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DATE: October 3, 2022

TO: Honorable Members of the Board of Supervisors  
Jeffrey V. Smith, M.D., J.D., County Executive

FROM: René G. Santiago, Deputy County Executive & Director, County of Santa Clara Health System  
Sherri Terao, Director, County of Santa Clara Behavioral Health Services Department

SUBJECT: Institute for Mental Disease Exclusion

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After receiving a Board of Supervisor’s inquiry regarding the Institute for Mental Disease (IMD) Payment Exclusion, a brief history of the exclusion was prepared. This off-agenda memo has been prepared as background for the full Board.

**Background**

The Medicaid IMD Payment Exclusion is a provision of federal law that limits funding for mental health and substance use disorder patients in need of residential care. The IMD Exclusion prohibits the use of federal Medicaid dollars to pay for treatment delivered to individuals ages 21 through 64 residing in qualifying IMD facilities with more than 16 beds. This ban on the use of federal Medicaid dollars to pay for certain residential care services has been part of the Medicaid program since its initial passage in 1965.

The original rationale for this exclusion was a belief that funding for large mental health hospitals should remain at the state and local level and not be shifted to the federal government. In the 1960s, there was also a growing concern that these large hospitals were providing inadequate care and federal dollars should not be used to sustain this system.

**Brief History of the IMD Exclusion**

The IMD Exclusion has evolved over the last several decades. Changes include:

1965 – President Johnson signed the Social Security Amendments of 1965, creating the Medicare and Medicaid programs. The IMD Exclusion is part of the historic enactment of Medicaid but does not apply to individuals in need of services who are 65 or above.

1972 – Congress passes the Social Security Amendments of 1972, changing the law to also exempt children under the age of 21 from the IMD Exclusion.

1988 – Congress passes the Medicare Catastrophic Coverage Act of 1988, exempting residential facilities with 16 beds or less from the IMD Exclusion, to promote community-based services in smaller facilities.

2010 – President Obama signs the Affordable Care Act (ACA) into law. Among its many provisions, the ACA requires federally qualified health plans offering products on the exchange to cover mental health and substance use disorder services, including behavioral health counseling and psychotherapy. While Medicaid and Medicare are not plans offered through the exchange thus leaving the IMD Exclusion remains intact, the ACA creates the Medicaid Emergency Psychiatric Demonstration. Through this Demonstration pilot opportunity, 11 states can apply to partially lift the exclusion to assess the impact on emergency room admissions and Medicaid costs.

2015 – The Centers for Medicare and Medicaid Services (CMS) issues guidance that opens the possibility that states can receive federal approval through a Section 1115 Medicaid Waiver to lift the IMD Exclusion for Substance Use Disorder (SUD) services to test the impact of new services.

2015 – California reaches agreement on an amendment to its Section 1115 Waiver (known as Medi-Cal 2020) to pilot a Drug Medi-Cal Organized Delivery System (DMC-ODS). DMC-ODS pilots a continuum of evidence-based services, bringing a managed care approach into SUD services. Selective provider contracting, quality assurance and utilization controls are included in the pilot. This new system includes an exemption for California from the requirements of the IMD Exclusion for facilities that provide SUD treatment for clients with a primary SUD diagnosis. Through the Waiver, federal funds can be received for services provided through the pilot; there is no change to Medicaid benefits. The IMD Exclusion still applies to mental health services. The pilot was limited to the term of the Medi-Cal 2020 Waiver.

2017 – Under the Medi-Cal 2020 Waiver, DMC-ODS becomes operational in four (4) California counties (including Santa Clara) and federal Medicaid funding for SUD residential treatment as part of a continuum of care becomes available. For counties to draw down the federal match for short-term SUD services provided in IMD facilities with 16 or more beds, the clients must have SUD as a primary diagnosis and follow limits on length of stay, with a statewide average of 30 days. Adult clients stay up to 90-days are allowed, adolescents are limited to 30-day stays. Limits are placed on the number of days and frequency of utilization. To receive federal funds, the IMD facilities must be included in the County's 1115 Waiver contract with the State.

2018 – The Secretary of Health and Human Services, Alex Azar, announces a new CMS policy that will allow Section 1115 Waivers to exempt from the IMD Exclusion residential services for adults with Serious Mental Illness (SMI) and children with serious emotional disturbance (SED). In California, additional counties join the DMC-ODS pilot. In total, 19 counties are approved.

2019 – California unveils California Advancing and Innovating Medi-Cal (CalAIM), a major change in the structure of the Medi-Cal program and includes a reference to the new IMD Exclusion Waiver for mental health services. The State says that it will consult with stakeholders and evaluate the possibility of applying for this new Waiver.

2020 - Due to COVID-19, the Medi-Cal 2020 Waiver was amended. Pilots, including DMC-ODS, were extended through 2021.

2021 –California receives CMS approval for CalAIM, extending the State’s 1915(b) Waiver to maintain the Medicaid managed care system and move more responsibilities to managed care plans. CalAIM expands the DMC-ODS pilot, extending the pilot through December 2026. Federal funding for short-term SUD residential services is available under the 1115 Waiver, which allows for federal reimbursement to be drawn down with non-federal share, subject to limitations on length of stay and primary diagnosis of SUD.

2021 - Congresswoman Grace Napolitano introduces HR 2611 which would eliminate the IMD Exclusion from federal Medicaid law. HR 2611, which attracted 14 co-authors, is never set for a hearing.

2022 – The California Department of Health Care Services indicates that it is nearing the end of its evaluation of the option of advancing an IMD Exclusion Waiver for mental health services and may unveil a proposal before the end of the year. Any state proposal would need to be submitted to CMS for review, negotiation, and ultimate approval. This process typically takes several months. An expansion of the IMD Exclusion Waiver would require state funds be made available to draw down federal funds.

cc: Greta S. Hansen, Chief Operating Officer  
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