



December 14, 2016

Andy Slavitt
Acting Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Ms. Vikki Wachino
Director
Center for Medicaid & CHIP Services
Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Administrator Slavitt and Director Wachino:

On behalf of the nation's Medicaid Directors, we respectfully request CMS's reconsideration of its implementation strategy for the final Medicaid managed care rule's "in lieu of" services (ILOS) provisions and the limit on federal Medicaid financial participation for beneficiary stays in Institutions for Mental Disease (IMDs). States wish to work with CMS to craft more targeted and effective approaches for the state and federal partners which ensure no further unintended consequences for vulnerable Medicaid clients.

Since publication of the final rule, we have appreciated the opportunities CMS staff have extended to our association and individual states to learn more about the rationale for the ILOS and IMD provisions and the intersection of policy and program issues. States have just begun discussing with CMS staff the effect of these particular provisions for their respective Medicaid programs. The communications between the federal and state agencies— which are still ongoing—have brought to light a number of unanticipated and complex issues for the federal and state partners, including the impact on the most vulnerable Medicaid clients.

Many of the concerns that are coming to light now were not explicitly addressed in [NAMID's comments on the proposed rule](#). We acknowledge that the lack of this type of specific feedback to CMS may have contributed to the current implementation challenges states face. However, we also note that the rule's provisions have nuanced and state-specific impacts which are not possible to concretely capture in a comment letter. Nor is it possible for NAMID or states to anticipate how CMS will apply the rule's provisions, while such interpretations dictate the rule's programmatic impact.

For these reasons, states have begun to generate possible solutions to the policy and operational conflicts presented by the managed care rule's provisions. Listed below, we offer for your consideration steps and specific policy modifications that CMS could pursue to mitigate the IMD-related challenges states face in implementing the managed care rule and complying with the complement of Medicaid's statutory requirements.

Recommendations for Targeted Modifications

As CMS continues to develop its understanding of state ILOS authority – in previously approved as well as new contracts— we call on our federal partners to reassess how best to implement the managed care rule's IMD policies. We recommend CMS collaborate with states on the feasibility for the following:

1) **Allow targeted capitation rate recoupment for IMD stays beyond 15 days.**

States remain significantly concerned at the existing CMS policy which requires full recoupment of capitation rates if an individual has an IMD stay longer than 15 days in a month. Full recoupment would not allow the individual's non-IMD services to be adequately addressed, particularly in states with limited infrastructure outside of their managed care delivery model. Additionally, there are serious operational challenges for states to implement this recoupment provision, which requires the ability to track individual IMD stays and set up processes for clawing back rate payments from plans retrospectively. This policy may create instability and uncertainty for plans.

Instead, NAMD recommends that CMS consider allowing a more targeted recoupment of portions of the capitation rate associated with IMD services when IMD stays exceed 15 days in a month. Alternatively, CMS could require states to recoup the rate payment for day 16 and beyond of an IMD stay, inclusive of non-IMD services. As discussed above, some states already have systems in place to make daily capitation payments to their plans, and would have the capability to implement this more targeted approach.

2) **Develop distinct stay-limits appropriate for individuals with mental health and substance use disorder diagnoses.** We acknowledge that CMS review of data sources indicated that a 15-day length of stay limit is appropriate for persons admitted for mental health diagnoses, as the average length of stay for these admissions falls below that timeframe. As discussed in NAMD's comments on the proposed rule, however, a 15-day limit on IMD stays may not be clinically appropriate for all individuals with SUD diagnoses.



States consistently articulate that a 28-day length of stay would allow for more patient-centered SUD care. CMS currently acknowledges the appropriateness of these longer lengths of stay in its [SUD-focused 1115 demonstration waiver](#), which incorporates standards of care from the American Society of Addiction Medicine. If necessary, CMS could work with states to collect and analyze data pertinent to informing modifications to the managed care rule provisions.

- 3) **Authorize exceptions to the 15-day limit.** We request that CMS modify its application of the ILOS and IMD provisions to accommodate those circumstances and conditions which warrant an exception to the rule's 15-day limit on IMD stays in a month. For example, in treating resistant depression, standard practice when an initial medication trial fails, which may take 5 to 7 days, is to then undertake a course of electroconvulsive therapy (ECT), which generally takes an additional 10 to 14 days. Absent an exceptions process, the 15-day limit may inappropriately incentivize non-standard courses of treatment in these circumstances.

We thank CMS for its continued engagement with NAMD and the states on IMD issues and other issues related to the managed care rule. We share CMS's goals of realizing a smooth and effective implementation of the rule's provisions, and stand ready to continue our partnership to achieve these goals.

Sincerely,

A handwritten signature in black ink, appearing to read "T. J. Betlach", written in a cursive style.

Thomas J. Betlach
Arizona Health Care Cost
Containment System Director
State of Arizona
President, NAMD

A handwritten signature in black ink, appearing to read "John B. McCarthy", written in a cursive style.

John B. McCarthy
Director
Ohio Department of Medicaid
State of Ohio
Vice-President, NAMD