



# Waivers of the Institutions for Mental Disease (IMD) Exclusion: Emerging Opportunities and Challenges

Manatt Health  
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**STATE**  
Health & Value  
**STRATEGIES**

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**Questions?** Email Heather Howard at [heatherh@Princeton.edu](mailto:heatherh@Princeton.edu).

# About Manatt Health

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Patricia Boozang, Mindy Lipson, and Nina Pুনukollu with Manatt Health prepared this presentation. Manatt Health integrates legal and consulting expertise to better serve the complex needs of clients across the healthcare system. Combining legal excellence, first-hand experience in shaping public policy, sophisticated strategy insight, and deep analytic capabilities, we provide uniquely valuable professional services to the full range of health industry players. Our diverse team of more than 160 attorneys and consultants from Manatt, Phelps & Phillips, LLP and its consulting subsidiary, Manatt Health Strategies, LLC, is passionate about helping our clients advance their business interests, fulfill their missions, and lead healthcare into the future. For more information, visit <https://www.manatt.com/Health>.

# Agenda

- **Background**
- **CMS Guidance on Waivers of the IMD Exclusion**
- **SUD Implementation Protocol Requirements**
- **New Jersey: Experiences and Lessons Learned**
- **Discussion**

# Background

# Overview

## States are leveraging Medicaid waivers as part of their response to the substance use disorder (SUD) – including opioid use disorder (OUD) – epidemic

- More than 2 million people in the United States have an OUD—with nearly another 10 million at risk due to misuse of these drugs. Yet, only 1 in 5 people suffering from an OUD receive treatment
- States are leveraging Medicaid as a key tool to combat the opioid epidemic: tailoring benefits to improve SUD prevention and treatment, implementing Health Homes to provide specialized care management, and leveraging Medicaid’s purchasing power to promote SUD treatment best practices
- Through Section 1115 demonstrations states are using federal Medicaid funding to provide care to individuals residing in Institutions for Mental Diseases (IMDs), expanding SUD benefits, developing specialized managed care products, and implementing targeted coverage expansions for individuals with SUD, among other strategies
- This webinar will review federal guidance on waivers of the IMD exclusion, outline requirements states must meet to secure a waiver, and highlight best practices and lessons learned from New Jersey’s experience implementing its waiver



# CMS Guidance on Waivers of the IMD Exclusion


# Evolution of Federal Guidance on IMD Exclusion

**CMS now allows states to receive federal matching funds for services provided to individuals residing in IMDs to treat addiction to opioids or other substances**

- Medicaid law precludes payment for services delivered to individuals ages 21-64 residing in facilities classified as IMDs<sup>1</sup>; this provision of Medicaid law is commonly referred to as the IMD exclusion
- The 2016 Medicaid managed care rule permitted states to receive federal matching funds for 15 days or fewer of services delivered in IMDs as an in lieu of service
- CMS issued guidance in November 2017, replacing guidance issued in July 2015, advising states that CMS will grant waivers of the IMD exclusion for services to treat addiction to opioids or other substances if states meet key conditions, including:
  - Offering access to a full continuum of care for substance use disorders (SUD)
  - Ensuring Medicaid enrollees have access to high-quality SUD treatment providers
  - Designing demonstrations that focus on use of evidence-based practices to meet the needs of individuals with SUDs, such as the American Society for Addiction Medicine (ASAM) criteria
- CMS issued additional guidance in June 2018 highlighting the availability of enhanced federal funding for health IT to support states' efforts to address the opioid crisis, including funding for telemedicine, electronic care plans, and prescription drug monitoring programs

# Guidance on Application & Reporting Requirements

As conditions for obtaining federal matching funds for services delivered in IMDs, states must develop and submit four deliverables to CMS

No.	Deliverable	Description	Submission Timeline
1	<p><b>SUD Implementation Protocol</b></p> <p> <i>Today's Focus</i></p>	<ul style="list-style-type: none"> <li>▪ Describes a state's approach and project implementation plan for meeting six milestones (to be described in more detail in this webinar), including a description of the:               <ul style="list-style-type: none"> <li>▪ Current state</li> <li>▪ Future state</li> <li>▪ Approach/timeline to meet each milestone</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ States must submit to CMS within 90-120 days of waiver approval</li> <li>▪ Only after approval of the waiver <u>and</u> the SUD implementation protocol, can states begin receiving federal matching funds for services delivered in an IMD</li> </ul>
2	<p><b>SUD Monitoring Protocol</b></p>	<ul style="list-style-type: none"> <li>▪ Describes a state's plans for collecting data on and reporting progress for each milestone</li> <li>▪ Outlines performance measures (as identified by state and CMS), including:               <ul style="list-style-type: none"> <li>▪ Baseline performance</li> <li>▪ Target to achieve by end of demonstration</li> <li>▪ Annual goals to close gap between target and baseline</li> </ul> </li> <li>▪ Addresses how CMS will monitor spending in IMDs as part of budget neutrality</li> </ul>	<ul style="list-style-type: none"> <li>▪ States must submit to CMS within 150 days of waiver approval</li> </ul>

# Guidance Details Application & Reporting Requirements

As a condition for obtaining federal matching funds for services delivered in IMDs, states must develop and submit four deliverables to CMS

No.	Deliverable	Description	Submission Timeline
3	<b>SUD Evaluation</b>	<ul style="list-style-type: none"><li>▪ Evaluates SUD-specific components of the state demonstration</li><li>▪ Includes the following deliverables:<ul style="list-style-type: none"><li>▪ SUD evaluation design</li><li>▪ Interim evaluation report</li><li>▪ Summative evaluation report</li></ul></li></ul>	<ul style="list-style-type: none"><li>▪ States must submit SUD evaluation design to CMS within 180 days of 1115 waiver approval</li></ul>
4	<b>Midpoint Assessment</b>	<ul style="list-style-type: none"><li>▪ Examines state progress toward meeting milestones within timeframe as approved in the implementation protocol</li><li>▪ States must contract with an independent assessor to conduct the midpoint assessment of the SUD components of the demonstration</li></ul>	<ul style="list-style-type: none"><li>▪ States must submit to CMS within 90 days after the third year of 1115 waiver approval</li></ul>

# Budget Neutrality

## The November 2017 federal guidance outlines a specific approach for budget neutrality in waivers of the IMD exclusion

- States must report expenditures for individuals receiving services in an IMD (for any applicable months) separately to CMS
- The waiver will include a supplemental budget neutrality cap for services delivered in an IMD
- If a State exceeds the supplemental cap, it will reduce savings available for other initiatives; if a State is below the supplemental budget neutrality cap, it does not need to identify other savings to offset the IMD payments
- States cannot use any budget neutrality “savings” from waivers of the IMD exclusion for other purposes

# SUD Implementation Protocol Requirements

# SUD Implementation Protocol Milestones

CMS requires states to describe their current and envisioned future state for each of the below milestones in the SUD implementation protocol

- 1 Access to Critical **Levels of Care** for OUD and Other SUDs
- 2 Use of Evidence-Based, SUD-specific **Patient Placement Criteria**
- 3 Use of Nationally Recognized SUD-Specific Program Standards to Set **Provider Qualifications** for Residential Treatment Facilities
- 4 Sufficient **Provider Capacity** at Critical Levels of Care including for Medication Assisted Treatment for OUD
- 5 Implementation of **Comprehensive Treatment and Prevention Strategies** to Address Opioid Abuse and OUD, including development of a SUD Health Information Technology (HIT) plan
- 6 Improved **Care Coordination and Transitions** between Levels of Care

# Deep Dive: SUD Implementation Protocol Milestones

1

## Access to Critical Levels of Care for OUD and Other SUDs

<b>Guidance</b>	States must describe and modify their Medicaid coverage of outpatient, medication-assisted treatment (MAT), intensive outpatient, residential and inpatient level services for treatment and withdrawal services
<b>Timeframe</b>	Within <b>12-24 months</b> of demonstration approval
<b>State Action</b>	Submit or update State Plan Amendments (SPA), as needed, to reflect new or modified services

2

## Use of Evidence-Based, SUD-specific Patient Placement Criteria

<b>Guidance</b>	States must implement evidence-based, SUD specific patient placement criteria and utilization management approach to ensure that Medicaid enrollees receive quality services that are appropriate to meet their level of need
<b>Timeframe</b>	Within <b>12-24 months</b> of demonstration approval
<b>State Action</b>	Modify clinical coverage policies and offer provider training on evidence-based patient placement criteria

3

## Use of Nationally Recognized SUD-specific Program Standards to Set Provider Qualifications

<b>Guidance</b>	States must implement residential treatment provider qualifications for services delivered that meet nationally recognized qualifications (e.g., ASAM)
<b>Timeframe</b>	Within <b>12-24 months</b> of demonstration approval
<b>State Action</b>	Update clinical policies and State administrative rules to align with nationally recognized criteria

# Deep Dive: SUD Implementation Protocol Milestones

## 4 Sufficient Provider Capacity at Critical Levels of Care including for Medication Assisted Treatment for OUD

<b>Guidance</b>	Requires states to assess the availability of Medicaid providers at each level of care throughout the state, including those that offer MAT, and propose a plan for expanding provider networks where shortage exists
<b>Timeframe</b>	Within <b>12 months</b> of demonstration approval
<b>State Action</b>	Establish network adequacy standards for managed care plans (if applicable) that improve access to care

## 5 Implementation of Comprehensive Treatment and Prevention Strategies to Address Opioid Abuse and OUD

<b>Guidance</b>	Requires states to 1) detail their efforts to date and future plans for addressing the opioid crisis by expanding access to naloxone, implementing opioid prescribing guidelines, and improving their prescription drug monitoring program (PDMP) and 2) develop an HIT plan that details the current and planned future state of HIT functionality to support PDMP interoperability and clinicians' use of the PDMP
<b>Timeframe</b>	<b>Varies</b> , but within <b>24 months</b> for improvements to PDMP program
<b>State Action</b>	Enhance prescription drug monitoring efforts and strengthen policies related to prescription drugs

## 6 Improved Care Coordination and Transitions between Levels of Care

<b>Guidance</b>	Requires states to detail their approach to care coordination from inpatient and residential facilities to community based settings, identify gaps in transitions of care policies, and recommend improvements
<b>Timeframe</b>	Within <b>12-24 months</b> of demonstration approval
<b>State Action</b>	Coordinate with managed care plans in the state (if applicable)

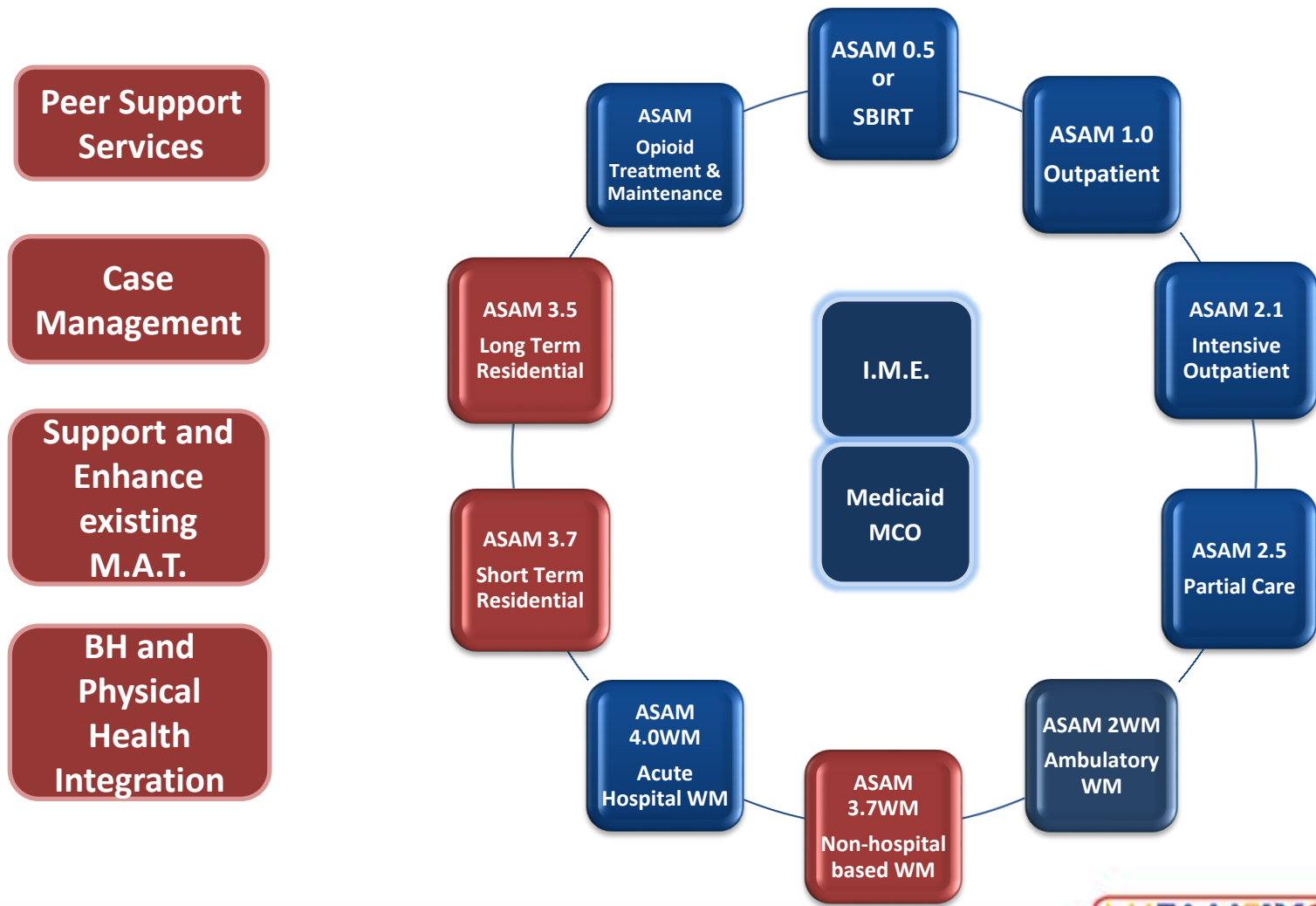
# Operational Considerations

Developing the SUD Implementation Protocol requires in-depth review of clinical coverage policies, analysis of workflow changes, and collaboration across state agencies

- Updating clinical coverage policies to align with nationally recognized criteria
- Submitting and updating SPAs, as needed, to reflect new clinical services
- Creating and/or revising licensure rules
- Updating capitation (if applicable) and reimbursement rates to reflect any new services or changes to existing services
- Updating MMIS systems to permit billing for services delivered to individuals residing in IMDs and incorporate any new services

# New Jersey: Experiences and Lessons Learned

# A Full Continuum of Benefits for SUD Treatment



# Special Terms and Conditions

## *CMS Deliverables*

**SUD Program  
Implementation  
Plan**

**SUD Program  
Health IT  
Plan**

**SUD Program  
Evaluation  
Design**

**SUD Program  
Monitoring  
Protocol**

**Budget  
Neutrality**

# HIT Plan

- The 1115 waiver HIT plan is part of a comprehensive treatment and prevention strategy to address opioid abuse and opioid use disorder;
- Serves to connect state departments and form a shared strategy for integrated data and monitoring;
- Will develop pathways to collect data relevant to the identification of opioid prescribing and trends in the state;
- To integrate systems to support appropriate prescribing, checks for misuse, and improve overall outcomes.

# HIT Plan

## CMS/ONC Template for SUD HIT Plan

### Prescription Drug Monitoring Program

- Functionalities
- Query Capabilities
- Clinician Workflow

### Master Patient Index

Overall Objective for Enhancing PDMP Functionality and Interoperability

# HIT Plan

## HIT Initiatives

Prescription Drug Monitoring Program

Health Information Exchange

- ADT Event Notification
- Master Patient Index
- Opioid Risk Use Case

Electronic Health Records

## Other State Initiatives

State Medicaid HIT Plan

HIT Environmental Plan

HITECH Funding Initiatives

- EHR Incentive Program
- HIE BH Provider Onboarding

MCO Contract

- HIT/HIE Provider Network Data
- HIT/HIE Performance Data

# Monitoring Plan

The State's Monitoring Plan outlines performance measures in each of the following categories to closely monitor the effectiveness, efficiencies & identify areas for improvement over the demonstration period.

- Assessment of need and qualification for SUD services
- SUD treatment initiation and treatment at each level of care
- SUD network adequacy and provider capacity
- SUD related quality
- Financial/budget neutrality
- SUD access to care for co-morbid physical health conditions
- SUD related grievances, appeals and critical incidents

# Q&A



**Thank You!**

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