

**21ST CENTURY CURES ACT SECTION 12002 IMD STUDY  
SUPPORTING STATEMENT PART A  
CMS-10684, OMB 0938-TBD (New)**

## Background

The Medicaid Institutions for Mental Diseases (IMD) exclusion prohibits states from receiving federal payment for care or services provided to individuals over 21 and under 65 who are inpatients in an IMD. At the same time, the Medicaid program offers risk-based Medicaid managed care plans the flexibility to provide alternative services in lieu of covered services or settings if those services are medically appropriate and cost-effective. However, the interaction between the IMD exclusion and the use of IMDs as alternative settings has created a gray area for states and plans. While some states likely already allowed IMDs to be considered in lieu of settings, it has been unclear whether this use contravened the IMD exclusion. To address this uncertainty and ensure compliance with the exclusion, the 2016 Medicaid managed care regulations promulgated by the Centers for Medicare & Medicaid Services (CMS) established clear parameters for the coverage of services for people receiving treatment in IMDs in lieu of covered services in Medicaid Managed Care (42 CFR 438.6(e)). The regulations clarify that states are permitted to make monthly capitation payments to plans for beneficiaries aged 21–64 who are inpatients in an IMD if (1) the enrollee selects the IMD services voluntarily as an optional alternative to otherwise-covered service settings, (2) the IMD is an inpatient hospital or a subacute facility providing crisis residential services for psychiatric or substance use disorders, and (3) the IMD stay is fewer than 15 days in the month (42 CFR 438.6(e)).

### A. Justification

#### 1. Need and legal basis

Because of substantial interest in the future of the IMD exclusion among Congress, state Medicaid programs and plans, and the wider behavioral health community alike, Section 12002 of the 21st Century Cures Act (the Act) calls for the U.S. Department of Health and Human Services to conduct a study of the effects of the clarifications surrounding the applicability of the IMD exclusion to in-lieu-of services codified in the managed care final rule. The Act requires that the study examine five important outcomes: (1) the extent to which states and territories are providing capitated payments to Medicaid managed care plans, including comprehensive Managed Care Organizations (MCOs) and Prepaid Inpatient Health Plans (PIHPs), for enrollees who receive services in IMDs; (2) the number of Medicaid beneficiaries who are receiving services in IMDs through Medicaid MCOs and PIHPs; (3) the range of and average number of months, and the length of stay during such months, that such individuals receive such services in IMDs; (4) how plans determine when to furnish services through an IMD in lieu of other benefits (including the full range of community-based services) under their contract to address psychiatric or substance use disorder treatment; and (5) the extent to which the provision of services within IMDs has affected the capitated payments for managed care plans. The Act requires a report to Congress on the study, due in December 2019. CMS contracted with Mathematica Policy Research to conduct the study on its behalf. This Office of Management and Budget (OMB) package requests clearance for a survey of states and territories to support the study called for by the Act.

The State and Territory Survey for which we are requesting clearance was developed to inform the study and report to Congress, mandated by Section 12002 of the Act, regarding the provision of capitation payments to Medicaid managed care plans on behalf of people receiving treatment in IMDs as permitted by 42 CFR 438.6(e). This survey will collect information from state Medicaid agencies on (1) whether and how states and territories are permitting plans to cover services for people receiving treatment in IMDs, (2) the number of people enrolled in such plans and the extent to which they are receiving services in IMDs, (3) the number of IMD stays among such individuals, and (4) the types of guidance and rules that states and territories have established regarding plans' coverage of services for people receiving treatment in IMDs. These data will be used to answer the five study questions posed by the Act and to inform a mandated report to Congress.

## **2. Information and users**

CMS will use the information collected in the State and Territory Survey to develop a report to Congress as required by Section 12002 of the Act. Specifically, CMS will request that states and territories with risk-based Medicaid managed care arrangements complete the 16-question survey. CMS will then analyze and use the data collected from states through the survey to answer the five study questions outlined in the law. The analysis will be used to inform the report to Congress.

## **3. Use of information technology**

To reduce burden on state-level respondents, we will, whenever possible, use advanced technology to collect data.

The data collection plan is designed to obtain information with minimal respondent burden. When feasible, we will gather information from existing data sources, using the most efficient methods available.

We will administer the State and Territory Survey via the web so that it can be accessed from any computer and allow the greatest ease of access and sharing by multiple respondents. The web-based survey will enable respondents to complete the data collection instrument at a location and time of their choice, and its built-in editing checks and programmed skips will reduce the level of response errors and allow completion as quickly as possible.

## **4. Duplication of effort**

In formulating the study design, CMS has carefully considered how to minimize burden by supplementing existing data sources with targeted primary data collection. To this end, the study incorporates the following approach:

**Using data from existing sources while conducting supplemental primary data collection.** To the extent possible, information necessary to answer the five study questions outlined in the Act will be gathered through a review of available documents and sources, including, for example, state Medicaid managed care contracts and other publicly available documentation. We will also consult with internal CMS experts to gather the required information. However, we expect that the level of detail and consistency of the information provided in these source documents will vary significantly from state to state, and available

information will be insufficient to answer the study questions posed by the Act. To supplement data gathered from these sources, CMS is requesting OMB clearance to conduct the State and Territory Survey. The study team will use the information gathered from states and territories that complete the survey to clarify and fill in substantial gaps in the data gathered from a document review. We have tailored the survey questions and designed the instrument so as to minimize the time that state staff must spend gathering data and completing the survey.

#### **5. Small businesses**

The data collection effort will not involve small businesses or other small entities.

#### **6. Less-frequent collection**

The survey included in this request provides information needed to answer fully the study questions posed by the Act. If the data are not collected, the study team will not have sufficient information to answer the five study questions the Act requires. The inclusion of all planned data sources, including document review, informal consultations with subject matter experts, and the survey included in this information collection request, is needed to gather information about the way states are using the option to cover services for people receiving treatment in IMDs, and to obtain a complete picture of the length of stay for such people in IMDs. The survey will be fielded only once during the study period. If it is not conducted, the study team will not have adequate information to inform the required report to Congress.

#### **7. Special circumstances**

There are no special circumstances for the proposed data collection.

#### **8. Federal Register/outside consultation**

##### ***Federal Register***

The 60-day notice published in the Federal Register on October 23, 2018 (83 FR 53474). A comment was received, but its content was outside of the scope of this information collection request.

##### **Outside consultation**

The study team discussed the design and development of the State and Territory Survey in informal, unstructured conversations with state Medicaid directors in three states: Washington, Louisiana, and Missouri. We discussed (1) the availability of data to answer proposed survey questions, and (2) the potential benefits of completing the survey for states. We also gathered suggestions on the format and on the survey tool. We used information from these informal consultations to inform and refine the survey design.

#### **9. Payment/gifts to respondents**

Survey respondents will not receive a payment or gift of any type.

#### **10. Confidentiality**

Before the start of the survey, we will inform all respondents that the information gathered will be used for study purposes only and not be attributable to any individual. Responses should

not contain private information but will be aggregated to the extent possible so that individual answers will not be identifiable. Because of the limited number of respondents completing the survey, however, it might be possible to infer individual responses from reports. (For example, there may be only one state Medicaid official participating per state.) For each respondent, we will collect name, professional affiliation, and title, but not Social Security numbers, home contact information, or similar information that could identify the respondent directly. Only the study team will have access to individual responses.

## 11. Sensitive questions

There are no questions of a sensitive nature in the State and Territory Survey.

## 12. Burden estimates (hours and wages)

### Wage estimate

To derive average costs, we used data from the U.S. Bureau of Labor Statistics' May 2017 National Occupational Employment and Wage Estimates for all salary estimates [[http://www.bls.gov/oes/current/oes\\_nat.htm](http://www.bls.gov/oes/current/oes_nat.htm)]. In this regard, the following table presents the mean hourly wage, the cost of fringe benefits and overhead (calculated at 100 percent of salary), and the adjusted hourly wage.

Table A.1. Burden estimates

Occupation title	Occupation code	Mean hourly wage	Fringe benefits and overhead	Adjusted hourly wage
State government general and operations manager	11-1021	\$59.53/hr	\$59.53/hr	\$119.06/hr

### Burden estimate

CMS expects that it will take 2 hours at \$119.06 /hr for about 43 state government general and operations managers to complete and submit the survey to CMS, for a total burden of 86 hours at a cost of \$10,239.

Table A.2. Estimated annual burden hours

Respondent type	No. of respondents	No. of responses per respondent	Average burden per response (in hours)	Total burden hours
State government general and operations manager	43	1	2	86
<b>Total</b>	<b>43</b>	<b>1</b>	<b>2</b>	<b>86</b>

Table A.3. Estimated annual cost burden

Respondent type	Total hours	Hourly wage (\$)	Total cost (\$)
State government general and operations manager	86	119.06	10,239.16
<b>Total</b>	<b>86</b>	<b>119.06</b>	<b>10,239.16</b>

### Collection of Information Instruments and Instruction/Guidance Documents

21st Century Cures Act Section 12002 Study Survey

Survey Glossary

Summary of Relevant Regulations and Legislation

### 13. Capital costs

There are no anticipated costs to respondents beyond the employee time expended during completion of the survey instrument and as addressed in the above section.

### 14. Costs to federal government

The estimated annual cost to the government is \$282,562.50. We estimate two CMS employees will be involved for five percent of their time at a salary of \$114,590 (grade 14, step 1 in 2018 in the Washington DC metropolitan area) at an annual cost of \$11,459.00. Additional costs are 100 percent of the contract amount awarded by CMS for conducting the 21st Century Cures Act Section 12002 IMD Study (\$542,207.00 over two years, or an annualized cost of \$271,103.50).

### 15. Changes to burden

Because this is a new collection, there are no changes to the burden.

### 16. Publication/tabulation data

We will incorporate aggregate results from the State and Territory Survey in text and charts in the report to Congress due in December 2019. CMS may also incorporate the aggregate results from the study into journal articles, scholarly presentations, and congressional testimony related to the outcomes of the study. Table A.4 provides an overview of the study tasks and in which years we will conduct the tasks.

Table A.4. Study tasks timeline

Evaluation timeline	2017	2018	2019
Development of study design and instrumentation	X	X	
OMB submission		X	
Initial informal consultations with states and CMS experts		X	
Initial document review	X	X	
State/Territory survey data collection			X

Evaluation timeline	2017	2018	2019
Ongoing document review and informal consultations with internal and external experts		X	X
Analysis of primary (survey) and secondary data		X	X
Development and submission of report to Congress			X

**17. Expiration date**

The OMB approval number and expiration date will be displayed or cited on all forms completed as part of the data collection.

**18. Certification statement**

There are no exceptions to the certification statement identified in Item 19, “Certification for Paperwork Reduction Act Submissions,” of OMB Form 83-I.