



**Department  
of Health**

**Office of Children  
and Family Services**

# **Medicaid Institution for Mental Diseases (IMD) Exclusion impact on Services provided to Children Residing in Residential Settings**

## **Stakeholder Discussion**

May 4, 2022

# Agenda

- Welcome
- New York State's Vision
- Institution for Mental Diseases (IMD) Exclusion Overview
- Timeline Review and Next Steps
- Open Dialogue/Questions



# Welcome

- *All lines muted upon entry*
- Please use Q&A feature for comments and questions
- This webinar will be recorded

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# New York State's Vision

# Shared Vision and Guiding Principles

- New York State is at an inflection point in our child welfare system – the dramatic shifts brought about as a result of the FFPSA, unique and challenging needs of our foster care youth, focus on upstream prevention, workforce and other structural challenges facing non profits and local districts, and an urgent need to address racial bias and social inequities throughout our child welfare, health and behavioral health sector bring us to a place of transformational opportunity.
- Where silos between systems are broken down and children and families have access to the right services, at the right level of intensity, for the right amount of time well before anyone feels the need to call the State Central Register.
- In the event that child welfare is needed, we are able to care for our children and parents in a wholistic manner, right here in New York State and families' lives are better because they have been touched by our system of care.



# Shared Vision and Guiding Principles

- In doing this well, NYS can further the goal of further reducing foster care youth in congregate care placements by addressing long standing needs to better support parents, kin and foster parents especially for children and youth with significant behavioral health and DD issues, The implementation of innovative community-based intensive services will better serve the communities, parents, and youth we serve.
- In doing this well, we support and provide further capacity to the voluntary and other non profit agencies and we acknowledge their expertise and deep commitment to this work.
- By close design with OCFS, DOH, OASAS, OPWDD and OMH, comprehensively, New York State can make great progress to meet the complex needs of the cross-system youth in New York State and stop the steady flow of our youth to programs out of New York State.



# State Actions to Date

- OCFS and DOH have strenuously advocated for congressional relief to remedy the IMD inclusion in the FFPSA statute including direct advocacy to CMS and ACF.
- Thoroughly analyzed the applicable legal standards regarding the Medicaid IMD exclusion and applicability to Child Welfare and consulted with advocates, coalitions, and other states
- Developed list of impacted QRTP providers and those that will likely require onsite review to validate initial determinations and obtain further information
- Collaboratively developed tools to use as part of the review process
- Issued a letter to stakeholders outlining NY's strategy to ensure Medicaid funding is available for services provided to children residing in QRTPs



# New York State's Commitment

- Maintain adequate funding for services
  - State is committed to its obligation to ensure children receive all services that are medically necessary
- Avoid destabilization and focus on capacity building
- Provide supports that allow children to return home sooner, shared planning
- Prioritize family-based placement with kinship
- Strengthening community-based services
- Build on accomplishments (Family First, 29-I Licensure)



# Federal Medicaid IMD Exclusion Overview

# Voluntary Foster Care Agencies and the Medicaid IMD Exclusion Overview

- **The Family First Prevention Services Act (FFPSA)** made significant changes to improve the child welfare system, including limiting Title IV-E maintenance payments to no more than 14 days except for specified settings which includes facilities licensed as Qualified Residential Treatment Facilities (QRTPs) and QRTP-Exceptions.
- **Section 1905(a)** of the Social Security Act prohibits use of federal Medicaid dollars for any services provided to residents of IMDs
- **Under an 1115 Waiver**, states may request federal Medicaid financial participation for services provided to Medicaid members residing in an IMD for an average length of stay of up to 30 days. For residents of QRTPs that are considered IMDs, the length of stay limitation is waived for the first two years of the demonstration.
- **September 2019** CMS Guidance – QRTPs may be IMDs and states need to analyze these settings to determine whether the facility meets the definition of an IMD;
- **October 2021** CMS Guidance – a QRTP will likely qualify as an IMD. CMS encouraged states to submit an 1115 waiver to ensure availability of federal Medicaid funding for services provided to residents of these facilities.



# IMD Definition

- An Institution for Mental Diseases (IMD) is defined as “a hospital, nursing facility **or other institution of more than 16 beds** that is primarily **engaged** in providing diagnosis, treatment of persons with **mental diseases**, including medical attention, nursing care, and related services”.
  - Institution is the first level of assessment
- An agency is considered an IMD if its overall character is that of a facility established and maintained primarily for the care and treatment of individuals with mental health needs, meaning that more than 50% of the population have a mental health diagnosis.
- An OCFS licensed residential program may be considered an IMD if certain criteria, as outlined by the Centers for Medicaid (CMS) manual, are met. These include:
  - Program has 17 residential beds or more on a contiguous campus
  - Same CEO oversees all programs/components
  - Shared medical/clinical staff across programs/components
  - Shared administrative functions
  - Shared license across programs/components



# 1115 Waiver Overview

- Under an 1115 IMD waiver, federal Medicaid financial participation (FFP) is available for services provided to individuals residing in an IMD for an average length of stay up to 30 days, not to exceed a maximum of 60 days.
- CMS has granted an exception to this limitation for child welfare facilities, which will allow states to claim federal financial participation regardless of length of stay in a QRTP during the first two years of the waiver demonstration period.
- At the end of the initial two years of the waiver period, FFP will not be available for Medicaid members with IMD lengths of stay that exceed 60 days, or average length of stay of more than 30 days



# 1115 Waiver Process

- NYS plans to submit a serious mental illness/serious emotional disturbance (SMI/SED) Medicaid 1115 Demonstration Waiver in July 2022.
- Subsequent to CMS approval of this waiver, which is expected in the Fall of 2022, NYS will request an 1115 waiver amendment to request federal participation for services provided to individuals residing in QRTPs that meet the criteria of an IMD
- The Waiver amendment will include an implementation plan for restructuring agencies/programs meeting IMD criteria to a program type compliant with this regulation, when appropriate; reducing the lengths of stay; and expanding availability of home and community-based services.
- The implementation plan will be developed in collaboration with providers.
- The Waiver amendment and implementation plan will require public/Tribal notice, public hearings, and a public comment period.



# 1115 Waiver Requirements

During the waiver period, NYS will work collaboratively with providers to ameliorate conditions that result in facilities meeting the criteria of an IMD wherever possible:

1. Reduce the bed size of residential programs to 16 beds or fewer
2. Remedy other conditions that result in the QRTP being considered an IMD (e.g., separate clinical staff for each program/component the agency operates; separate Medical Director for each program/component the agency operates)
3. License qualified programs as psychiatric residential treatment facilities (PRTFs) for children/youth 21 years of age and younger, if appropriate
4. Reduce lengths of stay to an average of less than 30 days and not to exceed 60 days



# Implementation of a Child Welfare IMD Waiver in New York State

- In order to ensure availability of federal funding for services provided to children/youth residing in an IMD, some changes in residential service delivery will be necessary
- New York is committed to ensuring quality programming during the transition, providing fiscal and programmatic support to providers, the workforce, families and communities.
- New York State is exploring ways to support system changes to ensure continuity of services:
  - State funds to support QRTPs during the transition to cover any lost Medicaid claiming;
  - Funding to assist programs that must reduce bed capacity or make other changes to program operations to comply with federal Medicaid requirements;
  - Funding to support transition of programs to become licensed RTFs, if appropriate.



# Timeline Review and Next Steps

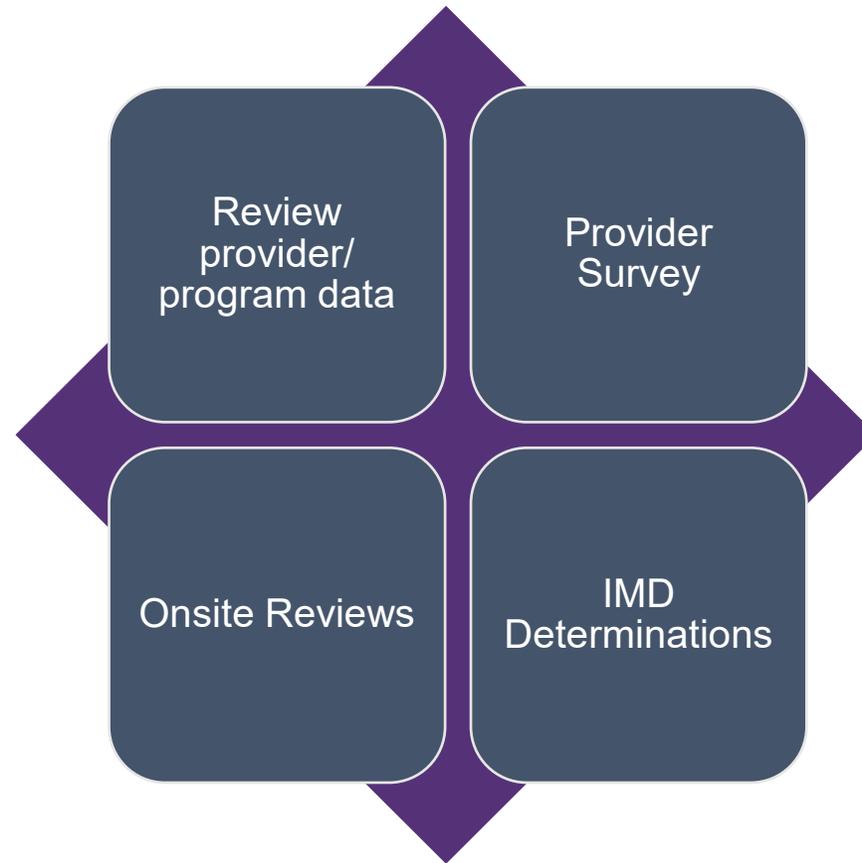


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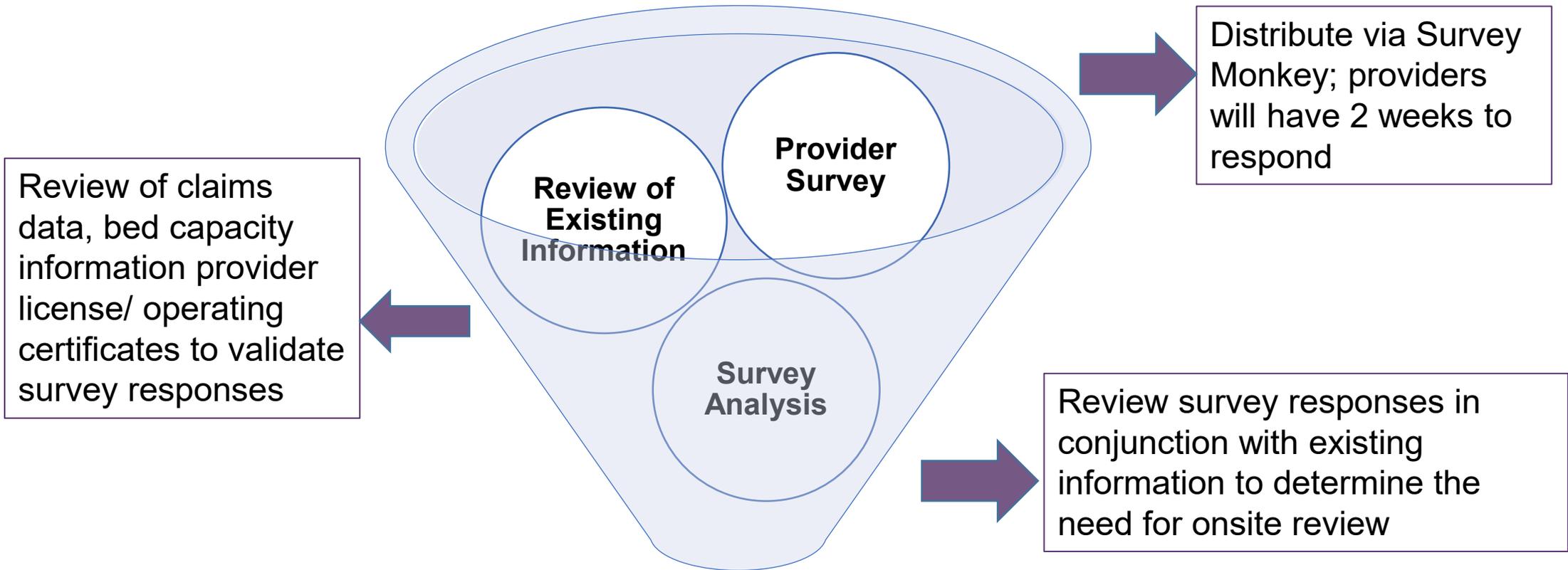
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# Process for IMD Determination

DOH and OCFS will work with providers to assess IMD criteria for all programs



# Evaluation Process

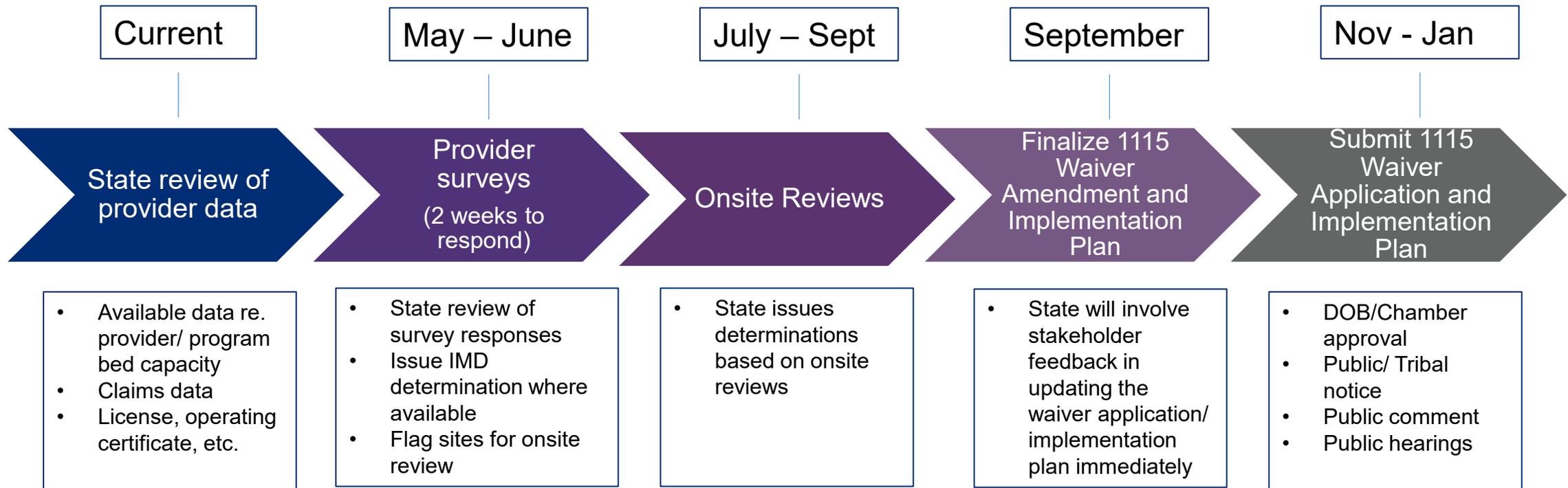


*In instances where the IMD determination is not clear based on the information above, an onsite review will be conducted*

## IMD Determination or Onsite Review



# Estimated Timeline



# Open Dialogue/ Questions



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