Partner Agencies of the \_\_\_\_\_\_\_\_\_\_\_\_\_\_ Treatment Court

**Memorandum of Understanding**

Governing the Use of Medications for Opioid Use Disorder

**I. Access to Medications for Opioid Use Disorder**

1. The \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Treatment Court is committed to providing safe and effective treatments for substance use disorders while safeguarding participant welfare, public safety, and the fair administration of justice.
2. Medications for opioid use disorder (MOUD), including methadone, buprenorphine (e.g., Suboxone, Subutex), and naltrexone (e.g., Revia, Vivitrol) [INSERT EXAMPLES OF OTHER BRAND NAMES USED IN THE PROGRAM, SUCH AS ZUBSOLV OR SUBLOCADE, IF DESIRED], in combination with counseling and social services, are demonstrated to improve outcomes for persons with opioid use disorders involved in the criminal justice system. Proven benefits include increasing treatment attendance and reducing illicit opioid use, overdose risk, and new drug-related arrests and technical violations.[[1]](#footnote-1)
3. Participants in the treatment court are permitted to receive MOUD when prescribed lawfully by a licensed physician or other legally authorized medical provider in the state or territory, such as a nurse practitioner or physician’s assistant, who has received the requisite training and credentials to prescribe the medication, has personally examined the participant, and will continue to monitor treatment progress and safety.
4. Participants are not required to change medications, reduce the medication dosage, or discontinue MOUD as a condition of entering or graduating successfully from the treatment court. Participants receiving MOUD are eligible for the same services in the program as other participants and earn the same legal and other benefits of graduation.
5. Nothing in this Agreement requires the treatment court to provide MOUD or a particular medication if qualified providers or sufficient funding are not reasonably available to the program. The treatment court team will make all reasonable efforts to identify competent and qualified MOUD practitioners in the local community and obtain funding to support administration of MOUD and related services (see Section IX).

**II. Choice and Dosage of Medication**

1. Some medications have risks for more serious side effects than other medications but may have a greater chance of being effective for a particular individual. Weighing the potential benefits and risks of different medications and deciding which medication to prescribe for a given person are medical decisions to be made by a trained and lawfully credentialed medical provider in consultation with the participant. Nonmedically-trained members of the treatment court team do not make these medical decisions.
2. Selecting the proper medication dosage and deciding whether to reduce the dosage or discontinue the medication are medical decisions to be made by a trained and lawfully credentialed medical provider in consultation with the participant. Nonmedically-trained members of the treatment court team do not make these medical decisions.

**III. Choice of Medical Providers**

1. The treatment court team will make all reasonable efforts to identify and maintain a list of preapproved physicians and other lawfully qualified medical providers who have worked effectively with the treatment court or are recognized as delivering safe and competent treatment. Participants may select providers from this list for evaluation and treatment with MOUD. Preapproved providers must acknowledge and adhere to the responsibilities described below in Section VII for working with the treatment court.
2. Participants may choose other lawfully qualified physicians or medical providers not on the preapproved list but must provide their contact information to the treatment court team and sign all required releases of information allowing the team to communicate freely with the provider about the participant’s treatment plan and progress in treatment. The provider must acknowledge and adhere to the responsibilities described below in Section VII for working with the treatment court.
3. Participants who have already received a lawful prescription for MOUD prior to entering the treatment court must inform the treatment court team about the prescription as soon as practicable but no later than the date of entry into the program. The participant must provide contact information for the prescribing medical provider and sign all required releases of information allowing the treatment court team to communicate freely with the provider about the participant’s treatment plan and progress in treatment. The provider must acknowledge and adhere to the responsibilities described below in Section VII.
4. Lawfully qualified medical providers are presumed to be competent to treat patients safely and effectively. If, however, the treatment court team has substantial cause to be concerned about the safety or competence of medical care being proposed or provided, the team may request a new evaluation, or second opinion based on a review of the participant’s medical record, from another qualified medical provider. In such instances, the team will explain the reason(s) for requesting a second opinion to the participant. Participants will only be required to select a new medical provider or transfer to a new provider for their care if the judge finds, based on expert medical evidence, that the proposed course of treatment falls below the generally recognized medical standard of care in the medical community or poses an undue risk to the participant’s welfare.

**IV. Screening and Evaluation for Opioid Use Disorder and Indications for MOUD**

1. All participants entering the treatment court will be screened during intake for possible indications for MOUD using a validated screening tool, clinical interview, and review of prior medical records, if any, by a clinically trained and credentialed treatment professional. The screening will assess whether the participant has a moderate to severe opioid use disorder and is at risk for serious repercussions from this disorder, such as overdose, treatment attrition, or nonresponse to treatment without MOUD. Participants screening positive will be referred to a qualified physician or other medical provider for a comprehensive medical evaluation of their suitability for MOUD and to develop a treatment plan. Participants may be re-screened at any time during their enrollment in the treatment court if their clinical presentation changes or staff become aware of new information suggesting a potential need for MOUD.
2. Results from the screening, comprehensive medical evaluation, and recommended treatment plan will be submitted to the treatment court team for approval. Approval will ordinarily be granted unless the judge finds, based on expert medical evidence from another qualified medical provider, that the evaluation or proposed treatment plan falls below the generally recognized medical standard of care in the medical community or poses an undue risk to the participant’s welfare. In such cases, the participant will be referred to another qualified medical provider for a new evaluation or second medical opinion.
3. Information obtained while screening or evaluating participants for opioid use disorder and assessing their suitability for MOUD will be used solely to inform or adjust the treatment plan and other conditions of the treatment court, such as drug testing or other monitoring procedures or indicated complementary counseling services, and will not be admissible as evidence to substantiate or prosecute any new or prior criminal charge or technical violation of a court order.

**V. Informed Consent and Sharing of Information**

1. Participants receiving MOUD or who are referred for evaluation for MOUD must sign all required releases of information necessary for the medical provider to communicate freely with the treatment court team about the recommended treatment plan and progress in treatment. The scope of disclosures will be limited to the minimum information necessary to ensure safe and effective use of MOUD, including but not limited to the following information:
2. Assessment results pertaining to the participant’s diagnosis, treatment needs, and indications for MOUD or a particular medication
3. Attendance at scheduled medical appointments
4. Adherence to the medication regimen, barriers to adherence, if any, and willful misuse of the medication
5. Side effects, if any, from the medication and indicated responses to those side effects
6. Symptom improvement including changes in opioid cravings, withdrawal symptoms, and associated mental health symptoms such as depression, boredom, irritability, or anhedonia (loss of pleasure)
7. Results from prescription drug monitoring program (PDMP) reports indicating whether the participant obtained any unauthorized prescription from another provider for a controlled addictive or intoxicating medication
8. Any efforts by the participant to tamper with or invalidate drug or alcohol tests if such tests are performed by the treating medical provider
9. Evidence of treatment-related attitudinal improvements such as increased insight or motivation for change
10. Any menacing, threatening, or disruptive behavior directed at the medical provider, other medical staff members, fellow patients, or other persons.

**VI. Misuse or Diversion of Medications**

1. The treatment court team will monitor participants to ensure that they are taking their medications as prescribed and not diverting them for unintended use. Safety and monitoring procedures that may be employed for such purposes include but are not limited to the following. These precautions will be imposed only when warranted to avoid foreseeable misuse of medications and will be discontinued when no longer necessary to avoid placing undue burdens on participants’ access to needed medications.
2. Requiring medication ingestion to be observed by medical staff, a treatment court staff member such as a clinical case manager or probation officer, or another approved individual such as a trustworthy family member of the participant
3. Observing medication ingestion using facial recognition, smartphone, or similar technology
4. Monitoring urine or other test specimens for the expected presence of medications or their metabolites
5. Conducting random pill counts
6. Using medication event monitoring devices (MEMDs) that record when and how many pills were removed from the medication vial
7. Using abuse-deterrence formulations of the medications if available and medically indicated, such as soluble sublingual films, liquid medication doses, or long-acting injections
8. Reviewing PDMP reports to ensure that participants are not obtaining unapproved prescriptions from other providers for controlled medications
9. Information obtained while monitoring participant compliance with MOUD, including drug test results and PDMP reports, will be used solely to inform or adjust the treatment plan and other conditions of the treatment court, and will not be used to substantiate or prosecute any new or prior criminal charge or technical violation of a court order. Nothing in this Agreement prevents law enforcement from prosecuting a participant for willful misuse or diversion of a prescribed medication while in the treatment court if discovered independently of treatment court procedures.
10. Punitive sanctions may be imposed pursuant to treatment court best practices[[2]](#footnote-2) for willful or proximal infractions relating to the misuse of prescription medications, such as ingesting more than the prescribed dosage to achieve an intoxicating effect, combining the medication with another illicit or unauthorized substance to achieve an intoxicating effect, or obtaining an unauthorized prescription for a controlled medication. Such sanctions will *not* include discontinuation of the medication unless discontinuation is ordered by the treating medical provider or another qualified medical provider who has personally examined the participant and reviewed the medical record in the case.
11. Punitive sanctions will ordinarily not be imposed for continued use of illicit opioids until participants have reached a therapeutic dosage of the medication as determined by the prescribing medical provider and are no longer experiencing withdrawal symptoms, opioid cravings, or associated mental health symptoms such as depression or anhedonia. Prior to this level of clinical stabilization, the indicated response to continued illicit opioid use will ordinarily include adjustments to the medication regimen if medically indicated, addition of complementary counseling or monitoring services, person or place restrictions, curfews, or low-magnitude instructive assignments such as journaling exercises or daily activity scheduling.
12. Sharing or selling medication to another person poses a serious risk to public safety and other participants, is potentially a new criminal offense, and may result in arrest and/or discharge from the treatment court. Participants may be discharged from the treatment court if the judge finds that sharing prescription medication posed a substantial risk of harm to another person and is reasonably likely to be repeated. Nothing in this Agreement prevents law enforcement from prosecuting a participant for willful diversion of a prescribed medication to another individual while in the treatment court.
13. Participants may, at times, receive jail sanctions (typically one to five days) in the treatment court for serious or repetitive proximal infractions, such as diverting medication for illicit use, violating curfew, violating person or place restrictions, or committing a new criminal offense. Every effort will be made to ensure that participants have uninterrupted access to prescribed medications while in custody. Medical providers may, for example, be asked to provide an extended prescription or medication dose to jail medical personnel and instructions for its use. Treatment court staff will make all reasonable efforts to avoid having jail sanctions interfere with medication regimens.

**VII. Responsibilities of Medical Providers**

1. Physicians or other lawfully qualified medical providers prescribing MOUD for treatment court participants will sign and adhere to a memorandum of understanding agreeing to work collaboratively with the treatment court team, share pertinent information as necessary to coordinate participant care, and respond in a timely manner to questions and concerns about the treatment plan.
2. The physician or medical provider will deliver a written treatment plan to the treatment court team documenting the participant’s opioid use disorder diagnosis, indications for MOUD or a particular medication, and rationale for the recommended treatment course. This information will help the treatment court team coordinate the participant’s care and know what symptoms, side effects, or other issues to be aware of and how to respond but will not be used to second-guess or discount the medical provider’s judgment. If the team has substantial cause for concern about the proposed treatment plan, it may obtain a new evaluation or second medical opinion from another qualified medical provider.
3. The physician or medical provider or a clinically trained representative from the medical provider’s staff will deliver routine progress reports to the treatment court team describing the participant’s progress in treatment, including the information delineated above in Section V. Ideally, this information will be provided in person or by phone or videoconferencing during staff meetings but may, if necessary, be provided in written progress reports submitted in advance of staff meetings.
4. Medical providers will agree to respond within 48 hours to questions or concerns by treatment court staff about participants’ apparent lack of responsiveness to the treatment plan, possible medication side effects, and suspected misuse or diversion of medication. Medical providers will respond as soon as practicable to any report of serious or life-threatening symptoms and will provide emergency instructions and contact information for emergency services to be used by the participant or treatment court staff in the event of a medical crisis.
5. Where permitted by law, the physician or medical provider will conduct PDMP inquiries at least every 90 days and report the results to the treatment court team [assuming treatment court staff are not authorized to conduct PDMP reports in the jurisdiction].

**VIII. Complementary Services to Facilitate MOUD**

1. The prescribing physician or medical provider or a clinically trained member of the treatment court team will educate all participants in the treatment court (regardless of whether they are receiving MOUD) about precautions they can take to avoid or reverse a life-threatening drug overdose. This will include providing emergency phone numbers and crisis management instructions to follow in the event of an overdose or medical emergency.
2. The prescribing physician or medical provider or a clinically trained member of the treatment court team will educate all participants in the treatment court (regardless of whether they are receiving MOUD) on the safe and effective administration of overdose-reversal medications such as naloxone hydrochloride (naloxone or Narcan). Where reasonably available and permitted by law, participants and their significant others will be provided intranasal naloxone kits and trained on their use.
3. The prescribing physician or medical provider or a clinically trained member of the treatment court team will educate family members and significant others of participants receiving MOUD about the efficacy and safety of MOUD, how it works, potential side effects to be aware of, and how to respond to those side effects and will work to dispel commonly held and stigmatizing beliefs about MOUD.
4. The treatment court team will make all reasonable efforts to identify trained and credentialed peer mentors or peer recovery support specialists with lived experience related to substance use disorders, MOUD and justice system involvement who have abstained from illicit substance use and criminal activity for at least the previous three consecutive years. Where available, participants receiving MOUD will be paired with a peer mentor or recovery support specialist to help them navigate the health care system, adhere safely and responsibly to their MOUD regimen, attend scheduled appointments, and achieve successful long-term recovery.
5. The treatment court team will make all reasonable efforts to identify peer-support or self-help recovery groups in the local community that are accepting of MOUD and will prepare participants to cope effectively with stigmatizing attitudes about MOUD that may emanate from members of the self-help community or other persons.

**IX. Identifying Providers and Funding for MAT**

1. The treatment court team will make all reasonable efforts to identify competent and lawfully qualified MOUD providers in the local community, including querying online directories of medical providers and treatment agencies specializing in addiction medicine or addiction psychiatry, and reaching out to the single state agency for substance use treatment, state or county boards of health and medical societies, and local colleges, universities, and medical schools.
2. Case managers or benefits assistants working with the treatment court will identify and help enroll participants eligible for Medicaid or other third-party reimbursement for MOUD.
3. The treatment court team will make all reasonable efforts to obtain grant or other external funding for MOUD if available, such as applying for funds from state block grants or appropriations, contacting federally qualified health centers (FQHCs) offering discounted medications for uninsured and low-income individuals, attempting to negotiate reduced-price medications from pharmaceutical companies, and reaching out to covered entities offering reduced medication rates for specified vulnerable populations under the federal 340B Drug Pricing Program.

***IN WITNESS HEREOF,*** duly authorized representatives of the partnering agencies of the \_\_\_\_\_\_\_\_\_\_\_\_\_ Treatment Court have set their signatures and endorsement of the terms of this Agreement:

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Presiding Judge and/or Treatment Court Judge Date

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Treatment Court Coordinator Date

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Prosecution Representative Date

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Defense Counsel Representative(s) Date

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Probation Department Representative Date

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Dept. of Human Services or Treatment Agency(ies) Representative(s) Date

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Law Enforcement or Sheriff’s Dept. Representative Date

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OTHER PARTIES AS INDICATED

1. *See.,* e.g., Substance Abuse and Mental Health Services Administration. (2019). *Use of medication-assisted treatment for opioid use disorder in criminal justice settings* (HHS Pub. No. PEP19-MATUSECJS). <https://www.samhsa.gov/resource/ebp/use-medication-assisted-treatment-opioid-use-disorder-criminal-justice-settings> [↑](#footnote-ref-1)
2. *See* National Association of Drug Court Professionals. (2013). *Adult Drug Court Best Practice Standards* (Vol. I-Text Revision).<https://www.nadcp.org/standards/adult-drug-court-best-practice-standards/> [↑](#footnote-ref-2)