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Medicaid MCO Implementation of 15-day IMD Policy

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Background

- CMS **finalized a policy in the 2016 Medicaid Managed Care** rule to **permit federal financial participation (FFP) for a full monthly capitation payment** on behalf of an enrollee aged 21 to 64 who is a patient in an IMD for part of that month in cases in which:
  - (1) the enrollee elects such services in an IMD as an alternative to otherwise covered settings for such services (such as an inpatient psychiatric unit in an acute care hospital);
  - (2) the IMD is a hospital providing psychiatric or substance use disorder (SUD) inpatient care or a sub-acute facility providing psychiatric or SUD crisis residential services; and
  - **(3) the stay in the IMD is for no more than 15 days in that month**
- CMS cited **two reasons for the 15-day** limitation:
  - (1) to specifically address concerns focused on access to short-term inpatient psychiatric and substance use disorder (SUD) services, and
  - (2) to secure compliance with the statute by delineating parameters for capitation payments which would otherwise be prohibited under the statutory IMD exclusion

Prohibition on Payment When 15-day Limit Is Exceeded

- CMS states that the MCO/PIHP must "determine if the enrollee has an inpatient level of care need that necessitates treatment for no more than 15 days", and **if the plan (or physician) believes that a stay longer than 15 days is necessary or anticipated, Medicaid coverage would not be appropriate**

- "If an enrollee has a length of stay for more than 15 days within the period covered by the monthly capitation payment, **no capitation payment may be made for that enrollee under a Medicaid managed care program** regulated under 42 CFR part 438."

Plan Interpretations of 15-day Limitation

- Some MCOs and PIHPs **have interpreted CMS' statements that "no capitation payment may be made"** for an enrollee receiving inpatient services at an IMD for greater than 15 days as either:
  - (1) **entitling them recoupment of payments to IMD providers** when the patient's stay exceeds 15 days, or
  - (2) **entitling them to withhold payments to IMD providers** when the patient's stay exceeds 15 days.

- Both situations involve MCOs and PIHPs effectively **transferring all financial risk that a patient's stay will exceed 15 days to the IMD providers**

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Argument

- **The MCOs/PIHPs' position is a plainly erroneous interpretation of the preamble text**

- CMS' discussion of when payment is appropriate under the 15-day IMD policy is **primarily directed at state Medicaid programs**
  - CMS states that no **capitation payment** may be made for that enrollee. A "**capitation payment" is a term of art defined in regulations as a periodic payment by a State to a "contractor" (i.e. MCO/PIHP)** for the provision of services under the State plan.

- CMS' **15-day IMD policy is specifically designed to leverage FFP**, which is directly relevant to States, in order to increase access to short-term inpatient psychiatric and SUD services

Argument (cont.)

- **Nowhere in the 2016 rulemaking does CMS speak directly to requirements imposed on the relationship between the MCO/PIHP and IMD**

- Traditionally, **CMS does not dictate the payment rates that MCOs/PIHPs must provide to providers and other downstream contractors**
  - MCOs/PIHPs, pursuant to the "risk contracts" they sign with States, assume "**risk for the cost of the services covered under the contract**" and must **"incur[] loss[es] if the cost of furnishing the services exceeds the payments under the contract**."

- Thus, whether a patient stay exceeds the 15-day threshold and triggers a non-capitation payment by the State to the MCO/PIHP **is irrelevant with respect to how the MCO/PIHP pays the IMD provider**

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Conclusion

- **MCO/PIHPs cannot rely on statements by CMS that were plainly directed to delineate the parameters for state Medicaid programs to receive FFP for inpatient stays at an IMD facility**

- The MCOs/PIHPs' position **effectively eliminates the risk they agreed to assume in being risk-bearing entities**, and it leads to an absurd result that would have **IMD providers render potentially millions of unreimbursed dollars** in the first 15 days simply because the **MCO/PIHP** wants to be made whole **for a result that it was complicit in failing to anticipate**

CMS should use the opportunity in the Medicaid Managed Care Rule (CMS-2408-F) to clarify that it did not intend to entitle MCOs/PIHPs to recoup or withhold payments to IMD providers when the agency issued the 15-day IMD policy in the 2016 Medicaid Managed Care Final Rule