



Institution for Mental Diseases (IMD) FAQs

** Indicates most recent questions from February 27, 2023*

#	Category	Question	Answer
IMD Criteria & Analysis			
1	IMD Criteria & Analysis	What is an IMD?	CMS 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”.
2	IMD Criteria & Analysis	What are the criteria for determining whether an agency meets the definition of an IMD?	An agency is considered an IMD if it has more than 16 beds and its overall character is that of a facility established and maintained primarily for the care and treatment of individuals with mental health or substance use disorder needs, meaning that more than 50% of the population have a mental health or substance use disorder diagnosis. Further information can be located here in the CMS guidelines in Sections 4390 and 4390.1 of the State Medicaid Manual.
3	IMD Criteria & Analysis	Does the 16-bed limit include all beds licensed by only OCFS, or does this include beds that are licensed by OMH, OASAS or Office for People With Developmental Disabilities (OPWDD) as well?	There have been situations where CMS has determined that programs licensed by separate entities constitute one institution; this will depend on how the different programs are operating. DOH has determined that OCFS QRTPs that meet IMD criteria are the only programs that will be included in the waiver.
4	IMD Criteria & Analysis	If a VFCA has two programs that each operate under separate operating certificates, would these be considered two separate programs for IMD purposes?	This answer cannot be definitively answered without further information regarding other characteristics of the VFCA, which was obtained through provider surveys and is being analyzed by the State in conjunction with other available information. Also see #5.
5	IMD Criteria & Analysis	Does the IMD exclusion apply to a VFCA that operates two separate group homes that have nine beds in each group home?	VFCAs operating separate group homes and/or other types of programs may be considered a single institution that may meet IMD criteria. The State conducted preliminary reviews to determine whether VFCAs meet IMD criteria, including, but not limited to, whether separate group homes and/or other types of programs that a VFCA operates are considered a single institution.
6*	IMD Criteria & Analysis	How is "co-located" defined for IMD categorization? Is it the service sharing and/or physical address?	Co-located means physical proximity, such as same address or campus. However, multiple facilities that are <i>not</i> co-located may also be considered a single institution if assessment determines they share resources such that they could not operate as an independent program. (e.g., staff, food service, Medical Director, administrative support, etc.
7*	IMD Criteria & Analysis	If an agency has two programs with 16 beds each that are located on two separate properties, would that qualify as IMD if the other criteria regarding mental health diagnosis are met?	An analysis would be conducted to determine whether the programs at the two properties share services or staff; if they do, they may be considered a single institution and may meet IMD criteria if there are 17 beds or more between both programs, and the residents meet the criteria for mental health diagnosis. An analysis would be done to determine if more than 50% of the residents have

			mental health or substance use disorders, contributing to the IMD determination.
8	IMD Criteria & Analysis	Is the limitation on Federal Medicaid dollars only for those services delivered by the IMD itself, or does this also include any services received by a child/youth who resides in an IMD, regardless of whether they are delivered in the community or in the facility?	The limitation applies to the Federal share of all Medicaid services that children/youth who are residents of an IMD receive, both those inside the facility and outside from other Medicaid providers.
9	IMD Criteria & Analysis	For States to receive Federal match for Medicaid services provided in an IMD, the average length of stay must be no longer than 30 days, with the maximum length of stay no longer than 60 days. Are these the length of stay per episode, annually, or for the life of the child/youth?	The CMS limitation states that Federal financial participation will not be permitted for stays that exceed 60 days. The current interpretation is that the 60-day limitation applies per episode.
10*	IMD Criteria & Analysis	Are children/youth who are residing in Qualified Residential Treatment Programs (QRTPs) as a result of placement by the Committee on Special Education (CSE) counted in the 16-bed limit?	Yes. All children/youth residing in a QRTP, including children/youth placed by CSE, are included in the total bed count when determining IMD status.
11*	IMD Criteria & Analysis	Are crisis residences and crisis programs included in the State's IMD analysis to make a preliminary determination of IMD status?	No. Only QRTPs were considered in this analysis; no additional review of non-QRTPs is planned at this time.
12*	IMD Criteria & Analysis	Are Raise the Age (RTA) programs considered IMDs?	A 29-I program that is a QRTP may be an IMD if it has more than 16 licensed beds and more than 50% of individuals have a mental health or substance use disorder diagnosis. This includes RTA programs that are QRTPs.
1115 Waiver			
13*	1115 Waiver	Why is the State pursuing an 1115 Waiver?	<p>The waiver is an opportunity to work with providers on identifying gaps in home and community-based services that would allow youth to be discharged sooner, or avoid admission, and improve standards when it comes to the use of seclusion and restraints in QRTPs.</p> <p>New York State has determined that participation in a SMI/SED 1115 demonstration waiver is necessary to:</p> <ul style="list-style-type: none"> • 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. <p>The State (DOH, OASAS, and OMH) has submitted an 1115 IMD waiver application for adult residential substance use disorder (SUD) and severe mental illness (SMI) services. Although the DOH, OASAS, and OMH collaborative application has been in progress for about 18 months, the need for a similar application for child welfare agencies was made clear only more recently.</p>

14	1115 Waiver	What facilities/programs are being included in the initial application 1115 the State is submitting? What are the implications for child welfare facilities in the meantime?	The State (DOH, OASAS, and OMH) has submitted an 1115 IMD waiver application for all adult residential substance use disorder (SUD) facilities and severe mental illness (SMI) services in state psychiatric centers. Although the DOH, OASAS, and OMH collaborative application has been in progress for about 18 months, the need for a similar application for child welfare agencies was made clear only more recently. There are no immediate implications for child welfare agencies; however, OCFS and DOH are working in partnership with providers to evaluate all facilities.
15	1115 Waiver	When will the two-year waived length of stay requirement under the 1115 waiver end?	The two-year period will begin upon Centers for Medicare and Medicaid Services (CMS) approval of 1115 child welfare IMD waiver application.
16	1115 Waiver	What are the implications to Voluntary Foster Care Agencies (VFCAs) if CMS does not approve the 1115 waiver application? Are there special claiming processes VFCAs should be following for facilities that have 17 or more beds?	The State currently does not have details regarding how Medicaid claiming will change if CMS does not approve the 1115 waiver application. However, the State is committed to ensuring that medically necessary services are delivered to children/youth residing in VFCAs, regardless of whether the State will receive Federal reimbursement for these services.
17	1115 Waiver	What are the potential ways to secure Federal participation in the share of Medicaid costs in facilities determined an IMD?	The only way for the state to receive Federal participation for Medicaid services provided to children residing in facilities determined to be IMDs is through the 1115 waiver.
18	1115 Waiver	Are there any additional requirements that QRTPs will have to abide by if the 1115 waiver is granted?	QRTPs will have to abide by provisions in the Standard Terms and Conditions of the 1115 waiver. This will include a requirement that QRTPs abide by the seclusion and restraint provisions in 42 CFR Part 483.358 .
19	1115 Waiver	What is the connection of the SMI/SUD 1115 Waiver to the Medicaid Redesign Team (MRT) Waiver Strategic Health Equity Reform Payment Arrangements: Making Targeted, Evidence-Based Investments to Address the Health Disparities Exacerbated by the COVID-19 Pandemic 1115 Research and Demonstration Waiver? Will the timeline of that influence the submission of the SMI/SUD Waiver?	These two waivers are not connected; therefore, there is no impact to approval and/or timelines of either waiver, and these two waivers can work independently of each other without creating conflict. The State will need approval of the SMI/SUD IMD waiver before the child welfare QRTP portion of the waiver can be submitted.
20*	1115 Waiver	Will agencies that have policies that prohibit the use of restraints or seclusions be required to have a clinical team for this purpose?	Yes. If CMS approves New York's waiver, as part of the standard terms and conditions all agencies that are QRTPs meeting IMD criteria will be required to have appropriate medical teams on-call to review the use of seclusion and restraints per Federal guidelines, should the circumstance arise where a child/youth needs to be restrained, even if the agency has a no-restraint policy. See #18.
21*	1115 Waiver	How will providers be able to find medical professionals to meet the seclusion and restraint provisions given the workforce shortage? When will these staff need to be hired by, and what is the implication to the agency for staffing non-compliance?	This is an area that the State expects to partner with providers on, as the State recognizes there are workforce shortages. However, programs will not be required to meet this requirement until the Waiver is approved, which provides time to strategize how to best meet this requirement (e.g., sharing staff). QRTPs are encouraged to start thinking about potential partnerships with other providers, including Article 28 clinics, pediatric practices, and RTFs to fulfill the requirement for on-call clinical staff.
Fiscal Impact			
22	Fiscal Impact	What is the "IMD Exclusion"?	Federal law (Section 1905(a) of the Social Security Act) prohibits use of Federal Medicaid dollars for any services provided to residents of IMDs; unless they are

			under age 21 in a Psychiatric Residential Treatment Facility (PRTF), or age 65 and over.
23	Fiscal Impact	What fiscal impact will the IMD determination have on providers? If the separate programs that providers operate need to comply with various IMD factors such as shared CEO and clinical staff, the current rates would not be able to support this.	The IMD regulation will not result in current change to the way providers are operating today; providers can continue to conduct business and services as they have been doing. The State will use the two-year length of stay waiver period to collaboratively work with providers to determine the most appropriate strategic course of action following the waiver period. Additionally, the State will continue to evaluate the children, youth, and family needs, as well as the system needs, to identify improvements.
24	Fiscal Impact	Would the State contemplate keeping the current operating model and closing the Federal funding gap with State funds, rather than going through remediation efforts -such as reduction in bed size, PRTF conversions, etc.? It is believed these options may result in a less beneficial situations for both youth and providers.	We recognize that remediation may be an option for <i>some</i> , but not all providers. The State will work with providers to strategize and determine the best potential options for the youth and how to ensure adequate continued funding to support programming no matter the model of care.
25	Fiscal Impact	What is the annual fiscal loss estimated to the State on the Medicaid loss?	The total annual fiscal loss is dependent on which programs are determined to meet the IMD criteria and how many providers remediate the criteria resulting in the IMD determination. The two-year waived length of stay requirement for QRTPs will also help minimize fiscal losses to the State for the two-year waiver period.
26	Fiscal Impact	What is the share of the local cost in the State's total fiscal impact?	The State has not yet determined this.
	Fiscal Impact	Will this affect the Medicaid cap per district?	Not in the immediate term – this would only be if the State is not able to submit the waiver. The State fiscal team will be working on fiscal projections.
27	Fiscal Impact	Given the potential fiscal needs for transformation, will the State provide any funding or assistance start-up, capital, and/or other costs?	The State recognizes there may be some costs to providers due to necessary transformations and is working to identify funding sources to meet this need. Additionally, the recent State investments to expand Home and Community Based Services (HCBS) may provide community services to children/youth who are at-risk of residential placement, and possibly divert residential placement.
28	Fiscal Impact	If the waiver is not granted or VFCAs are determined to meet IMD criteria, will providers lose funding retroactively?	There is no intent to retroactively take back funding from any provider. The IMD exclusion affects the State's ability to drawn down federal funds.
29*	Fiscal Impact	If a child/youth needs to stay in an IMD longer than 60 days, will the county stop receiving Federal reimbursement? How should agencies continue to pay their clinical staff that are normally funded through Medicaid reimbursement?	The waiver does not impose length of stay limitations. At the end of the initial two-year waiver period, the State will no longer be allowed to claim Federal matching funds for medical services provided to children residing in a QRTP meeting IMD criteria for longer than 60 days. The state is committed to fulfilling its obligations under federal law (Title IVB) and state regulations to ensure necessary healthcare is provided to foster care youth. It is the State's intent to ensure needed services are paid for, similar to the approach for adult inpatient psychiatric hospitals. More information will be available once the budget is finalized in April 2023 and in the subsequent months.

30*	Fiscal Impact	How much Medicaid money is being spent on the youth in QRTPs that have a preliminary determination of IMD?	Annual expenditures for kids in QRTP IMDs is \$76.5 million
31*	Fiscal Impact	Many residential programs also operate 853 schools. If the residential bed capacity shrinks to meet IMD requirements, this will have significant implications on the way these schools are funded. What is the State's position on this? Will the State be adjusting the 29-I Medicaid rates to account for these changes?	The State plans to collaborate across all child-serving state agencies and with providers to strategize on a future system of care that will account for these types of concerns.
32*	Fiscal Impact	Can Children and Family Treatment and Support Services (CFTSS) (e.g., OLP) be delivered and billed to Medicaid for children/youth in residential IMD settings?	Since CFTSS are Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) services, they can be billed to Medicaid for residents of IMDs and are separately reimbursable because they are not included in the QRTP 29-I per diem.
34*	Fiscal Impact	What is the projected total cost of this transformation?	Since final IMD status determinations have not been conducted and the total costs cannot be determined until the full implementation plan is developed in collaboration with providers and other state agencies, this information is not currently available.
35*	Fiscal Impact	What funding has the State allocated to this issue?	The SFY 24 Executive Budget contains a proposed \$17M to help support the cost of complying with the waiver requirements related to seclusion and restraints and other costs that may be identified as the implementation plan is developed. The State also dedicated \$8.8M in American Rescue Plan Act (ARPA) funding to expand and improve home and community based services (HCBS) and community supports and reduces to help youth divert from residential services and step-down into the community.
36*	Fiscal Impact	Will the State's plan include funding for retrofitting of programs, downsizing, or hiring of medical professionals to meet seclusion and restraint requirements?	The Governor's proposed \$17M investment reflected in the executive 2023-2024 budget will help programs prepare for the necessary changes, including staffing for seclusion and restraint.
Impact to Services			
37	Impact to Services	Will children/youth residing in an IMD need to be disenrolled from Medicaid?	No. Children/youth cannot be disenrolled from Medicaid simply because they are placed in an IMD. Children/youth placed in an IMD can still receive medically necessary services through Medicaid, but the State would no longer be able to draw down the Federal match for the share of Medicaid.
38	Impact to Services	What State supports are available to providers who know they will no longer qualify for Medicaid reimbursement, and they want to restructure to be in compliance by reducing the number of beds they currently have?	Providers determined to meet the criteria of an IMD could still be eligible to claim Medicaid; however, the State cannot be reimbursed for the Federal share. During the waiver period, in order to maximize federal funding, the State will collaborate with providers to identify opportunities to eliminate provider characteristics that result in them being considered an IMD (e.g., a facility with 17 beds may be encouraged to drop to 16).
39	Impact to Services	Does the IMD exclusion impact any court-ordered Medicaid services? Some court-ordered services are for longer than the 60-day maximum length of stay.	The IMD exclusion will not have an impact on the provider's ability to provide and bill for the required court-ordered services.
40	Impact to Services	How does this impact the options for children/youth placed through school system and CSE process?	CSE-placed children/youth will be included in the calculation of the provider's total bed count; there are no changes to the CSE process.

41	Impact to Services	Do providers have to make any changes to staffing or facilities if they are IMDs but not RTFs?	Not at this time. However, once the waiver is approved, QRTPs included in the demonstration waiver must comply with CMS regulations regarding seclusion and restraint found in 42 CFR Part 483 Subpart G - § 483.358 "Orders for the use of restraint or seclusion" that "(a) Orders for restraint or seclusion must be by a physician, or other licensed practitioner permitted by the State and the facility to order restraint or seclusion and trained in the use of emergency safety interventions." The State will be seeking additional information from providers to determine whether there are additional costs to adhere to these requirements.
Potential Solutions			
42	Potential Solutions	What recourse do providers have if they do not agree with the State's IMD determination?	Providers have the opportunity to provide supporting documentation/ information to refute the State's determination. The State will also work with providers on potential options during the two-year waiver period.
43	Potential Solutions	Is the State pursuing Congressional support for repeal of any part of the IMD regulation?	The State has been engaged with congressional representatives and plans to continue its advocacy efforts.
44*	Potential Solutions	How does the State envision reducing the average length of stay to 60 days?	If youth in residential programs that are IMDs require longer lengths of stay, the state will cover the costs without federal funds. The State understands that 60-day length of stay is not possible for all children/youth who currently reside in QRTPs that are IMDs. This is an area where the State will seek input from providers to identify gaps in community services and supports, and develop viable strategies for increasing access to community services to avoid admission and reduce lengths of stay wherever possible. These services include other treatment options such as crisis residential, OMH community residences, Youth ACT, RTF, and OPWDD residential programs, which are not subject to the IMD exclusion.
45*	Potential Solutions	Would it be a viable option for agencies to change some of their QRTPS into non-specified settings?	No. Children in foster care are required to be placed in the least restrictive, most homelike setting appropriate. Children in foster care who need congregate settings should be receiving appropriate services in congregate settings authorized as QRTP's or QRTP exceptions. The mandates of FFPSA require an assessment by a Qualified Individual (QI), a court review, as well as a long-stayer review for children/youth placed in a QRTP. This supports a structured decision-making framework for children being placed in the highest level of care, which is not required in a non-specified setting. Non-specified settings also cannot receive Title IV-E funding for lengths of stay longer than 14 days.
Other			
46	Other	Does the long stayer review pertain to children/youth who were grandfathered in?	The long stayer review relates to children/youth placed in a residential placement on or after September 29, 2021; therefore, the length of stay outlined in the Families First Prevention Services Act does not apply to these children/youth. Regardless of this provision, there is still a need to look at the length of stay and whether the services/settings provided are the best to meet the child/youth's needs.
47	Other	What is the current foster care percentage of stay in congregate care facilities?	As of 3/31/2022, about 14% of children in care reside in a congregate care setting (combination of QRTP, PPP, EMPOWER, and Non-Specified).

48	Other	What is the current average length of stay?	OCFS is assessing data to ascertain average length of stay in QRTPs and will make that information available when complete.
49	Other	What work is being done with OMH and OPWDD to enhance their services in the community to serve the child welfare population?	The State is committed to continued child welfare transformation and ensuring that children/youth are placed in the most appropriate setting. The State is engaged in cross-systems work with partner agencies and meets regularly to discuss these topics. Significant funding has been awarded to CFTSS and Children's HCBS providers to expand access to care and state agencies are working collaborative with providers to identify children and youth awaiting services and connect them to available providers. DOH is also preparing an amendment to the 1915(c) Children's Waiver to make additional services available to support step-down from and avoid admission to institutional care. All State agencies will be investigating services and supports to assist families and mitigate against the child/youth initially being placed in foster care, such as resources for family kinship foster care, the Treatment Oregon model, and current length of stay case reviews.
50	Other	What is the overlap between 29-Is and QRTPs?	All QRTPs are 29-Is; however, not all 29-Is are required to be QRTPs, as it was determined by OCFS that providers could make this business decision during the implementation of the Families First Prevention Services Act.
51	Other	What is the purpose of the provider survey?	The purpose of the survey is to collect additional information regarding provider factors that will help the State to determine if a setting is an IMD. The State is analyzing providers' responses, along with other available information such as licenses, operating certificates, and on-site visits, as necessary, to make the determination whether the provider meets IMD criteria.
52	Other	If the IMD exclusion could apply not only to services provided on the QRTP campus but also to services provided to residents in the community, will the surveys also collect data on community-based services being provided by QRTPs?	For providers determined to meet the criteria of an IMD, the services provided to the children/youth who are residents of the QRTP are not eligible for Federal financial participation outside of an 1115 waiver. If the provider is providing services to children/youth in the community as non-residents, these services are eligible for Federal financial participation and would have no impact on a providers IMD assessment.
53*	Other	How are DOH and OCFS engaging other State agencies in the transformation?	The State recognizes the complexity of needs of children/youth in residential foster care and is partnering with all relevant agencies. DOH and OCFS are engaging in ongoing discussions through cross-agency meetings with representatives from OPWDD, OMH, OASAS, State Education, Council on Children and Families (CCF) and Juvenile Justice. All of these agencies will also be consulted during the development of the waiver implementation plan and with regard to increasing access to alternative treatment/services.