

March 5, 2026

Dr. Mehmet Oz
Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Re: Comments on Florida’s Application for Section 1115 Waiver of IMD Rule

Dear Administrator Oz:

The Bazelon Center for Mental Health Law submits the following comments in response to Florida’s application for a Section 1115 waiver for Institutions for Mental Disease Coverage for Individuals Diagnosed with Mental Illness and/or Substance Use Disorder. The Bazelon Center is a national non-profit legal advocacy organization that promotes full inclusion and equal opportunity for people with psychiatric disabilities in all aspects of life, including health care, housing, community living, employment, and other areas. We are deeply concerned about Florida’s proposal to expand the use of institutional care through a demonstration project with federal Medicaid dollars supporting the provision of institutional care to individuals with serious mental illness. For the reasons below, we urge you to reject the waiver.

CMS Lacks Authority to Grant the Proposed Waiver

Section 1115 of the Social Security Act does not allow CMS to approve waivers of the IMD rule. Section 1115(a)(1) only permits waiver of specific provisions of the Medicaid statute; the IMD rule is not among them.¹ The agency’s “expenditure authority” under Section 1115(a)(2) only applies to waivers of those listed provisions.² The statutory language clearly prohibits federal financial participation for services provided to

¹ Social Security Act, 42 U.S.C. § 1315 (a)(1).

² See *Id.* at (a)(1-2) (permitting the use of expenditure authority only for the “costs of *such project*” that is approved under the agency’s Section 1115(a)(1) authority).

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individuals aged 21-64 in IMDs, and CMS therefore has no authority to grant Florida's request.

Florida's Application Fails to Meet CMS's Length-of-Stay Rule

Even if CMS could grant the waiver, Florida's proposal fails to meet the requirements set by the agency's 2018 Dear State Medicaid Director Letter allowing 1115 demonstrations waiving the IMD rule for services provided to people with serious mental illness. That directive provides that Section 1115 waivers of the rule will only be granted to cover stays averaging no more than 30 days. CMS's 30-day limitation recognizes the statutory exclusion for federal reimbursement of services to individuals 21-64 in IMDs and the need to ensure that the agency's departure from that exclusion to allow federal funding for those services is narrowly cabined.

Florida makes no assurance that it will take steps to ensure that this limitation is met and in fact never even mentions the 30-day limitation. Instead, it sets its *own standard* for covered lengths of stay, seeking federal reimbursement for IMD stays of up to *90 days*, which it characterizes as "short-term." CMS has already identified the standard for ensuring that demonstration waivers are cabined to short stays. Indeed, according to most studies the average length of stay in a psychiatric hospital nationally is less than 10 days. Florida's failure to commit to CMS's length-of-stay requirement and insistence on its own standard, which is far outside the length of most hospitalizations, should lead CMS to reject its application.

Florida's Hypotheses Have Already Been Disproven

Waiver of the IMD rule should not be granted to test the hypotheses Florida presents in its application, as they have already been disproven through a large demonstration project. The state contends that increased access to inpatient psychiatric treatment will decrease emergency room utilization and lengths of stay, reduce preventable admissions to acute care hospitals and residential settings, increase access to crisis stabilization, improve access to community services, and improve continuity of community care following hospitalization.³

³ Application at 11.

These same hypotheses were tested in the large, congressionally mandated and federally directed Medicaid Emergency Psychiatric Demonstration. From 2012-2015, the federal government reimbursed eleven states and the District of Columbia for inpatient treatment of adults with psychiatric disabilities in private IMDs. The program’s final evaluation found *no* decrease in emergency department admissions or lengths of stay, *no* decrease in general hospital admissions or lengths of stay, *no* significant improvement in access to inpatient care, and *no* improvement in follow-up care in the community.⁴ The program also either increased or had no effect on total mental health spending in each demonstration jurisdiction.⁵ Accordingly, granting Florida’s waiver request would mean spending significant federal resources on costly care that will not achieve the stated goals of the demonstration.

Increasing IMD Use Will Not Address the Root Issue

Expanding inpatient beds will do little to address the root cause of the pressure on psychiatric hospital capacity in Florida--the lack of community-based mental health services. Without adequate community services, the state will continue to experience difficulty preventing avoidable admissions and facilitating timely discharges from the hospital. The National Association of State Mental Health Program Directors emphasizes that the pressure to increase psychiatric inpatient capacity “often actually stems from an underfunded community mental health system.”⁶

Florida’s current mental health care system under-resources community services and includes significant gaps in those services. A 2025 Behavioral Health Gap Analysis prepared for Florida by Ernst & Young highlighted that Florida has serious deficiencies

⁴ Crystal Blyler et al., *Medicaid Emergency Psychiatric Services Demonstration Evaluation: Final Report*, Mathematica Pol’y Rsch. 27, 54-55, 74 (Aug. 18, 2016).

⁵ *Id.* at 70.

⁶ Sherry Lerch and Kevin Martone, *The Role of Permanent Supportive Housing in Determining Psychiatric Inpatient Bed Capacity*, Nat’l Ass’n of State Mental Health Program Dirs. 4 (Aug. 2017), https://www.nasmhpd.org/sites/default/files/TAC.Paper_4.Housing_in_Determining_Inpatient_BedCapacity_Final.pdf.

in community-based mental health services.⁷ For example, the analysis found that Florida needs to increase its Assertive Community Treatment (ACT) teams by 75%, from 39 teams to 68 teams, to meet the need. The report noted that New York, with a similarly sized population (indeed, one smaller than Florida's) has 108 ACT teams.⁸ The report also highlighted other significant gaps in community mental health services, including gaps in mobile response teams, supported housing, and peer support services.⁹

Expanding institutional services rather than addressing Florida's serious gaps in community services will continue the current situation and will not solve the underlying problems causing hospital admissions and delaying discharges. To the contrary, focusing on institutional expansion is likely to further aggravate the gaps in community services, fueling more demand for hospitalization. With states facing unprecedented budget shortfalls due to recent Medicaid changes, cuts to Medicaid community services are already anticipated. Incentivizing further investment of scarce resources in expensive institutional care in the face of anticipated cuts to community services—which reduce the need for institutional beds and can serve many more people for the same cost—means serving fewer people at greater financial cost and greater cost to those individuals' lives. That does not serve the purpose of an 1115 demonstration. CMS should not approve the request.

The past fifty years have seen a clear and deliberate public policy shift away from the historic overreliance on psychiatric institutions and towards increased investment in the cost-effective community mental health services that reduce the need for hospitalization. This has occurred for two reasons: (1) a recognition that many individuals served in IMDs receive better care and achieve recovery in home and community-based settings, and (2) the need to comply with the Americans with Disabilities Act's integration and the Supreme Court's *Olmstead* decision, which require states to offer individuals with disabilities the opportunity to be served in the most integrated setting appropriate.

⁷ *State of Florida Behavioral Health Gap Analysis* (Jan. 31, 2025), <https://img1.wsimg.com/blobby/go/04dad2ad-e4b1-42e4-b8b4-42d4f2bb4407/Behavioral%20Health%20Gap%20Analysis%20-%20SB%20330%20Analys.pdf>.

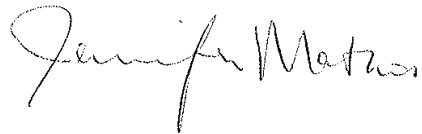
⁸ *Id.* at 33.

⁹ *Id.* at 30, 33.

Granting Florida's waiver request would undermine these crucial goals, in addition to exceeding CMS' statutory authority.

We appreciate the opportunity to provide comments on Florida's application. For the reasons listed, we urge CMS to reject the requested waiver with respect to psychiatric institutions.

Sincerely,

A handwritten signature in black ink that reads "Jennifer Mathis". The signature is written in a cursive, flowing style.

Jennifer Mathis
Deputy Director