

**HB 1261 Testimony**  
**House Human Services Committee**  
**Representative Weisz, Chairman**  
**January 16, 2023**

Chairman Weisz and Members of the Committee, I am Carlotta McCleary, the Executive Director of the ND Federation of Families for Children's Mental Health (NDFFCMH), which is a parent run organization that focuses on the needs of children and youth with emotional, behavioral, or mental health needs and their families. I am also the Executive Director for Mental Health America of ND (MHAND) which is a consumer-run organization whose mission is to promote mental health through education, advocacy, understanding, and access to quality care for all individuals. Today I am testifying as the Chairman of Behavioral Health Planning Council. Members of the North Dakota Behavioral Health Planning Council are appointed by the Governor. BHPC's objective is to monitor, review, and evaluate the allocation and adequacy of mental health and substance abuse services in North Dakota. The BHPC has a focus and vision on wellness and recovery that is consumer and family driven.

The ND Behavioral Health Planning Council is opposed to HB 1261, the implementation of Medicaid waivers related to institutions for mental diseases. The IMD exclusion serves an important purpose, a waiver would risk undermining that purpose. We believe there are numerous ways to improve Medicaid funded behavioral health services without pursuing a waiver.

The BHPC has been reviewing IMD exclusion over the last biennium. We have had presentations from ND Medicaid, Karen Kimsey and Tom Betlach from Speire Healthcare Strategies, and finally a presentation from Jennifer Lav, from National Health Law Program and Elizabeth Priaux, from National Disability Rights Network.

Under Section 1905(a) of the Social Security Act, there is a general prohibition on Medicaid payment for any services provided to any individual who is under 65 and who is residing in an institution for Mental Diseases (IMD). "The term 'institution for mental diseases' means 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.” Under this definition, can have more than 16 beds dedicated to mental health treatment in a general hospital. The purpose of the IMD Exclusion was to clarify it as the states responsibility and to encourage community-based services.

The IMD Exclusion is limited:

- Does not apply to individuals 65 and over
- Does not prevent children under 21 from getting services in the following settings (even if more than 16 beds) psychiatric hospital, psychiatric unit of general hospital, and psychiatric residential treatment facility
- Does not stop managed care enrollees from getting services in an IMD for up to 15 days per calendar month (ND Medicaid Expansion)
- Does not prevent states from asking for a state plan option to allow people to get services for SUD in IMDs (expires 9/30/2023)
- Does not prevent States from getting federal funds for inpatient psychiatric care in general hospitals
- Does not prevent federal funding for adult settings that are 16 beds or less.

What do IMD Waivers let states do? IMD waivers allow states to collect federal dollars for services provided to residents of IMDs.

There are certain services, resources, and infrastructure elements that should be in place prior to applying for and implementing a IMD waiver.

- Budget Neutrality Strategy: CMS requires states to have a strategy to offset the costs of the additional services provided so that projects do not result in Medicaid costs to the federal government that are greater than what the federal government’s Medicaid cost would have likely been absent the demonstration.
- State Plan Services: Meeting CMS milestone requirements might require the provision of serves not currently covered in the state plan.

- Infrastructure Development: New services could require developing adequate provider networks, utilization management protocols, and care management infrastructure to support the access to and the appropriate use of new services.
- Integrating Services: Integrating new services and improving the overall system of care for behavioral health services could require a significant investment of time and resources along with internal and external stakeholder input.
- Management Staff: Additional staff could be needed to assist with planning, execution, and management of the IMD Waiver.

Steps Prior to applying for a waiver:

- Conduct a gap analysis of current to future delivery system
- Determine FTE and resource needs for IMD
- Determine stakeholder demand/appetite and political climate
- Develop a phased implementation plan to address the gaps

We must also consider:

- Discriminatory impact & adverse impact on community-based integration
- Administrative burden
- Opportunity costs

What are the alternatives, North Dakota's 1915(i). Give the 1915(i) time to meet its promise. The service package within the 1915(i) are some of the best within the country. Mobile Crisis Response and Stabilization Services, under American Rescue Plan Act (ARPA), states may apply for and receive an 85% federal match for qualified mobile crisis services, for up to 3 years during a 5-year period, starting April 1, 2022, and increasing access for Assertive Community Treatment.

Through our deliberations, we concluded that we needed to keep the end user and their families at the forefront of our recommendations. The response to the pursuit of an IMD waiver was negative. Consumers and family members have been adamant that the work the council has embarked on to support the HSRI recommendations needs to continue. That work concentrated

on the development of community services for people with behavioral health needs, not increasing our reliance on institutional care and large institutional settings. We also heard from providers that the pursuit of an IMD waiver sends the message to existing providers that their work to play by the rules and build their facilities around smaller bed counts across the state are not rewarded for that work. Instead, bigger providers are going to reap the benefits of such a change.

The IMD waiver does nothing for community-based services that cannot be done by directly improving community-based services. If anything, the IMD waiver jeopardizes the work that we have done over the last few years and the work that remains to be done.

Thank you for your time, I would be happy to answer any question that you may have.

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