Report to
The Vermont Legislature

2021 Report on Vermont's Institutions for Mental Disease

In Accordance with
Act 200 of 2018, Section 10

Submitted 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
Submitted by:	Michael K. Smith, Secretary, Agency of Human Services
Prepared by:	Ashley Berliner, Director of Medicaid Policy
Report Date:	January 15, 2021

VERMONT
AGENCY OF HUMAN SERVICES

Statutory Language

Sec. 10 of Act 200 of 2018, An act relating to systemic improvements of the mental health system, requires that the Agency of Human Services (AHS) provide the Vermont Legislature an annual report each January 15 from 2019-2025 on the Agency's progress in evaluating the impact of federal Institutions for Mental Disease (IMD) spending on persons with serious mental illness or substance use disorders.

> Sec. 10. REPORT; INSTITUTIONS FOR MENTAL DISEASE
>
> The Secretary of Human Services, in partnership with entities in Vermont designated by the Centers for Medicare and Medicaid Services as "institutions for mental disease" (IMDs), shall submit the following reports to the House Committees on Appropriations, on Corrections and Institutions, on Health Care, and on Human Services and to the Senate Committees on Appropriations, on Health and Welfare, and on Institutions regarding the Agency's progress in evaluating the impact of federal IMD spending on persons with serious mental illness or substance use disorders:
>
> (1) a status update that shall provide possible solutions considered as part of the State's response to the Centers for Medicare and Medicaid Services' requirement to begin reducing federal Medicaid spending due on or before November 15, 2018; and
>
> (2) on or before January 15 of each year from 2019 to 2025, a written report evaluating:
>
> (A) the impact to the State caused by the requirement to reduce and eventually terminate federal Medicaid IMD spending;
>
> (B) the number of existing psychiatric and substance use disorder treatment beds at risk and the geographical location of those beds;
>
> (C) the State's plan to address the needs of Vermont residents if psychiatric and substance use disorder treatment beds are at risk;
>
> (D) the potential of attaining a waiver from the Centers for Medicare and Medicaid Services for existing psychiatric and substance use disorder services; and
>
> (E) alternative solutions, including alternative sources of revenue, such as general funds, or opportunities to repurpose buildings designed as IMDs.

This is the third annual report required under Sec. 10 of Act 200 of 2018. The following report is broken into four parts to provide a description of Vermont's evaluation of the impact of federal IMD spending on persons with serious mental illness (SMI) or substance use disorders (SUD), including: (1) Five Year IMD Phase-down Schedule, (2) Current Waiver Activities (3) Phase-down Options, and (4) Conclusions.

1. Five-Year IMD Phasedown Schedule

As discussed in the report submitted January 15, 2020[1], AHS was required by CMS in Vermont's Global Commitment to Health 1115 Demonstration Waiver to submit a phase-down schedule of funding for Vermont IMDs. To ensure adequate time to strategically adjust Vermont's system of care, AHS presented the following phase-down schedule of Federal Financial Participation (FFP) for IMDs to the Centers for Medicare and Medicaid Services (CMS)[2]:

2021: 95% of FMAP

2022: 90% of FMAP

2023: 85% of FMAP

2024: 80% of FMAP

2025: 75% of FMAP

2026: 0% of FMAP

CMS verbally approved the 2021 phasedown proposal of 95% of FFP in early 2019, but that approval was not memorialized in writing. When it provided verbal approval, CMS explained that the 2021 percentage would be codified in Vermont's 1115 waiver as part of the State's IMD waiver amendment already planned for 2019, but proposed percentages for years 2022 through 2025 would not be considered until the 2022 waiver negotiation. CMS's verbal approval of Vermont's 2021 percentage was reinforced throughout 2019 as Vermont worked on its Serious Mental Illness IMD waiver application. Draft waiver language contained the 95% for 2021 during nearly all the negotiation, but on 11/19/19, CMS conveyed that to it would be reverting to "TBD" for CY 2021 so that the IMD waiver could be effective 1/1/2020. CMS stated that it would work with Vermont in the first quarter of 2020 to provide official approval of the 2021 phasedown percentage in the form of a letter. No discussions occurred prior to the onset of the COVID-19 Public Health Emergency (PHE).

In August 2020, CMS requested that the State submit a revised and accelerated phasedown percentage for

[1] 2020 Report on Vermont's Institutions for Mental Disease (Act 200 of 2018)

[2] http://dvha.vermont.gov/global-commitment-to-health/1cms.final-phasedown-report-12-31-18.pdf

calendar year 2021. Vermont carefully reviewed its IMD projections and submitted an updated phasedown percentage of 75% FFP to CMS in October 2020. **This change from 95% to 75% of FFP has no real dollar impact for CY21, but rather reflects the migration of dollars from the investment category of spending to the to the programmatic category because Vermont's SUD and SMI IMD waiver amendments now allow these expenditures as Medicaid program expenditures.** On January 13th, 2021, CMS approved Vermont's revised phasedown proposal for 2021 (see appendix). Without changes that could be obtained through Vermont's 2022 1115 renewal, actual loss of FMAP for IMDs will occur in CY22 when the state will be required phase down investment dollars used for IMDs beyond what is covered by the IMD waivers.

In June 2018, Vermont amended its Global Commitment to Health 1115 Demonstration waiver to receive authority to pay for IMD treatment of primary substance use disorders (SUD). On December 5, 2019, the Waiver was again amended to enable Vermont to receive FFP for short-term (60 days or fewer) IMD stays provided to otherwise-eligible Medicaid beneficiaries with diagnosis of serious mental illness (SMI) and/or serious emotional disturbance (SED). With both the SUD and SMI IMD waiver amendments, the IMD phasedown required by Special Term and Condition (STC) 91 of the State's 1115 waiver is estimated to be at the following gross amounts:

Facility	Type and Target Group(s)	Treatment Focus	# of Beds	CY21 Gross
Lund Home *Burlington* *100% of ineligible dollars due to stay over 60 days.*	Residential treatment for pregnant and parenting women with children under 5 years old	Psychiatric/SUD	26	$2,832,952
Brattleboro Retreat *Brattleboro* *Ineligible dollars due to combination of stays over 60 days and forensic stays.*	Inpatient stabilization for adults	Psychiatric, Co-occurring SUD	89	$7,353,466
Vermont Psychiatric Care Hospital (VPCH) *Berlin* *Ineligible dollars due to combination of stays over 60 days and forensic stays.*	Inpatient stabilization for adults under the care and custody of DMH	Psychiatric, Co-occurring SUD	25	$19,771,878
Total				**$29,958,296**

The phasedown amounts above reflect the state/federal-combined cost for stays prohibited under the terms of the SMI/SUD IMD waivers. Specifically, the following stays are not eligible for FFP under Vermont's IMD waivers:

- IMD stays for non-Medicaid patients.
- IMD stays over 60 days.
- IMD stays for individuals defined as "forensic" under the terms of the IMD waiver:

1. Individuals who are awaiting a psychiatric evaluation as part of a trial.
2. Individuals who have been found incompetent to stand trial.
3. Individuals who have been found to be insane at the time of the crime were tried and found not guilty by reason of insanity.
4. Individuals who are pre-adjudication or have been convicted and are in DOC custody who develop the need for acute psychiatric care on either a voluntary or involuntary basis.

The remaining $29.9M in investment spending that is subject to phasedown is attributed to forensic care in IMDs, care for persons who are not Medicaid eligible, and care for persons whose length of stay exceeds 60 days. Vermont's proposed phase-down schedule considers the extensive amount of time and resources that will be necessary to adequately plan and implement the large-scale change that is necessary for determining an appropriate financing plan, for the remaining, non-waivered types of care provided in IMDs.

2. Current Waiver Activities and Impact on Federal Funding

Vermont's Global Commitment to Health 1115 Demonstration Waiver is currently set to expire on December 31, 2021. Due to the Public Health Emergency, Vermont was able to extend its renewal application deadline from December 2020 to June 2021. AHS is working aggressively on renewal planning and has contracted with Manatt Health and Wakely Actuarial Consulting to provide technical and actuarial assistance with the renewal application and negotiation. Though it is unknown how the incoming Biden administration will choose to handle Vermont's proposed IMD phasedown schedule for 2022 through 2025, AHS plans to purse expanded IMD waiver authority to cover costs currently excluded under the existing terms. Specifically, AHS plans to request IMD waiver authority to 1. cover stays longer than 60 days, and 2. apply to a narrower interpretation of "forensic" that would authorize Medicaid coverage for individuals not in the custody of Department of Corrections.

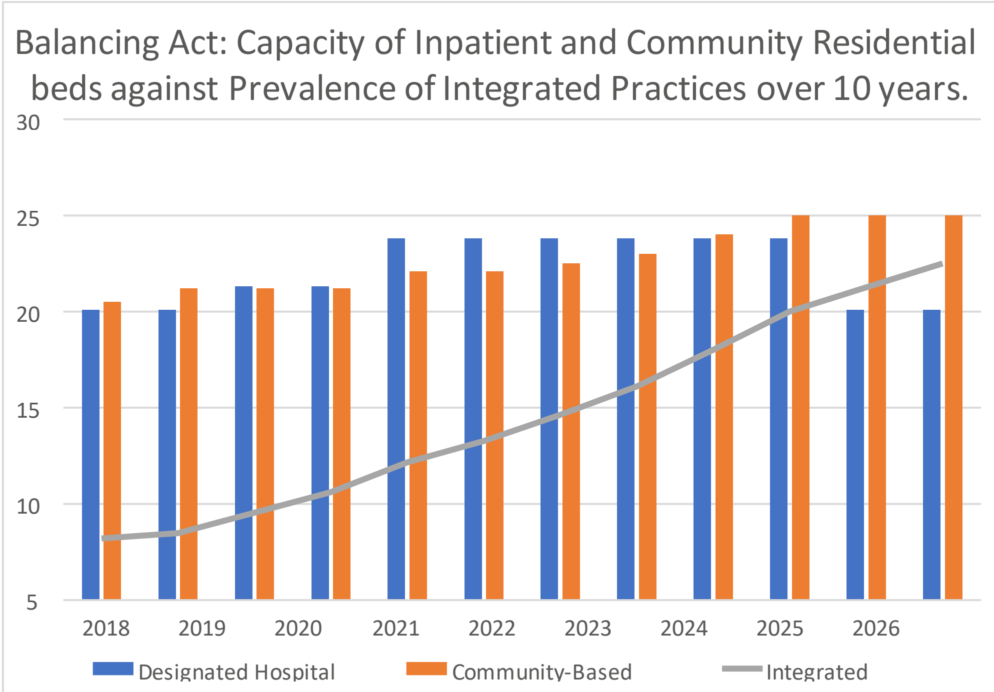
If Vermont's requests to broaden IMD waiver authority are approved, the phasedown requirement on IMD investment spending would be moot for all but a small number of non-Medicaid stays.

3. Phase-down Options

Consistent with a collaborative network approach between hospitals and community-based programs, the gap in bed capacity could potentially be addressed through more robust investments in the expansion of an array of residential support models in the community. However, in line with a complete system of care, Vermont will need to ensure there is a place for all individuals experiencing a psychiatric crisis.

Further, as Vermont works towards its goals of an integrated and holistic health care system, the need for inpatient level of care may be reduced over time. A visual of this concept is provided below for illustration and discussion purposes. The premise is that inpatient capacity must grow initially, but that additional capacity in community based and residential levels of care and expansion of integrated care approaches may alleviate the need for inpatient level of care over time. Prevention and health promotion activities should also help decrease the number of Vermonters who find themselves in need of such levels of care.

Inpatient levels of care are illustrated to be stable for several years while the growth and impacts of improved community capacity, integrated care approaches, and prevention activities are evaluated for impact. For purposes of this illustration, the projected outcome is that increases in community based, residential and integrated care delivery are over the long term impactful. This is not a foregone assumption by AHS but is proposed as the framework of a vision that is worth further exploration.



4. Conclusion

SMI IMDs are one of the essential and high-quality components of Vermont's psychiatric system of care. Without approval of Vermont's requests to broaden its existing IMD waivers, the anticipated elimination of federal investment funds for these institutions will significantly impact the system of care. While the existing IMD waivers ease Vermont's burden of phasedown planning, their significant constraints still require the state to carefully assess the system of care and to propose an adequate and proper financing mechanism if necessary. The phasedown plan proposed to CMS allows AHS the time necessary to seek broader IMD waiver authority through its 2022 renewal request. It will also provide for more time to study and continue to implement the most effective care-delivery models to serve these populations.

AHS believes Vermont must continue to make efforts to achieve an integrated and holistic health care system. However, working towards establishing a balance between mental health services provided in the hospital, and services delivered in the community, requires time to develop the necessary community supports to ensure all Vermonters have access to the care they need at the time they need it. The State must ensure it is done in a thoughtful way, driven by the needs of Vermonters, and not based on federal funding decisions.

Appendix

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-25-26
Baltimore, Maryland 21244-1850

CENTERS FOR MEDICARE & MEDICAID SERVICES
CENTER FOR MEDICAID & CHIP SERVICES

State Demonstrations Group

January 13, 2021

Mike Smith
Secretary
Vermont Agency of Human Services
280 State Drive
Waterbury, VT 05671

Dear Mr. Smith:

CMS is writing to confirm Vermont's proposed phase-down of Demonstration Year (DY) 16 expenditures for the Vermont Psychiatric Hospital and other Institutions for Mental Disease (IMD) Investment expenditures, as required by Special Terms and Conditions (STC) 91 of the Global Commitment to Health Demonstration. CMS is reissuing STCs with the updated figure for demonstration year (DY) 16. Vermont has proposed, and CMS accepts, a 25 percent reduction in allowable expenditures in this category for the final year of the demonstration approval period. For all future reviews of this demonstration authority, including the state's extension request, if submitted, the state should account for and CMS will consider the impact of the IMD expenditure authority CMS provided as part of the Serious Mental Illness amendment approval on December 5, 2019, as well as the Substance Use Disorder amendment approval on June 6, 2018.

We look forward to our continued partnership on the Global Commitment to Health 1115(a) demonstration. If you have any questions, please contact your CMS project officer, Ms. Rabia Khan, at (410) 786-6276 or Rabia.Khan1@cms.hhs.gov.

Sincerely,

Angela D. Garner
Director
Division of System Reform Demonstrations

cc: Gilson DaSilva, State Monitoring Lead, Medicaid and CHIP Operations Group