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**Centers for Medicare & Medicaid Services**  
**Qualified Residential Treatment Programs (QRTP) and Serious Mental Illness (SMI) and**  
**Serious Emotional Disturbance (SED)**  
**Demonstration Opportunity**  
**Technical Assistance Questions and Answers**  
**September 20, 2019**

The following guidance clarifies existing CMS policy regarding Institutions for Mental Diseases (IMDs) and its potential for impact on Qualified Residential Treatment Programs (QRTPs) defined in title IV-E of the Social Security Act (the Act) as amended by Division E, Title VII Family First Prevention Services Act of the Balanced Budget Act of 2018 (BBA of 2018, Pub. L. 115-123). CMS explains how states can provide Medicaid services to Medicaid-eligible children residing in these facilities.<sup>1</sup>

CMS has not made a determination that all QRTPs will be IMDs; rather, there are several options for states to consider regarding QRTPs. Consistent with current practices, states make an IMD assessment and determination on a facility by facility basis according to CMS's existing statute, regulation and sub-regulatory guidance. QRTPs that are 16 beds or fewer would not meet the statutory Medicaid definition of an IMD. Additionally, states may consider QRTPs that meet Conditions of Participation and seek certification, as a psychiatric residential treatment facility (PRTF), which is one of the facility types in the inpatient psychiatric services benefit for individuals under 21 and which represents an exception to the IMD exclusion discussed below. Finally, states may consider an existing section 1115 option, which we further clarify in this document, for states to receive Medicaid reimbursement for services to individuals in QRTPs that would be considered IMDs.

**Q1: What is a Qualified Residential Treatment Program?**

**A1:** The Family First Prevention Services Act (FFPSA),<sup>2</sup> that was signed into law on February 9, 2018 as a part of the BBA of 2018, created limitations on title IV-E foster care maintenance payments (FCMPs) for children placed in child care institutions (CCIs) longer than 14 days, effective October 1, 2019. A QRTP placement is a specific category of a non-foster family home placement setting that is one of the few exceptions to those limitations on IV-E placements in CCIs established by the FFPSA. A QRTP must meet the definition of a child-care institution at

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<sup>1</sup>Guidance related to Section 8081 of the Substance Use Disorder Prevention that Promotes Opioid Recovery and Treatment (SUPPORT) for Patients and Communities Act (SUPPORT Act, P.L. 115-271) on how states may use Medicaid and Title IV-E program authorities to support substance use disorder (SUD) treatment in family-focused residential treatment programs is under development and not addressed in this document.

<sup>2</sup> See section 472 of the Act as amended by section 50741 of the BBA of 2018.

sections 472(c)(2)(A) and (C) of the Act.<sup>3</sup> A child-care institution is defined, in relevant part, as “a private child-care institution, or a public childcare institution which accommodates no more than 25 children, which is licensed by the State in which it is situated or has been approved by the agency of the State responsible for licensing or approval of institutions of this type as meeting the standards established for the licensing.”<sup>4</sup> Title IV-E also generally specifies that a QRTP placement must meet the following criteria:

- Provides a trauma-informed model of care designed to address the needs, including clinical needs, of children with serious emotional or behavioral disorders or disturbances;
- Has registered or licensed nursing staff and other licensed clinical staff who provide care within the scope of their practice as defined by state law, who are on-site consistent with the treatment model, and available 24 hours and 7 days a week (need not solely be direct employees of the QRTP);
- Facilitates family participation in a child’s treatment program (to the extent appropriate, and in accordance with the child’s best interest);
- Facilitates and documents family outreach and maintains contact information for any known biological family and fictive kin of the child;
- Documents how the child’s family is integrated into the child’s treatment, including post discharge, and how sibling connections are maintained;
- Provides discharge planning and family-based aftercare supports for at least 6 months post discharge; and
- The program is licensed<sup>5</sup> and nationally accredited by the Commission on Accreditation of Rehabilitation Facilities (CARF), the Joint Commission on Accreditation of Healthcare Organizations (the Joint Commission), the Council on Accreditation, or another independent, not-for-profit accrediting organization approved by the Secretary.<sup>6</sup>

Further, the title IV-E agencies must meet detailed assessment, case planning, documentation, judicial determinations and ongoing review and permanency hearing requirements for a child to be placed in and continue to receive title IV-E FCMPs for the placement (sections 472(k)(1)(B) and 475A(c) of the Social Security Act.

## **Q2: What is the Institution for Mental Diseases (IMD) Exclusion?**

**A2:** Section 1905(i) of the Social Security Act (Act) defines an IMD as 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.”

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<sup>3</sup> See new section 472(k)(1) of the Act as set forth in section 50741 of the BBA of 2018.

<sup>4</sup> See new section 472(c)(2)(A) of the Act as set forth in section 50741 of the BBA of 2018.

<sup>5</sup> See section 471(a)(10) of the Act.

<sup>6</sup> See new section (k)(4), (k)(6) of Section 472 of the Act as set forth in section 50741 of the BBA of 2018.

Under section 1905(a) of the Act<sup>7</sup>, there is a general prohibition on Medicaid payment for any services provided to an individual who has not yet attained 65 years of age who is residing in an IMD. This is commonly known as the IMD exclusion, and it applies to any care or services provided to patients residing in an IMD inside or outside of the IMD. There are two longstanding statutory exceptions<sup>8 9</sup> to the IMD exclusion under section 1905(a). First, inpatient hospital services, nursing facility services, and intermediate care facility services for individuals age 65 and older in IMDs can be reimbursed.<sup>10</sup> Second, inpatient psychiatric hospital services for individuals under age 21 furnished by a psychiatric hospital, a general hospital with a psychiatric program that meets the applicable conditions of participation, or an accredited psychiatric facility, commonly referred to as a “Psychiatric Residential Treatment Facility” (PRTF), that meets certain requirements, can also be reimbursed.<sup>11</sup> This is commonly referred to as the “psych under 21” benefit.

### **Q3: Will QRTPs Qualify as IMDs?**

**A3:** Title IV-E specifies that QRTPs are to have “a trauma-based treatment model that is designed to address the needs, including clinical needs as appropriate, of children with serious emotional or behavioral disorders or disturbances and, with respect to a child, are able to implement the treatment identified for the child by the assessment of the child . . .”<sup>12</sup> In addition, under title IV-E, QRTPs must be licensed as a “child care institution.”<sup>13</sup> Therefore, QRTPs may qualify as IMDs if they are primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases including medical attention, nursing care, and related services, and have more than 16 beds.

Existing Medicaid IMD policy, which has not been changed as a result of the FFPSA, is applicable in this circumstance. State Medicaid agencies must review each QRTP, if over 16 beds, to make a determination if the facility meets the definition of an IMD according to Medicaid statute, regulation and guidance in the State Medicaid Manual. If initial review is not

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<sup>7</sup> Clause (B) following section 1905(a) of the Act.

<sup>8</sup> Section 1012 of the SUPPORT Act creates a limited exception. Specifically, section 1012(a) states that for a woman who is eligible on the basis of being pregnant (and up to 60-days postpartum), who is a patient in an IMD for purposes of receiving treatment for a substance use disorder (SUD), who is either enrolled under the state plan immediately before becoming a patient in the IMD, or who becomes eligible to enroll while a patient in an IMD, the IMD exclusion shall not be construed to prohibit federal financial participation for medical assistance for items and services provided outside of the IMD to such women. More information about this provision is available at <https://www.medicaid.gov/federal-policy-guidance/downloads/cib072619-1012.pdf>

<sup>9</sup> Section 5052 of the SUPPORT Act added a new section 1915(l) state plan option to the Act for Medicaid beneficiaries age 21 through 64 who are in an IMD for a SUD diagnosis to receive services from October 1, 2019 through September 30, 2023.

<sup>10</sup> 42 C.F.R. §440.140

<sup>11</sup> 42 C.F.R. §440.160; Section 12005 of the 21<sup>st</sup> Century Cures Act (P.L. 114-255) requires Medicaid reimbursement for Early and Periodic Screening, Diagnostic and Treatment (EPSDT) services for children under age 21 who are receiving inpatient psychiatric hospital services. Otherwise, the IMD payment exclusion applies to reimbursement for services inside or outside the IMD, including EPSDT services. More information on section 12005 of the 21<sup>st</sup> Century Cures Act is available at <https://www.medicaid.gov/federal-policy-guidance/downloads/cib062018.pdf>

<sup>12</sup> See new section (k)(4) of Section 472 of the Act as set forth in section 50741 of the BBA of 2018.

<sup>13</sup> See new section 472(k)(1) of the Act as set forth in section 50741 of the BBA of 2018.

clear whether the overall character of a facility is that of an IMD, then a thorough IMD assessment must be made.<sup>14</sup> If the state Medicaid agency determines that the facility is an IMD, federal financial participation (FFP) generally would not be available for any Medicaid services provided inside or outside of the QRTP to Medicaid eligible children residing in the QRTP, unless one of the two exceptions to the IMD exclusion described above applies. Additionally, once a state Medicaid agency makes the determination that a facility is an IMD, it must cease claiming immediately for FFP for individuals residing in that facility. States may find that prior to becoming a QRTP, some of the facilities are already IMDs, in which case the state must also cease claiming immediately for FFP for individuals residing in that facility. If a state does not do so, it is at risk for an audit finding and CMS may take back FFP for claims for individuals residing in the facility that was determined to be an IMD. CMS is available to provide technical assistance to states on Medicaid IMD policy.

#### **Q4: Could QRTPs qualify for any of the exceptions to the IMD exclusion?**

**A4:** Because a QRTP is a child-care institution under Title IV-E of the Act and for purposes of Medicaid, the exception for inpatient hospital services, nursing facility services, and intermediate care facility services for individuals age 65 and older in IMDs would not apply.

The psych under 21 benefit exception may or may not apply to a particular QRTP. The psych under 21 exception applies to inpatient psychiatric hospital services for individuals under age 21 furnished by a psychiatric hospital, a general hospital with a psychiatric program that meets the applicable conditions of participation, or an accredited psychiatric facility, commonly referred to as a “Psychiatric Residential Treatment Facility” (PRTF), that meet certain requirements.<sup>15</sup> A QRTP would not meet the definition of “inpatient” as set forth in the Medicaid regulations and therefore would not qualify as a psychiatric hospital or psychiatric program in an acute care hospital. Under 42 C.F.R. § 435.1010, “inpatient” is defined, in relevant part, as a “patient who has been admitted to a medical institution as an inpatient on the recommendation of a physician or dentist and who receives room and board and professional services in the institution for a 24 hour period or longer”.<sup>16</sup> A “medical institution” is defined, in relevant part, as an institution that “is organized to provide medical care, including nursing and convalescent care. . .”<sup>17</sup> A child-care institution is defined separately and distinctly from inpatient and medical institution in 42 C.F.R. § 435.1010 as “a non-profit private or public child-care institution that accommodates no more than 25 children, which is licensed by the States in which it is situated. . .”<sup>18</sup> QRTPs must be licensed under title IV-E as child care institutions, with a definition similar to the definition in 42 C.F.R. § 435.1010. QRTPs also likely would not meet the requirements to qualify as PRTFs, which have more stringent standards, including meeting the requirements in 42 CFR sections 441.151 through 441.182. If, however, a QRTP meets the applicable requirements and conditions of participation to qualify as a PRTF, then FFP would be available.

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<sup>14</sup> State Medicaid Manual, Section 4390.

<sup>15</sup> 42 C.F.R. §440.160

<sup>16</sup> 42 CFR 435.1010

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

There is some authority for states to receive FFP for monthly capitation payments paid to Medicaid managed care plans for coverage of Medicaid beneficiaries residing in IMDs. Medicaid managed care rules permit FFP for monthly capitation payments to managed care plans for enrollees that are inpatients in a residential setting that may qualify as an IMD when the stay is for no more than 15 days during the period of the monthly capitation payment and certain other conditions are met.

**Q5: Can a state include QRTPs in a section 1115 demonstration?**

**A5:** On November 13, 2018, CMS issued State Medicaid Director Letter (SMDL) #18-011 regarding “Opportunities to Design Innovative Service Delivery Systems for Adults with SMI or Children with SED”.<sup>19</sup> This SMDL allows for Federal Financial Participation (FFP) for Medicaid coverable services provided to beneficiaries with SMI or SED during short term stays for acute care in IMDs. States participating in this demonstration opportunity are also expected to take a number of actions to ensure access to a continuum of care for beneficiaries with SMI or SED, including taking actions to improve community-based mental health care in addition to the short term stays in IMDs, and to improve care coordination and transitions between levels of care. For beneficiaries who are under 21 years of age, states may include services in IMDs that qualify as settings eligible to provide the psych under 21 benefit.

In light of the FFPSA defining QRTPs as a specific category of allowable placement for IV-E funding under federal law, states may include QRTPs that meet the definition of and are determined by the state to be an IMD and are not PRTFs in a section 1115 demonstration application as described in SMDL #18-011. A state should specifically request to include QRTPs in such a SMI/SED demonstration application.

In addition, the QRTPs that the state wishes to include in these demonstrations should meet the criteria for QRTPs described above and other requirements for QRTPs, including requirements regarding needs assessments and assurance of appropriateness of placement in those settings as specified in the FFPSA. QRTPs will also have to meet any guidance or regulations that may be issued by the Administration for Children and Families for these settings.<sup>20</sup> Additionally, services provided by the QRTP would be eligible for FFP only when the billing provider is enrolled in Medicaid and the practitioner who furnishes a service meets federal and state qualifications to provide the service. Finally, QRTPs should also comply with CMS regulations regarding seclusion and restraint found in 42 CFR Part 483 Subpart G.

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<sup>19</sup> State Medicaid Director on Opportunities to Design Innovative Service Delivery Systems for Adults with Serious Mental Illness or Children with Serious Emotional Disturbance, SMD 18-011, Nov. 18, 2018, *available at* <https://www.medicaid.gov/federal-policy-guidance/downloads/smd18011.pdf>.

<sup>20</sup>See, e.g., Administration for Children and Families, “Program Instruction” on “Public Law 115-123, the Family First Prevention Services Act: Implementation of Title IV-E Plan Requirements”, issued July 9, 2018, pp. 10-12, *available on-line at* <https://www.acf.hhs.gov/sites/default/files/cb/pi1807.pdf>.

**Q6: Are there limitations on what can be covered by Medicaid in QRTPs included in section 1115 demonstrations?**

**A6:** FFP will not be available for room and board costs in QRTPs, unless they are also certified as PRTFs. The definition of medical assistance described in 1905(a) does not include room and board as a separate, coverable benefit. Instead, room and board costs are included in the definition of an inpatient in a medical institution.<sup>21</sup> Medicaid coverage of room and board costs is limited to settings that qualify as inpatient settings under Section 1905(a) of the Act.

Through the section 1115 SMI/SED 1115 demonstrations, FFP is available for services furnished to Medicaid beneficiaries during short-term stays for acute care in psychiatric hospitals or residential settings that qualify as IMDs. Accordingly, states are expected to achieve a statewide average length of stay of 30 days or less in the participating IMDs. States interested in including QRTPs in their section 1115(a) demonstrations will need to determine how best to include stays in QRTPs, recognizing that overall the state will be expected to achieve a statewide average of 30 days as part of these demonstrations.

States will also be expected to report data regarding any participating QRTPs as part of the monitoring and evaluation information states are expected to submit to CMS for these demonstrations.

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<sup>21</sup> See 42 CFR 440.2.