Federal Guidance Re: Institutions for Mental Diseases (IMDs)

An IMD is defined in section 1905(i) of the Social Security Act
“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.”

Prohibition of Federal Medicaid Coverage
The Federal Medicaid program does not provide for coverage of (i.e. Federal payment for) any services, inside or outside an IMD, for any individual age 21-64\(^1\) who is a patient in an IMD.

42 CFR § 435.1010 interprets the statutory definition in 1905(i) above
“The term ‘institution for mental diseases’ means .... and related services.
Whether an institution is an institution for mental diseases is determined by its overall character as that of a facility established and maintained primarily for the care and treatment of individuals with mental diseases, whether or not it is licensed as such. An institution for Individuals with Intellectual Disabilities is not an institution for mental diseases. An “Institution” is an establishment that furnishes (in a single or multiple facilities) food, shelter, and some treatment or services to four or more persons unrelated to the proprietor. (42 CFR 435.1010)

SUD Treatment Facilities and IMDs
Since “mental diseases” are not defined in statute or regulation, the Centers for Medicare and Medicaid Services (CMS) refers to section 4390 of the State Medicaid Manual (SMM) for guidance on how to view Substance Use Disorders (SUDs.) The SMM interprets mental disease to include diseases listed as mental disorders in the International Classification of Diseases, modified for clinical applications (ICD-9-CM). The ICD-9 classifies alcoholism and other chemical dependency syndromes as mental disorders. The Diagnostic and Statistical Manual of Mental Disorders (DSM) is a sub-specification of the ICD and may also be used to determine whether a disorder is a mental disease.

Services in a chemical dependency treatment facility may be subject to the Medicaid exclusion if the facility follows a psychiatric model with medically trained and licensed personnel. (Exception are facilities based on the Alcoholics Anonymous model of lay counseling and social support. These would not be eligible for Medicaid funding nor would these facilities be IMDs if they primarily rely on lay staff. (State Medicaid Manual Section 4390)

\(^1\) See last page for details on Medicaid coverage for individuals younger than 21 or 65 and older
IMD Determination Criteria

The following 5 criteria, at a minimum, should be used to evaluate whether the overall character of a facility is that of an IMD:

1. The facility is licensed as a psychiatric facility.
2. The facility is accredited as a psychiatric facility.
3. The facility is under the jurisdiction of the state’s mental health authority.
4. The facility specializes in providing psychiatric/psychological care and treatment. May be ascertained through review of patients’ records, finding that patients are receiving psychopharmacological drugs, and an review of staff training and qualifications.
5. More than 50 percent of all the patients in the facility because of mental diseases, including SUDs. This is true regardless of whether or not the patients are receiving treatment.

If more than 50 percent of the patients are residing in the institution because of implications of mental health or substance use diagnoses, then the facility may be determined to be an IMD.

Commonly Owned Facilities Totaling > 16 beds

The following criteria, at a minimum, should be used to determine if commonly owned facilities, each of which has 16 beds or fewer, are actually operating as one facility:

1. Are all components controlled by one owner or one governing body?
2. Is one chief medical officer responsible for the medical staff activities in all components?
3. Does one chief executive officer control all administrative activities in all components?
4. Are any of the components separately licensed?
5. Are the components so organizationally and geographically separate that it is not feasible to operate as a single entity?
6. If two or more of the components are participating under the same provider category (such as NFs), can each component meet the conditions of participation independently?

If a review of the above criteria indicates that one or more of the components or facilities have intertwined operations and appear to be operating as a single, unified facility, then the bed count of each component would be aggregated, and, if the bed count exceeded a total of 16 beds, the IMD Criteria would apply.

1115 SUD Authority to Allow Services to be Purchased in an IMD

State Medicaid Director Letter SMD # 17-003 (Here) issued November 1, 2017 permits states to use section 1115 authority to test Medicaid coverage of a full substance use disorder (SUD) treatment service array if the state is pursuing service delivery system transformation.
States must meet SUD-specific program requirements that will reflect certain expectations as hallmarks of a transformed system of care. CMS would specifically allow federal financial participation (FFP) for services furnished to individuals residing in IMDs for short-term SUD treatment:

- Inpatient services described by the ASAM Criteria as occurring in Level 4.0 hospital inpatient settings, which are medically managed.
- Residential services provided in ASAM Level 3.1, 3.3, 3.5 and 3.7 settings, which are clinically managed and medically monitored services. Stays will be limited to an average length of stay of thirty (30) days.
- Inpatient and residential care should supplement and coordinate with community-based care and be clinically appropriate.

The guidance allows states a timeframe of 18-24 months to implement critical provisions of their Waiver that purchase services in IMDs.

**Summary Conclusion**

A final determination of a facility’s IMD status depends on whether an evaluation of the facility establishes that its overall character is that of a facility established and/or maintained primarily for the care and treatment of individuals with mental diseases, including alcoholism and other chemical dependency syndromes.

All factors are considered, however the critical factors are whether a facility:
1. Provides diagnostic, treatment or care services;
2. Has more than 16 beds, including all commonly owned facilities and
3. Has more than 50% of the residents in the facility because of their mental disease (mental illness and/or substance use disorder.)

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**Exceptions to the IMD Medicaid Coverage Exclusion for Individuals Younger Than 21 or 65 and older.**

1. Individuals aged 65 and older are not subject to the coverage exclusion. States may provide optional coverage for individuals aged 65 and older, who are in hospitals or nursing facilities that are institutions for mental diseases (42 CFR §440.140.) Even if a state does not elect such coverage, the IMD exclusion does not apply to individuals age 65 and older.

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2 ODM has been advised that “30 days” refers to a statewide average and is to be set as a goal to be pursued during the course of the 1115 waiver.
2. Inpatient psychiatric services for individuals under age 21 benefit allows for coverage of services in an inpatient psychiatric hospital, an inpatient psychiatric program of an acute care hospital, or another psychiatric facility (such as a Psychiatric Residential Treatment Facility) that meets federal requirements. (Section 1905(a)(16) of the Act and 42 CFR 440.160.)

Effective 1/1/2019, children receiving services under this benefit will also be eligible for the full range of EPSDT services. (CURES Act, sec. 12005)