

Center for Medicaid and CHIP Services

CMCS Informational Bulletin

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SUBJECT: **State Guidance for the New Limited Exception to the IMD Exclusion for Certain Pregnant and Postpartum Women included in Section 1012 of the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment (SUPPORT) for Patients and Communities Act (Pub. L. 115-271), entitled Help for Moms and Babies**

The Center for Medicaid and CHIP Services (CMCS) is issuing this Informational Bulletin (Bulletin) to provide guidance to states on section 1012 of the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act, (SUPPORT for Patients and Communities Act), entitled Help for Moms and Babies. Section 1012 creates a new limited exception to the institution for mental diseases (IMD) exclusion for certain pregnant and postpartum women as discussed below.

Background

Institution for Mental Diseases (IMD) Exclusion

Section 1905(i) of the Social Security Act (Act) defines an IMD 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.”

Under section 1905(a) of the Act¹, there is a general prohibition on Medicaid payment for any services provided to an individual who has not yet attained 65 years of age who is residing in an IMD. This is commonly known as the IMD exclusion, and it applies to any care or services provided to patients residing in an IMD inside or outside of the IMD. There are two exceptions to the IMD exclusion under section 1905(a). First, inpatient hospital services, nursing facility services, and intermediate care facility services for individuals age 65 and older in IMDs can be reimbursed (42 C.F.R. §440.140). Second, inpatient psychiatric hospital services for individuals under age 21 furnished by a psychiatric hospital, a general hospital with a psychiatric program that meets the applicable conditions of participation, or an accredited psychiatric facility,

¹ Clause (B) following section 1905(a) of the Act.

commonly referred to as a “Psychiatric Residential Treatment Facility” (PRTF), that meet certain requirements, can also be reimbursed (42 C.F.R. §440.160).² This is commonly referred to as the “psych under 21” benefit.

Medicaid Coverage for Pregnant and Postpartum Women

Eligibility and coverage of the category of low-income pregnant women is subject to income limits and is mandatory in Medicaid. Pregnant woman, as defined in 42 C.F.R. §435.4, includes the postpartum period, which extends until the last day of the month in which a 60-day period has elapsed after the end of the pregnancy.

Federal law requires states to extend Medicaid eligibility and coverage to categorically needy and medically needy pregnant women who are eligible for Medicaid on the basis of being pregnant. At a minimum, qualified pregnant women are entitled to coverage of pregnancy and pregnancy-related services and services for the treatment of conditions that may complicate pregnancy, when available under the state plan (42 C.F.R. §435.116(d); §435.301(b)(1)(i)). These services are defined by the state and are not necessarily specifically identified or defined in the state plan, but they generally include prenatal care, delivery, postpartum care, family planning services and can also include diagnosis or treatment of illnesses or medical conditions that might threaten the health or well-being of the mother or fetus. Under 42 C.F.R. §440.250(p), states may also provide extended services to pregnant women that are not available to non-pregnant individuals, and may provide these services in greater amount, duration or scope than is provided under the state plan to other individuals eligible for Medicaid, providing the services are 1905(a) coverable services, are related to the pregnancy or are related to any other condition that may complicate pregnancy.³

New Limited Exception to the IMD Exclusion for Certain Pregnant and Postpartum Women

Section 1012 of the SUPPORT for Patients and Communities Act creates a new limited exception to the IMD exclusion. Specifically, section 1012(a) states that for a woman who is eligible on the basis of being pregnant (and up to 60-days postpartum), who is a patient in an IMD for purposes of receiving treatment for a substance use disorder (SUD), who is either enrolled under the state plan immediately before becoming a patient in the IMD, or who becomes eligible to enroll while a patient in an IMD, the IMD exclusion shall not be construed to prohibit federal financial participation for medical assistance for items and services provided outside of the IMD to such women.

² Section 12005 of the 21st Century Cures Act requires Medicaid reimbursement for Early and Periodic Screening, Diagnostic and Treatment (EPSDT) services for children under age 21 who are receiving inpatient psychiatric hospital services. More information is available at <https://www.medicaid.gov/federal-policy-guidance/downloads/cib062018.pdf>

³ §440.210(a)(2), §440.210(a)(3)

Implementation

Section 1012(b) specifies that the effective date of section 1012 was the date of enactment of the SUPPORT for Patients and Communities Act, which was October 24, 2018. CMS encourages all states to implement this provision as quickly as possible to ensure that pregnant women, including women in the postpartum period, receive these important services. Women eligible for this limited exception to the IMD exclusion must either be enrolled as a pregnant woman (or in the 60 day postpartum period) in Medicaid immediately prior to becoming a patient in the IMD or become eligible to enroll in Medicaid as a pregnant woman (or in the 60 day postpartum period) while a patient in an IMD.

Per section 1012(b), some Medicaid state plans may require state legislation in order for the state plan to be amended to add the additional coverage requirements, and CMS shall not consider such state plans as failing to comply with section 1012 of the SUPPORT for Patients and Communities Act before the first day of the first calendar quarter beginning after the close of the first regular session of the state's legislature that begins after October 24, 2018. In the case of a state that has a two-year legislative session, each year of such session shall be deemed to be a separate regular session of the state legislature. States will be expected to be in compliance by October 1, 2020, relative to certain state legislative timeframes.

Conclusion

Women diagnosed with a SUD, who are pregnant or in the 60 day postpartum period, require access not only to effective SUD treatment but also to the full array of mandatory and optional pregnancy and pregnancy-related services available through Medicaid, including treatment of conditions that may complicate pregnancy. Section 1012 of the SUPPORT for Patients and Communities Act provides support for those pregnant and postpartum women facing and/or recovering from substance use disorder, including opioid use disorder, and aids them in their recovery. For additional information about this Bulletin, or for states requesting technical assistance, please contact Kirsten Jensen, Director of Division of Benefits and Coverage, at Kirsten.Jensen@cms.hhs.gov.