

September 10, 2015

Submitted Electronically via Medicaid.gov

Ms. Victoria Wachino
Deputy Administrator and Director
Center for Medicaid and CHIP Services
Centers for Medicare and Medicaid
7500 Security Boulevard
Baltimore, MD 21244-1850

Dear Ms. Wachino:

Thank you for the opportunity to submit comments in support of Maryland's Institutions for Mental Disease (IMD) waiver request. The Drug Policy and Public Health Strategies Clinic of the University of Maryland Francis King Carey School of Law works to expand access to non-discriminatory substance use disorder treatment in Maryland. The Clinic testified in support of the waiver request during the Department of Health and Mental Hygiene's May 28, 2015 Public Hearing. Additionally, the Clinic submitted detailed written comments to the Department outlining our support for the State's waiver request (See Maryland HealthChoice Program 1115 Waiver Amendment, Appendix C). As we stated in our letter of support, the IMD exclusion contributes to Maryland's ongoing overdose crisis by blocking access to comprehensive substance use disorder treatment. Further, the IMD exclusion undermines Maryland's existing health reform efforts, including Medicaid expansion, behavioral health integration, and hospital payment reform.

In addition to the letter of support we submitted to the State of Maryland, we wish to provide comments in response to the final waiver application presented to the Center for Medicaid and CHIP Services on July 27, 2015.

1.) Maryland's IMD waiver request remains consistent with the historical purpose of the IMD exclusion. The original policy was enacted to ensure that state and local jurisdictions continued to support the operation of public psychiatric hospitals, which provided custodial care to individuals with serious mental illnesses. The waiver, if granted, would continue to exclude public facilities from eligibility for Medicaid reimbursement and allow for coverage of individuals with substance use disorders, who were never intended to be captured under the exclusion. Further, residential substance use disorder treatment in Maryland is rehabilitative, rather than custodial, and admission to residential levels of care, like all other services in Maryland, is governed by clinical standards established by the American Society of Addiction

Medicine. As explained in the State's application, the substance use disorder treatment provided in present-day residential programs in Maryland bears little resemblance to the model of care excluded from Medicaid coverage by the IMD policy. The waiver would ensure greater access to substance use disorder treatment without frustrating the original purpose of the IMD exclusion.

- 2.) **The IMD exclusion places artificial restrictions on treatment and creates barriers to effectively addressing Maryland's ongoing opioid overdose epidemic.** Over 1,000 Marylanders died of overdose-related causes – including 578 heroin-related deaths – in 2014 alone. In light of this epidemic, it is not surprising that the residential substance use treatment providers whose letters of support were included in the waiver application report long waitlists. It is tragic, however, that the same providers report having dozens of unused treatment beds because Medicaid enrollees cannot apply their coverage to residential substance use disorder treatment for stabilization and short-term rehabilitation. Marylanders will continue to succumb to chronic substance use disorders unless they have meaningful and timely access to appropriate care, including residential treatment.
- 3.) **The IMD exclusion leads to inequitable treatment of individuals with behavioral health conditions.** The Clinic agrees with the Department's assertion that an IMD waiver will further the goal of achieving parity for individuals with behavioral health conditions. While the IMD exclusion may not technically violate the Parity Act, because it excludes individuals from Medicaid coverage entirely rather than discriminating against enrollees, the policy clearly restricts access to medically necessary mental health and substance use disorder treatment. While a Medicaid enrollee with a serious medical condition has access to a range of services – including inpatient, outpatient, and rehabilitative care—that same enrollee does not have access to the full continuum of care for a behavioral health condition.
- 4.) **The IMD exclusion promotes expensive, ineffective health care.** The IMD exclusion does not shield the Medicaid program or the larger healthcare system from the costs of treating behavioral health disorders. Although the IMD excludes Medicaid enrollees from residential treatment, the policy does nothing to reduce the actual need for services. As the waiver application notes, individuals who cannot access medically necessary residential treatment over-utilize lower levels of behavioral health care, despite limited long-term benefits. When inappropriate lower levels of care prove ineffective, patients seek assistance in high-cost hospital settings. Medicaid reimburses hospital emergency departments and inpatient units for treating the acute physical manifestations of mental illnesses and substance use disorders. These settings are not designed to provide behavioral health care for the underlying problem. Not only is this model ineffective and costly to the Medicaid program, it increases the total cost of care by unnecessarily driving up hospital costs, an outcome that is entirely counter to the goals of Maryland's all-payer waiver. The IMD waiver request, if granted, will ensure that Medicaid enrollees can access appropriate levels of care, ultimately lowering costs to the Medicaid program and the larger healthcare system.

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The Drug Policy Clinic appreciates the opportunity to reiterate our support for Maryland's IMD waiver request. Please do not hesitate to contact us for additional information. Thank you for considering our views.

Sincerely,



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