



DEPARTMENT OF HEALTH

Larry Hogan, Governor · Boyd K. Rutherford, Lt. Governor · Dennis R. Schrader, Secretary

July 30, 2021

The Honorable Guy J. Guzzone
Chair
Senate Budget and Taxation Committee
3 West Miller Senate Office Bldg.
Annapolis, MD 21401-1991

The Honorable Maggie McIntosh
Chair
House Appropriations Committee
121 House Office Bldg.
Annapolis, MD 21401-1991

RE: 2021 Joint Chairmen's Report (p. 117) – Report on IMD Designation

Dear Chairs Guzzone and McIntosh:

Pursuant to the requirements of the 2021 Joint Chairmen's Report (p. 117) the Maryland Department of Health (MDH) submits this report on the Institutions for Mental Disease (IMD) designation for psychiatric hospitals in the State. Specifically, this report addresses waivers to seek reimbursement for IMD designated psychiatric hospitals from the Centers for Medicare and Medicaid Services (CMS), limitations to removing the IMD designation from the hospitals currently designated as IMDs, and the timeline for submission of necessary waivers. The report further addresses funding adequacy for these hospitals and steps taken by MDH to ensure adequate funding.

Background

The IMD exclusion prohibits states from receiving federal Medicaid matching dollars for services provided by IMDs for individuals between 22 and 64 years old.¹ An IMD is defined as a facility with more than 16 beds that is primarily engaged in providing diagnosis, treatment, or care of persons with mental illness.² This exclusion is one of only a few instances where Medicaid is not permitted to provide payment for medically necessary services. States have the ability to request a waiver from the CMS to pay for IMD services for individuals between 22 and 64 years old; however, waiver authority is not available to waive the status of an entity as an IMD.

¹ 42 C.F.R. § 435.1009(a)(2). The Department covers the provision of IMD services to children under age 21. See sec. 1905(a)(16) of the Social Security Act (SSA) authorizing the Inpatient Psychiatric Services for Individuals under Age 21 benefit and CMS implementing regulations defining the types of settings that can provide this benefit at 42 C.F.R. § 440.160 and 441 Subpart D.

² 42 U.S.C. §1396d(i).

Current Actions

HealthChoice 1115 Waiver to Cover IMD Services

Maryland has been a national leader with respect to coverage of IMD services through Medicaid. MDH previously had a psychiatric IMD exclusion waiver beginning in 1997 that was phased out by 2008 under the direction of CMS. Again, in 2012 through 2015, under the Affordable Care Act (ACA), Maryland had a Medicaid Emergency Psychiatric Demonstration.³ As part of MDH's current HealthChoice 1115 waiver (CY 2017-2021), CMS granted MDH expenditure authority under Section 1115(a)(2) of the Social Security Act (SSA) to claim federal financial participation expenditures for substance use disorder (SUD) treatment in non-public IMDs, which are not otherwise included as expenditures under section 1903 of the SSA, and to have those expenditures regarded as such under the State's Title XIX plan.

As part of MDH's 1115 waiver renewal application for CY 2022-2026, MDH is seeking to retain the existing authorization for SUD treatment in non-public IMDs for Medicaid-eligible individuals aged 21 through 64, who are enrolled in a Medicaid Managed Care Organization (MCO) or are dually-eligible for Medicare and Medicaid. As authorized under the previous 1115 waiver and its amendments, MDH currently covers:

- American Society of Addiction Medicine (ASAM) residential levels 3.1, 3.3, 3.5, 3.7, and 3.7WM (withdrawal management); and
- ASAM residential level 4.0 for individuals with a primary SUD diagnosis and secondary Mental Health (MH) diagnosis in an IMD.

Additionally, MDH is seeking to expand coverage to include *all* participants aged 21-64 with a severe mental illness (SMI) diagnosis (not just those with a dual SUD diagnosis), beginning January 1, 2022. Based on guidance released in November 2018 regarding opportunities for states to apply for demonstrations to cover residential mental health services in IMD settings, MDH anticipates CMS will approve its request to cover an average length of stay of no more than 30 days across all participants statewide, and no more than 60 days for any individual.⁴

³ This Demonstration tested whether Medicaid could support higher quality care at a lower total cost by reimbursing private psychiatric hospitals for certain psychiatric services for which Medicaid reimbursement has historically been unavailable. For more information, see <https://innovation.cms.gov/innovation-models/medicaid-emergency-psychiatric-demo>.

⁴ Centers for Medicare & Medicaid Services Serious Mental Illness (SMI) and Serious Emotional Disturbance (SED) Demonstration Opportunity Technical Assistance Questions and Answers, November 4, 2019 (available at https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents/faq110419_13.pdf); see also, SMD # 18--011, RE: Opportunities to Design Innovative Service Delivery Systems for Adults with a Serious Mental Illness or Children with a Serious Emotional Disturbance, at page 12 (available at: <https://www.medicaid.gov/federal-policy-guidance/downloads/smd18011.pdf>).

Waiver of IMD Status for Hospitals

Sheppard Pratt approached MDH in early 2021 regarding options to remove its IMD designation. Sheppard Pratt posited that because it offers a full continuum of services through its health system across the state, in addition to the psychiatric inpatient services offered through its two hospitals, that it no longer meets the definition of an IMD. MDH sought guidance from CMS regarding options for revisiting Sheppard Pratt's designation.

Pursuant to Section 4390, Part C, of CMS' State Medicaid Manual (SMM), the following guidelines are used to evaluate whether the overall character of a facility is that of an IMD:

1. The facility is licensed as a psychiatric facility;
2. The facility is accredited as a psychiatric facility;
3. The facility is under the jurisdiction of the state's mental health authority (This criterion does not apply to facilities under mental health authority that are not providing services to mentally ill persons);
4. The facility specializes in providing psychiatric/psychological care and treatment. This may be ascertained through review of patients' records. It may also be indicated by the fact that an unusually large proportion of the staff has specialized psychiatric/psychological training or that a large proportion of the patients are receiving psychopharmacological drugs; or
5. The current need for institutionalization for more than 50 percent of all the patients in the facility results from mental diseases.

If *any* of these criteria are met, a thorough IMD assessment must be made.⁵

In response to the MDH's inquiry, CMS advised that the provision of outpatient services by a broader health system is not material to assessing whether an individual hospital qualifies as an IMD. The determination of IMD status is made at a facility level. Because the IMD definition requires the need for institutionalization of 50 percent or more of the patients residing in the facility, and as more than 50 percent of those patients' admissions currently relate to mental disease, the Maryland Medicaid program is unable to change Sheppard Pratt's IMD status.

MDH notes that Shepard Pratt is not barred from billing under MDH's existing waiver for services rendered to Medicaid participants with a primary SUD diagnosis and secondary MH diagnosis. Additionally, CMS changed its policies and has been approving waivers from other states that are similar to the waiver MDH seeks in the 1115 renewal application, so MDH anticipates its waiver request will be approved by CMS. If approved, the expanded authority of the renewed 1115 waiver will further permit Sheppard Pratt to bill for services for Medicaid participants with *any* SMI diagnosis.

⁵ CMS' The State Medicaid Manual, Chapter 4 – Services (Rev. 65), at 4-388 (available at: [cms.gov/Regulations-and-Guidance/Guidance/Manuals/Paper-Based-Manuals-Items/CMS021927](https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Paper-Based-Manuals-Items/CMS021927)).

Funding Considerations

The Joint Chairmen's Report also requires MDH to review funding adequacy for the services currently under the IMD exclusion and measures taken by MDH to ensure adequate funding for these services. MDH understands the critical services that IMDs deliver and is committed to making the necessary adjustments to fund psychiatric IMD services. To date, IMD services have never been discontinued due to exceeding the budgeted amount. If utilization does exceed the estimates supporting the budgeted amount, MDH will ensure that the funds are available through a budget amendment or deficiency, especially when taken as a whole with other services supported by funds solely used to provide behavioral health services.

Next Steps

MDH submitted its 1115 waiver renewal application to CMS on June 30, 2021, with a requested effective date of January 1, 2022. MDH remains committed to continuing work to resolve billing so that funding is received from the appropriate sources. Additionally, MDH will continue to monitor the need for more State funds for IMD services.

If further information on this subject is needed, please contact Heather Shek, Director, Office of Governmental Affairs, at heather.shek@maryland.gov.

Sincerely,



Dennis R. Schrader
Secretary

cc: Steven R. Schuh, Deputy Secretary, Health Care Financing and Medicaid
Heather Shek, Director, Office of Governmental Affairs
Sarah Albert, Department of Legislative Services (5 copies)