

February 3, 2020

Via E-mail

Richard Figueroa, Acting Director
Department of Health Care Services
1501 Capitol Avenue
P.O. Box 997413, MS 4410
Sacramento, CA 94899-7413

RE: CA Potential 1115 Waiver IMD Exclusion Proposal

Dear Acting Director Figueroa:

Mental Health America of California (MHAC) is the state affiliate of Mental Health America (MHA), founded in 1957 and 1909 respectively. Together we are the state and nation's leading community-based nonprofits dedicated to addressing the needs of those living with mental illness and promoting the overall health of all Americans. With eight chapters in the State, Mental Health America of California has long sought to promote mental health as a critical part of overall wellness and to advocate on behalf of those experiencing mental health conditions.

We are excited about the potential opportunities afforded by the State's Medi-Cal Healthier California for All (formerly CalAIM) process and the resulting 1915(b) and 1115 waiver applications to CMS. Although MHAC is in complete support of efforts to increase or facilitate access to a full continuum of voluntary, community-based mental health services, **we are adamantly opposed to any effort by the State to modify or eliminate the Institutions for Mental Disease (IMD) exclusion for beneficiaries with Serious Mental Illness/Serious Emotional Disturbance (SMI/SED)**. MHAC believes that an application to CMS to waive the IMD exclusion would be dangerous, divisive, distracting and unnecessary.

Removing the IMD exclusion is dangerous:

The presence of the existing IMD exclusion is the primary safeguard in inhibiting county mental health departments from expanding the use of institutional settings and an important incentive for those departments to develop alternatives to those settings. Removing the IMD exclusion would undermine the State's 40-year-old policy to develop small, recovery-oriented, residential treatment settings that serve as alternatives to their institutional counterparts (e.g., hospitals, psychiatric health facilities, skilled nursing facilities and mental health rehabilitation centers). California can ill-afford to go back to the days of mass institutionalization.

There is no data to support the popular notion if Medicaid reimbursement were to be made allowable in IMD settings that counties would use potentially "freed-up" funds to expand their community-based non-institutional services. Our colleagues at the California Association of Social Rehabilitation Agencies, while conducting an analysis of FY 2009-10 data California-county spending on 24-hour care (the most recent made available by DHCS) found that "demand significantly outpaces supply when it comes to community-based care, especially in comparison to the demand and supply for institutional care" (CASRA: 2018). The substantial expansion in the use of skilled nursing facilities for persons with mental

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health conditions which occurred in the 1980s was predicated, to a large extent, on the fact that federal Medicaid dollars were available to underwrite a significant portion of the total costs.

MHAC, along with many other mental health advocacy organizations, believes that should the State be granted the waiver by CMS, California and many counties would soon find themselves in jeopardy of Olmstead-based lawsuits. The Olmstead decision maintains a presumption that persons with disabilities are entitled to receive whatever services and/or supports enable them to live in the community. Put simply, the intent is to describe what services need to be available in order to prevent institutionalization. The resulting increase in institutionalization that would come as a result of successful waiver application would fly in the face of this presumption as IMDs are not small, human-scale, community-based or rehabilitation/recovery-oriented.

Removing the IMD exclusion is divisive:

Over the past 40 years, California's mental health community, despite sometimes conflicting views, has been able to unify around many key issues. The need for parity in insurance coverage, the need to expand affordable housing opportunities, the effort to pass the Mental Health Services Act are examples of this. The Medi-Cal Healthier California for All initiative is another important opportunity for the mental health community to come together to assist DHCS and the counties in making much needed changes to the way that the majority of funding for California's public behavioral system is structured. The insertion of the IMD exclusion waiver into the discussion of the 1915(b) and 1115 waivers threatens to fracture the mental health community precisely at the time when they much reach consensus.

The use of locked involuntary care, which the IMD waiver would support, is the single most divisive issue in the mental health community. To call it polarizing would be an understatement and throughout MHAC's long history of advocacy in California we have found very little, if any, middle ground on this issue. We understand that certain constituencies are placing a great deal of pressure on DHCS to apply for the waiver, but we are deeply concerned that this pressure originates from a combination of ignorance and political expediency.

The vast majority of California's counties lack anything close to a full continuum of voluntary, community-based alternatives to locked, involuntary and institutional settings. We too have heard the cry for "more beds" from various groups, who then point to the lack of beds in locked, involuntary settings as the evidence that supports requesting the IMD waiver. What these groups fail to do is articulate the types and intensity of services that should surround these "beds". They constantly point to locked, involuntary settings because they only have experience with those settings and rarely mention alternatives such as peer respite, crisis residential and mental health urgent care centers. In short, you only know what you know.

Added to this is the immense pressure to address the growing homelessness crisis in California. MHAC has long fought against the tendency of the public, the press and many elected officials to conflate mental health conditions and homelessness. Homelessness is primarily due to a combination of poverty and a lack of affordable housing, not untreated mental illness. Although addressing the mental health needs of those who are living on our streets is important, the belief that homelessness can be solved or even largely ameliorated by forcing individuals into mental health treatment is inaccurate and as previously mentioned, dangerous. We believe that the pressure exerted by various county Boards of Supervisors to apply for the IMD waiver is based on their desire for a quick fix for what many Board Members acknowledge as their primary local problem, homelessness.

Removing the IMD exclusion is distracting and unnecessary:

As you are no doubt aware, the many moving parts associated with the Medi-Cal Healthier California for All initiative are complex and will require a great deal of effort on the part of DHCS, the counties and other stakeholders to formulate waiver applications that will both address California's needs and be deemed acceptable by CMS. As this process unfolds, it is becoming clear that due to their complexity, some elements of the initiative will have to wait for the next round of waivers in 2025 in order to be implemented.

If this weren't enough, CMS's requirements related to the IMD waiver are quite complicated and will place a great deal of pressure on the State and any participating county to demonstrate ongoing compliance. DHCS will certainly have its hands full to implement the non-IMD waiver portions of the initiative and we are concerned that the Department will become overwhelmed by the IMD elements, putting the other portions of the initiative at risk. It must be noted that there is no requirement that the IMD waiver application be submitted in conjunction with the 1915(b) or 1115 waivers. The IMD waiver "opportunity" is a completely separate option that need not be executed now, or ever, for that matter. MHAC believes that the State and the counties will need to marshal all of their resources at the multitude of other non-IMD related requirements to be successful.

Conclusion:

MHAC strongly opposes a DHCS proposal to seek a waiver for the IMD exclusion for all the reasons cited above and instead encourages the Department to focus the energies of stakeholders, the counties and its own staff on the exciting and challenging opportunities offered by the other elements of the Medi-Cal Healthier California for All initiative.

Sincerely,



Heidi L. Strunk
President and CEO
Mental Health America of California

Cc: Brenda Grealish, Chief, Medi-Cal Behavioral Health, DHCS
Kelly Pfeifer, Deputy Director, Behavioral Health, DHCS