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**TO: Members of the Assembly Committee on Health, Aging and Long-Term Care**

**FROM: Matthew Stanford, General Counsel  
Kyle O'Brien, Senior Vice President, Government Relations**

**DATE: November 8, 2023**

**RE: WHA supports Assembly Bill 616 which addresses IMD restrictions on inpatient psychiatric placement**

To create additional inpatient psychiatric placement options for Medicaid patients, the Wisconsin Hospital Association supports Assembly Bill 616, which will enable Wisconsin to seek a waiver to the 1960s-era psychiatric IMD exclusion that currently excludes about half of Wisconsin's inpatient psychiatric beds from participating in the traditional Medicaid fee-for-service program for adults.

When Congress created the Medicaid program in 1965, it largely excluded Medicaid coverage in psychiatric facilities. Known as the Institute for Mental Disease (IMD) exclusion, the federal Medicaid law defined freestanding psychiatric hospitals with more than 16 beds as an Institute for Mental Disease and prohibited the Medicaid program from providing reimbursement to those facilities for services provided to patients between the ages of 21 and 64.

However, the IMD exclusion's care restrictions have been loosened by the federal government in both the Obama and Trump administrations.

First, in 2015, the federal Centers for Medicare and Medicaid Services (CMS) codified an ability for adult Medicaid managed care patients to receive services in IMD facilities. Then, in November 2018, CMS sought to further loosen IMD restrictions when it sent a letter to all state Medicaid directors encouraging states to seek a waiver of the IMD exclusion that could allow Medicaid reimbursement for short-term (defined as fewer than 30 days) inpatient services in an IMD for Medicaid fee-for-service enrollees with serious mental illness.

In order to remove a disincentive to the sustainability of psychiatric hospitals with more than 16 beds, this bill authorizes the State of Wisconsin through the Department of Health Services to seek a waiver to the federal Institute for Mental Disease exclusion to enable freestanding psychiatric hospitals in Wisconsin with more than 16 beds to receive reimbursement for Medicaid fee-for-service patients ages 21 to 64.

Wisconsin has already applied for and received a similar IMD waiver for substance use disorder services. Utilizing Wisconsin statutory language created in 2017 to implement the substance use disorder IMD waiver, this legislation directs DHS to apply to CMS no later than January 1, 2025 for an IMD waiver for mental health services.

By receiving a federal waiver of the federal IMD Medicaid payment exclusion for fee for service Medicaid enrollees, Wisconsin could:

- Enable freestanding psychiatric hospitals to be reimbursed for services provided to adults aged 21-64 enrolled in a Medicaid fee for service program.
- Remove a disincentive that can discourage freestanding psychiatric hospitals with fewer than 16 beds from expanding services.

Currently, 11 states have an approved IMD waiver for mental health treatment ((AL, DC, ID, IN, MD, NH, NM, OK, UT, VT, WA), and 7 additional states have an application for a waiver pending with CMS (AL, AZ, MA, MO, NY, WA) according to the KFF Medicaid Waiver Tracker.

WHA and our members ask for your support of Assembly Bill 616, which is one step Wisconsin can take to help remove public policy barriers impacting access to mental health services that do not exist for physical health services.