

## FACT SHEET

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### **New Medicaid Demonstration Opportunity to Treat Patients with Mental Illnesses**

On November 13, 2018, the Centers for Medicare & Medicaid Services (CMS) sent out a [letter](#) to State Medicaid directors that included a new demonstration opportunity for states to treat adults and children with serious mental illnesses. Specifically, states can now apply for a Medicaid Section 1115 waiver to receive matching federal funds for short-term residential treatment services in an institution for mental disease (IMD). This policy broadens the ability for states to work around the current “Medicaid IMD exclusion,” which prohibits the use of federal Medicaid funding for care provided to most patients in non-hospital inpatient mental health treatment facilities. Before this announcement, CMS only allowed states to waive the “Medicaid IMD exclusion” for patients with substance abuse disorders (SUDs). ACEP has long advocated for the full repeal of the Medicaid IMD exclusion, and believes that this new demonstration is a positive step in achieving this ultimate goal. Therefore, we encourage states to explore this new opportunity.

#### **Background on Medicaid IMD Exclusion**

The Medicaid IMD exclusion prohibits the use of federal Medicaid financing for care provided to most patients in non-hospital inpatient mental health treatment facilities larger than 16 beds. The exclusion applies to all Medicaid beneficiaries under age 65 who are patients in an IMD, except for payments for inpatient psychiatric services provided to beneficiaries under age 21, and has long been a barrier to efforts to use Medicaid to provide nonhospital inpatient behavioral health services. The IMD exclusion has been part of the Medicaid program since Medicaid’s enactment in 1965.

Congress recently modified (but did not repeal) the Medicaid IMD exclusion through the “Substance Use–Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act” or the “SUPPORT for Patients and Communities Act,” which was signed into law on October 24, 2018. The SUPPORT Act creates a five-year state plan option, from October 2019 through September 2023, to allow states to receive federal Medicaid payments for IMD services only for adults ages 21 to 64 with at least one SUD. IMD payments are limited to any 30 days in a 12-month period.

#### **Current Section 1115 Waivers Related to the IMD Exclusion**

Applying for a Section 1115 Medicaid waiver has been a common approach States have used to receive federal Medicaid funds for IMD services for nonelderly adults. Under Medicaid’s 1115 demonstration authority, CMS can allow a state to conduct experimental, pilot, or demonstration projects that would benefit Medicaid beneficiaries. These demonstrations usually run for five years and can be extended for up to three years at a time. Before this announcement, Section 1115 waivers have only been available to treat patients with SUD. These IMD waivers specifically distinguish between payments for SUD services and mental health services. According to CMS, 17 states currently have approved IMD waivers and have authority to use federal Medicaid funds to pay for IMD SUD services.<sup>1</sup>

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<sup>1</sup> <https://www.cms.gov/newsroom/press-releases/cms-announces-new-medicare-demonstration-opportunity-expand-mental-health-treatment-services>

## New Waiver Opportunity

The new demonstration opportunity will allow states to apply for, and, if approved by CMS, receive, federal funding for five years for services furnished to specific Medicaid beneficiaries during short term stays for acute care in psychiatric hospitals or residential treatment settings that qualify as IMDs. States are required to ensure high quality of care in IMDs and to improve access to community-based services. The specific Medicaid patient population impacted are adults with serious mental illness (SMI) and children with serious emotional disturbance (SED).<sup>2</sup>

CMS states that the agency is conducting this demonstration to ensure adequate access to acute care for beneficiaries with SMI or SED. CMS notes that many stakeholders believe that “**Medicaid beneficiaries with these conditions often present in emergency rooms where they are unlikely to receive adequate care and where they often must wait for hours and even days before space in an inpatient psychiatric facility becomes available.** Alternatively, beneficiaries may be admitted to a general hospital, but usually only for a very short period of time before being discharged, sometimes before being stabilized, and often without being connected to outpatient care. In addition, some stakeholders assert that the lack of intensive community-based services and discharge planning linking people with community-based supports results in individuals not transitioning out of acute care facilities in a timely fashion, which further limits inpatient capacity to address the acute care needs of individuals with SMI or SED.”<sup>3</sup> CMS aims to test these assertions through this demonstration.

### *Details of the Waiver*

Found below are some more details about the waiver opportunity:

- States may participate in the SUD demonstration opportunity and this new demonstration opportunity at the same time. CMS notes that 12 states who have already expressed interest in expanding access to community and residential treatment services for the full continuum of mental health and substance use disorders.<sup>4</sup>
- The demonstration opportunity allows states to receive federal matching funds for Medicaid-coverable services provided to individuals residing in psychiatric hospitals and residential treatment settings that qualify as IMDs; however, it does not allow for room and board payments in residential treatment settings unless they qualify as inpatient facilities.
- CMS will not approve a state demonstration unless it is expected to be budget neutral to the federal government.

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<sup>2</sup> The Substance Abuse and Mental Health Services Administration (SAMHSA) has defined adults with SMI as persons, age 18 and over, who currently, or at any time during the past year, have had a diagnosable mental, behavioral, or emotional disorder of sufficient duration to meet diagnostic criteria, that has resulted in functional impairment which substantially interferes with or limits one or more major life activities. Similarly, SAMHSA has defined children with SED as persons from birth up to age 18, who currently, or at any time during the past year, have had a diagnosable mental, behavioral, or emotional disorder of sufficient duration to meet diagnostic criteria that resulted in functional impairment which substantially interferes with or limits the child’s role or functioning in family, school, or community activities.

<sup>3</sup> <https://www.medicaid.gov/federal-policy-guidance/downloads/smd18011.pdf>

<sup>4</sup> <https://www.cms.gov/newsroom/press-releases/cms-announces-new-medicaid-demonstration-opportunity-expand-mental-health-treatment-services>

- States participating in the demonstration opportunity must commit to taking a number of actions to improve community-based mental health care. In the letter to State Medicaid Directors, CMS lists specific goals and milestones that states must meet to achieve these goals.

Goals	Milestones
Reduced utilization and lengths of stay in EDs among Medicaid beneficiaries with SMI or SED while awaiting mental health treatment in specialized settings	Ensuring Quality of Care in Psychiatric Hospitals and Residential Settings
Reduced utilization and lengths of stay in EDs among Medicaid beneficiaries with SMI or SED while awaiting mental health treatment in specialized settings	Improving Care Coordination and Transitions to Community-Based Care by
Improved availability of crisis stabilization services including services made available through call centers and mobile crisis units, intensive outpatient services, as well as services provided during acute short-term stays in residential crisis stabilization programs, psychiatric hospitals, and residential treatment settings throughout the state	Increasing Access to Continuum of Care Including Crisis Stabilization Services
Improved access to community-based services to address the chronic mental health care needs of beneficiaries with SMI or SED including through increased integration of primary and behavioral health care	Earlier Identification and Engagement in Treatment Including Through Increased Integration
Improved care coordination, especially continuity of care in the community following episodes of acute care in hospitals and residential treatment facilities	

- States can apply for this demonstration through the normal Section 1115 waiver application process.<sup>5</sup> States must include outline in the application how it plans on meeting both the goals and milestones listed above.

<sup>5</sup> Information on applying for a Section 1115 waiver can be found at: <https://www.medicaid.gov/medicaid/section-1115-demo/how-states-apply/index.html>.