


KAREN HURD

STATE REPRESENTATIVE • 68TH ASSEMBLY DISTRICT

Senate Bill 635
Public Testimony
Senate Committee on Mental Health, Substance Abuse Prevention, Children and Families
December 13, 2023

Thank you, Chair James, Vice-Chair Cabral-Guevara and members of the committee for holding this hearing on Senate Bill 635.

It is informative for our hearing today to understand an extremely brief history that has led us to this legislation; as indeed, the past steps on the heels of the present.

In 1955, almost all of our severely mentally ill were housed in public psychiatric hospitals. It was at that time that the widespread introduction of Thorazine, one of the first effective antipsychotic medications, precipitated the process of deinstitutionalization. This belief that the new antipsychotic medications offered a cure, coupled with the belief that mental hospitals were cruel and inhumane, led to discharging people from the public psychiatric hospitals into the community into the least restrictive setting possible. President Jimmy Carter's Commission on Mental Health emphasized this movement. Unfortunately, for some the "least restrictive setting" frequently turned out to result in homelessness, criminality, or a terror-filled existence.

An additional consequence of the deinstitutionalization was the dramatic reduction of psychiatric beds available due to the closing of large numbers of facilities. Although the goal of deinstitutionalization was well-intentioned, the unforeseen long-term consequences were then not known.

It was in this climate of deinstitutionalization that Medicaid was enacted in 1965. Congress specifically barred contributions for any care delivered in certain institutions that fell within the definition of an "institution for mental disease," (IMD). An IMD was defined as a hospital, nursing facility, or other institution of more than 16 beds that was primarily engaged in the provision of diagnostic services, treatment, or care of persons with mental disease, including medical attention, nursing care, and related services. The exclusion applied then and still does to persons between the ages of 22 and 64. IMD residents 65 and older have been exempted from the exclusion since Medicaid was enacted, and state Medicaid plans have had the option of exempting those under the age of 22 since 1972.

Fast forward to 2018. The Centers for Medicare & Medicaid Services (CMS) relaxed the IMD exclusion providing an opportunity for states to receive authority to pay for short-term residential treatment services in an IMD for adults with serious mental illness. Currently, more than one-quarter of adults with a serious mental illness rely on Medicaid. Since this CMS change, eleven states currently have approved IMD waivers for mental health treatment (AL, DC, ID, IN, MD, NH, NM, OK, UT, VT, WA). Seven additional states have an application pending for a waiver.

SB 635 directs the DHS to submit a request to the federal Department of Health and Human Services for a waiver to obtain approval for Wisconsin persons aged 21-64 to have Medicaid coverage for an IMD. The bill also stipulates that DHS "shall" provide Medicaid coverage of services for an IMD versus the

current language of “may,” predicated upon the approval of the waiver. SB 635 will cover the 7% of the Medicaid population that are in a fee-for-service plan.

Currently, there are 8 psychiatric hospitals in Wisconsin with more than 16 beds that are classified as IMDs. This includes the state’s two mental health institutes which account for 729 of the 1,268 beds in these hospitals.

By pursuing this waiver, Wisconsin would be taking significant steps towards providing individuals with mental health conditions access to the care that they need as well as continuing the progress we have made to destigmatize mental health and prioritize access to behavioral health care.

I am happy to address any questions that the committee may have.

References

- Centers for Medicare & Medicaid Services (CMS). CMS Announces New Medicaid Demonstration Opportunity to Expand Mental Health Treatment Services. Nov 13, 2018.
<https://www.cms.gov/newsroom/press-releases/cms-announces-new-medicaid-demonstration-opportunity-expand-mental-health-treatment-services>
- Fuller, Torrey, MD. *Out of the Shadows: Confronting America’s Mental Illness Crisis*. New York: John Wiley & Sons, 1997.
<https://www.pbs.org/wgbh/pages/frontline/shows/asylums/special/excerpt.html#:~:text=Deinstitutionalization%20is%20the%20name%20given,to%20the%20mental%20illness%20crisis>.
- Salinsky E, Loftis C. Shrinking Inpatient Psychiatric Capacity: Cause for Celebration or Concern? [Internet] Washington (DC): National Health Policy Forum; 2007 Aug 1. (Issue Brief, No. 823.) Available from: <https://www.ncbi.nlm.nih.gov/books/NBK560013/>
- Shields MC, Stewart MT, Delaney KR. Patient Safety In Inpatient Psychiatry: A Remaining Frontier For Health Policy. *Health Aff (Millwood)*. 2018 Nov;37(11):1853-1861. doi: 10.1377/hlthaff.2018.0718. PMID: 30395512; PMCID: PMC10152928.
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10152928/>
- Yohanna, Daniel, MD. Deinstitutionalization of People with Mental Illness: Causes and Consequences. *Virtual Mentor*. 2013;15(10):886-891. doi: 10.1001/virtualmentor.2013.15.10.mhst1-1310.
<https://journalofethics.ama-assn.org/article/deinstitutionalization-people-mental-illness-causes-and-consequences/2013-10#:~:text=Three%20forces%20drove%20the%20movement,to%20save%20money%20%5B8%5D>.



HOWARD MARKLEIN

STATE SENATOR • 17TH SENATE DISTRICT

December 13, 2023

Senate Committee on Mental Health, Substance Abuse Prevention, Children and Families Testimony on Senate Bill 635

Thank you Chairman James and committee members for hearing Senate Bill (SB) 635, which directs the Department of Health Services (DHS) to seek approval from the federal government for an Institutions for Mental Disease (IMD) waiver for mental health services. Thank you Chairman James, Senator Ballweg, and Senator Cabral-Guevara for co-sponsoring this bipartisan legislation.

Since the creation of Medicaid in the 1960's, states have been unable to receive federal Medicaid reimbursement for inpatient mental health services provided to individuals between the ages of 21 and 64 in a facility with more than 16 beds. Facilities with more than 16 beds are known as IMDs and the prohibition on reimbursement is known as the "IMD exclusion". While the original goal of the IMD exclusion was to discourage the use of large, psychiatric institutions to treat patients, over time it has inadvertently hindered the ability of states to provide care to individuals in the appropriate facility.

Today, the IMD exclusion is outdated and creates significant barriers for adults with severe mental illness to receive access to care. The IMD exclusion applies to roughly half of Wisconsin's inpatient psychiatric beds. Wisconsin has eight psychiatric hospitals classified as IMDs, including Winnebago Mental Health Institute (WMHI) and Mendota Mental Health Institute (MMHI).

For this reason, mental health services provided to the Medicaid population typically occur at facilities with fewer than 16 beds or, as in the case of WMHI and MMHI, are fully paid for by counties.

Over time, the federal government has relaxed its stance on the IMD exclusion. Since 2018, the federal government has allowed states to submit a waiver for the coverage of inpatient mental health services provided in IMDs on a short-term basis. Specifically, any stay is limited to 60 days, and the statewide average of all IMD stays must be 30 days or less. However, Wisconsin has not done this.

SB 635 directs DHS to seek a federal waiver to allow Medicaid coverage of inpatient hospital services for mental health conditions in IMDs for adults aged 21-64. While it is likely DHS has the authority to submit this waiver already, SB 635 provides the necessary certainty for DHS to take action.

This legislation will allow freestanding psychiatric hospitals to be reimbursed for services provided to the eligible Medicaid population and will remove the disincentive impacting the sustainability of psychiatric hospitals with more than 16 beds. In addition, there will be significant cost savings for counties as they will no longer pay for the full cost of patients at WMHI or MMHI.

Currently, 10 states (and DC), including Alabama, Utah, and Vermont, have an approved IMD waiver for mental health treatment. Seven states, including Kentucky and West Virginia, have waivers pending with the federal government. In addition, Wisconsin has received a similar IMD waiver for substance use disorder services.

SB 635 is supported by the Wisconsin Hospital Association, the National Alliance on Mental Illness (NAMI) Wisconsin, the Wisconsin Counties Association, and other providers of inpatient mental health services.

AB 616, the Assembly companion to SB 635, passed the Assembly Committee on Health, Aging and Long-Term Care 15-0 on November 9, 2023 and passed on a voice vote on the Assembly floor on November 14, 2023.

Thank you again to the committee for hearing SB 635, and your timely action on the bill.



State of Wisconsin
Department of Health Services

Tony Evers, Governor
Kirsten L. Johnson, Secretary

TO: Members of the Senate Committee on Mental Health, Substance Abuse Prevention, Children and Families

FROM: HJ Waukau, Legislative Director

DATE: December 13, 2023

RE: SB 635 relating to: Medical Assistance coverage of services provided in an institution for mental disease.

The Department of Health Services (DHS) would like to submit written testimony for information only on Assembly Bill (SB 635) regarding Medical Assistance (MA) coverage of services provided in an institution for mental disease (IMD). Under current law, DHS may but is not required to cover the MA program costs of services provided to MA beneficiaries in an IMD, if federal financial participation is available and specified requirements are met. SB 635 would require DHS to cover the costs of these services. The bill also requires DHS, by January 1, 2025, to submit a request to the federal U.S. Department of Health and Human Services (HHS) for any waiver or approval necessary to provide MA coverage, with federal funding participation, of short-term stays for acute care in an IMD.

In Governor Evers' "Year of Mental Health," pursuit of an IMD waiver could have significant impacts for mental health access in Wisconsin. Under SB 635 it is more than likely that receiving an IMD waiver approval from HHS would increase access to mental health services across the state, potentially provide better alignment of incentives with HMOs, and decrease costs to counties for individuals ages 21-64 who need these mental health services. Under existing authority and federal approvals there is no MA reimbursement for services provided in an IMD for individuals ages 21-64. These costs are being paid for by counties. However, HMOs can cover IMD services for ages 21-64, for up to 15 days in a calendar month. Further, DHS does have experience seeking a related waiver proposal as it has an approved 1115 waiver for IMD payment exclusion for substance use disorder treatment.

Should a federal waiver application process move forward DHS would need to evaluate how IMD services align with the operations of Family Care managed care organizations (MCOs). DHS cannot currently carve IMD services into Family Care MCOs contracts that do not have a health insurance license from the Office of the Commissioner of Insurance (OCI), and SB 635 does not address this issue. Current issues also exist where a Family Care member remains in an IMD after active treatment is completed because the MCO can't find a provider in the community to care for the individual. OCI provisions allow MCOs to be certified by DHS without becoming HMOs and requiring a health insurance license. Additional statutory language would be needed to allow DHS to carve IMD benefits into MCO contracts.

Overall, DHS supports a robust continuum of behavioral health care that includes IMD services for those individuals in need of the level of treatment that would be provided in an IMD setting. If approved, it would extend coverage by providing a more comprehensive continuum of care for individuals in need of this level of treatment.

DHS thanks the Committee for the opportunity to provide written testimony for information only on SB 635 and we offer ourselves as a resource for Committee members for any follow up or additional information that may be needed.



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TO: Members of the Senate Committee on Mental Health, Substance Abuse Prevention, Children and Families

**FROM: Matthew Stanford, General Counsel
Kyle O'Brien, Senior Vice President, Government Relations**

DATE: December 13, 2023

RE: WHA supports Senate Bill 635 which addresses IMD restrictions on inpatient psychiatric placement

To create additional inpatient psychiatric placement options for Medicaid patients, the Wisconsin Hospital Association supports Senate Bill 635, which will enable Wisconsin to seek a waiver to the 1960s-era psychiatric IMD exclusion that currently excludes about half of Wisconsin's inpatient psychiatric beds from participating in the traditional Medicaid fee-for-service program for adults.

When Congress created the Medicaid program in 1965, it largely excluded Medicaid coverage in psychiatric facilities. Known as the Institute for Mental Disease (IMD) exclusion, the federal Medicaid law defined freestanding psychiatric hospitals with more than 16 beds as an Institute for Mental Disease and prohibited the Medicaid program from providing reimbursement to those facilities for services provided to patients between the ages of 21 and 64.

However, the IMD exclusion's care restrictions have been loosened by the federal government in both the Obama and Trump administrations.

First, in 2015, the federal Centers for Medicare and Medicaid Services (CMS) codified an ability for adult Medicaid managed care patients to receive services in IMD facilities. Then, in November 2018, CMS sought to further loosen IMD restrictions when it sent a letter to all state Medicaid directors encouraging states to seek a waiver of the IMD exclusion that could allow Medicaid reimbursement for short-term (defined as fewer than 30 days) inpatient services in an IMD for Medicaid fee-for-service enrollees with serious mental illness.

In order to remove a disincentive to the sustainability of psychiatric hospitals with more than 16 beds, this bill authorizes the State of Wisconsin through the Department of Health Services to seek a waiver to the federal Institute for Mental Disease exclusion to enable freestanding psychiatric hospitals in Wisconsin with more than 16 beds to receive reimbursement for Medicaid fee-for-service patients ages 21 to 64.

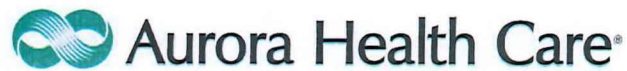
Wisconsin has already applied for and received a similar IMD waiver for substance use disorder services. Utilizing Wisconsin statutory language created in 2017 to implement the substance use disorder IMD waiver, this legislation directs DHS to apply to CMS no later than January 1, 2025 for an IMD waiver for mental health services.

By receiving a federal waiver of the federal IMD Medicaid payment exclusion for fee for service Medicaid enrollees, Wisconsin could:

- Enable freestanding psychiatric hospitals to be reimbursed for services provided to adults aged 21-64 enrolled in a Medicaid fee for service program.
- Remove a disincentive that can discourage freestanding psychiatric hospitals with fewer than 16 beds from expanding services.

Currently, 11 states have an approved IMD waiver for mental health treatment (AL, DC, ID, IN, MD, NH, NM, OK, UT, VT, WA), and 7 additional states have an application for a waiver pending with CMS (AL, AZ, MA, MO, NY, WA) according to the KFF Medicaid Waiver Tracker.

WHA and our members ask for your support of Senate Bill 635, which is one step Wisconsin can take to help remove public policy barriers impacting access to mental health services that do not exist for physical health services.



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**Testimony to the Senate Committee on Mental Health, Substance Abuse Prevention, Children and Families
In Support of Senate Bill 635**

Jessica Small, President of Aurora Psychiatric Hospital and Behavioral Health Operations

December 13th, 2023

Good morning. Thank you Chairman James and members of the committee.

My name is Jessica Small, I am the president of the Aurora Psychiatric Hospital in Wauwatosa and lead all behavioral health operations in the state for Aurora Health Care. I am also Interim Administrator for the Milwaukee County based Mental Health Emergency Center, a joint venture between the county and four of the area's health systems for which Aurora is the contracted operator.

Aurora is the largest health system in Wisconsin and a national leader in clinical innovation, health outcomes, consumer experience and value-based care. We serve patients across 17 hospitals and more than 150 sites of care covering much of the eastern part of the state. We are committed to providing care that makes our communities healthier, and I am proud to lead this work with regard to behavioral health services in Wisconsin.

On behalf of Aurora, I am here today to support SB 635 and share my experience with the current IMD (Institute for Mental Disease) exclusion and how it blocks access to much needed psychiatric care for patients with fee-for-service (FFS) Medicaid.

Patients who need inpatient psychiatric care are struggling with one of the most difficult times in their lives and resources are limited. We see patients with great behavioral health needs presenting across all our Emergency Departments, and at the Mental Health Emergency Center.

This is one of the most complex areas of care to navigate, as leaders in this specialty we get questions daily from neighbors, friends, coworkers, and families on how to help people gain access to life saving care. Unfortunately, the IMD exclusion is one of the greatest barriers patients can face when it comes to gaining access to care. In Milwaukee County, all but 12 of the ~270 inpatient mental health beds are licensed as IMD, meaning Medicaid FFS does not cover access to the vast majority of available beds.

Affected patients find themselves unable to get into facilities that are providing high quality care, all based on whether they are enrolled in Medicaid managed care or FFS.

I ask you to think about where in health care do you have these types of limitations? I can not think of any area, and even the federal government has recognized this as a problem.

As patients sit in emergency rooms across the state waiting for a psychiatric bed to become available, the IMD exclusion shrinks the available options even further, resulting in patients not getting timely beneficial care.

If the state receives this waiver, we will instead have the ability to leverage any open bed regardless of the facility type. We could improve access to care and keep patients closer to home. And all Medicaid members would have access to a best-in-class standard of care within behavioral health.

Therefore I respectfully ask that you help us by supporting SB 635, allowing all patients with Medicaid access to the same locations for behavioral health care. Thank you for your time, I'd be happy to answer any questions.

Assembly Committee on Health, Aging and Long-Term Care
Sita Diehl, Public Policy & Advocacy Director
NAMI Wisconsin
December 13, 2023

Re: Support for Senate Bill 635 requiring DHS to apply to CMS for an IMD Exclusion Waiver.

Chairman James and members of the Committee,

On behalf of NAMI Wisconsin, we urge your support of Senate Bill 635. NAMI Wisconsin is the state organization of the National Alliance on Mental Illness, an organization of and for people with mental illness and their families.

This bill would require the Department of Health Services (DHS) to apply for a federal waiver to allow Medical Assistance coverage of adults ages 21 – 64 for inpatient care in a free-standing psychiatric hospital with more than 16 beds, known as an Institution for Mental Disease (IMD).

The federal IMD exclusion is an artifact from 70 years ago when Medicaid was first enacted by Congress. The goal at the time was to shift the focus of care to community mental health and away from state psychiatric hospitals where thousands of people with mental illness were institutionalized for years, wasting their lives, at huge public expense.

In the intervening decades the pendulum has swung the other way, and for years it has been difficult to gain admission to hospital, even in a florid psychosis or crushing depression, even when a safe place and expert care are desperately needed.

When there are not enough inpatient psychiatric beds, emergency departments release people in crisis to the community — which means that all too often the person ends up back in crisis, sometimes in jail or on the streets, often at a higher cost to counties, the state and the federal government.

NAMI strongly supports efforts to correct the antiquated IMD exclusion policy. Senate Bill 635 puts Wisconsin on the right path. We see this as a parity issue. The IMD exclusion is the *only* part of federal Medicaid law that prohibits payment for the cost of providing medically necessary care because of the type of illness being treated.

While this policy was intended to reduce inhumane institutionalization, it also resulted in unequal coverage of mental health and, tragically, a lack of appropriate options for people with severe mental illness. If we treated other chronic conditions this way, far more people would die from diabetes, epilepsy, hypertension, and heart disease.

We know that one in eight visits to hospital emergency rooms involves a mental health or substance use condition, that emergency departments are often not equipped to help people who are in mental health crisis, and that emergency room staff have limited options for those who require inpatient care. That often means that people must travel far from their homes to Winnebago Mental Health Institute.

We also know that inpatient psychiatric beds have decreased significantly since the 1950s. A study published in 2021 found that Wisconsin is one of 28 states with a shortage of psychiatric

beds, showing that we need 248 more inpatient psychiatric beds to meet the need – an increase of 17%.¹ We know that availability of psychiatric beds fell sharply during the pandemic when occupancy went from double to single to minimize risk of covid infection. The COVID crisis ran straight into the workforce shortage and now there are whole wings of Granite Hills in Milwaukee County and Miramont Hospital here in Dane County that are empty for lack of staff.

We recently spoke with a mental health professional who practices inpatient mental health care in Wisconsin. When we mentioned the workforce shortage as a reason why hospitals are understaffed, he said, “There are plenty of people who are drawn to this work because it’s meaningful, and we transform lives. But it’s about money. People need to be adequately compensated for their time and expertise.” This waiver would draw down federal Medicaid dollars to cover inpatient psychiatric care for adults, increasing funds available to hospitals to compensate their staff.²

At the federal level, Medicaid recognizes this problem and in recent years, states have been given the option to cover short-term stays in psychiatric hospitals by applying for a waiver from the federal Centers for Medicare and Medicaid Services, or CMS. This option has been available to Wisconsin for several years. We have an IMD waiver for inpatient substance use treatment. It is high time that we apply for an IMD waiver for psychiatric inpatient care.

People with mental health conditions — just like people with any medical condition — need a range of care options from outpatient services to hospital care. Updating the IMD exclusion to allow for short-term stays in psychiatric hospitals helps strengthen the mental health system and provides more treatment options to Medicaid enrollees.

At NAMI we believe that every person with mental illness, including those who rely on Medicaid, should have access to the full range of treatment options they need — bringing us one step closer towards full and equal treatment under the law. We are in strong support of Senate Bill 635.

Sita Diehl
Public Policy and Advocacy Director
NAMI Wisconsin
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¹ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8625568/>

Bryan Polcyn; 9/6/2023 Wisconsin Psychiatric Bed Shortage Magnified by spike in competency orders, Fox News: <https://www.fox6now.com/news/wisconsin-psychiatric-bed-shortage-competency-orders>

² Note: Federal Medicaid does allow coverage of children and adults 65 and older.