

5160-3-06.1

**Institutions for mental diseases (IMDs).**

- (A) ~~Section 1905 (a) of the Social Security Act provides that federal financial participation (FFP) is not available for any medical assistance for individuals who are in an institution for mental disease (IMD) unless the payments are for inpatient hospital or nursing facility (NF) services for individuals sixty-five years of age or older, or for inpatient psychiatric hospital services for individuals under age twenty-one, and in certain circumstances under age twenty-two. The purpose of this rule is to set forth the process by which the Ohio department of medicaid (ODM) shall identify nursing facilities (NFs) that are at risk of becoming IMDs, the preventive measures to be taken by ODM when such facilities have been identified, and the course of action to be taken if a NF is identified as an IMD.~~

Medicaid payment is not available for services provided to individuals in an IMD who are age twenty-one and over, and in certain circumstances age twenty-two and over, and under age sixty-five, except as permitted in 42 C.F.R. 438.6(e) (October 1, 2016).

**(B) Definitions.**

- (1) "At risk facility". A NF is considered to be an at risk facility if it meets two or more of the IMD evaluation criteria set forth in paragraph (C)(2)(b) of this rule but has not been determined to meet the definition of IMD set forth in paragraph (B)(2) of this rule.
- (2) "Institution for mental diseases (IMD)" means a hospital, nursing facility, or other institution of more than sixteen beds that is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care and related services. A NF is considered to be an IMD if its overall character is that of a facility established and maintained primarily for the care and treatment of individuals with mental diseases, whether or not it is licensed as such. An intermediate care facility for the mentally retarded (ICF-MR) is not an IMD.
- (3) "Mental diseases" means diseases listed as mental disorders in the "International Classification of Diseases, Tenth Revision, Clinical Modification," or the most recent edition, with the exception of mental retardation, senility, and organic brain syndrome. This publication is available on the internet via the website <http://www.cdc.gov/nchs/icd/icd10cm.htm>.
- (4) "Potentially at risk of becoming an IMD". A NF is considered to be potentially at risk of becoming an IMD if any one of the following applies:
  - (a) The NF is licensed as a mental nursing home as defined in rule

3701-17-01 of the Administrative Code;

- (b) The NF was identified as an at risk facility during a prior IMD review; or
- (c) Forty-five per cent or more of the NF's residents have been determined to need specialized services for serious mental illness by the Ohio department of mental health and addiction services (ODMHAS) in accordance with rules 5160-3-15.1, ~~5160-3-51.2~~5160-3-15.2, and 5122-21-03 of the Administrative Code.

(C) Identification of at risk facilities and IMDs.

(1) ODM shall identify and maintain a list of NFs that are potentially at risk of becoming IMDs.

(2) IMD reviews shall be conducted for any potentially at risk facility on the list.

(a) IMD reviews shall be scheduled as follows:

- (i) ODM shall schedule and complete an initial on-site IMD review of any NF that is newly identified as meeting the criteria set forth in paragraphs (B)(4)(a) and/or (B)(4)(c) of this rule. Initial reviews shall be completed within sixty calendar days following the identification of the NF's potentially at risk status;
- (ii) ODM shall conduct annual on-site IMD reviews in each potentially at risk facility for at least two consecutive years after it is identified as potentially at risk of becoming an IMD.

(b) IMD review criteria. The following criteria shall be used to evaluate the overall character of a NF:

- (i) Whether the NF is licensed as a psychiatric facility. For purposes of this rule, this includes licensure as a mental nursing home in accordance with rule 3701-17-01 of the Administrative Code;
- (ii) Whether the NF is accredited as a psychiatric facility by the "Joint Commission," which accredits and certifies health care organizations and programs in the United States;
- (iii) Whether the NF is under the jurisdiction of the ODMHAS;

- (iv) Whether the NF specializes in providing psychiatric and/or psychological care and treatment, as evidenced by any of the following indicators:
    - (a) Fifty per cent or more of individuals residing in the NF have medical records indicating that they are receiving psychiatric/psychological care and treatment;
    - (b) Fifty per cent or more of the NF's staff have specialized psychiatric/psychological training; or
    - (c) Fifty per cent or more of individuals residing in the NF are receiving psychopharmacological drugs; and
  - (v) Whether the current need for institutionalization for more than fifty per cent of all the individuals residing in the NF results from mental diseases. In determining whether this criterion is met, the reviewer must consider whether more than fifty per cent of individuals residing in the NF have serious mental illness (as defined in rule 5160-3-15 of the Administrative Code) and have been determined by ODMHAS to need specialized services for serious mental illness in accordance with rule 5160-3-15.1 or 5160-3-15.2, and rule 5122-21-03 of the Administrative Code.
- (c) IMD review results. At the conclusion of each IMD review, ODM shall make one of the following determinations:
- (i) The NF is not at risk of becoming an IMD;
  - (ii) The NF is an at risk facility as defined in paragraph (B)(1) of this rule; or
  - (iii) The facility is determined to be an IMD.
- (D) ODM action pursuant to IMD review results. Upon completion of the IMD review, ODM shall proceed with the follow-up activities corresponding to the determination that was made for the NF:
- (1) For NFs determined not to be at risk of becoming an IMD:

- (a) Any NF that is determined not to meet the criteria for potential risk shall be notified and removed from the list of facilities that are potentially at risk of becoming an IMD.
  - (b) Any NF determined to be potentially at risk of becoming an IMD but that does not meet at least two of the IMD review criteria set forth in paragraph (C)(2)(b) of this rule shall be notified of its status as a potentially at risk facility and that it shall continue to be subject to annual IMD reviews, and retained on the list of facilities that are potentially at risk of becoming an IMD.
- (2) NFs determined to be at risk of becoming an IMD shall be notified of the determination, offered the opportunity to receive technical assistance to prevent them from becoming IMDs, and shall be monitored closely by ODM following the at risk determination. Such monitoring may include the performance of additional, unannounced, on-site IMD reviews by ODM.
- (3) For NFs determined to be an IMD:
- (a) The NF shall be notified by certified mail of the determination, that eligibility to receive medicaid vendor payment shall be terminated with respect to all individuals residing in that NF who are under age sixty-five and age twenty-one and over, and, in certain circumstances age twenty-two and over, except as permitted in 42 C.F.R. 438.6(e), and that it has ~~ten working~~ thirty days from the date the notice was mailed to exercise its ~~appeal~~ reconsideration rights pursuant to paragraph ~~(B)(D)~~ of rule ~~5160-1-57~~5160-70-02 of the Administrative Code;
  - (b) If the facility requests a reconsideration pursuant to paragraph ~~(B)(D)~~ of rule ~~5160-1-57~~5160-70-02 of the Administrative Code, eligibility to receive vendor payment will continue until the issuance of a final decision by ODM.
  - (c) On the ~~eleventh~~thirty-first day following the date the IMD determination notice was mailed to the NF, or upon issuance of a final decision by ODM, if the IMD determination is upheld on ~~appeal~~reconsideration, ODM shall notify the county department of job and family services (CDJFS) in writing, to initiate the process for termination of the vendor payment and a redetermination of the residents' continued eligibility for medicaid and to provide notice of all applicable appeal rights to all affected residents of that IMD in accordance with Chapters 5101:6-1 to 5101:6-9 of the Administrative Code.

(E) A NF which has been determined to be an IMD may, following a period of not less than six months, submit a written request that ODM conduct a redetermination survey when changes have been made in its overall character such that the administrator of the facility believes it would no longer qualify as an IMD. ODM shall respond to such requests by conducting a redetermination survey within sixty days of the receipt of the request.

(1) If the redetermination survey finds that the NF no longer meets the definition of an IMD set forth in paragraph (B)(2) of this rule, ODM shall:

(a) Follow the procedures set forth in paragraph (D)(1) or (D)(2) of this rule; and

(b) Notify the CDJFS in writing, of the effective date of the determination that the facility is not an IMD, to initiate vendor payment, regardless of the age of the individual and in accordance with rule 5160-3-15 of the Administrative Code, on behalf of medicaid eligible individuals seeking medicaid payment of their stay in that NF.

(2) If the redetermination survey finds that the NF continues to be an IMD, the NF shall be notified by certified mail of the determination, the basis for the determination, that it has ~~ten working~~thirty days from the date the notice was mailed to exercise its ~~appeal~~ reconsideration rights pursuant to paragraph ~~(B)(D)~~ of rule ~~5160-1-57~~5160-70-02 of the Administrative Code, and that if the NF does not exercise its ~~appeal~~ reconsideration rights within that time it may not request another ~~reconsideration~~ redetermination survey for at least six months from the date of the determination.

Effective: 08/17/2017

Five Year Review (FYR) Dates: 05/31/2017 and 08/17/2022

CERTIFIED ELECTRONICALLY

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Certification

08/07/2017

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Date

Promulgated Under: 119.03  
Statutory Authority: 5165.02  
Rule Amplifies: 5162.06  
Prior Effective Dates: 6/15/88 (Emer.), 8/29/88, 9/1/94, 7/1/08, 10/3/14