



Medicaid Institutions for Mental Diseases (IMD) Exclusion

Treatment Communities of America (TCA) is a nonprofit, member-led professional association representing hundreds of community-based behavioral health treatment providers in the United States and Canada. TCA offers this position statement urging the full repeal of the **Medicaid Institutions for Mental Diseases (IMD) Exclusion** enacted in 1965.

In the face of an opioid epidemic, the nation cannot afford to continue to bear the unintended constraints of the 50-year old provision under Medicaid that severely impedes availability and access to treatment.

In 2016 and 2017 there have been several key developments related to the IMD exclusion:

- 43 Governors signed *A Compact to Fight Opioid Addiction*, which calls for the reducing of administrative barriers in Medicaid to ensure Americans have access to SUD treatment in their communities. The National Governors Association has called for the elimination of the IMD Exclusion for SUD to help states expand access to addiction treatment.
- 29 Senators signed a letter urging the Centers for Medicare and Medicaid Services (CMS) to exclude SUD from the definition of mental disease in the IMD rule.
- Bills have been introduced to end or reform the IMD Exclusion including:
 - H.R. 2938: Rep. Fitzpatrick (R-PA), the Road to Recovery Act, to eliminate the IMD Exclusion for community-based residential treatment
 - S. 1169: Sen. Durbin (D-IL) /H.R. 2687: Rep. Foster (D-IL), the Medicaid CARE Act, to increase the bed limits to 40 and allow for reimbursement of 60 days of residential treatment
- The President's Commission on Combating Drug Addiction and the Opioid Crisis Interim Report recommended that all 50 states be granted waiver approvals to eliminate barriers resulting from the IMD exclusion.

Now is the time to join TCA in supporting community-based addiction treatment providers with the expertise and ability to expand education, prevention, and treatment in our communities.

The IMD Exclusion Defined

The IMD exclusion is a payment exclusion that is part of Title XIX of the Social Security Act that restricts Medicaid reimbursements to IMDs. Specifically, the IMD exclusion disallows the use of federal Medicaid financing for services provided to individuals in mental health and substance use disorder residential treatment facilities larger than sixteen (16) beds. The exclusion applies to all Medicaid recipients under the age of 65, who are patients in an IMD, except for individuals younger than 21, who are receiving inpatient psychiatric services.

The Purpose of the 1965 IMD Rule

The Congressional intent of the IMD exclusion was to encourage the growth of community-based treatment for individuals with mental illness as part of the move to de-institutionalize mental health treatment. **However, the IMD exclusion had the unintended consequences of creating a barrier to the provision of substance use disorder treatment in community-based, non-medical/hospital residential programs.**

The Differences between an IMD and a Treatment Community

IMD: The Social Security Act defines an IMD 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, including medical attention, nursing care, and related services.

Treatment Community: TCA defines treatment communities as multi-faceted, community-based residential SUD treatment programs that provide non-medical oriented strategies to address addiction. Since treatment communities are community-based, they serve diverse populations with a variety of health needs.

The IMD Exclusion's Negative Impact on Community-Based Addiction Treatment

Treatment communities are limited by two (2) primary problems caused by the IMD exclusion:

1. **Problem:** The Centers for Medicaid and Medicare Services (CMS) has linked substance abuse with mental health, categorizing addictive disorders as mental disorders under the International Classification of Diseases, 10th Edition (ICD-10).

Facts: Alcohol and other drug addiction is a separate identifiable illness. The Substance Abuse and Mental Health Services Administration (SAMHSA) recognizes co-occurring disorders (COD) as the coexistence of two distinct disorders: mental illness and substance use. TCA believes that Medicaid-eligible individuals are entitled to an efficient system of care that matches an individual's clinical needs with the appropriate care setting in the least restrictive and most cost-effective manner. Individualized, non-medical, community-based residential SUD treatment is effective.

2. **Problem:** CMS interprets "institution" within the IMD statute to include community-based substance abuse non-hospital residential treatment facilities (i.e., treatment communities). The law disallows the use of federal Medicaid financing for services provided to individuals in IMDs with more than 16 beds.

Facts: Community-based treatment communities require a census for the treatment model to be effective. Facilities with 16 beds or less do not achieve fidelity to the treatment community model. In addition, the 16 or less bed restriction makes economic survival impossible for community-based treatment providers while complying with licensure requirements for addiction treatment including staff-to-patient ratios, counseling and coverage hours, etc. Moreover, a new federal IMD rule limits treatment to 15 days in facilities with more than 16 beds. The majority of individuals in residential SUD treatment programs require treatment for more than 15 days to achieve and maintain their recovery consistent with their clinical diagnosis.

Supporting Community-Based Treatment Costs Less

Some who express reservations about the full repeal of the IMD exclusion cite increased costs to the federal government as a primary reason for their resistance. **However, TCA asserts that supporting community-based, non-medical treatment options is a cost-effective solution to the Nation's SUD epidemic.**

It has been estimated that allowing Medicaid to pay for all inpatient behavioral health services in IMDs (with a length of stay of less than 30 days) would boost federal spending between \$40 billion - \$60 billion over a decade.

TCA estimates that as little as 25% of Medicaid funding would be pay for community-based, non-medical treatment, with the majority being allocated to true, medical IMDs.

In comparison, the National Institute on Drug Abuse (NIDA) estimates that abuse of alcohol and illicit drugs is even more costly to our nation, exacting more than \$400 billion annually in costs related to crime, lost work productivity and health care.

TCA Call to Action

TCA does not support waivers as the long-term solution to the barriers created by the IMD Exclusion. Waivers are time-limited and state-specific and will limit the long-term effectiveness of community-based providers to address the overall problem of addiction. **TCA urges the full repeal of the IMD exclusion by President Trump through an executive action or a full repeal (or significant revision) by Congressional action.** If the IMD exclusion cannot be fully eliminated, TCA recommends several options for Congressional action:

- Pass H.R. 2938, the Road to Recovery Act, to eliminate the IMD Exclusion for community-based residential treatment

- Pass S. 1169: Sen. Durbin (D-IL) /H.R. 2687: Rep. Foster (D-IL), the Medicaid CARE Act, to increase the bed limits to 40 and allow for reimbursement of 60 days of residential treatment
- Repeal CMS's final rule (2016) allowing individuals to receive care in IMDs for a maximum of 15 days and instead allow length of stay to be determined according to clinical need;
- Exclude SUD from the definition of mental disease for the purposes of determining if a treatment facility is an IMD;
- Remove community-based residential SUD treatment and rehabilitation facilities from the interpretation of the "institutions for mental disease."
- In addition to increasing bed limits that may apply, remove governance structure criteria in determining IMD status so that factors such as common governing body, common CEO, common Medical Director, do not trigger designation of multiple programs/facilities as an IMD.

Treatment Communities of America
1776 Eye Street, NW, Room 937
Washington, DC 20006
(202) 296-3503 (202) 518-5475 FAX
Email pat.tca@verizon.net
www.treatmentcommunitiesofamerica.org