

Expiration of 1915(l) Medicaid State Plan Option

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Background

Medicaid is a joint federal-state program that finances the delivery of primary and acute medical services, as well as long-term services and supports, for a diverse low-income population, including children, pregnant women, adults, individuals with disabilities, and people aged 65 and older.

Medicaid's **institutions for mental diseases (IMD) exclusion** limits the circumstances under which federal Medicaid funding to states is available for inpatient behavioral health care. Policymakers have concerns about the effects of this exclusion on access to behavioral health care, and recent enacted laws and federal guidance have amended the IMD exclusion.

One of the amendments to the IMD exclusion is a provision in the Substance Use-Disorder Prevention That Promotes Opioid Recovery and Treatment for Patients and Communities Act (SUPPORT Act; P.L. 115-271), which added a Medicaid state plan option to allow for federal Medicaid funds to be used for patients at IMDs with substance use disorder (SUD). This Medicaid state plan option is set to expire on September 30, 2023.

What Is the IMD Exclusion?

The IMD exclusion is a long-standing policy under Medicaid that prohibits the federal government from providing federal Medicaid funds to states for services rendered to Medicaid-eligible individuals aged 21-64 who are patients in IMDs.

IMD is **defined** 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.” For the definition of IMDs, the term *mental disease* includes SUD.

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States currently have some [options](#) to receive federal Medicaid funds for Medicaid payments to IMDs and to provide Medicaid coverage of patients in IMDs. One of these options is the SUPPORT Act state plan option, which is set to expire on September 30, 2023.

Expiring Provision

Section 5052 of the [SUPPORT Act](#) added a new [Section 1915\(l\)](#) of the Social Security Act (SSA) for a new state plan option to provide Medicaid coverage of eligible individuals who are patients in an eligible IMD for no more than a period of 30 days (whether or not consecutive) during a 12-month period beginning October 1, 2019, and ending September 30, 2023.

SSA Section 1915(l) defines an eligible individual for the state plan option as a Medicaid enrollee aged 21 through 64 with at least one SUD who is residing in an IMD. The Centers for Medicare & Medicaid Services (CMS) issued a [State Medicaid Directors Letter](#) with guidance to states on the implementation of this option, which specified that eligible individuals must be residing in an IMD primarily to receive withdrawal management or SUD treatment services.

SSA Section 1915(l) defines an eligible IMD as an IMD that (1) follows reliable, evidence-based practices and (2) offers at least two forms of medication-assisted treatment for SUD on site. CMS' guidance states that eligible IMDs can offer medication furnished offsite by qualified providers with established arrangements and are required to ensure a comprehensive continuum of care and care transitions.

As a condition of the state plan option, states have a [maintenance of effort \(MOE\) requirement](#) to maintain the annual level of state and local expenditures for items and services furnished to Medicaid enrollees aged 21 through 64 with at least one SUD in (1) eligible IMDs and (2) outpatient and community-based settings. The MOE is based on state and local expenditures from federal fiscal year 2018 or, if higher, the level of spending in the most recent federal fiscal year as of the day the state submits the state plan amendment.

Also, states adopting this option are required to ensure that a continuum of services is available by (1) notifying the Secretary of Health and Human Services of how individuals receive evidence-based clinical screening before receiving services in an eligible IMD; (2) providing coverage of certain outpatient, inpatient, and residential services; and (3) ensuring appropriate transition from an eligible IMD to receiving care at a lower level of clinical intensity. Under the state plan option, individuals receiving IMD SUD services also must receive Medicaid coverage of services provided outside the IMD.

According to a [survey](#) from the Kaiser Family Foundation, as of October 2019, five states reported plans to implement the 1915(l) state plan option: Idaho, Indiana, New Hampshire, South Dakota, and Tennessee. Currently only two of these states are participating in this state plan option: South Dakota and Tennessee. Several of the surveyed states that indicated no plans to take up 1915(l) noted the increased flexibility for length of stay limits available under Section 1115 waivers as one reason for not pursuing this option.

Recently, the [Congressional Budget Office \(CBO\)](#) [estimated](#) the increase in federal outlays of permanently extending the state plan option in three different ways, which included an assumption that a permanent extension would increase state uptake:

1. Permanently extending the state plan option as it is currently written would increase federal outlays by \$535 million over the next 10 years (i.e., FY2024 through FY2033).
2. Permanently extending the state plan option while also increasing the number of days that are eligible for federal reimbursement from 30 days to 60 days per 12-month period would increase federal outlays by \$560 million over the next 10 years.
3. Permanently extending the state plan option but restricting eligible facilities to only facilities with 17 to 39 beds would increase federal outlays by \$155 million over the next 10 years.

The 1915(l) state plan option provides another opportunity for states to increase access to SUD services for Medicaid enrollees. States may choose this option if they are not able to take advantage of the other options due to their service delivery systems or those that want to avoid the administrative requirements of waivers. It will be important to evaluate the low state take up rate of this provision as Congress considers whether to extend or make permanent the 1915(l) state plan option. In addition, data on the impact of this provision on access to SUD treatment are limited; Congress may consider whether increased reporting requirements could fill that gap.

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