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Medicaid's winding path through Institutions of Mental Disease

Changes to IMDs in Medicaid under the SUPPORT Act

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On October 24, 2018, President Trump signed into law the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act (SUPPORT Act) to address the ongoing opioid epidemic. For state Medicaid programs, one key impact is the availability of substance use disorder (SUD) treatments through Institution of Mental Disease (IMD) facilities where Medicaid recipients have been historically unable to receive care that qualifies for federal matching funds. In the recent past, a number of states have received approval from the Centers for Medicare and Medicaid Services (CMS) for Section 1115 demonstration waivers for authority to use federal Medicaid funds for SUD treatments under various restrictions. The SUPPORT Act now provides a simpler way for states to include these facilities in their fee-for-service (FFS) and managed care delivery models—a state plan amendment (SPA).

Where did we start: Background of the IMD exclusion

Medicaid was created with a policy in place to exclude services provided while a patient is at an IMD from funds submitted for federal financial participation (FFP). This "IMD exclusion" applies to beneficiaries aged 21 to 64. States have long sidestepped this regulation by deeming IMDs an "in lieu of" service—meaning that under a managed care delivery system, the services provided in the IMDs are direct substitutes for services that would be provided at other facilities under the state plan.

Released in 2016, 42 CFR 438.6 provides further clarification regarding IMDs and in lieu of services. Additionally, the 2017 Medicaid Managed Care Rate Development Guide (released in 2016) introduced new requirements for managed care capitation rate development, including services performed at IMDs. Mat DeLillo explores the implications of these releases in his 2016 publication on Milliman Insight, available at: http://www.medinsight.milliman.com/insight/2016/Institution-for-Mental-Disease-IMD-as-an-in-lieu-of-service/.

Figure 1 shows a timeline summarizing the regulations and CMS guidance concerning IMDs to date. Further information on the developments in the SUPPORT Act are detailed for the remainder of this paper.

FIGURE 1: REGULATIONS AND CMS GUIDANCE TIMELINE CONCERNING IMDS TO DATE

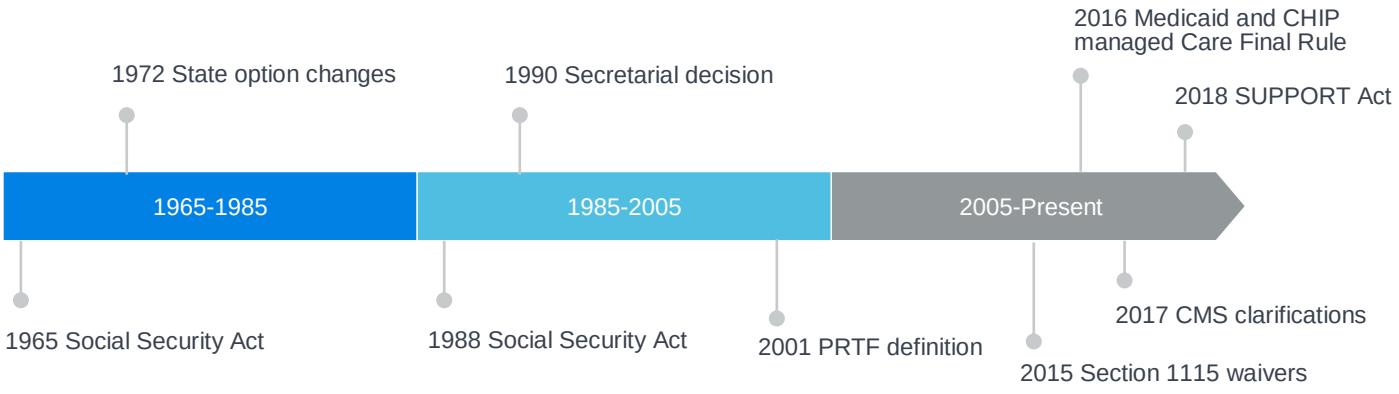

FIGURE 1: REGULATIONS AND CMS GUIDANCE TIMELINE CONCERNING IMDS TO DATE (CONTINUED)

- **1965 Social Security Act:** Original restrictions on IMDs, intended to shift dollars from facilities to local public health and welfare programs.[1,2]
- **1972:** State option to receive federal financial participation (FFP) for services at an IMD for individuals under age 21.[3]
- **1988 Social Security Act:** IMD was statutorily defined as "a hospital, nursing facility, or other institution of more than 16 beds, that is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care, and related services."[4,5]
- **1990:** Secretarial authority to allow FFP for facilities other than hospitals for enrollees under 21 changes.[6]
- **2001:** Psychiatric residential treatment facilities (PRTF) were defined by CMS, allowing FFP for enrollees under age 21 based on the 1990 change.[7]
- **July 2015 State Medicaid Director Letter:** Introduces Section 1115 waivers as a method to waive the IMD exclusion.[8]
- **2016 Medicaid and Children's Health Insurance Program (CHIP) Managed Care Final Rule:**
  - 42 CFR 438.6(e) states that IMD stays of less than 15 days ("short stays") can be covered as an in lieu of service, but must be priced at the cost of the same services included in the state plan for managed care capitation rates.[9]
  - CMS 2017 Medicaid Managed Care Rate Development Guide (released in 2016) provides more detail regarding IMDs in capitation rate development, and requires additional documentation.[10]
  - 21st Century Cures Act requires that all children under age 21 in qualified inpatient psychiatric hospitals and facilities be guaranteed access to the full range of Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) services. It also relaxed November 28, 2012, guidance; CMS no longer requires that medically necessary services provided to a child in an IMD setting be specified in a child's plan of care or provided under an arrangement with the facility.[11]
- **August 2017:** CMS Q&A clarifies administrative and technical details regarding IMDs in 42 CFR 438.6(e), such as prorated capitation payments.[12]
- **November 2017 State Medicaid Director Letter:** Gives states more flexibility with Section 1115 waivers related to opioid treatment and other SUD.[13]
- **2018 SUPPORT Act:** Amends Section 1915 of the Social Security Act and allows states to partially waive the IMD exclusion through SPAs.[14]
- **November 2018 State Medicaid Director Letter:** Allows states to obtain Section 1115 waivers for the treatment of mental illness in IMDs.[15]

States that do not pursue a Section 1115 waiver or SPA to waive the IMD exclusion must comply with the regulations and guidance listed above regarding IMDs in managed care capitation rates. The table in Figure 2 summarizes some key technical requirements.

FIGURE 2: SUMMARY OF CURRENT IMD EXCLUSION IN MANAGED CARE RATE SETTING

What is excluded?	Members aged 21-64 who are in an IMD for longer than 15 days in a month ("long stays") Claim costs incurred by these members during the long stay
Treatment of short stays	Can be included in capitation rates, but priced to the state plan
Continuity of stays	Noncontinuous days in a single month that exceed 15 in total qualify as a "long stay"
Consecutive months	Stays less than 15 days in a single month, but which span two months for more than 15 days in total, are not subject to the exclusion
Capitation payments	Can be prorated for members who are in an IMD more than 15 days in a month

Where are we now: Current IMD demonstration waivers

CMS issued a State Medicaid Director Letter[8] in July 2015 describing new service delivery opportunities for individuals with a SUD under Section 1115 of the Social Security Act. If a participating state's demonstration initiative is consistent with the expectations for a transformed SUD treatment system, CMS will allow federal funding participation (FFP) for costs not otherwise eligible for matching to provide coverage to adults residing in IMDs for short-term acute SUD treatment. The treatment may occur in inpatient settings and/or residential settings with proposed limits on days during the IMD stay. On November 1, 2017, CMS issued a State Medicaid Director Letter[13] revising the 2015 guidance issued by the Obama administration with an emphasis on treating opioids or other substance addictions.

Section 1115 demonstration waivers have been a commonly used method for states to seek federal authority to alter the IMD payment exclusions. The other main methods are Medicaid

managed care "in lieu of" authority and disproportionate share hospital (DSH) payments.[16] The Kaiser Family Foundation (KFF) maintains a "Medicaid Waiver Tracker"[17] page that aggregates states' Section 1115 waiver status information. As of November 2018, 18 states have approved IMD payment waivers and nine more are pending with CMS. A smaller number of states are also seeking, or have received, a waiver of exclusions of other mental health (MH) treatments in IMDs. See the table in Figure 3 for details.

FIGURE 3: CURRENT STATE IMD PAYMENT EXCLUSION WAIVERS[18]

Waiver Provision	Number of States With an Approved Waiver	Number of States With a Pending Waiver
IMD Payment Exclusion for SUD Treatment	18 Approved (AK, CA, IL, IN, KY, LA, MA, MD, NC, NH, NJ, PA, UT, VA, VT, WA, WI, WV)	9 Pending (AZ, DE, KS, MD, MI, MN, NM, RI, TN)
IMD Payment Exclusion for MH Treatment	1 Approved (VT)	3 Pending (KS, NM, RI)

On November 13, 2018, after the SUPPORT Act became law, CMS issued another State Medicaid Director Letter[15] that allows states to obtain Section 1115 waivers of the IMD payment exclusion for mental health services.

Where are we going: Options under the SUPPORT Act

The table in Figure 4 shows key differences between a Section 1115 waiver and a SPA. As the table shows, state plan amendments are generally simpler in every case, allowing more flexibility, fewer hurdles, and a longer term.

FIGURE 4: COMPARISON OF STATE PLAN AMENDMENT AND SECTION 1115 WAIVERS

	Section 1115 Waiver	State Plan Amendment[19]
Definition	Request to waive federal requirements for a Medicaid program	Change to state's Medicaid program within federal requirements
Budget neutrality	Must be budget-neutral	No requirements
Duration	Typically five years[20]	Per applicable laws, no fixed limit
CMS submission	Defined application and calculation template	Proposed edits to state plan and accompanying forms
CMS approval	Considerable review from CMS	Within 90 days, depending on review

The SUPPORT Act itself does not allow free rein for states to include IMD services in their treatment plans—there are a few specific restrictions on what can be accomplished via amendment, rather than a waiver. The primary limitations within the SUPPORT Act are the time period for which the IMD services can be matched under FFP and the length of time individual Medicaid participants can receive care in an IMD. In particular, the FFP match is only available from October 1, 2019, through September 30, 2023, four federal fiscal years. To the extent that states rely on managed Medicaid programs with rate development on a different schedule than federal fiscal years, this may require states to submit rate amendments to comply with the limitation.

The other main requirement built into the SUPPORT Act is the limitation on the amount of care a single participant can receive for SUD services in an IMD in a 12-month period, namely 30 days. While this expansion of coverage for IMD services is significant, it is not an unlimited allowance for these services.

There are a few limitations on SPAs more generally, beyond basic compliance with all current federal regulations. They include comparability, meaning all participants should have access to comparable services, and the freedom to choose providers. In particular, with the SUPPORT Act changes, a SPA allowing SUD treatment at IMDs would need to allow this benefit to all Medicaid participants and allow participants to choose an appropriate IMD, where multiple acceptable options exist. IMDs have historically been defined as facilities with at least 16 beds primarily serving patients with mental diseases. The SUPPORT Act further requires they follow evidence-based practices and provide at least two forms of medication-assisted treatments (MATs). As not all IMDs currently offer MATs based on the historical definition, this update may expand access to those services.

With the expansion of options under the SUPPORT Act, states will need to consider whether or not their goals for treating SUD patients in IMDs can be achieved under the simpler SPA process with its inherent limitations from the SUPPORT Act, or if the more complicated but potentially more flexible waiver process remains their best option.

Endnotes

[1] The full text of the Social Security Amendments of 1965 is available at https://www.ssa.gov/history/pdf/Downey%20PDFs/Social%20Security%20Amendments%20of%201965%20Vol%205.pdf.

[2] Legal Action Center. The Medicaid IMD Exclusion: An Overview and Opportunities for Reform. Retrieved December 18, 2018, from https://lac.org/wp-content/uploads/2014/07/IMD_exclusion_fact_sheet.pdf.

[3] Medicaid and CHIP Payment and Access Commission (March 31, 2016). The Medicaid Institution for Mental Diseases (IMD) Exclusion. Retrieved December 18, 2018, from https://www.macpac.gov/wp-content/uploads/2016/03/The-Medicaid-Institution-for-Mental-Diseases-IMD-Exclusion.pdf.

[4] Social Security Administration. Compilation of the Social Security Laws. Retrieved December 18, 2018, from https://www.ssa.gov/OP_Home/ssact/title19/1905.htm.

[5] Edwards, J.F. (May 1997). The Outdated Institution for Mental Diseases Exclusion: A Call to Reexamine and Repeal the Medicaid IMD Exclusion. Retrieved December 18, 2018, from https://mentalillnesspolicy.org/wp-content/uploads/imd-legal-analysis.pdf.

[6] Medicaid and CHIP Payment and Access Commission (March 31, 2016), op. cit.

[7] Medicaid and CHIP Payment and Access Commission (March 31, 2016), op cit.

[8] CMS (July 27, 2015). New Service Delivery Opportunities for Individuals With a Substance Use Disorder. SMD #15-003. Retrieved December 18, 2018, from https://www.medicaid.gov/federal-policy-guidance/downloads/SMD15003.pdf.

[9] Federal Register (May 6, 2016). Medicaid and Children's Health Insurance Program (CHIP) Programs; Medicaid Managed Care, CHIP Delivered in Managed Care, and Revisions Related to Third Party Liability. Retrieved December 18, 2018, from https://www.federalregister.gov/documents/2016/05/06/2016-09581/medicaid-and-childrens-health-insurance-program-chip-programs-medicaid-managed-care-chip-delivered.

[10] CMS. 2017 Medicaid Managed Care Rate Development Guide: For Rating Periods Starting between January 1, 2017 and June 30, 2017. Retrieved December 18, 2018, from https://www.medicaid.gov/medicaid/managed-care/downloads/2017-medicaid-managed-care-rate-development-guide.pdf.

[11] CMS (June 20, 2018). Requirements of Section 12005 of the 21st Century Cures Act. Retrieved December 18, 2018, from https://www.medicaid.gov/federal-policy-guidance/downloads/cib062018.pdf.

[12] CMS (August 2017). Medicaid and CHIP Managed Care Final Rule (CMS-2390-F): Frequently Asked Questions (FAQs) – Section 438.6(e). Retrieved December 18, 2018, from https://www.medicaid.gov/federal-policy-guidance/downloads/faq08172017.pdf.

[13] CMS (November 1, 2017). Strategies to Address the Opioid Epidemic. SMD #17-003. Retrieved December 18, 2018, from https://www.medicaid.gov/federal-policy-guidance/downloads/smd17003.pdf.

[14] The full text of the bill is available at https://www.congress.gov/bill/115th-congress/house-bill/6.

[15] CMS (November 13, 2018). Opportunities to Design Innovative Service Delivery Systems for Adults with a Serious Mental Illness or Children with a Serious Emotional Disturbance. SMD #18-011. Retrieved December 18, 2018, from https://www.medicaid.gov/federal-policy-guidance/downloads/smd18011.pdf.

[16] KFF (June 18, 2018). Key Questions About Medicaid Payment for Services in "Institutions for Mental Disease." Retrieved December 18, 2018, from https://www.kff.org/medicaid/issue-brief/key-questions-about-medicaid-payment-for-services-in-institutions-for-mental-disease/.

[17] KFF (December 7, 2018). Medicaid Waiver Tracker: Approved and Pending Section 1115 Waivers by State, Retrieved December 18, 2018, from https://www.kff.org/medicaid/issue-brief/medicaid-waiver-tracker-approved-and-pending-section-1115-waivers-by-state/.

[18] KFF, Medicaid Waiver Tracker, ibid., Waivers with Behavior Health Provisions.

[19] Families USA (June 2012). State Plan Amendments and Waivers: How States Can Change Their Medicaid Programs. Retrieved December 18, 2018, from https://familiesusa.org/sites/default/files/product_documents/State-Plan-Amendments-and-Waivers.pdf.

[20] KFF (September 20, 2018). Section 1115 Medicaid Demonstration Waivers: The Current Landscape of Approved and Pending Waivers. Retrieved December 18, 2018, from https://www.kff.org/medicaid/issue-brief/section-1115-medicaid-demonstration-waivers-the-current-landscape-of-approved-and-pending-waivers/.

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