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Medicaid's Institution for Mental Diseases (IMD) Exclusion

Medicaid is a joint federal-state program that finances the delivery of primary and acute medical services, as well as long-term services and supports, for a diverse low-income population, including children, pregnant women, adults, individuals with disabilities, and people aged 65 and older.

Medicaid's Institution for Mental Diseases (IMD) exclusion limits the circumstances under which federal Medicaid funding to states is available for inpatient behavioral health care (i.e., mental health or substance use disorder [SUD]). The exclusion applies to facilities with more than 16 beds "primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care, and related services." In recent years, policymakers have expressed concerns about the way the IMD exclusion is affecting access to inpatient behavioral health care.

What Is the IMD Exclusion?

The IMD exclusion is a long-standing policy under Medicaid that prohibits the federal government from providing federal Medicaid funds to states for services rendered to certain Medicaid-eligible individuals who are patients in IMDs (§1905(a)(30)(B) of the Social Security Act [SSA]). When a Medicaid-eligible individual is a patient in an IMD, the individual cannot receive Medicaid coverage for services provided inside or outside the IMD. Due to the exceptions explained in the "Legislative History" section, the IMD exclusion applies to individuals aged 21 through 64.

"The term 'institution for mental diseases' means 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." (SSA §1905(i).)

Determination of whether a facility is an IMD depends on whether its overall character is that of a facility established and maintained primarily to care for and treat individuals with mental diseases. Examples include a facility that is licensed or accredited as a psychiatric facility or one in which mental disease is the current reason for institutionalization for more than 50% of the patients.

For the definition of IMDs, the term *mental disease* includes diseases listed as mental disorders in the International Classification of Diseases, with a few exceptions. (See Centers for Medicare & Medicaid Services [CMS], *State Medicaid Manual*, Part 4, §4390.) Under this definition, SUDs are included as mental diseases. If the substance abuse treatment follows a psychiatric model and

is performed by medical personnel, it is considered medical treatment of a mental disease.

Legislative History

The IMD exclusion was part of the Medicaid program as enacted in 1965 as part of the Social Security Amendments (P.L. 89-97). The exclusion was designed to assure that states rather than the federal government maintained primary responsibility for funding inpatient psychiatric services. However, federal Medicaid law as originally enacted included an exception to the IMD exclusion for individuals aged 65 and older, consistent with the federal government's new role in financing the care of older adults. In 2018, at least 42 states provided this optional coverage for individuals aged 65 and older.

The Social Security Amendments of 1972 (P.L. 92-603) provided another exception to the IMD exclusion for children under the age of 21 (or in certain circumstances under the age of 22), commonly referred to as the "Psych Under 21" benefit. This optional benefit allows states to provide coverage for inpatient psychiatric services to children in certain types of facilities. However, these services are mandatory for states to cover if an early and periodic screening, diagnosis, and treatment (EPSDT) screen of a child determines inpatient psychiatric services are medically necessary. As a result, all states provide Medicaid coverage of inpatient psychiatric services for individuals under the age of 21.

The Medicare Catastrophic Coverage Act of 1988 (P.L. 100-360) created the statutory definition of an IMD, which followed the regulatory definition with one addition: the exception for facilities with 16 beds or fewer. Thus, small facilities can receive Medicaid funding, which indicates Congress supported the use of smaller facilities rather than larger institutions.

Inpatient Mental Health Services for Persons Aged 21 Through 64

Taking into consideration all the statutory exceptions, the IMD exclusion prevents the federal government from providing federal Medicaid funds to states for any service delivered to individuals aged 21 through 64 in an IMD. However, states can receive federal Medicaid funding for inpatient behavioral health services for individuals aged 21 through 64 if the care is provided outside of an IMD, such as in facilities with 16 or fewer beds and facilities that are not primarily engaged in providing care to individuals with mental diseases.

Section 1115 Waivers

States may request a Section 1115 waiver to receive federal Medicaid funds for services provided to individuals who are patients in IMDs. Between 1993 and 2009, nine states had

approved Section 1115 waivers allowing these states to receive federal Medicaid funds for behavioral health services in IMDs. All except one of these waivers were phased out.

In July 2015, CMS issued guidance (updated in November 2017) notifying states that certain Section 1115 waivers would be approved for short-term stays in IMDs for individuals receiving SUD treatment. Then, CMS issued new guidance in November 2018, as mandated by Section 12003 of the 21st Century Cures Act (P.L. 114-255), about opportunities to design innovative systems for adults with serious mental illness (SMI) and children with serious emotional disturbance (SED). This guidance allows states to provide Medicaid coverage through Section 1115 waivers for short-term stays in IMDs for individuals with SMI and SED. For the list of states with approved and pending Section 1115 waivers to make payments to IMDs, see **Table 1**.

Table 1. States Paying IMDs Under Section 1115 Waiver Authorities, as of January 14, 2025

Section 1115 Waiver	States with Waivers
Waiver of IMD Exclusion for Substance Use Disorder Treatment	Approved: AK, CA, CO, CT, DC, DE, ID, IL, IN, KS, KY, LA, MA, MD, ME, MI, MN, MO, MT, NC, NE, NH, NJ, NM, NV, NY, OH, OK, OR, PA, RI, UT, VA, VT, WA, WI, WV Pending: AL, AZ, AR, MA, WA
Waiver of IMD Exclusion for Mental Health Treatment	Approved: AL, CA, CO, DC, ID, IN, KY, MD, MO, NH, NM, OK, UT, VT, WA Pending: AR, MA, MT, NJ, NV, NY, OR, TN, WA, WI

Source: KFF, *Medicaid Waiver Tracker: Approved and Pending Section 1115 Waivers by State*, January 14, 2025.

Medicaid Managed Care

Under Medicaid managed care coverage, states may make payments to managed care organizations for enrollees aged 21 through 64 who are patients at IMDs. In May 2016, CMS added this policy to regulations, and Section 1013 of the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act (SUPPORT Act; P.L. 115-271) codified the regulations. It specified that states may make payments to managed care organizations for enrollees aged 21 through 64 who are patients in an IMD as long as the length of stay in the IMD is no more than 15 days during the month of the payment. According to a 2019 KFF survey, at least 31 states made payments to IMDs in FY2020.

SUPPORT Act State Plan Option for SUD Services

Section 5052 of the SUPPORT Act added a new state plan option under SSA Section 1915(l) beginning October 1, 2019. This option provides Medicaid coverage of Medicaid enrollees aged 21 through 64 with at least one SUD who are patients in an eligible IMD for no more than a period of 30 days (whether or not consecutive) during a 12-month period.

An eligible IMD is defined as an IMD that (1) follows reliable, evidence-based practices and (2) offers at least two forms of medication-assisted treatment for SUDs on site. As a condition of the state plan option, states would have to maintain the annual level of state expenditures for items and services furnished to Medicaid enrollees aged 21 through 64 with at least one SUD in outpatient and community-based settings. According to CMS guidance from November 2024, states participating in this state plan option will need to comply with these maintenance of effort requirements by March 9, 2025.

Additionally, by October 1, 2025, states that have implemented this state option are required to have (1) “evidence-based, SUD-specific individual placement criteria” to ensure eligible individuals receive an appropriate level of care prior to being treated in an IMD and (2) a process to review compliance of eligible IMDs with statutory requirements using nationally recognized standards. States also are required to begin assessing availability of SUD treatment at different levels of care as specified in SSA Section 1915(l)(4)(C) no later than March 9, 2025. Lastly, under the state option, individuals receiving IMD SUD services also must receive Medicaid coverage of services provided outside the IMD. Two states (SD and TN) currently have this Medicaid state option.

Medicaid DSH Payments

States also can provide Medicaid disproportionate share hospital (DSH) payments to IMDs, but these are lump-sum payments provided to the facilities rather than payments for services rendered. (See CRS Report R42865, *Medicaid Disproportionate Share Hospital Payments*.) Most states focus their Medicaid DSH funding on hospitals, but some states use this funding for IMDs. In FY2023, 34 states made DSH payments to IMDs, and two of them (ME and MA) made all of their DSH payments to IMDs.

Recent Developments

The IMD exclusion has been a topic of debate in Congress as focus has grown on the effect this policy has on access to behavioral health services. There is some interest in eliminating the IMD exclusion, which leads to questions about Medicaid’s role in providing institutional care for behavioral health. Thus far, most of the exceptions to the IMD exclusion are for Medicaid coverage of short-term stays in an IMD.

In the 117th and 118th Congresses, at least four bills (H.R. 1201, H.R. 8767, H.R. 7803, H.R. 10266) were introduced that would have fully repealed the IMD exclusion. Other introduced bills would have amended it in some way, such as by altering the definition of an IMD by increasing the number of beds.

In April 2023, the Congressional Budget Office (CBO) released a report that estimated the budgetary effects of repealing the IMD exclusion or permanently extending the SUPPORT Act state plan option. For each of these policy options, CBO discussed a few different ways to implement the policy. CBO estimated these policy options would increase federal Medicaid outlays from \$155 million to \$38.4 billion over a 10-year period.

Varun Saraswathula, Analyst in Health Care Financing

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