



County of Santa Barbara

Behavioral Wellness Commission

300 North San Antonio Road, Bldg. 3, Santa Barbara, CA 93110

TEL: (805) 681-5220 FAX: (805) 681-5262

February 20, 2019

Honorable Steve Lavagnino, Chair, and Members of the Board of Supervisors,

In November, the federal government announced a new Institutes for Mental Disease (IMD) Medicaid Exclusion waiver that would do a great deal to help address a severe shortage of psychiatric beds in California. Each state Medicaid Director must apply for the waiver.

On January 16, 2019 the Santa Barbara County Behavioral Wellness Commission voted unanimously to ask our County Supervisors to request that California's state Medicaid Director move ahead to apply for the waiver.

Since the 1960s, Medicaid IMD law has prohibited payments for adult inpatient treatment, undermining existing medical facilities and exacerbating a national bed shortage crisis – effectively denying medically necessary care. This longstanding policy has disproportionately discriminated against adults with serious mental illness, many of whom are Medicaid beneficiaries, and many of whom have suffered terrible outcomes resulting from an inability to receive timely, necessary treatment.

This IMD exclusion has constituted a barrier to adding inpatient beds, while the number of beds nationally has declined from a high of 560,000 in the 60's to an approximately 38,000 beds now. Jails and prisons throughout California are now housing thousands of persons whose untreated mental illness has resulted in their criminalization. Tragically, they receive no treatment there, and typically become even more ill.

The new Medicaid waiver is an opportunity that would entitle California to use Medicaid funds for IMDs including state hospitals, Mental Health Rehabilitation Centers (MHRCs), Psychiatric Health Facilities (PHFs), adult homes and certain residences for persons living with serious mental illness. It could allow the expansion of our local 16-bed PHF which has the physical capacity to add several more beds, spreading the very expensive overhead that maintains this vital facility.

The Behavioral Wellness Commission would like to stress the urgency of the need for more treatment beds which this waiver offers: currently many persons in our county, whose acute illness has resulted in Conservatorship, are waiting for placement in state hospitals where there are no beds. Their untreated mental illness too often results in increased pressure on their community's law enforcement and emergency rooms, and untold and often tragic challenges to their families and fellow citizens.

We urge you to notify Jennifer Kent, Director of California Health Care Services of your support for this waiver. More details on the waiver may be found in the attached notice from the highly regarded non-profit Treatment Advocacy Center.

Sincerely,

Sharon Byrne, Chair
Behavioral Wellness Commission

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

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.

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.

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.