



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF HUMAN SERVICES  
LANSING

MAURA D. CORRIGAN  
DIRECTOR

December 11, 2014

The Honorable Bruce Caswell, Chair  
Senate Appropriations Subcommittee on DHS  
Michigan State Senate  
Lansing, Michigan 48933

The Honorable Peter MacGregor, Chair  
House Appropriations Subcommittee on DHS  
Michigan House of Representatives  
Lansing, Michigan 48933

Dear Senator Caswell and Representative MacGregor:

This report is provided pursuant to the Department of Human Services' (DHS') Fiscal Year 2015 Appropriations Act, PA 252 of 2014, Article X, Section 702(2). This section requires that DHS in conjunction with the Department of Community Health (DCH) submit a waiver request to the federal government to expand Medicaid coverage to children in need of secure residential treatment in this state.

DCH is the single state Medicaid agency authorized to submit Medicaid waivers to the Centers for Medicare and Medicaid Services. The attached report submitted by DCH to the Senate and House Appropriations Subcommittees on DCH and the Senate and House Fiscal Agencies in accordance with DCH's Fiscal Year 2015 Appropriations Act, PA 252 of 2014, Article IV, Section 1893, addresses the barriers to securing Medicaid funding. DHS will continue collaboration with DCH to develop a plan to provide secure stabilization services, assessment, and treatment to expand Medicaid coverage to Michigan children in need of secure residential treatment.

If you have any questions, please contact Dr. Herman McCall, Juvenile Justice Programs acting director, at (517) 335-3489.

Sincerely,

Susan Kangas  
Chief Financial Officer

Attachment: DCH Report on Securing Medicaid Funds for Children in Need of Secure Residential Treatment Section 1893

cc: Senate and House Appropriations Subcommittees on DHS  
Senate and House Fiscal Agencies  
Senate and House Policy Offices

**Michigan Department of Community Health**  
**Report on securing federal Medicaid funds for children in need of secure residential treatment**  
**Section 1893**

*Sec. 1893. (1) The department, jointly with the department of human services, shall explore the feasibility of securing federal Medicaid funds for children in need of secure residential treatment in this state. The departments shall include an examination of the public juvenile detention facilities or private secure residential facilities in this state as possible treatment sites.*

*(2) If the exploration determines that federal Medicaid funds are available for services to this population, the department, jointly with the department of human services, shall develop a plan to provide stabilization services, assessment, and treatment accordingly.*

*(3) By December 1 of the current fiscal year, the department, jointly with the department of human services, shall provide a progress report to the senate and house subcommittees on community health and the senate and house fiscal agencies outlining all of the following:*

*(a) The findings of the initial exploration.*

*(b) A comparison of similar services provided by juvenile rehabilitation centers that receive Medicaid funds in other states, including, but not limited to, the Woodside Juvenile Rehabilitation Center in the State of Vermont, with those provided in public juvenile detention facilities or private secure residential facilities in this state.*

*(c) Any barriers to securing Medicaid funds for such services in this state.*

*(d) Recommendations for future action, if any.*

#### **Findings from the Initial Exploration**

There are a number of federal laws, regulations, and clarifications that apply to and help instruct whether federal Medicaid funds are available for children in need of secure residential treatment.

Primary among these are the regulations regarding inmates of a public institution. These regulations, commonly referred to as the "inmate exception", specify that federal Medicaid funds are not available for on-site services provided to individuals who are inmates of public institutions.

42 CFR 435.1010 defines a public institution as "an institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control". There are some important exceptions incorporated into this definition, however. A public institution, as defined above, does not include:

- medical institutions (defined below);
- intermediate care facilities;
- publicly operated community residences that serve no more than 16 residents; and
- child care institutions with respect to children receiving foster care or foster care payments.

The same section defines a medical institution as "an institution that—

- (a) Is organized to provide medical care, including nursing and convalescent care;
- (b) Has the necessary professional personnel, equipment, and facilities to manage the medical, nursing, and other health needs of patients on a continuing basis in accordance with accepted standards;
- (c) Is authorized under State law to provide medical care; and
- (d) Is staffed by professional personnel who are responsible to the institution for professional medical and nursing services. The services must include adequate and continual medical care and supervision by a physician; registered nurse or licensed practical nurse supervision and services and nurses' aid services, sufficient to meet nursing care needs; and a physician's guidance on the professional aspects of operating the institution".

In 1997, the Department of Health and Human Services released guidance clarifying a number of items related to the inmate exception. This memo confirmed that federal Medicaid funds are not available for individuals who are being held involuntarily in detention centers awaiting trial or those receiving care on the premises of a prison, jail, detention center, or other penal setting; however, Federal Financial Participation (FFP) can be permitted for inmates “when an inmate becomes a patient in a medical institution. This occurs when the inmate is admitted as an inpatient in a hospital, nursing facility, juvenile psychiatric facility, or intermediate care facility.” One such juvenile psychiatric facility is a Psychiatric Residential Treatment Facility (PRTF).

A PRTF is defined as a non-hospital facility that provides inpatient psychiatric services to Medicaid-eligible individuals under the age of 21 (42 CFR §483.352; 42 CFR §441.150 - §441.182). In addition to having a provider agreement with a State Medicaid Agency, a number of organizational requirements must be met in order for a facility to be certified as a PRTF.

1. The facility is a separate, stand alone entity providing a range of comprehensive services to treat the psychiatric condition of residents on an inpatient basis to improve the resident’s condition or prevent further regression so that the services will no longer be needed.
2. The facility must be accredited by the Joint Commission (JCAHO), the Commission on Accreditation of Rehabilitation Facilities (CARF), the Council on Accreditation of Services for Families and Children or another accrediting organization with comparable standards that is recognized by the state.
3. The facility must provide inpatient psychiatric services under the direction of a physician and certified in writing to be necessary in the setting in which they will be provided.
4. The facility’s staffing model must include an interdisciplinary team of physicians and other professional staff including a Board-eligible or Board-certified psychiatrist, a clinical psychologist who has a doctoral degree and a physician, and either:
  - a. a psychiatric social worker;
  - b. a registered nurse with specialized training or one year’s experience in treating mentally ill individuals;
  - c. an occupational therapist who has specialized training or one year of experience in treating mentally ill individuals; or
  - d. a psychologist who has a master’s degree in clinical psychology.

This team is responsible for certifying that the PRTF is the appropriate service delivery system and developing an individual plan of care for each resident of the facility.

5. The facility must meet all requirements under Part 483, subpart G—Condition of Participation for the Use of Restraint or Seclusion in PRTFs.

The 2001 interim final rule 66 FR 28111 clarified that PRTFs are eligible for Medicaid funding to support the inpatient psychiatric services and room and board costs for youth that meet the state’s established medical necessity criteria.

### **Other State Comparison**

Woodside Juvenile Rehabilitation Center is a secure facility operated by the Vermont Department for Children and Families (DCF). The majority of the facility’s residents are delinquent youth (ages 10-18). In 2011, the facility was repurposed as a cost-effective alternative to hospitalization for youth. The reorganization, CARF accreditation, and renewed focus on treatment enabled the facility to receive Medicaid funding through Vermont’s Global Commitment for Health Section 1115 waiver, as this waiver allowed the state flexibility to purchase cost-effective and medically appropriate services that are alternatives to traditionally-covered services.

Woodside provides on-site screening and assessment, medical care, medication management, individual and group therapy, supervision and discharge planning. The facility's staff includes a full-time registered nurse specializing in adolescent psychiatric services and two licensed physicians available for weekly office visits/examination.

Harborcreek Youth Services (HYS) is a Pennsylvania child and family social service agency that provides treatment to male youths (ages 10-18) who are diagnosed with a mental health disorder and who usually have delinquency and/or dependency issues. In 2005, HYS began implementing changes to begin operating a number of PRTFs. At the present, HYS operates four PRTFs in the state. These secure facilities are accredited through the Council on Accreditation (COA) and licensed by the Pennsylvania Department of Public Welfare. In order to be admitted into the PRTF, individuals, many of whom are under court supervision for delinquency issues, must meet the medical necessity criteria as determined by a licensed psychiatrist. The agency also operates a 12 bed facility for boys who are court ordered to HYS, but do not meet medical necessity. Counties pay for that service directly.

HYS provides on-site screening and assessment, medical care, medication management, individual and group therapy, supervision and discharge planning. The facility's staff includes a board-certified licensed psychiatrist (head of PRTF treatment team), a full medical staff consisting of a nurse supervisor and 3 LPN/RNs, a licensed general practitioner available once weekly for office visits/examinations, and a licensed (or at least master level) mental health therapist.

Boystown is a secure residential program in Nebraska for youth ages 5 to 18 with psychiatric disorders. Boystown's secure PRTF opened in 2013 and is accredited through the Joint Commission and licensed by the Nebraska Department of Health and Human Services. The facility, designed to provide medically directed psychiatric care for seriously troubled youth who require supervision, safety, and therapy, accepts candidates referred by clinical professionals, caseworkers, and the juvenile justice system.

Boystown provides on-site screening and assessment, medical care, medication management, individual and group therapy, academics, life skills building, supervision and discharge planning. The facility's staff includes a licensed psychiatrist, a therapist, an educator, a nurse, and a treatment technician.

### **Barriers to Securing Medicaid Funding**

Federal regulations clearly stipulate that Medicaid funding is not available for inmates receiving care "on premises of prison, jail, detention center, or other penal setting." FFP only becomes available for this population if the individual becomes a patient in a medical institution, as defined in statute.

While funding is available for youth placed in secure PRTFs, such a setting does not currently exist in Michigan. Additionally, certain legal precedent holds that claims are not eligible for FFP when the claims are for services other than inpatient psychiatric services to residents of a PRTF. Specifically, in May 2012, in the consolidated case of *Virginia Dept. of Medical Assistance Services v. Sebelius*, the U.S. Court of Appeals for the D.C. Circuit held that FFP is not available for services, other than inpatient psychiatric services, provided to persons under age 21 in a PRTF.

### **Recommendations for Future Action**

MDCH is currently working towards operationalizing a PRTF for a targeted group of youth with complex needs (Fetal Alcohol Spectrum Disorders and complex trauma) who have historically cycled between psychiatric hospitalization at Hawthorn Center and residential treatment and have not been able to be sustained in the community. This work is in the early stages at this point and a number of steps need to be taken for this facility, planned on the grounds of the Hawthorn Center in Northville, to come to fruition. The Department is currently

working to determine consultation needs and plans to pursue a State Plan Amendment when a plan has been finalized. In addition to these efforts, MDCH plans to continue work collaboratively across agencies to explore treatment and funding options for children with complex needs.