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TITLE 210 - EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES

CHAPTER 10 – EOHHS GENERAL PROVISIONS

SUBCHAPTER 00 GENERAL PROVISIONS

Part 7 MEDICAID PROGRAM INSTITUTIONS FOR MENTAL DISEASES

7.1 Legal Authority

A. The State of Rhode Island Executive Office of Health and Human Services (EOHHS), as the single state agency responsible for the State of Rhode Island Medicaid Program, reviews compliance with federal requirements to determine whether a Medicaid provider remains eligible for Medicaid reimbursement. R.I. Gen. Laws § 42-7.2-2(6); Title XIX of the U.S. Social Security Act, 42 U.S.C. § 1396a et seq. This includes ensuring compliance with Federal Regulations regarding whether a facility is excluded from the Medicaid program as an Institution for Mental Disease (IMD). 42 CFR 435.1010; CMS *State Medicaid Manual, Section 4390.* This IMD compliance review is critical to the proper administration of the Medicaid Program in compliance with all applicable federal laws and regulations.

7.2 Purpose and Scope

A. This regulation applies to any hospital, nursing facility, or other institution of more than sixteen (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 shall be considered an IMD and be excluded from Medicaid reimbursement. Whether a facility is an IMD is determined by its overall character as that of a facility established and maintained primarily for the care and treatment of mental disease whether or not the facility is licensed as such.

7.3 Definitions

A. For purposes of this section, the following definitions apply:

1. **"**At-Risk Facility**"** means a facility that is considered at risk of becoming an IMD if one (1) of the following applies:
   a. The facility was identified as an At-Risk Facility during a prior IMD review by EOHHS;

b. Forty-five percent (45%) or more of the facility's residents or patients carry a primary diagnosis of a mental disorder or disease and/or have been determined to need specialized services for serious mental illness.

2. "Institution for Mental Disease" or "IMD" means a hospital, nursing facility, or other institution of more than sixteen (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. A facility is considered an IMD if its overall character is that of a facility established and maintained primarily for the care and treatment of individuals with mental diseases, whether or not it is licensed as such. Provided however, an intermediate care facility for individuals with intellectual disabilities shall not be considered an IMD.

3. "Mental Diseases" means diseases listed as mental disorders in the *International Classification of Diseases, Tenth Revision, Clinical Modification (ICD-10-CM),* incorporated herein by reference (not including any later editions thereof), with the exception of intellectual disabilities, senility, and organic brain syndrome. This publication is available at: http://www.cdc.gov/nchs/icd/icd10cm.htm.

7.4 IMD Determination Review Process

A. EOHHS shall make the final determination as to whether any hospital, nursing facility, or other institution of more than sixteen (16) beds is an IMD and excluded from the Medicaid program. EOHHS shall identify:

1. Facilities that are at risk of becoming IMDs;

2. The course of action to be taken when such facilities have been identified as at risk of becoming an IMD; and

3. The course of action to be taken if a facility is identified as an IMD.

B. Medicaid payment is not available for services provided to individuals in an IMD who are age twenty-one (21) and over, and under age sixty-five (65), except as permitted in 42 CFR 438.6(e) and in the Section 1115 Waiver Demonstration.

C. All Medicaid certified providers with more than sixteen (16) beds shall biannually complete and submit to EOHHS an IMD compliance self-assessment reporting tool and attestation of compliance to Medicaid. Specifically:

1. All hospitals on or before May 1, 2020**,** and biannually on December 1st and May 1st thereafter, shall submit an IMD compliance self-assessment reporting tool and attestation of compliance to EOHHS.

2. All other Medicaid certified providers with more than sixteen (16) beds shall submit an IMD compliance self-assessment reporting tool and attestation of compliance to EOHHS on December 1, 2020, and biannually on May 1st and December 1st thereafter.

3. Providers must allow EOHHS to sample attestations for lookbacks and validation by paid claims reviews and/or conduct on-site reviews and record reviews. The self-assessment and reporting tools shall be available on the EOHHS website.

D. At the conclusion of each bi-annual IMD review, EOHHS shall make one (1) of the following determinations:

1. The facility is not at risk of becoming an IMD;
2. The facility is an At-Risk Facility, as defined herein;
3. The facility is determined to be an IMD.

E. In determining whether a facility with over sixteen (16) beds is considered an IMD, EOHHS reviews and considers the overall character of the facility. EOHHS consideration shall include, but is not limited to, the following criteria:

1. Whether the facility is designated and/or licensed as a psychiatric or behavioral health facility by the State of Rhode Island Department of Behavioral Healthcare, Developmental Disabilities and Hospitals pursuant to Rhode Island General Laws Chapters 40.1-5, 40.1-24 and 40.1-24.5;
2. Whether the facility is accredited as a psychiatric or behavioral health facility by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), or another similarly nationally recognized accreditation entity, which accredits and certifies health care organizations and programs in the United States;
3. Whether the facility specializes in providing psychiatric and/or psychological care and treatment, as evidenced by consideration of the following indicators;
    a. Fifty percent (50%) or more of individuals residing in the facility have medical records indicating that they are at the facility because of a mental disease;

b. Fifty percent (50%) or more of the facilities' staff have specialized psychiatric/psychological training;

c. Fifty percent (50%) or more of individuals residing in the facility are receiving psychopharmacological drugs; and

d. Whether the current need for institutionalization for more than fifty percent (50%) of all the individuals at the facility results from mental diseases. In determining whether this criterion is met, EOHHS shall consider whether more than fifty percent (50%) of individuals residing in the facility have serious mental illness or are receiving care and treatment for substance abuse disorder and have been determined to need specialized services for serious mental illness. If it is not possible to make the determination of the status of a patient solely based on their current diagnosis, the patient should be classified according to their diagnosis at the time of admission, if the patient was admitted within the past year. A patient should not be included in the mentally ill category when no clear distinction is possible.

F. Upon completion of the IMD review, EOHHS shall proceed with the follow-up activities corresponding to the determination that was made for the facility.

1. Facilities determined not to be at-risk of becoming an IMD shall be notified and if necessary, shall be removed from the list of facilities that are at risk of becoming an IMD.

2. At-Risk Facilities shall be notified of the determination and shall be monitored by EOHHS following the At-Risk Facility determination. Such monitoring may include the performance of additional, unannounced, on-site IMD reviews by EOHHS.

3. Facilities determined to be an IMD:

   a. The facility shall be notified of the IMD determination, that eligibility to receive Medicaid vendor payment shall be suspended and that the facility has thirty (30) days from the date the notice was mailed to exercise its right to request an appeal of the IMD finding by EOHHS.

   b. If the facility appeals EOHHS' IMD determination, eligibility to receive vendor payment shall continue to be suspended throughout the appeal process.

G. EOHHS shall identify and maintain a list of At-Risk Facilities. IMD reviews shall be conducted for any At-Risk Facility on the list. EOHHS IMD reviews of At-Risk Facilities shall be scheduled as follows:

1. At-Risk-Facilities shall be subject to an initial on-site IMD review of any facility that is newly identified by EOHHS as meeting the above criteria as an At-Risk Facility.

2. At-Risk-Facilities shall have an annual IMD review, that may include on-site visits, in each At-Risk Facility for a minimum of two (2) consecutive years after EOHHS identifies the facility as at risk of being determined an IMD.

H. A facility that has been determined to be an IMD may, following a period of not less than six (6) months, submit a written request to EOHHS requesting a redetermination survey when changes have been made in its overall character and patient mix such that the administrator of the facility believes it would no longer qualify as an IMD. EOHHS shall respond to such requests by conducting a redetermination survey.

1. If the IMD redetermination survey finds that the facility no longer meets the definition of an IMD as set forth herein, EOHHS shall provide the facility with the effective date that the facility is not an IMD, to allow the facility to initiate vendor payment for all eligible individuals.

2. If the redetermination survey finds that the facility continues to be an IMD, the facility shall be notified of the determination, the basis for the determination, that it has thirty (30) days from the date the notice was mailed to exercise its appeal rights, and that if the facility does not exercise its appeal rights within that time frame it may not request another redetermination survey for at least six (6) months from the date of the determination.

7.5 ADMINISTRATIVE HEARINGS

A. As appropriate, an administrative hearing may be held pursuant to Part 10-05-2 of this Title.

B. The hearing officer must issue her or his decision in writing in accordance with the Part 10-05-2 of this Title. If the decision is made that the claim does not meet the requirements for offset, EOHHS must take appropriate corrective action.