Update on Institutions for Mental Diseases "IMD"

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Tara Larson, Chief Clinical Operating Officer, DMA

Why is NC reviewing facilities for IMD status?

- The federal regulations covering IMD were last updated in 1988.
- As the single state Medicaid Agency, review of compliance with federal rules is an on-going requirement. This includes IMD determinations.
  - IMD review is a targeted area for CMS and OIG
- There have been 2 significant IMD reviews in the state:
  - 2005 State Operated Facilities
  - 2006 Mental Health/Substance Abuse Group Homes for Children
- Both reviews found facilities to be IMDs and steps for transition and compliance were implemented.

Where Did the IMD Complaint Originate?

- Concerns that Adult Care Homes were possibly IMDs surfaced in 2005
  - CMS questions while reviewing comparability
- Multiple factors brought attention to the issue:
  - Numerous legislative hearings discussing the placement of recipients with MH/SA in ACHs
  - Newspaper articles about placement and treatment of people in ACHs
  - ACH study
  - Disability Rights of NC and US Dept of Justice
- IMD review is part of the PCS plan of correction

  (not a part of the origination)

What is an IMD?

- 42 CFR 435.1010
  - 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.
- Whether an institution is an IMD is determined by its overall character as that of a facility established and maintained primarily for the care and treatment …whether or not it is licensed as such.
- Treatment of persons with intellectual or other developmental disabilities (IDD) does not make a facility an IMD.

How are IMDs defined?

- CMS provides guidance to States in the **State Medicaid Manual**, "Section 4390, Institutions for Mental Diseases".
  - **Over 16 beds**
  - Current need of more than **50% of ALL patients in the facility resulted from mental disease**
  - Licensed as psychiatric facility
  - Accredited as psychiatric facility
  - The facility is under the jurisdiction of the mental health authority (does not apply if not providing "mental health" services)
  - Specializes in providing psychiatric/psychological care and treatment. (Attained through record reviews, staff trained in psychiatric or psychological interventions/services or that large portion are receiving medications for mental diseases.)
- The State Medicaid Agency (SMA) makes the determination – the final determination may not be delegated to another entity or vendor. Vendors may gather information and make the recommendation but only the SMA may make the final determination.

How are IMDs defined? *CON'T*

Why Look at Shared or Common Ownership?

- 42 CFR 435.1010 defines institution –
  - "an establishment that furnishes (in single or multiple facilities) food, shelter and some treatment or services to four or more persons unrelated to the proprietor"

- CMS **State Medicaid Manual, Section 4390** and Office of Inspector General (OIG) guidance require States to review all related facilities and to consider the factors to the overall bed size and % of people being served

How are IMDs defined? *CON'T*

Why Look at Shared or Common Ownership?

- If there are multiple components then…
  - Are all components controlled by one owner or governing body?
  - Is one chief medical officer responsible for the medical activities?
  - Does one chief executive officer control all the administrative activities in all the components?
  - Are the components licensed separately?
  - Are the components so organizationally and geographically separate that it is not feasible to operate as single entity?
  - If two or more of the components are participating under the same provider category, can each meet the conditions of participation independently?

How is the Determination Made?

- NC is addressing ACH IMD determination in two phases: Phase I and Phase II
  - **Phase 1:** Must be completed by June 30, 2012
    - Review of paid claims at point in time, matched with licensing information for facilities over 16 beds
    - Review of paid claims to determine if recipient was actively receiving MH/SA services
    - 25 site specific homes were originally identified
    - Review tool developed and distributed
    - Over 700 recipients reviewed or determined to have MH/SA as primary diagnosis
    - 5 facilities have received prior notice “at risk” letters and will have on-site reviews prior to final determination
      - Notices of possible facility IMD determination have been sent to all residents in the facilities
    - 7 facilities have initially been cleared
    - Additional information was requested from the remaining homes and will be reviewed

How is the Determination Made? *CON'T*

Phase 2

- Complete a current data run of all existing ACH, MH Group Homes, Family Care Homes by site and tax ID to determine if any additional homes meet the initial threshold.
- By July 1, 2012, DMA will distribute self assessment and reporting tool.
- By September 1, 2012 – complete reviews of any potential IMDs.
  - Will utilize steps and process being used through out the country
  - External vendor will conduct on-site reviews and record reviews
- By September 1, 2012, facilities will submit attestation of compliance to DMA.
  - DMA will sample attestations for look behind and validation
  - Monitoring and compliance is an on-going process for the facilities and the State.
  - IMD reviews will be added as part of any monitoring conducted by DHSR, DMA or DMH/DD/SAS

Facility Deemed an IMD …

- Medicaid funding for all services must stop for all Medicaid recipients in the home for as long as the facility remains an IMD.
- If services were to continue, the only option to cover the costs would be to pay with state dollar. (unless the facility is no longer deemed an IMD)
- Cost to remain in an IMD
  - Based upon paid claims, the average cost per year per recipient:
    - PCS = $8,574
    - Other Medicaid cost = $11,666
    - Total per year = $20,241 ($1,686 per month)

Appeal Process

- There is no right to appeal under federal law. However, facilities can file a request for appeal of IMD determination with the Office of Administrative Hearings in accordance with N.C.G.S. 150B-23.

- Per CMS recipients do not have the right to appeal the IMD determination because the action is against the facility, not the recipients.

Plan of Action for Health Care Services for Residents Remaining in IMDs

- Recipient transition planning and activities is similar to the same transition as a result of the 1915i implementation.
  - Utilization of Discharge Procedures developed pursuant to Session Law 2011-272
  - At risk notice sent to the facility and recipient when the evidence appears to support an IMD determination
    - Involvement of local DSS/LMEs in the planning
    - Individual housing assessments

Questions?