

## REPORT TO THE LEGISLATURE

### Waiver Application Reimbursement for Full Cost of Stays in IMDs

Substitute Senate Bill 5883  
Section 204 (1)(f) and  
Section 213(1)(rr)

December 1, 2017

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## REPORT REQUIREMENTS

The 2017 Legislature's operating budget bill (SSB 5883), requires the Department of Social and Health Services, Behavioral Health Administration (BHA) to apply for a waiver from the Centers for Medicare and Medicaid Services (CMS) to allow for the full cost of stays in Institutions of Mental Diseases (IMDs) to be included in Behavioral Health Organization (BHO) capitation rates and managed care rates beginning July 1, 2018. The same requirement to apply for a waiver is also in the Health Care Authority section of the operating budget bill – Section 213(1)(rr). The Department and the Health Care Authority must submit a report on the status of the waiver to the office of financial management and the appropriate committees of the legislature by December 1, 2017.

SSB 5883, Section 204(1)(f) and SSB 5883, Section 213(1)(rr):

*Section 204(1)(f): state appropriation for fiscal year 2018 is provided solely to assist behavioral health organizations with the costs of providing services to medicaid clients receiving services in psychiatric facilities classified as institutions of mental diseases. The department must apply for a waiver from the center for medicaid and medicare services to allow for the full cost of stays in institutions of mental diseases to be included in fiscal year 2019 behavioral health organization capitation rates. The department must submit a report on the status of the waiver to the office of financial management and the appropriate committees of the legislature by December 1, 2017.*

*Section 213(1)(rr): state appropriation for fiscal year 2019 are provided solely for the physical health care costs of medicaid clients receiving services in facilities classified as institutions for mental diseases for longer than 15 days in a calendar month. The authority must apply for a waiver from the center for medicare and medicaid services to allow for the full cost of stays in institutions for mental diseases to be included in managed care rates beginning on July 1, 2018. The authority must submit a report on the status of the waiver to the office of financial management and the appropriate committees of the legislature by December 1, 2017.*

## SUMMARY

The IMD exclusion is found in section 1905(a)(B) of the Social Security Act, which prohibits payments for care in Institution for Mental Diseases (IMD) for individuals under age 65. There is an exception to the exclusion for inpatient psychiatric hospital services for individuals under age 21. An IMD is defined as 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. This rule has been in place since the enactment of Medicaid in 1965. The rule applies to both mental health and substance use disorder services.

Prior to July 2016, Washington State was using an “in lieu” of authority under a 1915 (b) managed care waiver that allowed IMD stays to be covered for up to 30 days. In July 2016 the Centers for Medicare and Medicaid Services (CMS) passed final managed care rules that allow for stays up to 15 days in a calendar month to be provided through managed care entities. The opportunity to use the 1915 (b) waiver for this purpose was eliminated with the July 2016 rule change.

The new federal rule further states, the state is not eligible for federal participation if a Medicaid enrollee exceeds 15 days in a calendar month in an IMD setting. The per member per month capitation payments must be recouped from the managed care entity. The effect of this portion of the rule is that all services provided for an individual Medicaid enrollee in an IMD exclusion month are ineligible for federal funds.

In response to this, the Washington State Legislature provided funding to be used by both Behavioral Health Organizations (BHO) and Managed Care Organizations (MCO) to ensure medically necessary services were provided and purchased even when the IMD stay exceeded the 15 day limit. With this funding came the requirement to request a waiver of the federal rules.

CMS provided a pathway for an 1115 demonstration Waiver of the IMD exclusion for Substance Use Disorder (SUD) treatment as described in a “Dear Medicaid Director” letter dated July 27, 2015. That letter describes waiver requirements for a comprehensive continuum of access to SUD treatment and recovery services. The federal guidance does not address mental health treatment.

Since the publishing of the final managed care regulations in July 2016 several states have pursued the 1115 Waiver authority to address the SUD residential IMD exclusion. CMS has made a commitment to assist states in their pursuit of this waiver authority and dedicated resources for technical assistance. At the federal level, rapid approval of the SUD waivers is considered a priority for addressing the opioid crisis.

The Health Care Authority (HCA) as the Medicaid Agency, and the Department of Social and Health Services (DSHS) as the Mental Health and Substance Abuse Services Authority will move forward with an application requesting 1115 authority as described in the “Dear Medicaid Director” letter for SUD services. The State expects approval of this waiver amendment with an effective date of July 1, 2018.

The Agencies will also submit a waiver that applies to mental health facilities as directed in the proviso. CMS has been clear about their desire to approve SUD waivers. The federal response to a waiver for mental health is not likely to be approved.

DSHS and HCA are working with contracted actuaries to determine the amount of IMD related expenditures that could be recaptured in the managed care rates with the approval of a waiver for services provided in IMD settings. The expenses reviewed will include both the direct service costs for treatment in an IMD setting and all other services provided for the enrollee during the month.

## **IMD 1115 WAIVER TIMELINE**

### Hard Deadlines

January 1, 2018: Deadline to Send Tribal Consultation Letter (60 days before submission)

January 31, 2018: Deadline for Public Notice of Waiver Application (30 days before submission)

March 2, 2018: Deadline to Submit Waiver to CMS

- Within 15 days: CMS will notify state whether the application is complete or not.
- Once the application is complete, CMS allows a 30 day Federal Public Comment period.

July 1, 2018: Effective Date

### Other Deadlines

January 2018:

- Data to Actuaries for Cost Neutrality  
Final Drafts of Waiver Language for internal review prior to public posting