

CCJJ Jail/Mental Health Task Force Questions Regarding
Medicaid reimbursement for Jail Detainees who are gravely disabled by a behavioral health disorders
and require outside hospitalization

- 1) If a jail detainee is gravely disabled by a mental health disorder that requires outside psychiatric hospitalization, what are the rates and allowable timeframes for Medicaid reimbursement?

Answer:

- Federal rule allows for State Medicaid programs to cover a hospitalization that is longer than 24 hours at an acute care hospital for a Medicaid-eligible member who is incarcerated in a prison or jail at the time of hospitalization. This coverage is irrespective of diagnosis. Legislation passed in 2008 required the Department of Health Care Policy and Financing (HCPF) to adopt this policy. After communication with the Centers of Medicare & Medicaid (CMS), HCPF officially implemented this policy in 2014. HCPF upgraded its implementation tools in 2017 as part of its implementation of its new fiscal agent. For more information on this federal rule and state policy, please go to:
<https://www.colorado.gov/pacific/hcpf/medicaid-and-criminal-justice-involved-populations>
- No federal Medicaid funding can be used to pay for acute care in an Institute of Mental Disease (IMD). The federal IMD exclusion is found in section 1905(a)(B) of the Social Security Act. There are some exceptions for people over age 65 and under 21 years of age described in the Act.
- Certain regulations afford States with Medicaid managed care capitated programs some flexibility to pay for IMD stays. These regulations are found in the Medicaid and CHIP Managed Care Final Rule at 42 CFR 438.6(e) and 42 CFR 438.3(e). IMDs have to meet requirements of being an “in lieu of” service, described in 438.3, in order for the State to operationalize the flexibility of paying for short term stays allowed in 438.6. HCPF is currently working with CMS to operationalize this flexibility for their capitated behavioral health program. However, Medicaid-eligible members who are incarcerated are not eligible for this flexibility as they are only eligible for coverage outlined in the first bullet.

- 2) Can acute care hospital wards be locked?

Answer:

- This issue is regulated by CDPHE health facilities licensure and certification. Nothing in DCPHE licensure rule prevents hospitals from having locked acute care ward.

Note: The task force might want to explore the Denver Health acute care unit for jail detainee model. The CMS representative for FQHCs for the Denver region is Laura Trujillo at 303-844-7127.