DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
JFK Federal Building, Government Center
Room 2275
Boston, Massachusetts 02203

CENTERS for MEDICARE & MEDICAID SERVICES

Division of Medicaid and Children's Health Operations/Boston Regional Office

August 9, 2011

Mary Mayhew, Commissioner
Department of Health and Human Services
11 State House Station
Augusta, Maine 04333-0011

RE: Institution for Mental Disease Exclusion

Dear Commissioner Mayhew:

As you are aware, Maine Department of Health and Human Services (DHHS) and CMS have engaged in frequent telephone conferences for the last several months regarding the State's current operations of private non-medical institutions (PNMI). These conferences are the result of several pending State plan amendments (SPA) which MaineCare submitted in the fall of 2010. The SPAs are currently "off the clock" as CMS and MaineCare work together to reach an approvable status.

In the course of these discussions, we have learned many details about the PNMI programs, services, and operations. Based on the information that we have received from DHHS, it is our opinion that several of the PNMI facilities may meet the regulatory definition of institutions for mental diseases (IMD). Section 1905(a)(28) of the Social Security Act (the Act) generally excludes Medicaid coverage for services provided in an IMD and Federal Financial Participation is unavailable for services to IMD patients regardless of whether those services are provided within or outside the facility. Federal Medicaid regulations at 42 CFR 435.1010 define an IMD as:

> "*Institution for mental diseases means a hospital, nursing facility, or other institution of more than 16 beds that is primarily engaged in providing diagnosis, treatment or care of persons with mental diseases, including medical attention, nursing care and related services. Whether an institution is an institution for mental diseases is determined by its overall character as 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 institution for the mentally retarded is not an institution for mental diseases*".

Additional guidance on the determination of whether a facility is an IMD can be found in section 4390 of the State Medicaid Manual.

However, as detailed below, there are situations in which Medicaid FFP is allowed for patients of IMDs:

a) Section 1905(a)(14) of the Act permits inpatient hospital services and nursing facility services for individuals 65 years of age or over if the IMD facility meets Medicaid survey and certification requirements and is licensed as a Medicaid facility.
b) Section 1905(a)(16) of the Act permits inpatient psychiatric services for patients who are under the age of 21 (or age 22 for those receiving such services when attaining age 21).
c) Also, for patients aged 65 and over, FFP is permitted for non-institutional services regardless of whether the IMD is licensed as an inpatient facility.

Please note that, other than the special situation noted in (b), none of these exceptions apply to IMD services for patients who are between ages 21 and 65.

Due to the above-expressed concerns, we are asking the State to identify all PNMI facilities that meet the Federal definition of an IMD and then immediately cease Medicaid claiming for services in that IMD. Please submit this list to my office within 60 days of receipt of this letter. CMS cannot guarantee that other entities with oversight responsibility of the Medicaid agency will not pursue compliance actions, within their authority, with respect to Medicaid payment to these IMDs.

Please feel free to contact me with any questions you may have regarding this letter.

Yours,

Richard McGreal
Associate Regional Administrator