

Federal funding of treatment in mental health institutions

November 1, 2021

Legislative direction on institutions for mental diseases

Through budget provisos, the Washington State Legislature directed the Health Care Authority (HCA) to submit a plan to preserve the portions of the Section 1115 Medicaid demonstration waiver that allow the state to receive federal financial participation (FFP) for certain stays in institutions for mental diseases (IMDs):

Engrossed Substitute Senate Bill 5092, Section 211 (5)

The authority shall submit a plan to preserve the waiver that allows for the full cost of stays in institutions for mental diseases to be included in managed care rates by November 1, 2021, to the appropriate committees of the legislature.

Engrossed Substitute Senate Bill 5092, Section 211 (6)

The authority shall submit a plan to preserve the waiver allowing for full federal financial participation for medical clients in mental health facilities classified as institutions for mental diseases by November 1, 2021, to the appropriate committees of the legislature.

Executive summary

HCA is developing a renewal of Washington's Section 1115 Medicaid demonstration waiver, called the Medicaid Transformation Project (MTP). A renewal would provide MTP with five additional years to observe the effectiveness of behavioral health (substance use disorder and mental health) services performed in IMD facilities, and provide the Legislature, HCA, and partners additional time to gain insights into the development of sustainable funding options for behavioral health treatments in IMD facilities.

HCA will submit a MTP renewal application to the Centers for Medicare & Medicaid Services (CMS) in 2022. Renewal of MTP requires approval by CMS and legislative authorization in the 2022 Supplemental Operating Budget to begin funding implementation in 2023.

Exclusion of FFP for IMDs

From the inception of Medicaid, Federal law has prohibited the use of FFP for services provided to inpatient residents over 21 and under 65 years of age who receive treatment in an IMD. The federal exclusion strictly limits the use of FFP for Medicaid fee-for-service payments to an IMD.

Until recently, CMS permitted managed care entities to purchase IMD services as an "in lieu of" service for stays of up to 30 days. In May 2016, CMS revised managed care rules and limited IMD services to no more than 15 days in a calendar month. These updated rules did not allow FFP-based capitation payments for enrollees whose IMD stays exceeded 15 days.

Federal funding through MTP

On January 9, 2017, HCA and partners launched MTP, with approval from CMS. This year is the last demonstration year for the current MTP waiver.

In November 2018, CMS provided new guidance. [State Medicaid Director Letter, SMD#18-011](#) allowed FFP for services provided to exclusion-aged individuals residing in an IMD with authority from a waiver. States can now apply for a Section 1115 Medicaid demonstration waiver that would permit FFP for certain IMD stays. Washington State received approval to add SUD IMD services to the waiver in July 2018, and the mental health IMD services were approved in November 2020.

In early 2021, HCA applied for a one-year extension of the current MTP waiver through 2022. (The one-year extension was submitted because of the disruptions of the COVID-19 pandemic.) The Legislature approved spending authority for this extra year and HCA anticipates that CMS will approve the one-year extension.

The current MTP waiver permits FFP for Medicaid (Apple Health) clients receiving treatment for substance use disorder (SUD) or treatment for mental health (together known as behavioral health services) in an IMD through two MTP initiatives:



- **Initiative 4: SUD IMD** permits federal funds to pay for SUD treatment in participating facilities that would otherwise not be eligible for FFP. Additional implementation of Initiative 4 will allow time to assess initial successes and determine the potential for next steps.
- **Initiative 5: mental health IMD** permits federal funds to pay for mental health treatment in participating facilities. FFP is limited to stays of 60 days or less when a participating facility maintains a statewide average length of stay of 30 days or less. These stays would not be eligible for FFP without the MTP waiver. Additional time is needed for Initiative 5 to demonstrate success and determine appropriate next steps.

Preserving federal funding of IMD facilities

To preserve federal funding for behavioral health services provided in IMD facilities, HCA plans to include Initiatives 4 and 5 in the MTP renewal application. If CMS approves the MTP renewal and funding is authorized by the Legislature, then the five-year renewal period would be effective the beginning of 2023. An MTP renewal would permit federal funding to provide longer durations of behavioral health services at IMD facilities. (Initiatives 4 and 5 were included in the one-year extension application (through 2022).)

Next steps

An MTP renewal would offer an additional five years to develop options for sustainable funding. Behavioral health services performed through IMD facilities are a recent addition to MTP. A renewal would allow the Legislature, HCA, and partners additional time to observe the effectiveness of behavioral health services provided in IMD facilities. Insights gained during this time may help justify sustaining federal funds to support improvements in care such as longer-duration services.

After Washington State submits the MTP renewal application, CMS will discuss and negotiate features of the application with HCA and other partners. The discussions will likely include details about federal budget neutrality assumptions or other limitations, or guidance CMS may choose to negotiate with Washington State.

Through the MTP waiver, CMS has supported the use of federal funds to provide behavioral health services in IMD facilities. HCA will continue to update the Legislature, tribal governments, other partners, and stakeholders on waiver funding for behavioral health services in IMD facilities as HCA develops the MTP renewal application.

