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**TO:** Richard Charest, Director, BHDDH

**FROM:** Benjamin Shaffer, Medicaid Program Director, EOHHS

**CC:** Womazetta Jones, Secretary, EOHHS

**DATE:** September 8, 2021

**SUBJECT:** ELEANOR SLATER HOSPITAL'S IMD STATUS 04/01/20 – 05/01/21

### INTRODUCTION

The purpose of this Memorandum is to provide the Department of Behavioral Health, Developmental Disabilities and Hospitals (BHDDH) with the Executive Office of Health and Human Services' (EOHHS) findings regarding the Eleanor Slater Hospital's (ESH) participation in the Rhode Island Medicaid program. Specifically, this Memorandum focuses upon whether during specific time periods detailed below, ESH was operating as an Institute for Mental Diseases (IMD) and therefore unable to claim federal matching funds also known as federal financial participation (FFP) for Medicaid eligible patients at ESH. These findings impact ESH's ability to retroactively and prospectively claim FFP from April 1, 2020 to the present.

### AUTHORITY

EOHHS, as the single state agency for the State of Rhode Island Medicaid Program, is responsible for reviewing compliance with federal requirements to determine whether a Medicaid provider remains eligible for Medicaid reimbursement. R.I. Gen. Laws § 42-7.2-2 (a)(6); Title XIX of the U.S. Social Security Act, 42 U.S.C. § 1396a et seq. This includes ensuring compliance with federal regulations regarding whether ESH is unable to claim FFP as an Institution for Mental Disease (IMD). 42 C.F.R. § 435.1010; CMS State Medicaid Manual, § 4390. Whether ESH is an IMD is solely determined by EOHHS, through a review and consideration of the hospitals' overall character and patient census based upon diagnosis.

The IMD review process and requirements for Rhode Island are contained in 210-RICR-10-00-7.4 (IMD Regulations). The IMD Regulations have been reviewed by CMS and are in alignment with the Federal Social Security Act 1905(i), 42 CFR § 435.1010 and CMS' State Operations Manual, Section 4390.C.5. In March 2020, EOHHS formally promulgated its existing IMD Policy into regulations outlining the process by which the State assesses and determines a facility's IMD status and became effective as of April 8, 2020. 210-RICR-10-00-7.



## EXECUTIVE SUMMARY AND IMD FINDINGS

To determine whether ESH can restart claiming FFP for Medicaid eligible ESH patients, EOHHS contracted with an independent, qualified IMD review team to assess the Hospital's IMD status, because IMD reports submitted to EOHHS as required by the regulation indicated that ESH was an "at-risk" facility. In accordance with the IMD Regulations, EOHHS has determined that ESH is licensed as one (1) hospital with a unified governance structure. As detailed in the IMD Regulations, EOHHS reviews the IMD status and patient census of facilities like ESH on May 1<sup>st</sup> and December 1<sup>st</sup> every year. The IMD Regulations and the CMS Provider Manual stipulate that to avoid the IMD exclusion, ESH's patient census for qualifying psychiatric patients must be less than 51% of the total patient population.

Effective June 15 of 2021, EOHHS retained a clinically qualified team to conduct a full independent IMD review of ESH's patient medical records focusing upon the ESH patient census for April 1, 2020, May 1, 2020, December 1, 2020 and May 1, 2021. April 1, 2020 was included in the independent IMD because in approving the Medicaid State Plan Amendment for ESH's rates CMS indicated that the new rate structure could be retroactively applied back to April 1, 2020.

The independent review teams findings on qualifying psychiatric patients is summarized in the table below:

| <b>Date</b>      | <b>Psychiatric Patients</b> | <b>Total Patient Census</b> | <b>% Of Total Patient Census with a Qualifying Psychiatric Disease</b> |
|------------------|-----------------------------|-----------------------------|--|
| April 1, 2020    | 97                          | 217                         | 44.7%  |
| May 1, 2020      | 95                          | 214                         | 44.4%  |
| December 1, 2020 | 83                          | 191                         | 43.5%  |
| May 1, 2021      | 96                          | 188                         | 51.1%  |

Based on the above findings, EOHHS determines that between April 1, 2020 and May 1, 2021, ESH was not an IMD and is fully authorized to retrospectively claim FFP for patient services provided during that period. The psychiatric patient census at ESH during this period was consistently below 45% and did not trigger the IMD Regulation designation of At-Risk IMD status, requiring closer oversight and review by EOHHS.

However, the result of the independent IMD review supports the EOHHS determination that the May 1, 2021 ESH census for qualifying psychiatric patients was 51% of the total patient population. EOHHS determines that ESH is in an IMD status and is therefore unable to claim FFP from May 1, 2021. The increase in the psychiatric patient mix between December 1, 2020 and May 1, 2021 suggests a change in the configuration and character of and patient mix at ESH, and despite being close to the 50% IMD benchmark, EOHHS can only conclude that, at this time, ESH is an IMD.

In accordance with 210-RICR-10-00-7, ESH can appeal EOHHS' finding that as of May 1, 2021, ESH is an IMD and unable to claim FFP. In addition, pursuant to the IMD Regulations, ESH has the option on or after December 1, 2021, to request a retroactive redetermination of this finding of IMD status by presenting to EOHHS a significant change in the character and configuration of the hospital or the patient census that changes ESH's IMD status. In response to such a request EOHHS would conduct a redetermination survey utilizing an independent review team. If EOHHS' IMD redetermination survey found that ESH no longer met the definition of an IMD, EOHHS could provide ESH with the effective date that ESH was no longer an IMD. This would allow ESH to initiate retroactive claiming of FFP for all eligible individuals to the effective date. ESH must ensure that ESH is not an IMD from that retrospective date, through December 1, 2021. Also, under the IMD Regulations, ESH can submit an IMD assessment on December 1, 2021 to seek a redetermination of this IMD finding and authorization to prospectively claim FFP.

### **EOHHS REVIEW OF ESH IMD STATUS**

The IMD review process utilized by EOHHS, contained in 210-RICR-10-00-7.4, has been reviewed and approved by CMS and is based upon the Federal Social Security Act 1905(i), 42 CFR § 435.1010 and CMS' State Operations Manual, Section 4390.C.5. In March 2020, EOHHS formally promulgated its existing IMD Policy into regulations outlining the process by which the State assesses and determines a facility's IMD status. These IMD Regulations became effective as of April 8, 2020 ("IMD Regulations"). 210-RICR-10-00-7. The IMD Regulations require facilities to file self-attestations and complete an IMD assessment form responding to specific questions concerning the general characteristics of the whole facility, including patient mix and census on May 1<sup>st</sup> and December 1<sup>st</sup> of each year. Based on the submission, the Medicaid Agency assesses whether the facility currently is an IMD or whether the facility is at-risk of becoming an IMD (an "At-Risk Facility").

Both the CMS Provider Manual and the IMD Regulations provide that in assessing patients for the purposes of determining whether a facility is subject to the IMD exclusion, a qualifying "mental disease" includes diseases listed as mental disorders in the International Classification of Diseases. However, individuals with intellectual and developmental disabilities, senility, or organic brain syndromes are specifically excluded from the definition of qualifying mental diseases in determining IMD status. Further the CMS Provider Manual provides that a patient should not be in the qualifying mentally ill category when no clear-cut distinction is possible. CMS State Operations Manual, Section 4390.D.

Under the CMS State Operations Manual, EOHHS cannot utilize ESH staff physicians or other BHDDH staff to conduct a patient census records review to assess whether ESH's patients have a qualifying mental disease that places them in the numerator of an IMD calculation ("qualifying mental disease"). Accordingly, in June 2021, EOHHS contracted with qualified independent clinical staff at Butler Psychiatric Hospital to conduct the IMD review at ESH. This independent IMD review team included a psychiatrist and other clinical staff, with the knowledge of long-term care facilities, gerontology, and dementia to perform the independent

IMD review. The independent IMD review team was authorized to conduct a review of ESH's patient records as part of the process to determine ESH's status as an IMD.

The independent IMD review team reviewed all ESH patient medical records for patients on the official census at Eleanor Slater Hospital on the following four (4) dates: April 1, 2020, May 1, 2020, December 1, 2020 and May 1, 2021. The independent IMD evaluation included a review of medical records for patients at both ESH's Cranston campus and Zambarano campus. The independent IMD review team conducted a comprehensive medical record review in accordance with the CMS Provider Manual and the IMD Regulations, 210-RICR-10-00-7 to determine whether a patient's primary treatment at ESH was for (1) a "qualifying mental disease" under IMD guidelines; (2) mental diseases that are exempt and excluded from the determination of a "qualifying mental disease", or (3) medical (physical) diseases and disorders.

The independent review team conducted reviews of patient records at ESH on the following dates and times for a total of 31.5 review hours:

1. Cranston 6/18/21 3:00pm-6:00pm (3 Hours)
2. Cranston 6/19/21 10:00am-2:00pm (4 Hours)
3. Cranston 6/25/21 1:00pm-6:00pm (5 Hours)
4. Cranston 6/28/21 3:00pm-6:00pm (3 Hours)
5. Cranston 7/9/21 2:00pm-6:00pm (4 Hours)
6. Cranston 7/23/21 2:00pm-6:00pm (4 Hours)
7. Pascoag 8/6/21 7:30am-4:00pm (8.5 Hours)

#### **NOTES FROM THE INDEPENDENT REVIEW TEAM**

A version of the Independent Review results provided to EOHHS is included as an attachment to this Memorandum. Appendix D of that document is a redacted description of ESH patient diagnoses and is not a public document because it contains private health information.

In conducting the independent IMD review, the clinical team noted the following for the State's consideration. We encourage ESH leadership to review the findings and respond with any questions for the clinical review team they may have:

1. Notes and assessment are handwritten and at times illegible.
2. There is frequently inconsistency in Diagnoses between disciplines
3. Outdated diagnoses are still being referenced and not standardized to DSM5/ICD10
4. The Primary Diagnosis is not listed consistently
5. Limited supporting documentation on patients with an Intellectual /Developmental Disability (IDD).

Given the above, EOHHS as the Single-State Authority and the Independent Review team make the following recommendations regarding ESH's ongoing compliance with Medicaid requirements:

1. Implementation of a new electronic record would provide ESH with the ability to run reports on a routine basis which would assist in tracking the patient mix, provide an accurate census that considers discharges and admissions and offers supportive documentation for coding and billing.
2. Ensure that the primary diagnosis of each patient is should be identified in every note. The treatment plan should reflect why the patient requires the current level of care, description of the current symptoms, treatment interventions and a discharge plan.
3. Implement a process for routine record reviews.
4. Implement a process for reporting to relevant departments when a primary diagnosis is changed over the course of hospitalization. An EMR would greatly enhance the ability to capture this information.

### **Attachments**

Attachment A: 210-RICR-10-00-7

Attachment B: CMS' State Operations Manual, Section 4390.C.5

Attachment C: ESH Independent Review