

IMD Exclusion

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Purpose and Function of the IMD Exclusion

IMD Exclusion

- Under 1905(a) of the Social Security Act, there is a general prohibition on Medicaid payment for any services provided to any individual who is under 65 and who is residing in an institution for Mental Diseases (IMD)

The IMD Exclusion

Medical Assistance does not include:

“any such payments with respect to care or services for any Individual who has not attained 65 years of age and who is a patient in an institution for mental diseases...”

42 U.S.C. 1396d(a)(31)(B)

Definition of IMDs

“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.”

42 U.S.C. 1396d(i)

*NOTE: Under this definition, can have more than 16 beds Dedicated to mental health treatment in a general hospital.

The *Olmstead* Decision/ Support for Community Integration

The reason why there is an IMD Exclusion is because of the history of institutionalizing those with mental illness without providing community-based services. As deinstitutionalization was beginning, the argument was that people with disabilities including those with mental illness deserved to be given community services instead of continuing the reliance on large hospitals to provide institutional level of care.

Purposes of the IMD Exclusion

1. State Responsibility
2. Encourage Community Based Services

The IMD Exclusion is Limited

- **Does not** apply to individuals 65 and over
- **Does not** prevent children under 21 from getting services in the following settings (event if more than 16 beds)
 - Psychiatric Hospital
 - Psychiatric Unit of General Hospital
 - Psychiatric Residential Treatment Facility
- **Does not** stop managed care enrollees from getting services in an IMD for for up to 15 days per calendar month
- **Does not** prevent states from asking for a state plan option to allow people to get services for SUD in IMDs (expires 9/30/2023)
- **Does not** prevent states from getting federal funds for inpatient psychiatric care in general hospitals
- **Does not** prevent federal funding for adult settings that are 16 beds or less

What Do IMD Waivers Let States Do?

1. IMD waivers allow states to collect federal dollars for services provided to residents of IMD's

Prior to Applying for IMD Waiver

- **Budget Neutrality Strategy:** CMS Requires states to have a strategy to offset the costs of the additional services provided so that projects do not result in Medicaid costs to the federal government that are greater than what the federal government's Medicaid cost would likely have been absent the demonstration.
- **State Plan Services:** Meeting CMS milestone requirements might require the provision of services not currently covered in the state plan.

Prior to Applying for IMD Waiver

- **Infrastructure Development:** New services could require developing adequate networks, utilization management protocols, and care management infrastructure to support the access to and the appropriate use of new services.
- **Integrating Services:** Integrating new services and improving the overall system of care for behavioral health services could require a significant investment of time and resources along with internal and external stakeholder input.
- **Management Staff:** Additional staff could be needed to assist with planning, execution, and management of IMD Waiver.

Steps Prior to Applying for a Waiver

- Conduct a gap analysis of current to future delivery system
- Determine FTE and resource needs for the IMD
- Determine stakeholder demand/appetite and political climate
- Develop a phased implementation plan to address the gaps

We Must Also Consider

- Discriminatory impact & adverse impact on community-based integration
- Administrative burden
- Opportunity costs

What Does the Evidence Show?

- If psychiatric beds are available, they are filled, taking resources from community-based services.
- Did not decrease psychiatric emergency room visits hospital
- Did not reduce the length of emergency room boarding
- Did not increase access to psychiatric hospital services.
- Increased costs to the federal government

Congress's Intent

- American with Disabilities Act
- Section 504 of the Rehabilitation Act of 1973
- Section 1557 of the Affordable Care Act
- Supreme Court decision in *Olmstead v. LC*.

Department of Justice

- The Justice Department has found violations of Olmstead and the Americans with Disabilities Act in states across the country due to states' overreliance on psychiatric institutions and insufficient community-based services.

Interim Hearings 2024

- On April 8 Interim Human Services Committee hearing: Prairie St. Johns; Mandan, Hidatsa, and Arikara Nation Recovery Services, Good Road Recovery Center; ShareHouse; and Prairie Recovery Center provided testimony/reports in support of pursuit of an IMD Exclusion Waiver.
- There was no slated public comment period on this agenda item

Interim Hearings 2024

- Prairie St. Johns provided testimony which highlighted their interest in two items:
 - Immediate pursuit of ND’s “in lieu of” authority to provide Medicaid Expansion reimbursement for up to 15 days
 - IMD Exclusion Waiver authorization during the upcoming legislative session (2025-2027)

Interim Hearings 2024

- Carlotta McCleary, providing testimony on behalf of Mental Health Advocacy Network (MHAN), reiterated MHAN’s prior position against the IMD Exclusion Waiver, reasons for the opposition, and alternative opportunities (community-based service expansion, “in lieu of” authority, etc.)
- Legislators were interested in understanding why there was much reluctance or opposition to pursuing IMD Exclusion Waiver
 - Carlotta highlighted perhaps the primary concern: budget neutrality (or a “cap”) on Medicaid Expenditures.
 - This concern had resonance with committee members.

Interim Hearings 2024

- Sara Aker, Executive Director, Medical Services with ND Department of Health and Human Services also provided comment on this issue.
 - In particular, what Sara Aker said was that there was a lot of nuance for interested parties and the public to understand when it comes to pursuing an IMD Exclusion Waiver and that North Dakota needs a full continuum of care for behavioral health prior to pursuing an IMD Exclusion Waiver.
 - Sara Aker and the Interim Committee members were open to having further discussions about the needs of the behavioral health system and the risks associated with pursuing an IMD Exclusion Waiver.

Thank you

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