



## **THE AVAILABILITY OF WAIVERS OF MEDICAID'S INSTITUTIONS FOR MENTAL DISEASES EXCLUSION FOR SEVERE MENTAL ILLNESSES AND SERIOUS EMOTIONAL DISTURBANCES**

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On November 13, 2018, the U.S. Department of Health & Human Services Secretary, Alex Azar, announced important regulatory changes that will allow states to receive Medicaid reimbursements for mental health treatment in inpatient settings known as IMDs, or institutions for mental diseases. These payments were previously prohibited by the so-called IMD exclusion.

The Treatment Advocacy Center heralded Secretary Azar's announcement, which coincided with the release of a letter from the Centers for Medicare and Medicaid Services to State Medicaid Directors, outlining guidelines for this policy change. Since then, we received a range of inquiries about this exciting development and the process of applying for what is known as a Section 1115 demonstration waiver.

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### **What is a Section 1115 demonstration waiver?**

Section 1115 of the Social Security Act grants authority to the Secretary of Health and Human Services to waive certain requirements of Medicaid law to allow federal funding to states for innovative care delivery that is otherwise prohibited. The purpose of an 1115 waiver is to give flexibility to states to better meet the needs of specific populations in novel ways that are budget neutral.

In accordance with The 21st Century Cures Act, Centers for Medicare and Medicaid Services (CMS) issued guidance to State Medicaid Directors outlining how states can use existing authorities within Medicaid to receive payments for care delivered to people with serious mental illness and serious emotional disturbance (SMI/SED), as well as – and this is what gets us excited – a new SMI/SED demonstration opportunity provided under 1115 waiver authority.

The overarching goal of the new SMI/SED demonstration opportunity is to provide timely access to the full continuum of care. The waiver offers flexibility for states to receive federal reimbursement for shorter-term acute care in institutions for mental diseases (IMDs) (defined broadly as a statewide average of less than 30 days length-of-stay in an IMD). This opportunity also requires improving access to community services for people with SMI/SED, including crisis services and processes to connect patients discharged from the hospital with outpatient services.

Another key aspect of this waiver is that states would be able to receive federal payments for necessary physical and substance use treatment for patients staying in an IMD for mental health treatment under the demonstration. Currently, Medicaid will not reimburse for any care – physical, mental, substance use – if provided to a beneficiary in an IMD.

### **What do we know about the application process?**

States must apply to CMS to receive a waiver. Although this particular type of SMI/SED 1115 waiver is new, most states are very familiar with 1115 waivers and have applied for and received them in the past. All of the basic submissions, eligibility, evaluation, and reporting requirements as outlined in the State Medicaid Directors Letter remain the same for these new waivers as for any other 1115 waiver.

While we are excited that the opportunity exists, making an application for a waiver and implementing the proposed plan is a complex process that requires a state to fundamentally reevaluate and restructure their existing system. That said, CMS has been generous in providing technical assistance and will help develop various aspects of the demonstration. Moreover, the basic procedure has been in place for decades.

All proposals are open to a 30-day public comment period before the applications are submitted to CMS. CMS cannot decide to move forward with an application until at least 45 days have passed and all comments are considered.

### **What does this mean for assisted outpatient treatment (AOT)?**

The letter that CMS sent to State Medicaid Directors underscores the importance of timely follow-up care for SMI/SED patients discharged from the hospital, and suggests that states adopt accountability measures and payments to incentivize better care coordination. Furthermore, the SMI/SED demonstration opportunity established a goal “to engage beneficiaries with SMI or SED in treatment as soon as possible.

However, CMS does not address early intervention or follow-up care for people who lack insight into their illness. This is an opportunity to educate State Medicaid Directors on Assertive Community Treatment (almost all components can be covered by Medicaid) and AOT, which can facilitate getting targeted care to people with SMI who do not voluntarily engage in treatment as a symptom of their illness.

Please note: A demonstration project will not permit keeping a person on an emergency hold longer than they would be held notwithstanding the demonstration. However, part of a care delivery proposal could be a requirement that everyone released from an emergency hold or inpatient hospitalization has meaningful follow-up and community services on discharge – and that the community behavioral health providers have a responsibility to provide it.

### **Stay tuned for more IMD information...**

In the meantime, please reach out with related questions to Frankie Berger, Director of Advocacy, at [bergerf@treatmentadvocacycenter.org](mailto:bergerf@treatmentadvocacycenter.org).

We will compile the questions and answers into a set of Frequently Asked Questions to share, and we will be disseminating updates and further explanation as we better understand this ongoing process.