

## Publications

### *Health Care Alert: New Proposed CMS Rules Relative to Medicaid Managed Care May Increase Access to Medicaid Behavioral Health Services*

#### Related Attorneys

Suzanne J. Scrutton

#### Related Industries

Health Care

#### CLIENT ALERT | 6.18.2015

Recently, the Centers for Medicare & Medicaid Services (CMS) published proposed rules relative to Medicaid Managed Care Organizations (MCOs) that may increase access to Medicaid behavioral health services through Medicaid managed care programs. The June 1, 2015 proposed rules would allow MCOs to pay institutions of mental disease (IMDs) using Medicaid funds received as capitation payments to provide services to certain Medicaid eligible individuals as a Medicaid “in lieu of” service. The proposed rules also set requirements about how to consider utilization and costs of covered services rendered in an IMD in developing capitation rates. This proposal represents a departure from the longstanding prohibition on Medicaid federal financial participation (FFP) paying for any Medicaid service provided in an IMD facility for individuals aged 21-64 (the IMD exclusion). Under the IMD exclusion, no FFP is available either inside or outside of the IMD while the individual is a patient in the IMD facility.

As behavioral health providers well know, due to the combined demand for inpatient psychiatric and substance use disorder (SUD) care and the systemic decline in the availability of inpatient psychiatric and SUD beds, there are few resources available under Medicaid to address the needs of consumers who may need temporary inpatient care. In order to address this problem, the proposed rules seek to allow states more flexibility to pay for inpatient psychiatric and SUD treatment through Medicaid managed care programs. The proposed rules would permit MCOs to receive a Medicaid capitation payment from a state for an enrollee aged 21 to 64 who spends a portion of the month in an IMD so long as the facility is: 1) a hospital providing psychiatric or inpatient SUD care, or 2) a sub-acute facility providing psychiatric or SUD crisis residential services, and the stay in the IMD is for no more than 15 days in that month.

Services that will be paid for in an IMD will be those Medicaid “in lieu of” services, i.e., alternative services or services in a setting that are not included in the state plan or otherwise covered by contract, but are medically appropriate and cost effective substitutes for state plan

services. These “in lieu of” services will only be eligible for payment for a short stay of no more than 15 days per month. The proposed rules seek to address concerns about access to and the availability of inpatient psychiatric and SUD services that are covered by Medicaid by providing resources for short term stays as a way to stabilize patients in crisis.

The proposed rules cite the flexibility that Medicaid managed care programs have in achieving efficiency and economic savings as compared to traditional Medicaid fee for service systems as a way of explaining the new payment options for IMD services. In determining the capitation rates, rates must still be developed consistent with the cost of the state plan services only.

From a provider perspective, this could open up access to Medicaid payment for mental health and SUD services that meet the criteria outlined in the proposed rules and increase access for consumers to short term inpatient crisis stabilization services. While consumers cannot be required to use the “in lieu of” arrangement as a substitute for a state plan covered service or setting, the proposed services may be a cost effective alternative to ensure appropriate care that is not available today.

At a time when implementation of Medicaid managed care for behavioral health services and other special populations receiving long term care services and supports is being discussed in legislatures across the country, these new rules add another layer of complexity to the discussion. Providers will likely have many questions about the breadth and scope of the IMD exclusion, what services are going to be paid for by an MCO, and implementation from a practical perspective. Comments to the proposed rules are due by July 27, 2015.

Vorys and Vorys Health Care Advisors will be holding a webinar on July 16, 2015 from 11:30 A.M. to 1:00 P.M. with particular focus on the aspects of the proposed rules that impact behavioral health, developmental disabilities, services for children and youth and long term services and supports.

To sign up for the webinar, [click here](#).