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Medicaid and CHIP Payment and Access Commission

[non-partisan legislative branch agency that provides policy and data analysis and makes recommendations to Congress, the Secretary of the U.S. Department of Health and Human Services, and the states on a wide array of issues affecting Medicaid and the State Children's Health Insurance Program (CHIP).]

Dear Ms. McMullen:

BOTTOM LINE: The IMD rule is discriminatory and does NOT comply with the Americans with Disabilities Act or federal parity requirements. The need for IMDs is intimately tied to what Intensive Community Mental Health Services and Housing are available in the Community and enforcement of existing disability rights laws, regulations & guidance on:

- Medicaid network adequacy,
- Mental health parity & addiction equity, and
- the Americans with Disabilities Act & Olmstead.

That enforcement should be paired with National Technical Support Centers to assist States in Compliance.

Removal of the IMD Rule MUST be paired with Technical Assistance & Support as well as Enforcement of the laws, regulations & guidance referenced above.



BRIEF DISCUSSION

We're facing an **EMERGENCY** in which people with "mental illness" are experiencing **IRREPARABLE HARM** in the hundreds of thousands across the country, and thousands in Colorado and pretty much thousands in every state.

We believe the current Medicaid IMD Exclusion Rule is:

- Discriminatory under the Americans with Disabilities Act & is in fact leading to the Incarceration & Great Risk of Institutionalization inherent in Homelessness
- Discriminatory under the Mental Health Parity & Addiction Equity Act of 2008. We provide all the hospitalization that is necessary for people with Physical Issues, but we greatly curtail it for people with mental illness or substance issues and that is discriminatory.

We also believe that it is impossible to adequately address this without also addressing the HUGE FAILURES in MEDICAID COMMUNITY MENTAL HEALTH.

These 2 issues: IMD & Medicaid Community Mental Health MUST be addressed in TANDEM as part of an overall COMPREHENSIVE MEDICAID MENTAL HEALTH CONTINUUM OF CARE.

Further, Americans with Mental Illness are in DESPERATE need of FEDERAL ADMINISTRATIVE ENFORCEMENT OF EXISTING LAWS & REGULATIONS, including:

- Medicaid Network Adequacy
- Mental Health Parity & Addiction Equity, &
- ADA/Olmstead



- **State requirements, including certification, licensure and accreditation applied to IMDs seeking Medicaid payment and how states determine if requirements have been met;**
 - Colorado Department of Health Care Policy & Financing
 - **[10 CCR 2505-10 8.300 HOSPITAL SERVICES 8.300.1 Definitions](#)**
 - **A Psychiatric Hospital** is licensed and CMS-certified as a Psychiatric Hospital to plan, organize, operate, and maintain facilities, beds, and treatment, including diagnostic, therapeutic and rehabilitation services, over a continuous period exceeding twenty-four (24) hours, to individuals requiring early diagnosis, intensive and continued clinical therapy for mental illness; and mental rehabilitation. A Psychiatric Hospital can qualify to be a state-owned Psychiatric Hospital if it is operated by the Colorado Department of Human Services.
 - **[10 CCR 2505-10 8.300 HOSPITAL SERVICES 8.300.3.A Covered Hospital Services - Inpatient](#)**
 - 4. Psychiatric Hospital Services Inpatient Hospital psychiatric care is a Medicaid benefit **for individuals age 20 and under** when provided as a service of an in-network Hospital.
 - **a. Inpatient care in a Psychiatric Hospital** is **limited to forty-five (45) days per state fiscal year, unless additional services are prior-authorized as medically necessary by the Department's utilization review vendor or other Department representative, and includes physician services, as well as all services identified in 8.300.3.A.1, above.**
 - **b. Inpatient psychiatric care in Psychiatric Hospitals is a Medicaid benefit only when:**
 - i. services involve active treatment which a team has determined is necessary on an Inpatient basis and can reasonably be expected to improve the condition or prevent further regression so that the services shall no longer be needed; the team must consist of physicians and other



personnel qualified to make determinations with respect to mental health conditions and the treatment thereof; and CODE OF COLORADO REGULATIONS 10 CCR 2505-10 8.300 Medical Services Board 7

- ii. services are provided prior to the date the individual attains age 21 or, in the case of an individual who was receiving such services in the period immediately preceding the date on which he/she attained age 21, the date such individual no longer requires such services or, if earlier, the date such individual attains age 22.
- **c. Medicaid clients obtain access to inpatient psychiatric care through the Community Mental Health Services Program defined in 10 CCR 2505-10, Section 8.212.**
- **8.212.4 BEHAVIORAL HEALTH SERVICES 8.212.4.A. The following are required services of the Community Behavioral Health Services program:**
 - **1. Inpatient Psychiatric Hospital Services:**
 - a. Under age 21 -- A program of psychiatric care in which the client remains 24 hours a day in a psychiatric hospital, State Institute for Mental Disease (IMD), or other facility licensed as a hospital by the State.
 - b. Adults ages 21-64 -- A program of psychiatric care in which the client remains 24 hours a day in a psychiatric hospital, or other facility licensed as a hospital by the State, excluding State Institutes of Mental Disease (IMD).
 - c. Adults ages 65 and over -- A program of care in which the client remains 24 hours a day in a psychiatric hospital, State Institute for Mental Disease (IMD), or other facility licensed as a hospital by the State.
- **CO Medicaid's Psychiatric Services in Hospitals Benefit**

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- **Are there any limits on services?**
Psychiatric services for adults in general hospitals are limited to no more than 45 days. Children ages 20 and under may go beyond this limit with prior authorization.
- **Are psychiatric services provided in specialized psychiatric hospitals?**
Services can be provided in a specialized psychiatric hospital if approved by your [regional organization](#). Your doctor or psychiatrist can request this coverage if it is medically necessary.

- **[HCPF Behavioral Health Hospital Engagement Forum](#)**

- **Standards (e.g., quality standards, facility standards, and clinical standards) that IMD providers must meet in order to receive Medicaid payment and how the state determines if standards have been met;**
 - **Colorado Department of Public Health & Environment Psychiatric Hospitals**
[6 CCR 1011-1 Chapter 18 CHAPTER 18 - PSYCHIATRIC HOSPITALS](#)

- **A description of IMDs receiving Medicaid payment including the number of these facilities, and the types of services provided; and**

- **A description of Medicaid funding authorities used to pay IMDs and any coverage limitations placed on the scope, duration or frequency of services provided in IMDs.**



- One really can't consider IMDs without reference to what is available under Colorado Medicaid for people with intensive mental health needs. Below are Colorado regulations regarding critical & essential "Alternative Services that are NOT available as a matter of right under Colorado Medicaid."
 - [8.212.4.B. Alternative services of the Community Behavioral Health Services program](#) are:
 - **1. Vocational** -- Services designed to help adult and adolescent clients who are ineligible for state vocational rehabilitation services to gain employment skills and employment. Services are skill and support development interventions, educational services, vocational assessment, and job coaching.
 - **2. Assertive Community Treatment (ACT)** – Comprehensive, locally-based, individualized treatment for adults with serious behavioral health disorders, that is available 24 hours a day, 365 days a year. Services include case management, initial and ongoing behavioral health assessment, psychiatric services, employment and housing assistance, family support and education, and substance use disorders services.
 - **3. Intensive Case Management** -- Community-based services averaging more than one hour per week, provided to adults with serious behavioral health disorders who are at risk of a more intensive 24 hour placement and who need extra support to live in the community. Services are assessment, care plan development, multi-system referrals, assistance with wraparound and supportive living services, monitoring and follow-up. Intensive case management may be provided to children/youth under the Early Periodic Screening, Diagnosis, and Treatment (EPSDT) program.
 - **4. Clubhouse and drop-in center services** – Peer support services for people who have behavioral health disorders, provided in a Clubhouse or Drop-In Center setting. Clubhouse participants may use their skills for clerical work, data input, meal preparation, providing resource information and outreach to



clients. Drop-in Centers offer planned activities and opportunities for individuals to interact socially, promoting and supporting recovery.

- **5. Recovery Services** – Community-based services that promote self-management of behavioral health symptoms, relapse prevention, treatment choices, mutual support, enrichment, rights protection, social supports. Services are peer counseling and support services, peer-run drop-in centers, peer-run employment services, peer mentoring, consumer and family support groups, warm lines, and advocacy services.

- **6. Residential Services** – Twenty-four (24) hour care, excluding room and board, provided in a non-hospital, non-nursing home setting, appropriate for adults whose mental health issues and symptoms are severe enough to require a 24-hour structured program but do not require hospitalization. Services are provided in the setting where the client is living, in real-time, with immediate interventions available as needed. Clinical interventions are assessment and monitoring of mental and physical health status; assessment and monitoring of safety; assessment of/support for motivation for treatment; assessment of ability to provide for daily living needs; observation and assessment of group interactions; individual, group and family therapy; medication management; and behavioral interventions. Residential services may be provided to children/youth under EPSDT.

- **7. Prevention/Early Intervention Services** – Proactive efforts to educate and empower individuals to choose and maintain healthy life behaviors and lifestyles that promote positive behavioral health. Services include behavioral health screenings; educational programs promoting safe and stable families; senior workshops related to aging disorders; and parenting skills classes.

- **8. Respite Care** – Temporary or short-term care of a child, youth or adult client provided by adults other than the birth parents, foster/adoptive parents, family members or caregivers that the client normally resides with. Respite is designed to give the caregivers some time away from the client to allow them to

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emotionally recharge and become better prepared to handle normal day-to-day challenges. Respite care providers are specially trained to serve individuals with behavioral health issues.

CONCLUSION

Access to Intensive Mental Health Treatment in the Intensity Needed and at the SCALE NEEDED is one of the great issues of our time – and THOUSANDS of AMERICANS are depending on the SPEEDY resolution of this CRISIS.

Sincerely,

Valerie L. Corzine, Esq.
Executive Director
Orchid Mental Health Legal Advocacy of Colorado, Inc.
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