

## MEMORANDUM

**To:** House Committee on Appropriations; House Committee on Corrections and Institutions; House Committee on Health Care; House Committee on Human Services; Senate Committee on Appropriations, Senate Committee on Health and Welfare; Senate Committee on Institutions

**From:** Al Gobeille, Secretary, Agency of Human Services

**Cc:** Mourning Fox, Interim Commissioner, Department of Mental Health  
Cory Gustafson, Commissioner, Department of Vermont Health Access

**Date:** November 15, 2018

**Re:** Report on Institutions for Mental Disease per Act 200 of 2018, Section 10

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This memorandum is to fulfill the requirement of Section 10.1 of Act 200 of 2018 providing a status update on the possible solutions considered as part of the State's response to the Centers for Medicare and Medicaid Services' (CMS) requirement to begin reducing federal Medicaid spending for Institutions for Mental Disease (IMDs) beginning in 2021.

### *Background*

#### Institutions for Mental Disease Exclusion

The IMD exclusion prohibits the use of federal Medicaid funding for care provided to patients aged 21-64 in mental health and substance use disorder residential treatment facilities larger than 16 beds<sup>1</sup>.

#### What makes a facility an IMD?

As defined in 42 CFR 435.1010, "Institution for mental diseases means 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. Whether an institution is an institution for mental diseases is determined by its overall character as 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. An institution for Individuals with Intellectual Disabilities is not an institution for mental diseases."

#### Phase-Down of Federal Funding for IMDs

The Agency of Human Services (AHS) is preparing a phase-down schedule of funding for Vermont IMDs, as required by CMS in Vermont's Global Commitment to Health 1115 Demonstration Waiver. This phase-down

schedule, due to CMS no later than December 31, 2018, will include a proposed schedule for reduced amounts of federal IMD expenditures beginning January 1, 2021 and phasing down to zero federal funding by December 31, 2025. Per CMS, if Vermont were not to submit the phase-down plan by December 31, 2018, the default percentage of federal IMD expenditures for Calendar Year 2021 would be zero percent.

*Possible Alternative to IMDs*

AHS feels it is important to carefully evaluate all the options utilized by states nationwide to address federal funding issues related to IMDs. However, it is important to note that the weighted evaluation of these alternatives does not rest exclusively on monetary impacts, but must also align with Vermont's vision for a comprehensive system of care.

Possible alternative to IMDs will be submitted in an annual report to the Vermont Legislature on January 15, 2019, as required by Section 10.2 of Act 200 of 2018. Alternatives to be evaluated include:

- Seeking approval of an amendment to Vermont's Global Commitment to Health 1115 Demonstration waiver to receive authority to pay for short-term residential treatment services in an IMD for individuals with severe mental illness<sup>ii</sup>;
- Reducing the number of beds in Vermont IMDs to 16;
- Separating IMDs into several independently operated and administered facilities with 16 beds or less;
- Merging IMDs with large general care hospitals, along with a potential reduction of psychiatric beds so that they account for less than 50% of the merged hospital's total bed capacity; and
- Contracting with a risk-based Medicaid managed care plan so that short-term IMD stays that are 15 days or less in a month may be eligible for FFP<sup>iii</sup>.

The Agency is assessing the feasibility and effectiveness of these alternatives to address the IMD phase-down requirements. AHS has had several discussions with leadership from Vermont IMDs regarding the phase-down and continues to seek their input and perspective as this work progresses.

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<sup>i</sup> 1905(a)(B) of the Social Security Act

<sup>ii</sup> CMS announced this as a new waiver opportunity on November 13, 2018. Prior to this CMS announcement, a waiver amendment was not an available alternative to states.

<sup>iii</sup> 42 CFR §438.6(e)