, DC 20201

To Whom It May Concern:

On behalf of the American Society of Addiction Medicine (ASAM), a national medical specialty society representing more than 6,000 physicians and other health professionals who are dedicated to the prevention and treatment of addiction, thank you for the opportunity to comment on the Office of Inspector General's (OIG) proposed amendments to 42 CFR 1001.952.

We understand these amendments would modify and add new safe harbors to the Federal anti-kickback statute (AKS) and exceptions to the beneficiary inducements civil monetary penalty definition of "remuneration" to foster arrangements that would promote care coordination and advance the delivery of value-based care while also protecting patients and taxpayer dollars against harms caused by fraud and abuse. Further, we understand OIG is seeking comment on whether to protect patient incentives and supports in the form of cash and cash equivalents, including gift cards, in certain circumstances in the final rule.

ASAM appreciates that OIG is concerned that patient supports in the form of cash or gift cards could induce patients to seek medically unnecessary items and services—leading to inappropriate utilization—and could result in providers improperly steering patients by offering valuable incentives. ASAM agrees that the AKS should continue to prohibit patient-brokering tactics used by unscrupulous providers to steer patients to certain treatment programs. However, the proposed rule also contemplates whether to include protection for cash, cash equivalents and gift cards in limited circumstances, such as when they are provided to patients with certain medical conditions, such as substance use disorders, as part of an evidence-based treatment program to effect behavioral change.

Cash and gift cards may be used in substance use disorder treatment as part of contingency management, an evidence-based psychosocial intervention in which patients are given tangible monetary or non-monetary rewards to reinforce positive behaviors such as abstinence.ⁱ A review of psychosocial treatments for substance use disorders found evidence that these interventions confer benefits to patients.ⁱⁱ



Specifically, the review found that contingency management is associated with improved rates of clinically significant abstinence among patients with substance use disorder, and it is associated with the lowest treatment drop-out rates compared to the other psychosocial interventions included in the review. Moreover, the review found that contingency management interventions are consistently successful for substance use disorders related to opioids, cocaine and nicotine. Finally, a 2019 discussion paper developed by the United Nations Office on Drugs and Crime notes that contingency management has been consistently found to be efficacious for treatment of psychostimulant use disorder, including methamphetamine use disorder.ⁱⁱⁱ Contingency management is the only evidenced-based treatment for this disorder. Whereas other forms of treatment such as cognitive-behavioral therapy and medications are safe and effective for opioid use disorder, they have not been proven to be effective for methamphetamine use disorder. This safe harbor would protect the basis for contingency management. Without it, we will not be able to provide the only known effective treatment to combat the rising methamphetamine crisis.

Thank you again for the opportunity to comment on this proposed rule and share information about the effectiveness of contingency management, which may include the use of cash or gift cards to positively reinforce behavior change, in substance use disorder treatment. Should you have any further questions, please contact Susan Awad, Senior Advisor, Public Policy and Regulatory Affairs at sawad@asam.org or 301-547-4106.

Sincerely,

A handwritten signature in black ink, appearing to read "Yngvild Olsen".

Yngvild Olsen, MD, MPH, DFASAM
Vice President, American Society of Addiction Medicine

ⁱ National Institute on Drug Abuse. Principles of Drug Addiction Treatment: A Research-based Guide. Bethesda, MD: National Institute on Drug Abuse; 2009.

ⁱⁱ Dutra L, Stathopoulou G, Basden SL, et al. A meta-analytic review of psychosocial interventions for substance use disorders. *Am J Psychiatry* 2008;165:179–187.

ⁱⁱⁱ United Nations Office on Drugs and Crime. Treatment of Stimulant Use Disorders: Current Practices and Promising Perspectives. 2019. https://www.unodc.org/documents/drug-prevention-and-treatment/Treatment_of_PSUD_for_website_24.05.19.pdf