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# MACPAC Releases Report to Congress on Oversight of Institutions for Mental Diseases

## Commission finds that nearly every state uses Medicaid funds to pay for IMD services, despite longstanding federal prohibition

Washington, DC—Despite a decades-old statutory provision that largely prohibits federal Medicaid payments to institutions for mental diseases (IMDs), states can and do legitimately pay for mental health or substance use disorder (SUD) services in these facilities, according to the Medicaid and CHIP Payment and Access Commission (MACPAC). The finding is part of a special congressionally mandated report, *Oversight of Institutions for Mental Diseases*, which MACPAC released January 6. The ban—known as the IMD exclusion—has been in force since Medicaid was established in 1965 to ensure that states, rather than the federal government, foot the bill for inpatient psychiatric services.

Policymakers and advocates have long debated the IMD exclusion's role in limiting access to residential and inpatient behavioral health services for Medicaid beneficiaries. "Despite the exclusion, we found most states are using multiple legal authorities to pay for residential and inpatient behavioral health treatment with Medicaid funds," said MACPAC chair Melanie Bella. "Findings from this report will be especially valuable as we grapple with how best to direct vital mental health and SUD treatment resources to people in need." The IMD designation, exclusive to Medicaid, applies to residential and inpatient hospital and nursing facilities with more than 16 beds that provide SUD and mental health services.

MACPAC found that states use myriad federal Medicaid authorities to pay for services in IMDs. These include demonstration waivers under Section 1115 of the Social Security Act and in-lieu-of services in managed care, as well as statutory exceptions to the exclusion for services provided to adults age 65 and older and children and youth under age 21. Most recently, the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act (SUPPORT Act, P.L. 115-271) allows states to make payments under their state plans to IMDs for services provided to beneficiaries with an SUD.

The report also found that state licensure agencies, accrediting bodies, and other payers do not have standards specific to IMDs, given that the designation is unique to Medicaid. States regulate inpatient and residential treatment facilities separately and standards vary according to whether a facility provides SUD treatment or mental health care. Federal standards for IMDs are largely determined by whether or not



facilities are Medicare providers, but because Medicare does not pay for SUD treatment services in most freestanding facilities, there is no federal certification process for these providers.

The report fulfills a requirement in the SUPPORT Act requiring MACPAC to identify and describe IMDs in selected states and summarize state licensure, certification, or accreditation requirements and Medicaid clinical and quality standards. The Commission looked specifically at policies in California, Colorado, Florida, Massachusetts, New Jersey, Ohio, and Texas, selecting them for diversity in the range of services covered as well as for the authorities used to administer services—for example, through the state plan or a Section 1115 demonstration—and whether services are delivered through managed care or fee for service. The Commission also considered the extent of the opioid epidemic in its choice of states to study.

Chapter 1 of *Oversight of Institutions for Mental Diseases* outlines the history of the IMD exclusion and federal regulations governing Medicaid payment to IMDs. Chapter 2 estimates the number of IMDs accepting Medicaid in the selected states and describes the types of services these facilities offer. Chapter 3 looks at the federal and state roles in the regulation and oversight of IMDs and mental health and SUD treatment programs and facilities. Chapter 4 reviews state standards for behavioral health facilities, including facilities that may be considered IMDs, and discusses how Medicaid agencies enforce these standards. The final chapter describes federal and state laws governing patient protection in IMDs, including the Americans with Disabilities Act (P.L. 101-336), the Supreme Court decision in *Olmstead v. L.C.* (119 S. Ct. 2176 (1999)), and the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act (P.L. 110-343).

Download *Oversight of Institutions for Mental Diseases* on the [MACPAC website](#), where you can also find the December 2019 edition of *MACStats: Medicaid and CHIP Data Book* and a new issue brief on *Health Care-Related Taxes in Medicaid*.

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## ABOUT MACPAC

The Medicaid and CHIP Payment and Access Commission is a non-partisan legislative branch agency that provides policy and data analysis and makes recommendations to Congress, the Secretary of the U.S. Department of Health and Human Services, and the states on a wide array of issues affecting Medicaid and the State Children’s Health Insurance Program (CHIP). For more information, please visit: [www.macpac.gov](http://www.macpac.gov).

