1115 Waiver SMI/SED IMD National Landscape Research Summary

Background

The Colorado Department of Health Care Policy & Financing (HCPF) is seeking to understand the national landscape of serious mental illness and serious emotional disturbances (SMI/SED) Medicaid section 1115 Demonstration programs that states have successfully attained and relevant outcome data that is available. Within the landscape of state initiatives, a key area of interest for HCPF is to understand if any other states have used the section 1115 authority to address campus/step-down availability, access, and related considerations. In addition, HCPF is seeking information on programs that did not work or proposals that were not accepted by CMS.

This research is intended to help HCPF identify solutions and approaches that could inform its section 1115 waiver proposal.

This document provides key findings from our research of the state proposals, section 1115 approval letters including the standard terms and conditions (STCs), implementation plans, and recent evaluations or state reports associated with the SMI/SED demonstration.

Our research covered the 30 state 1115 programs listed in Table 1. We reviewed 1115 proposals CMS approved and those still pending. Many states submitted the SMI/SED demonstration proposal in conjunction with a comprehensive demonstration renewal or an amendment to a broader approved demonstration program.

Table 1. State SMI/SED Section 1115 Demonstration Program Services

	SMI/SED IMD Payment Exclusion Waiver	**Behavioral Health & Other Community Based Benefit Expansions**
Approved	11 states: AL, DC, ID, IN, MA, MD, NH, OK, UT, VT, WA	22 states: AK, AZ, CA, DE, FL, HI, IL, KS, MA, MD, ME, NC, NJ, NM, NY, OR, RI, UT, VA, VT, WA, WV
Pending	5 states: NJ, NM, OR, WA, WV	7 states: ME, MT, NJ, UT, VA, WA, WV

The accompanying Excel workbook provides detailed information on each of the state programs and proposals listed in Table 1.

Summary Findings

The following are key findings from our comprehensive review of state demonstration programs.

- **The approved goals and associated STCs largely repeated the language from the guidance letter, with minimal if any deviation. We also noted that CMS has declined to approve states that submitted proposals that did not fully align with this guidance.** For example:
    - In November 2022, CMS notified Arkansas that its proposal did not fully align with the guidance and the agency was not approving that request at the time.
    - In October 2022, CMS approved Oregon's comprehensive 1115 demonstration proposals with some exceptions. The state requested to extend the eligibility criteria under its 1115 SUD (substance use disorder) program to include individuals in non-SUD IMDs (Institutions for Mental Diseases) including the Oregon State Hospital (OSH). The state proposed to provide a limited benefit package to adults in prison or IMDs for up to 90 days prior to their release from these settings. CMS did not approve these proposals but stated the agency is supportive of increasing pre-release services for justice-involved populations and of supporting individuals' transitions from institutional settings back into the community. We understand that the state and CMS have restarted discussions on this proposal.
    - In March 2021, New Mexico submitted a request for expenditure authority to reimburse psychiatric facilities (i.e., hospitals, nursing facilities, or other institutions of more than 16 beds that are primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care and related services) for reimbursable services to Medicaid recipients with SMI/SED for stays more than fifteen (15) days. The state is also seeking expenditure authority, notwithstanding the IMD expenditure limitations, for capitation payments to managed care entities under contracts that permit those entities to provide enrollees aged 21-64 inpatient services in an IMD regardless of the length of stay. The state is also seeking this expenditure authority for members who participate in the FFS (Fee for Service) program to ensure equal access to care in IMDs for all Medicaid enrollees.
    - Arizona's 2017 SMI (Serious Mental Illness) IMD amendment submission is still pending. The state requested a waiver of the IMD exclusion for all Medicaid beneficiaries aged 21-64, regardless of delivery system. Specifically, the waiver of the IMD exclusion would allow psychiatric facilities (i.e., hospitals, nursing facilities, or other institutions of more than 16 beds that are primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care and related services) to be able to provide reimbursable services to Medicaid recipients for stays more than 15 days.

- **The approval letters, STCs, published implementation plans and follow-on materials do not discuss in detail the sites of service.**
    - Our review of the approvals and related documents did not surface discussion of "campus" situations and approaches states may be taking to address the "triggering" of IMD status (if that were an issue).
    - The STCs explicitly prohibit FFP (Federal Financial Participation) for costs for services furnished to beneficiaries who are residents in a nursing facility (as defined in section 1919 of the Act) that qualifies as an IMD. As we previously noted, some states have requested such authority for nursing homes, but CMS has not permitted this to date.
- **While state SMI/SED demonstrations programs largely hew to the guidance, CMS has signaled that some innovation is still possible**.
    - For example, CMS approved Alabama's proposal to limit IMD expenditure authority to services delivered to Medicaid beneficiaries who are residing in IMDs located in Baldwin and Mobile counties due to the critical gap in access to non-IMD inpatient psychiatric care in the southwest region of the state.
- **Earlier SMI IMD demonstration requests and approval letters had a strong focus on improving the integration of behavioral and physical health services.** More recent approvals (e.g., MA, OR etc.) have maintained this focus and incorporate additional areas of interest:
    - There is a greater focus on social factors that impact population health in states with more recently approved SMI/SED IMD waiver. Specifically, the Biden Administration has demonstrated its willingness to work with states to include expenditure authority for health-related social needs (HRSNs) in section 1115 demonstration programs. The result is that states with and without the SMI IMD expenditure authority include more robust housing-related services in their demonstration programs. The criteria for housing-related services varies by state, with some states focusing eligibility on individuals diagnosed with SMI/SED and others having broader eligibility criteria.
    - Recent approvals have more robust discussion and documentation of both existing and planned programs/services for community-based behavioral health services. Specifically, states have enhanced discussion about their crisis stabilization services, discharge planning, and their plans for incorporating CCBHCs (Certified Community Behavioral Health Centers) in their continuum of services. Specifically, more detailed descriptions can be found in the states with recently approved Implementation Plans.
    - Generally, states with SMI/SED IMD waivers are also linking their programs and proposals to OUD (Opioid Use Disorder) and SUD IMD 1115 demonstration programs.
    - Several of the recent approvals also address the needs of children and youth. While the IMD waiver policy may not directly impact this population, several states discussed the extent of their systems, services and programs that were either planned or underway to address crisis stabilization services and behavioral health needs along the continuum.

This is consistent with the federal and state focus on the mental health needs of this population and growing attention to meeting the needs of families.

Highlights of Select State Proposals

The following are state proposals that may be of particular interest for further understanding the landscape of proposals and developing HCPF's submission.

- **Alabama's SMI/SED IMD demonstration May 2022 approval suggests that CMS is willing to engage with states around innovative ideas and flexibility that may be possible.** CMS limited IMD expenditure authority to services delivered to Medicaid beneficiaries who are residing in IMDs located in two counties due to the critical gap in access to non-IMD inpatient psychiatric care in the southwest region of the state. Beneficiaries in other counties within the state have access to non-IMD inpatient psychiatric services either in their county of residence or in close proximity to their county of residence. While reimbursement will be limited to IMDs in Baldwin and Mobile counties, Medicaid enrollees in need of inpatient behavioral health services will be able to access services via the IMDs participating in the demonstration, regardless of their county of residence.

- **Delaware's current demonstration program includes community-based residential alternative supports that excludes assisted living.** These are supportive and health-related residential services provided to beneficiaries in settings licensed by the State. The residential services must be necessary, as specified in the Recovery Plan, to enable the beneficiary to remain integrated in the community. Services include personal care and supportive services furnished to beneficiaries who reside in homelike, non-institutional, integrated settings. The provider will be encouraged to hire staff to deliver personal care services separate from staff who provide habilitation services that involved the development of ADL and IADL skills, if there is more than one staff member on site at the residence during normal hours, who can provide personal care services. The state believes this will ensure that the clinical boundary issues that would otherwise complicate habilitation services (if the same staff were also delivering personal care services) will be mitigated.

- **Massachusetts' October 2022 approved demonstration includes community crisis stabilization (CCS) services** furnished to otherwise eligible individuals who are primarily receiving treatment for a SMI or SED who are short-term residents in facilities that meet the definition of an IMD. The approved STCs also provide a transition period that allows the state to avoid service disruption for beneficiaries receiving Community Crisis Stabilization (CCS) and Community Based Acute Treatment for Children and Adolescents (CBAT) in IMD facilities. CMS authorized a transition period until December 31, 2023, for the state to align with the requirements and expectations discussed in federal guidance. During this period, the state can continue to claim FFP for CCS and CBAT services authorized under the demonstration but must ensure that facilities that meet the definition of an IMD work to meet applicable requirements, including accreditation, under federal requirements to qualify to furnish Inpatient Psychiatric Services for Individuals under Age 21 services.

- **Oklahoma specifically requested the IMD waiver for QRTPs (Qualified Residential Treatment Programs) that meet definition of an IMD for SED population for beneficiaries under age 21.**

Oklahoma utilizes a system of coordinated community response and mobile crisis response within the Systems of Care network to ensure children in crisis are connected with the appropriate level of care. Community based assessments (CBAs) are completed by licensed behavioral health professionals (LBHPs) to ensure children in crisis are diverted from more restrictive inpatient settings if other community-based services are available to meet their needs. This system covers most of the state outside of the metropolitan areas, and Oklahoma is potentially pursuing expansion of this service to currently unserved areas.

- **Oregon's approval allows the state to provide eligible youth with special health care needs (YSHCN) certain benefits.** Eligible youth must have one or more serious chronic conditions as represented by the Pediatric Medical Complexity Algorithm (PCMA)'s list of complex chronic conditions; have a SED or serious mental health issue. The state proposed, but CMS did not approve authority for Oregon's Psychiatric Residential Treatment Services (PRTS) to allow the Child Welfare Division ("Child Welfare") to: Create the ability to pay for non-billable (evaluation and assessment) services and to reserve capacity for youth involved with Child Welfare that meet medical necessity; and develop mechanisms between Child Welfare, CCOs and OHA with PRTS providers to prioritize youth in Child Welfare custody for these services. The state's goal was to prevent foster care placement, reduce the need for temporary lodging and out of state placement of children and youth in their custody.
    - As previously noted, the state and CMS are continuing to negotiate a proposal to provide a limited benefit package to adults in prison or IMDs for up to 90 days prior to their release from these settings.
- **West Virginia's currently pending extension includes relatively more expansive and slightly different language regarding the ALOS (average length of stay) policy:** "The state will continue to strive for an average length of stay (ALOS) of 30 days across all residential and inpatient treatment and withdrawal management LOCs (Level of Care). The state will note in policy and provide education to MCOs (Managed Care Organization) and providers that when a longer length of stay is medically necessary to meet individualized needs and adequately treat the most acute, clinically complex patients with SUD, BMS will reimburse stays up to 60 days. For stays longer than 30 days, two midpoint assessments will be performed: an assessment of the individual's needs by the provider (procedure code 90792 for psychiatric diagnostic evaluation with medical services) and a BMS-focused assessment of whether the state is meeting the 30-day average LOS (length of stay) requirement."

Conclusion

Notably, there is renewed state interest in pursuing a waiver to receive federal Medicaid funding to cover the costs of short-term stays in an IMD for individuals with SMI/SED diagnosis. This opportunity is of particular interest to states that have already made significant investments to build out a more robust continuum of services for individuals with SMI/SED; states are pursing this waiver opportunity to secure federal financial support for IMDs. While some states documented the additional work they intend to undertake to enhance community services, most states have fulfilled the community-based requirements associated with the SMI/SED IMD waiver and note this in available Implementation Plans. There is limited evidence of states utilizing this waiver opportunity to address campus and step-down facility considerations.