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# **New York State Medicaid IMD Exclusion Preliminary Survey Results and Next Steps**

February 27, 2023

# Agenda

- Guiding Principles
- OCFS Licensed Residential Program Provider Survey
  - Determining IMD Status
- 1115 SMI/SED Demonstration Waiver
- Timeline Review
- Next Steps
- Questions and Discussion



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# Guiding Principles

- Maintain adequate funding for services
  - New York State is committed to its obligation to ensure children receive all services that are medically necessary
- Avoid destabilization and focus on capacity building
  - Congregate care is a needed resource in our continuum of care
- Provide supports that allow children to return home sooner, shared planning
- Prioritize family-based placement with kinship
- Strengthening community-based services
- Build on accomplishments (Family First, 29-I Licensure)



# Commitment to Collaboration

- OCFS and DOH commit to a collaborative partnership with OCFS licensed residential programs (VAs) and COFCCA as we navigate the IMD issue
- OCFS and DOH recognize the significant impact the IMD issue has on the system of care
- While the IMD issue will require change, it must be done judiciously, informed by in-depth data and fiscal analysis and include the voice of all pertinent stakeholders
- We will engage with other states as well as entities with demonstrated expertise as we navigate these uncharted waters

# OCFS Licensed Residential Program Provider Survey Determining IMD Status



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# Background on Survey

- 4/15/22 - Joint letter from OCFS and DOH to residential child welfare providers with background and plans
- 5/4/22 - Webinar with OCFS and DOH with providers on the 1115 SMI/SED waiver process, implications, and plan to survey providers for additional information
- 7/11/22 - Survey distribution followed by additional provider input, as needed
  - 252 programs from all 55 agencies responded
- 2/27/23 - Issue notification of preliminary IMD determinations to QRTPs
  - Used CMS criteria outlined in the SMD letters pertaining to QRTPs, and
  - CMS responses to questions

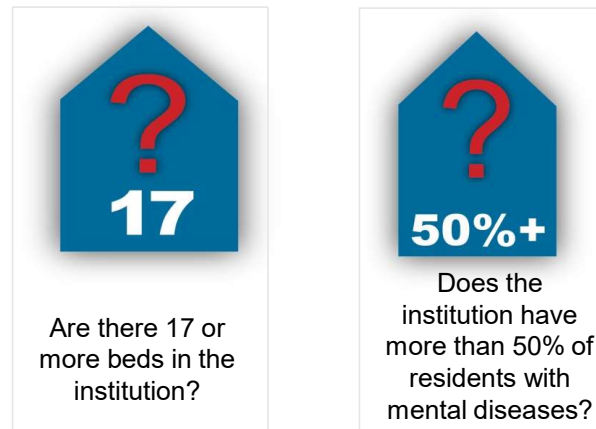


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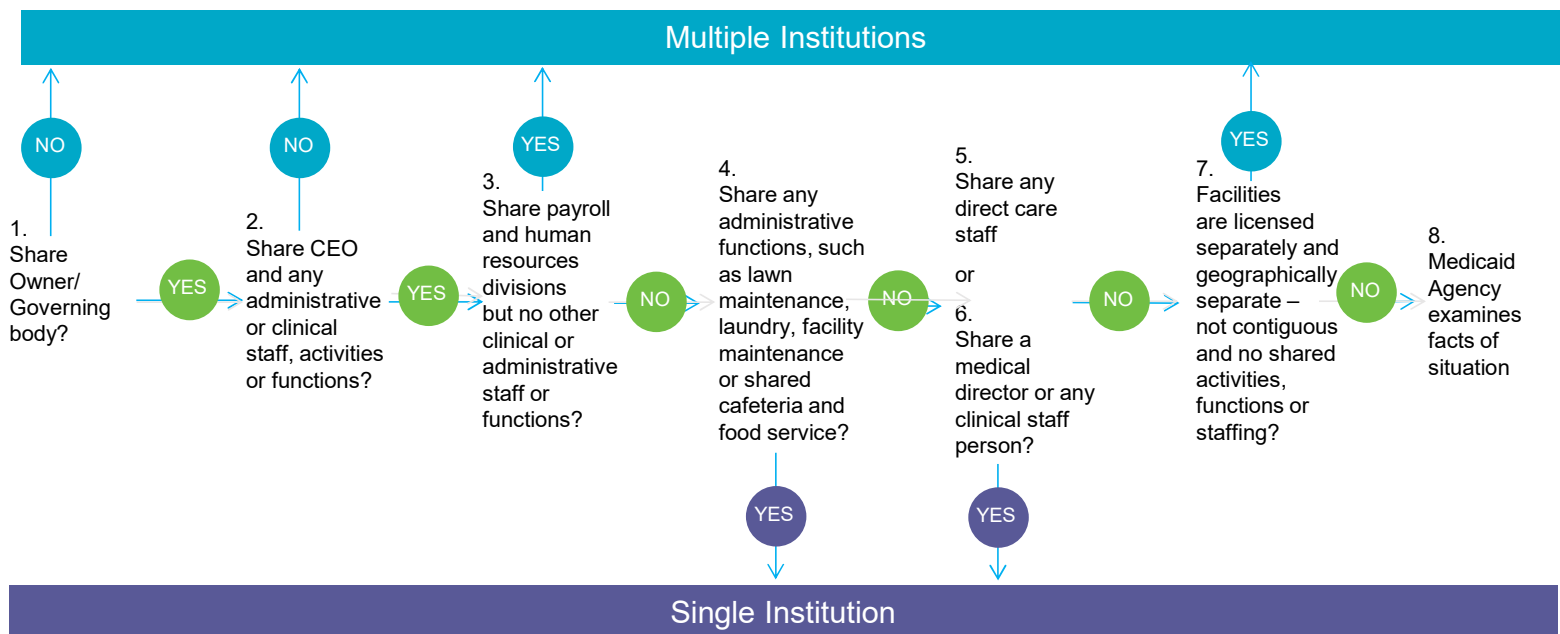
## What is an IMD? State Medicaid Agency Review

- The Centers for Medicare & Medicaid Services (CMS) requires the State Medicaid agency to determine if facilities are IMDs. There are several factors CMS requires the state to consider in its determination. The two primary factors are:



- Other factors include attributes of the facility itself that would indicate that it is a psychiatric facility.

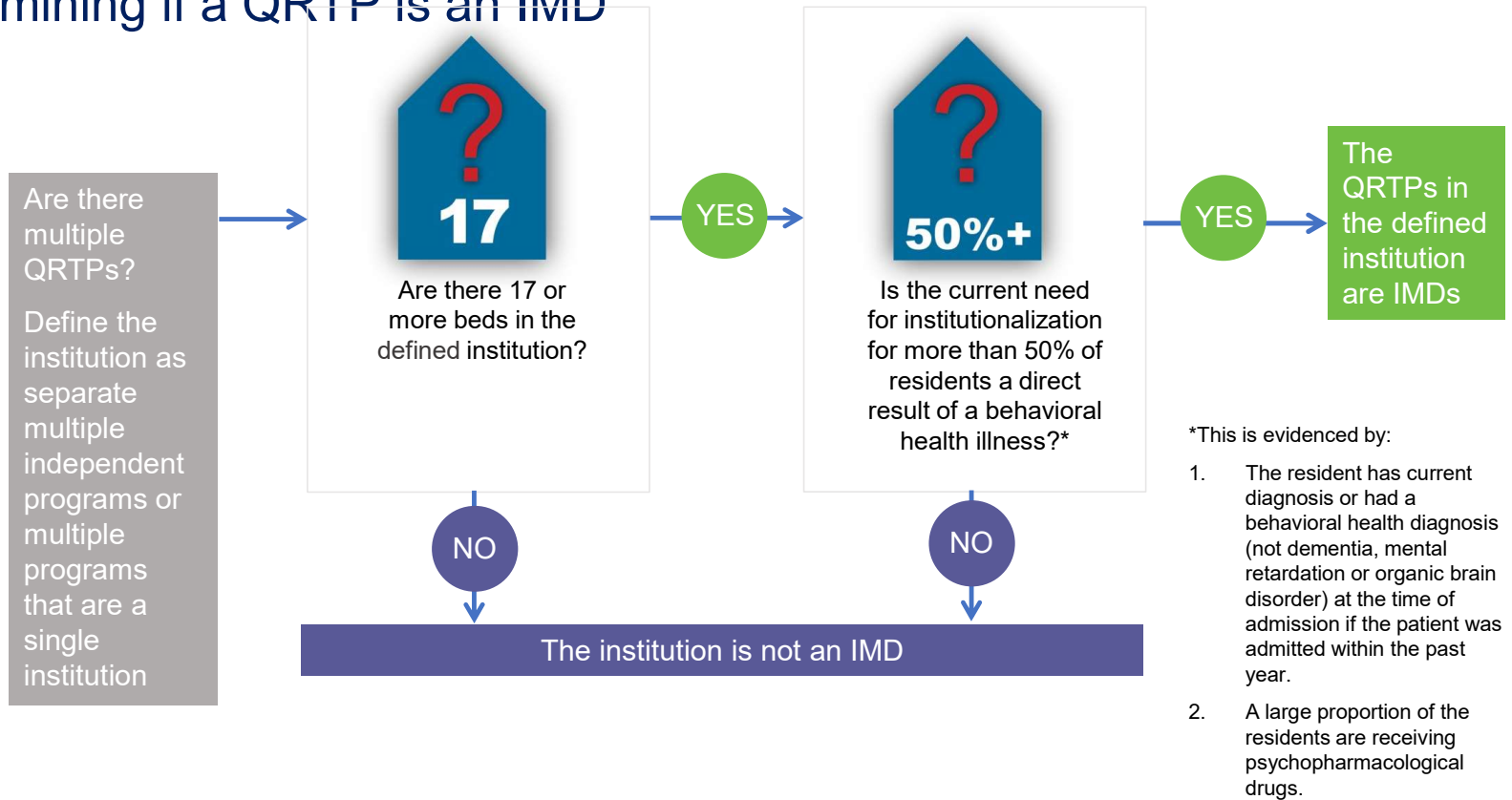
## Principles for Determining if Multiple Facilities are a Single Institution





# QRTPs

## Determining if a QRTP is an IMD



# IMD Designation Requirements

- State Medicaid agencies are responsible for designating IMD status:
  - IMD assessment must be made by a team that includes at least one physician or other skilled medical professional who is familiar with the care of mentally ill individuals.
  - No team member may be employed by, or have a significant financial interest in, the facility under review.



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## Preliminary Status of QRTPs - IMD

	Not IMD	IMD	Indeterminate
# Agencies	3	33	7
# Programs	4	125	24
Bed Capacity	26	2,349	215
# Beds Occupied (July 2022)	22	1,702	146



# Categories of programs

- QRTPs that do NOT meet IMD criteria:
  - Less than 17 certified beds and are not co-located with any other QRTP or RTF that provide treatment to persons with mental illness.
  - More than 16 certified beds and not "primarily engaged in care or treatments for mental disease" (less than 50% of the residents diagnosed with a mental health and/or substance use disorder. )



# Categories of programs

- **QRTPs that meet IMD criteria :**
  - More than 16 certified beds and more than 50% of the residents diagnosed with a mental health and/or substance use disorder.
  - More than 1 QRTP that operates as a single institution based on the sharing of services as described in CMS guidelines, section 4390 of the State Medicaid Manual, and together have more than 16 certified beds, with more than 50% of the residents diagnosed with a mental health and/or substance use disorder.
  - Less than 17 certified beds, but operate on the same campus as a Residential Treatment Facility (RTF) that provides treatment to children/youth diagnosed with mental illness – and are presumed to be one institution, and therefore combined as a single institution that operates more than 16 beds, and meets the criteria of an institution with more than 50% of the residents diagnosed with a mental health and/or substance use disorder.



# Categories of programs

- **To be determined**
  - Further information is needed to determine if the programs meet criteria for IMD exemption
- **Closed and therefore no IMD determination needs to be made**
- **Operate programs other than QRTPs** (“non-QRTPs”, i.e. QRTP-Exceptions and non-specified settings)
  - These programs were not included in the IMD analysis



# Next steps

- DOH will send letters to each agency regarding the preliminary determination (letters will be sent out following February webinar)
- DOH will set up calls and potential site visits for situations where a preliminary determination could not be made (Q1-Q2 2023).
  - The amount of time for a follow up, which may also include a site visit, will depend on the number of residents in the residential program(s), likely one full day
  - DOH will complete analyses following these site visits (Q2 2023).
- DOH will also set up site visits with a sample of providers to validate the preliminary determinations.
- After receiving the letter, agencies that have additional information should send a note to the Children's IMD mailbox at [ChildrensIMD@health.ny.gov](mailto:ChildrensIMD@health.ny.gov).
- DOH will set up group TA sessions and individual calls with providers who request to share additional information.



# 1115 SMI/SED Demonstration Waiver



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# 1115 Waiver- NYS Decision to Pursue

- New York State has determined that participation in a SMI/SED 1115 demonstration waiver is necessary to:
  - Ensure NY can claim federal Medicaid funding for Medicaid-covered services provided to youth individuals residing in IMDs;
  - Provide New York the time and opportunity to assess the continuum of residential care and implement the foundational changes necessary to align the system with federal requirements; and
  - Ensure availability of federal funding to support the cost of care



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# 1115 Waiver Overview

- Under an 1115 IMD waiver, federal Medicaid financial participation (FFP) is available for services provided to individuals residing in an IMD for an average length of stay up to 30 days, not to exceed a maximum of 60 days.
- CMS has granted an exception to this length of stay limitation for child welfare facilities, which will allow states to claim FFP regardless of length of stay in a QRTP during the first two years of the waiver demonstration period.
- At the end of the initial two years of the waiver period, FFP will not be available for services provided to Medicaid members residing in an IMD with a length of stay that exceeds 60 days, or average length of stay of more than 30 days, unless an exception is approved by CMS.
- If significant strides are taken toward lower lengths of stay, CMS may allow for additional time to reach these goals, otherwise the state may need to identify funding to cover cost of care.



# Requirements under the waiver

## Restraint and Seclusion

- Develop a plan, in collaboration with stakeholders, to meet the staffing, funding and establishment of policies necessary to implement federally-compliant seclusion and restraint provisions
  - NY has the option to follow OMH regulations OR develop new regulations specific to QRTPs (OLPs- Other Licensed Practitioners as allowed under the federal statute)
  - Shared resources?
  - Minimizing use of restraints?

## Length of Stay

- The state will work with stakeholders on the waiver implementation plan to move towards meeting the length of stay requirements to an average of less than 30 days (not to exceed 60 days) by the end of 2 years from approval of the waiver
  - How?
    - While the federal guidelines are 30 days ALOS/60 days maximum, our focus will entail demonstrable steps towards minimizing lengths of stay
    - Address barriers to expanded access to community and home-based support
    - Other ideas?
- Do not claim FFP for youth requiring longer LOS in facilities that are not PRFTs



# What the IMD Waiver IS

- An opportunity to meet the requirements of the Family First Act to reduce out of home placements and increase home and community-based resources
- A federally-approved mechanism to ensure the state can draw down FFP for the services provided to residents of QRTPs that are determined to meet the definition of an IMD



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# What the IMD Waiver IS NOT

- Not a mechanism to eliminate residential care for children in foster care
  - Residential care is an appropriate level of care for those youth who meet that level of care for a targeted period of time
- Not a requirement that all QRTPs convert to RTFs
  - Not all youth coming into care will meet the criteria for an RTF placement
- Not a requirement that children must leave a QRTP that's an IMD at the end of the 2-year waiver of the length of stay
  - Children who need that level of care can remain in the QRTP; FFP may not be available
- Not a static approval that ends if we do not meet the assurance of reduction to 30 days average length of stay in the 2-year window
  - The state will make diligent efforts to achieve this goal; if we do not, we will engage in conversations with CMS about corrective actions and seek extensions as necessary. We will also consider alternative funding streams, if necessary.



# Timeline Review

# 1115 Waiver Implementation Process

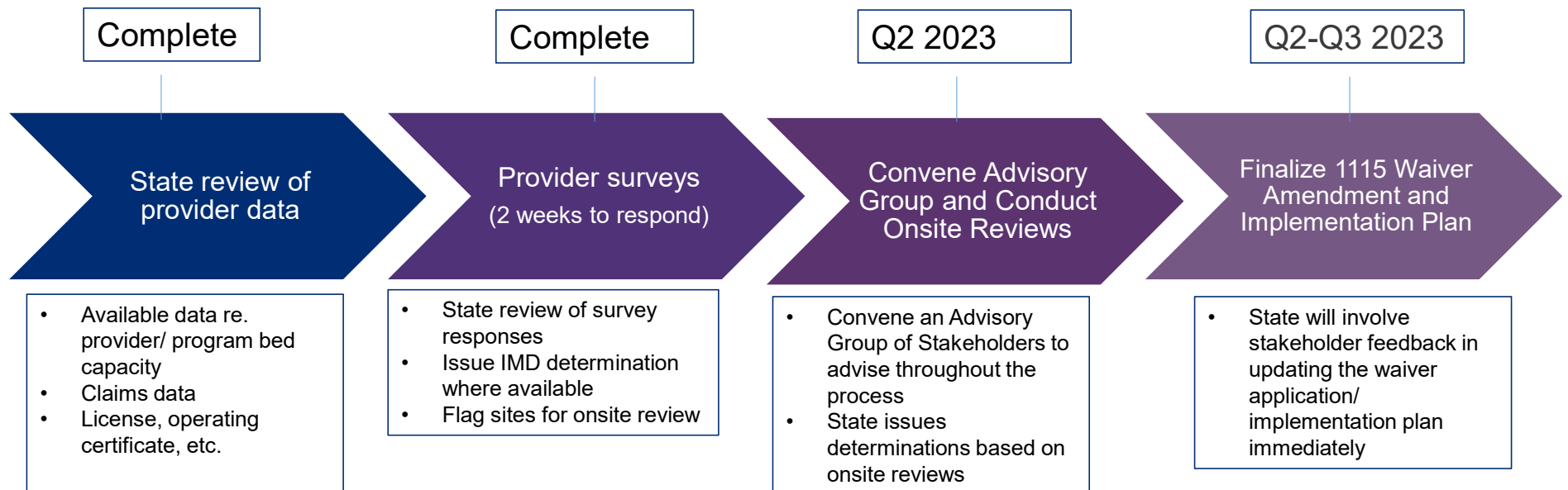
- DOH submitted a serious mental illness/serious emotional disturbance (SMI/SED) Medicaid 1115 Demonstration Waiver in Q4 2022 with OMH and OASAS.
- Subsequent to CMS approval of that waiver, which is not expected before Q2 of 2023, NYS will request an 1115 waiver amendment to request federal participation for services provided to individuals residing in QRTPs that meet the criteria of an IMD.
- The Waiver amendment will include an implementation plan for restructuring agencies/programs meeting IMD criteria to a program type compliant with the SMDs on IMD; reducing the lengths of stay; and expanding availability of home and community-based services.
- The implementation plan will be developed in collaboration with stakeholders and an independent consultant.
- The Waiver amendment and implementation plan will require public/Tribal notice, public hearings, and a public comment period.



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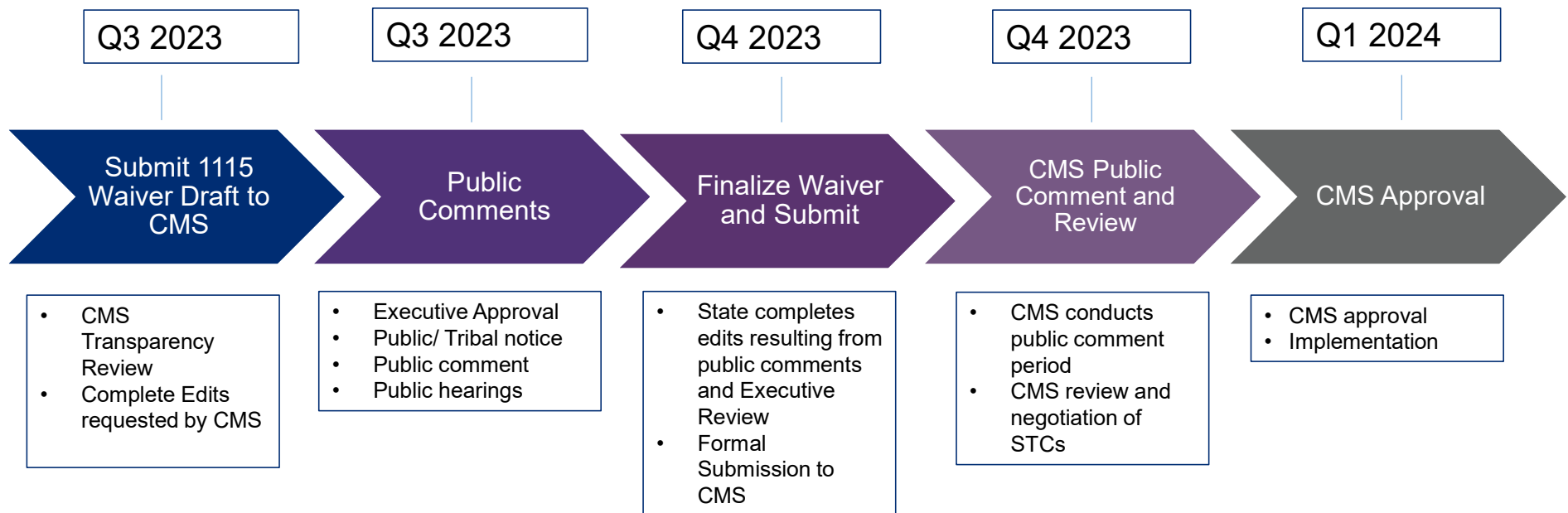
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# Estimated Timeline





# Estimated Timeline



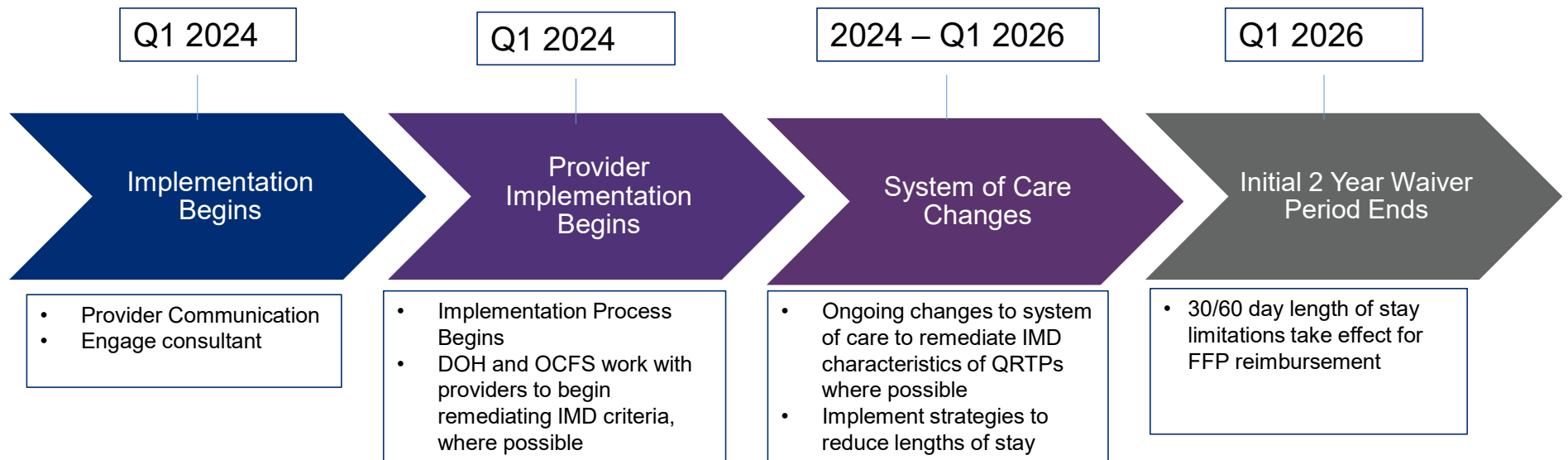
\*This timeline presumes that the IMD waiver for SMI and SUD has been approved by CMS



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# Estimated Timeline



# Next Steps

# Implementation of a Child Welfare IMD Waiver in New York State

- In order to ensure continued availability of federal Medicaid funding for services provided to children/youth residing in an IMD, some changes in residential service delivery will be necessary.
- New York is committed to ensuring quality programming during the transition, providing fiscal and programmatic support to providers, the workforce, families, and communities.
- New York State is exploring ways to support system changes to ensure continuity of services:
  - State funds to support QRTPs during the transition, as needed;
  - Funding to assist programs that must reduce bed capacity or make other changes to program operations to comply with federal Medicaid requirements;
  - Funding to support transition of programs to become licensed RTFs, if appropriate.
  - CMS approval of ARPA funding for 29-I health facilities to expand access to HCBS



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# Ongoing Stakeholder involvement

- Bringing national experts to the table to guide NYS in maximizing opportunities during this significant period of systems transformation
- The State is actively working to engage a consultant to work on the implementation plan and to strategize programmatic and fiscal opportunities in the context of this waiver.
- Consultant will assist OCFS and DOH in forming an advisory committee comprised of a cross representation of stakeholders from our VFCAs, COFFCA, LDSSs, and sibling-state agencies to be proactive thought partners in developing and shaping the implementation plan for the waiver application.
  - Anticipated start date- Q2 2023; meet on a regular basis
  - The State will elicit provider input to brainstorm gaps and solutions in the child welfare system for youth with behavioral health concerns.
  - The lens and expertise of agency providers and LDSSs is essential as we strategize to identify effective solutions
  - Input will include the key concerns for VFCAs and LDSSs



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# Q&A and Discussion

# 1115 Waiver Requirements - Discussion

NYS will work collaboratively with providers to assess whether there are any options to ameliorate conditions that result in some QRTPs meeting the criteria of an IMD.

NYS recognizes that some potential options to remedy IMD status contradict recent state policy decisions surrounding care of children and youth (e.g. consolidating administrative functions; reducing RTF beds)

Key factors to evaluate:

How many programs could meet any necessary changes?

- Not all programs could or should change their current model (assessing fiscal viability as it pertains to shared services)

Would modified programs still meet the needs of the child welfare system?

- Not all potential changes are better for the children (PRTFs)

What is the cost of any required changes and how will it be funded?

- Not all potential changes are fiscally viable (California has made significant investments for systems transformations; NYS is advocating for needed fiscal supports)



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## 1115 Waiver Requirements – Discussion – continued

What are the options?

Assess if any programs can:

1. Reduce the bed size of residential programs to 16 beds or fewer
2. Remedy other conditions that result in the QRTP being considered an IMD (e.g., separate clinical staff for each program/component the agency operates; separate Medical Director for each program/component the agency operates)
3. Convert to psychiatric residential treatment facilities (PRTFs) for children/youth 21 years of age and younger, if appropriate
4. **Other ideas?**



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## Contact us:

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