

Nebraska's Section 1115 Medicaid Substance Use Disorder Services Waiver

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Institutions for Mental Diseases Exclusion

- Since the inception of the Medicaid program, federal law has prohibited federal funding for services that Medicaid-enrollees ages 21-64 receive in an Institution for Mental Diseases (IMD)
- Legislative intent was for states to be responsible for the institutional care of people with behavioral health challenges

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What is an IMD?

- An 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.”

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Examples of IMDs

- Psychiatric hospitals
- Nursing facilities
- Residential treatment centers

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“In Lieu of” Authority

- The Centers for Medicare and Medicaid Services (CMS) allows states that contract with Medicaid managed care health plans, like the Heritage Health program, to allow those health plans to provide services a different way than is specified under the state’s State Plan agreement with the federal government.
- These “in lieu of” services must be no more costly than the services they take the place of
- Nebraska was one of several states that allowed Medicaid health plans to cover residential substance use disorder (SUD) services in IMDs “in lieu of” more expensive settings such as emergency departments.

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CMS's New Medicaid Managed Care Rule

- New federal managed care regulations issued July 5, 2016, restrict federal funding for “in lieu of” authority for IMDs to stays of no more than 15 days for Medicaid-enrolled adults ages 21-64. [42 CFR 438.6(e)]

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Effects of CMS's Medicaid Managed Care Rule

- With the implementation of the new Managed Care Rule, states may only utilize “in lieu of” authority to include IMD stays of 15 days or fewer.
- Medicaid health plans and providers will not be compensated for stays longer than 15 days.
 - Could result in early discharges that increase the likelihood of impacted members utilizing emergency department care
 - Could disrupt the SUD treatment plans for some of Medicaid's most vulnerable members
- Nebraska is among several states that have not yet implemented the limitations imposed by 42 CFR 438.6(e) due to the state's concern about the potential impact on Medicaid members.

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New CMS 1115 SUD Demonstration Program

- On November 1, 2017, CMS outlined a new initiative to use the Section 1115 demonstration process to assist states in confronting the opioid epidemic and detailed the agency's general criteria for SUD-focused demonstration programs
 - States can apply for an SUD demonstration waiver that allows Medicaid to cover residential SUD services in IMDs for durations longer than the current 15-day limit
 - States receive this authority in exchange for meeting specific milestones and reporting requirements
 - Demonstration programs are typically approved for 5-year periods and can be renewed
 - Demonstration programs must be “budget neutral” to the federal government

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Nebraska's 1115 SUD Waiver Application

- To ensure Medicaid members can continue receiving residential SUD services in the most appropriate setting for the medically appropriate length of time, Nebraska Medicaid is submitting an application for CMS's new SUD demonstration program
 - Nebraska Medicaid will seek federal authority to allow IMD stays for members receiving residential SUD services regardless of the length of stay
 - Nebraska Medicaid's application will seek to demonstrate that continuing the state's current IMD policy will result in future savings to the state and federal governments by avoiding costly and unnecessary services in expensive settings such as emergency departments.
- Multiple states have submitted similar waiver applications including Louisiana and New Hampshire

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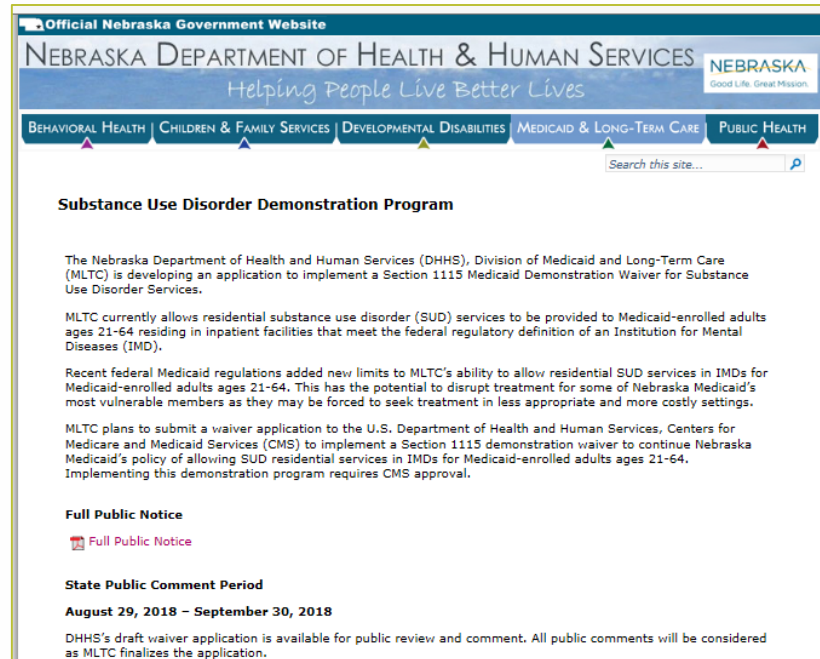
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Waiver Application Webpage

- More information about the demonstration program, including the proposed waiver application, the full public notice, additional public hearings, and the public input process, can be found on the DHHS website at:
- <http://dhhs.ne.gov/medicaid/Pages/SubUseDisDemo.aspx>



The screenshot shows the official Nebraska Government Website for the Nebraska Department of Health & Human Services. The page title is "Substance Use Disorder Demonstration Program". The content includes:

Substance Use Disorder Demonstration Program

The Nebraska Department of Health and Human Services (DHHS), Division of Medicaid and Long-Term Care (MLTC) is developing an application to implement a Section 1115 Medicaid Demonstration Waiver for Substance Use Disorder Services.

MLTC currently allows residential substance use disorder (SUD) services to be provided to Medicaid-enrolled adults ages 21-64 residing in inpatient facilities that meet the federal regulatory definition of an Institution for Mental Diseases (IMD).

Recent federal Medicaid regulations added new limits to MLTC's ability to allow residential SUD services in IMDs for Medicaid-enrolled adults ages 21-64. This has the potential to disrupt treatment for some of Nebraska Medicaid's most vulnerable members as they may be forced to seek treatment in less appropriate and more costly settings.

MLTC plans to submit a waiver application to the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) to implement a Section 1115 demonstration waiver to continue Nebraska Medicaid's policy of allowing SUD residential services in IMDs for Medicaid-enrolled adults ages 21-64. Implementing this demonstration program requires CMS approval.

Full Public Notice
[Full Public Notice](#)

State Public Comment Period
August 29, 2018 – September 30, 2018

DHHS's draft waiver application is available for public review and comment. All public comments will be considered as MLTC finalizes the application.

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Public Feedback

MLTC would like to hear from stakeholders on:

- Demonstration program goals?
- Evaluation criteria?
- How the demonstration program impacts you as a provider/patient/advocate?
- Any other aspect of the demonstration program?

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Public Comments

- The Nebraska Department of Health and Human Services is allowing 30 calendar days for public review and comment.
 - Please submit your comments by September 30, 2018
- Comments and questions about the proposed demonstration application can be submitted...
 - By email to: DHHS.SUDWaiver@nebraska.gov
 - By mail to: Department of Health and Human Services
Division of Medicaid and Long-Term Care
Attn. Todd Baustert
301 Centennial Mall South
P.O. Box 95026
Lincoln, Nebraska 68509-5026

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CMS Submission & Review Process



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Thank You

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