

## Attachment B

**Note: the information contained in this summary and glossary will be available as a reference for survey respondents via the web-based survey platform.**

### Summary of Relevant Regulations and Legislation

#### *Medicaid Managed Care Final Rule*

Section 438.6(e) of the final rule states that:

The State may make a monthly capitation payment to an MCO or PIHP for an enrollee aged 21–64 receiving inpatient treatment in an Institution for Mental Diseases, as defined in [§ 435.1010](#) of this chapter, so long as the facility is a hospital providing psychiatric or substance use disorder inpatient care or a sub-acute facility providing psychiatric or substance use disorder crisis residential services, and length of stay in the IMD is for a short term stay of no more than 15 days during the period of the monthly capitation payment. The provision of inpatient psychiatric or substance use disorder treatment in an IMD must meet the requirements for in lieu of services at [§438.3\(e\)\(2\)\(i\) through \(iii\)](#). For purposes of rate setting, the state may use the utilization of services provided to an enrollee under this section when developing the inpatient psychiatric or substance use disorder component of the capitation rate, but must price utilization at the cost of the same services through providers included under the State plan.

#### *Medicaid and CHIP Managed Care Final Rule Frequently Asked Questions (FAQs) – Section 438.6(e)*

FAQs published in August 2017 state:

A state can make a pro-rated capitation payment to cover the days when the enrollee is not a patient in an IMD, but FFP is not available for payments related to days when the enrollee is in an IMD when the requirements of [§438.6\(e\)](#) are not met....[W]e understand that there may be circumstances in which the enrollee will be a patient in an IMD for more than 15 days within a month, but for less than 30 days. In some of these circumstances, such enrollees will remain in states' managed care programs, and the MCO or PIHP will assume some level of risk for Medicaid-covered services once the enrollee is back in the community and not a patient in an IMD. In such cases, states are permitted to make a pro-rated capitation payment to the MCO or PIHP to cover only the days within the month when the enrollee is not a patient in the IMD. FFP is not available for payments related to days when the enrollee is in an IMD when the requirements of [§438.6\(e\)](#) are not met.

#### *21st Century Cures Act Mandate*

[Section 12002 of the 21st Century Cures Act](#), entitled Study and Report Related to Medicaid Managed Care Regulations, requires HHS to conduct a study on coverage under the Medicaid program of services provided through a Medicaid managed care organization (MCO) or prepaid inpatient health plan (PIHP) with respect to individuals over the age of 21 and under the age of 65 for the treatment of a mental health disorder in institutions for mental diseases.

## Survey Glossary

**Capitation payment:** a payment the State makes periodically to a contractor on behalf of each beneficiary enrolled under a contract and based on the actuarially sound capitation rate for the provision of services under the State plan. The State makes the payment regardless of whether the particular beneficiary receives services during the period covered by the payment (defined in 42 CFR 438.2).

**Enrollee:** for the purposes of this survey, an enrollee is a Medicaid beneficiary aged 21-64 who is currently enrolled in an MCO or PIHP entity in a given managed care program (modified from 42 CFR 438.2).

**Institution for Mental Diseases (IMD):** IMD is defined in 42 CFR 435.1010 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. 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. **For the purposes of this survey, an IMD is a hospital providing psychiatric or substance use disorder inpatient care or a sub-acute facility providing psychiatric or substance use disorder crisis residential services (42 CFR 438.6(e)).**

**In lieu of:** for the purposes of this survey, please refer to the definition of in lieu of services in [§438.3\(e\)\(2\)\(i\) through \(iii\)](#).

**Managed Care Program:** A managed care program is defined by the set of benefits covered and the type of participating managed care plans (e.g., MCOs, PHPs, etc.) or providers (e.g., PCCM providers). For the purposes of this survey, please include the following types:

**Comprehensive Managed Care Organization:** A program in which the State contracts with managed care plans to cover all acute and primary medical services; some also cover behavioral health, dental, transportation and long term care. Entities that qualify as MCOs include Health Maintenance Organizations (HMOs) and Health Insuring Organizations (HIOs in California) (MMCDCS 2017 User Guide).

**BHO (PIHP):** A program specializing in behavioral health (mental health and/or substance use disorder) services. Services are covered on a prepaid basis (MMCDCS 2017 User Guide).

**Stay:** one or more consecutive night(s) spent in an IMD. Stays in which the release of the beneficiary occurred on the same day he or she was admitted would have a length of stay of zero; admissions in which the release of the enrollee occurred after one night would have a length of stay of one.