

## **PROPOSED PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY MEDICAID SUPPLEMENTAL PAYMENT PROGRAM**

### **The Problem: Wyoming's Mental Health Crisis**

- The State of Wyoming ranks 50th in the country in youth mental health, according to Mental Health America.
- Wyoming Medicaid reimburses Psychiatric Residential Treatment Facilities ("PRTFs") at per diem rates that are lower than the amounts allowed by federal law.

### **The Solution: PRTF Supplemental Payment Program**

- Wyoming should, with CMS approval, create a Medicaid supplemental payment program benefiting PRTFs ("PRTF SPP") to make up the difference between Medicaid rates and the federal limits.
- Supplemental payments will allow PRTFs to increase supplies, staff, beds, and other needed treatment amenities.

### **Supplemental Payment Program Calculations**

- A PRTF's Medicaid reimbursement cap is the lesser of its customary charges or the prevailing charge in the locality - WBI and St. Joseph's should be entitled to receive their individual customary charges.
- Based on 2020 and 2021 data, we estimate that a PRTF SPP could result in millions of new Medicaid dollars to allow WBI and St. Joseph's to enhance and expand the services they provide to Wyoming's most vulnerable population.

### **Funding the Non-Federal Share**

- Under the Medicaid program, the federal government pays a portion of the Medicaid payments, and the state, through various means, provides the non-federal share, including state general revenue, provider assessments, intergovernmental transfers and certified public expenditures.
- The Private Hospital Assessment Act (the "Act") is the most reasonable mechanism for funding the non-federal share of the PRTF supplemental payments – just as Wyoming Department of Health ("WDH") plans to fund professional services supplemental payments.
- WBI and St. Joseph's are either owned by, or can be affiliated by contract with, a private hospital to use revenue generated under the Act to fund the non-federal share of PRTF supplemental payments.
- Other options for funding the non-federal share could include certified public expenditures and intergovernmental transfers, but they are less straightforward than the Act.

### **Statutory Amendment**

- If either WDH or CMS determine that St. Joseph's affiliation attestation documents with a private hospital are insufficient to include St. Joseph's in the PRTF SPP under the current version of the Act, the Act could be amended to ensure that both WBI and St. Joseph's benefit from the supplemental payments generated by the Act.

### **State Plan Amendment**

- A Medicaid State Plan Amendment ("SPA") establishes the mechanism by which the state reimburses providers for various Medicaid services, including PRTF services under the proposed PRTF SPP.
- The draft example SPA attached sets forth the requirements Wyoming Medicaid will follow when implementing the PRTF SPP.
- The draft SPA can be revised in the event a statutory amendment is required.

### **Implementation Timeline**

- We propose the PRTF SPP be effective no later than July 1, 2022, or as soon as possible with CMS approval.

# **PROPOSED PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY MEDICAID SUPPLEMENTAL PAYMENT PROGRAM**

## **I. The Problem: Wyoming's Mental Health Crisis**

The State of Wyoming ranks 50<sup>th</sup> in the country in youth mental health, according to Mental Health America, and it likewise ranks 40<sup>th</sup> in prevalence of mental illness. In access to care, it ranks 38<sup>th</sup>. Overall, Mental Health America ranks Wyoming 48<sup>th</sup> in mental health.<sup>1</sup>

Additionally, the suicide rate in Wyoming is much higher than the national average. From 2009-2019, the age-adjusted suicide rate per 100,000 was 29.6. And the percent of need for mental health professionals met in Wyoming is only 47.1%.<sup>2</sup> While there are some outstanding mental health service providers, more are needed, and to improve mental health services in Wyoming and increase that percent of need met, it is necessary to enhance these providers' reimbursement.

Wyoming Psychiatric Residential Treatment Facilities ("PRTFs") are licensed by the State of Wyoming Department of Family Services and the Wyoming Department of Health, accredited by the Joint Commission<sup>3</sup> and certified by the Division of Healthcare Financing, with the Centers for Medicare and Medicaid Services's ("CMS's") approval. There are two PRTFs in Wyoming, UHS of Wyoming d/b/a Wyoming Behavioral Institute ("WBI"), an 81-bed acute psychiatric hospital with an attached 34-bed PRTF, and St. Joseph's Children's Home ("St. Joseph's"), a 62-bed private, non-profit freestanding PRTF.

Wyoming Medicaid reimburses PRTFs at per diem rates set by the Department of Health ("WDH"). Those rates, however, are lower than the amounts allowed by federal law. This shortfall limits the amount of PRTF services that are provided in the state; in particular, the number of Medicaid beds available to Wyoming's most fragile patient population.

## **II. The Solution: PRTF Supplemental Payment Program**

To ensure that Wyoming PRTFs can provide adequate care for individuals with mental illness, WDH should, with CMS approval, create a Medicaid supplemental payment program ("SPP") benefiting PRTFs affiliated with hospitals (the "PRTF SPP"). How would this work? Medicaid allows states to pay providers up to a specified limit for services, also known as the Upper Payment Limit ("UPL").<sup>4</sup> The Wyoming Medicaid program, however, reimburses PRTFs at rates lower than their UPLs. A Medicaid PRTF SPP would provide quarterly lump sum payments to make up the difference between a PRTF's UPL and the amounts it received in Medicaid payments. This

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<sup>1</sup> Mental Health America, *Ranking the States*, <https://www.mhanational.org/issues/ranking-states>.

<sup>2</sup> Kaiser Family Foundation, *Mental Health in Wyoming*, <https://www.kff.org/statedata/mental-health-and-substance-use-state-fact-sheets/wyoming/>.

<sup>3</sup> WY ADC 048.0037.40 § 4, Accreditation can also be done by the Commission on Accreditation of Rehabilitation Facilities, the Council on Accreditation of Services for Families and Children, or by any other accrediting organization with comparable standards that is recognized by the State.

<sup>4</sup> 42 C.F.R. § 447.325 (Other inpatient and outpatient facility services: Upper limits of payment).

additional funding would allow PRTFs to increase supplies, staff, beds, and other needed treatment amenities.

### III. Supplemental Payment Program Calculations

To calculate the supplemental payment to a PRTF, we first determine the UPL, which as mentioned above, is specified in the Code of Federal Regulations. *“The agency may pay the customary charges of the provider but must not pay more than the prevailing charges in the locality for comparable services under comparable circumstances.”*<sup>5</sup> In other words, a PRTF’s Medicaid FFS reimbursement cap is the lesser of its customary charges or the prevailing charge in the locality. There is no definition of “prevailing charge” in the locality.

Because WBI and St. Joseph’s are located 145 miles apart, and the amount paid for a medical service in each specific geographic area is based on what providers in that area usually charge for the same or similar medical service to meet the needs of their patients, WDH should pay WBI and St. Joseph’s up to their individual customary charges. Consequently, to calculate the amount of a supplemental payment available to WBI and St. Joseph’s, we first determined the amount of their customary charges for Medicaid patients. Second, we identified the payments WBI and St. Joseph’s received for those patients. The difference is the potential supplemental payment that each facility should receive.

Based on 2020 and 2021 data, we estimate that a PRTF SPP could result in millions of new Medicaid dollars to allow WBI and St. Joseph’s to enhance and expand the services they provide to Wyoming’s most vulnerable population.

### IV. Funding the Non-Federal Share

Under the Medicaid program, the federal government pays a portion of the Medicaid payments (based on the “FMAP,” described below), and the state, through various means (also described below), provides the non-federal share, including state general revenue, provider assessments, certified public expenditures, and intergovernmental transfers. We have identified the Private Hospital Assessment (the “Act”) as the most reasonable mechanism for funding the non-federal share of this PRTF SPP; other options for funding the non-federal share are less straightforward than using the Act as detailed below. We do not believe a new assessment on PRTFs is the best option because assessing the PRTFs could not come close to generating enough federal funding to reach the PRTFs UPL.

#### A. Federal Medical Assistance Percentage (“FMAP”)

The FMAP determines the federal share of the cost of Medicaid services in each state. The FMAP is based on a formula in the federal Medicaid statute that is determined by state per capita income.

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<sup>5</sup> 42 C.F.R. § 447.325 (Other inpatient and outpatient facility services: Upper limits of payment).

In Wyoming, the FMAP is 50%.<sup>6</sup> In other words, for every dollar WDH contributes to a Medicaid payment, the federal government contributes another dollar.

Assuming the estimated supplemental payment of about \$7,113,000 is correct, the non-federal share of that payment is 50% or approximately \$3,556,000. States do not typically fund the non-federal share of Medicaid SPPs, as Wyoming does not for its current SPPs. Rather, we must access alternative means to generate these supplemental payments.

#### B. The Private Hospital Assessment Act

The Act requires that each private hospital pay a private hospital assessment to WDH each fiscal year in an amount calculated as a uniform percentage of each hospital's net patient revenue.<sup>7</sup> The assessment is calculated annually and collected quarterly to generate an amount not to exceed the non-federal portion of the UPL gap.<sup>8</sup> Each private hospital required to pay the assessment and that is eligible to receive Medicaid payments is then eligible to receive quarterly adjustment payments in an amount up to but not to exceed the applicable UPL gap.<sup>9</sup> Note that the assessment will be applied only to hospitals and that eligibility for payments applies only to hospitals, unless the Act is amended as discussed below.

Soon, WDH will increase the private hospital assessment to provide the non-federal share for the Professional Service Supplemental Payment ("PSSP") program, which will allow hospitals to receive supplemental payments for the services provided by their employed, contracted or affiliated professional service providers.<sup>10</sup> Further expanding this provider tax to fund the non-federal share of supplemental payments to PRTFs associated with a private psychiatric hospital would allow Wyoming's PRTFs to benefit from an already implemented assessment and might only require slight amendment to an already enacted statute based on the Woming and CMS's interpretation of the State Plan Amendment discussed below.

The Act applies to private hospitals, which the Act defines to mean those institutions licensed by WDH as hospitals which are not owned or operated by the state or any city, town, county, special district or other political subdivision of the state or local government.<sup>11</sup> PRTFs are defined as any non-hospital facility with a provider agreement with a State Medicaid Agency to provide the inpatient services benefit to Medicaid-eligible individuals under the age of twenty-one (21).<sup>12</sup> This would make it appear as if PRTFs are not applicable to the Act because they are not hospitals. And in fact, PRTFs are not subject to the tax.

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<sup>6</sup> Federal Medical Assistance Percentage (FMAP) for Medicaid and Multiplier, Kaiser Family Foundation, <https://www.kff.org/medicaid/state-indicator/federal-matching-rate-and-multiplier/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>.

<sup>7</sup> Wyo. Stat. § 42-9-104.

<sup>8</sup> Wyo. Stat. § 42-9-104.

<sup>9</sup> Wyo. Stat. § 42-9-101, *et seq.*

<sup>10</sup> Wyoming Department of Health, Medicaid Hospital Affiliated Professional Services Supplemental Payment Program, Section 4 of the Wyoming Medicaid State Plan.

<sup>11</sup> Wyo. Stat. § 42-9-102.

<sup>12</sup> Wyo. Admin. Code 048.0037.1 § 3

However, in connection with the PSSP, WDH determined that because the Act designated the assessed funds to serve as the non-federal share of Medicaid supplemental payments to only private hospitals or their owned or affiliated practices, they could be used to fund the non-federal share of the private hospital PSSP. The Act does not state that the funds assessed must be used to reimburse specific services, such as inpatient hospital services, outpatient hospital services, or professional services.

Therefore, just as Wyoming used the payments generated under the Act to implement the private hospital PSSP, we believe Wyoming should also use them to make supplemental payments to PRTFs affiliated with private hospitals. WBI is owned by a private hospital and St. Joseph's can be affiliated by contract with a private hospital, likely WBI. Consequently, we believe that WDH can make PRTF supplemental payments using funds created under the Act.

## **V. Statutory Amendment**

If either WDH or CMS determine that St. Joseph's affiliation attestation documents with WBI are insufficient to include St. Joseph's in the PRTF SPP under the current version of the Act, the Act could be amended to ensure that both WBI and St. Joseph's benefit from the supplemental payments generated by the Act and to allow WDH to increase the assessment to generate enough non-federal funding to fully fund the PRTFs' supplemental payments. Attached here as Attachment A are proposed amendments that could be made to the Act to accomplish that goal.

## **VI. State Plan Amendment**

A Medicaid State Plan Amendment ("SPA") establishes the mechanism by which the state reimburses providers for various Medicaid services, including PRTF services under the proposed PRTF SPP. "The State Plan is a contract between a State and the Federal government, enabling the delivery of health care. It ensures that a State abides by Federal rules and gets FFP. The State Plan sets out groups to be covered, services provided and limitations, reimbursement methodologies, and administrative requirements."<sup>13</sup> Attached as Attachment B is a draft SPA for adoption by WDH and submission to CMS to implement the PRTF SPP.

The draft SPA sets forth the requirements Wyoming Medicaid will follow when implementing the PRTF SPP. The SPA establishes the PRTFs that are eligible to receive PRTF SPP payments as those owned, contracted, or affiliated with a private hospital. The SPA also establishes that the PRTF SPP amount available for each PRTF will equal the difference between the lesser of customary charges of the PRTF and the prevailing charges in the locality and the amount paid for the same services by WDH. Finally, the SPA details how WDH will calculate the PRTF SPP payment amount. The SPA is drafted to be effective on July 1, 2022.

Note that this draft SPA assumes that it is unnecessary to amend the Act to provide specifically that a PRTF not owned by a hospital can receive supplemental payments generated by the funds assessed under the Act. In the event WDH requires a specific statutory amendment, we could modify this draft SPA.

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<sup>13</sup> <https://health.wyo.gov/healthcarefin/medicaid/spa/>.

## **VII. Implementation Timeline**

Given the ongoing and increasing mental health crisis in America and Wyoming, specifically, these additional funds are necessary to immediately support the efforts to combat this crisis. Accordingly, we propose the PRTF SPP be effective no later than July 1, 2022, or as soon as possible with CMS approval, because it often takes CMS six months or longer to review a SPA.

## ATTACHMENT A

### Amendments to The Private Hospital Assessment Act (the “Act”)

(Wyo. Stat. § 42-9-101, *et seq.*)

The following amendments are intended to ensure that all Psychiatric Residential Treatment Facilities (PRTFs) in Wyoming benefit from the supplemental payments generated by the Act and to allow WDH to increase the hospital assessment to generate enough non-federal funding to fully fund the PRTFs’ supplemental payments.

#### Wyo. Stat. § 42-9-104 Assessments:

- (a) Each private hospital shall pay a private hospital assessment to the department in accordance with this section. Hospitals owned or operated by the state or any city, town, county, special district or other political subdivision of the state or local government shall not be required to pay the assessment required by this section.
- (b) The assessment due under this section shall be imposed each fiscal year in an amount calculated as a uniform percentage of each hospital's net patient revenue. The assessment rate shall be determined by the department on a prospective basis and shall be based on the percentage of net hospital patient revenue needed to generate an amount not to exceed the nonfederal portion of the upper payment limit gap plus the fee authorized by [W.S. 42-9-103\(d\)\(i\)](#). In no event shall the assessment rate:
  - (i) Exceed the indirect guarantee threshold amount established by [42 C.F.R. 433.68\(f\)\(3\)\(i\)](#) or other federal law;
  - (ii) Exceed two percent (2%) of a hospital's net patient revenue for the first fiscal year in which the hospital is assessed;
  - (iii) Increase by more than **one and** one-half of one percent (**1.5%**) of a hospital's net patient revenue for each fiscal year following the first fiscal year in which the hospital is assessed without further approval by the legislature.
- (c) Unless otherwise determined by the department, the department shall collect and each private hospital shall pay the assessment required by this section on a quarterly basis, each payment constituting twenty-five percent (25%) of the annual assessment determined by the department. The initial payment shall be due not later than forty-five (45) days after the state plan has been approved by the centers for medicare and medicaid services unless a later date is set by the department. Subsequent payments are due not later than forty-five (45) days after the end of each calendar quarter unless a later date is set by the department.
- (d) If a private hospital ceases to operate as a hospital or for any reason ceases to be subject to the assessment imposed under this chapter, the assessment for the fiscal year in which the cessation occurs shall be adjusted by multiplying the annual assessment by a fraction, the numerator of which is the number of days in the year during which the hospital is subject to the assessment and the denominator of which is three hundred sixty-five (365). Immediately upon ceasing to operate as a hospital, or otherwise ceasing to be subject to this chapter, the hospital shall pay the assessment for each quarter as adjusted, to the extent not previously paid.

Wyo. Stat. § 42-9-106 Quarterly adjustment payments:

- (a) To preserve the quality and improve access to hospital services for private hospital inpatient and outpatient services rendered on or after July 1, 2016, the department shall make quarterly adjustment payments as set forth in this section.
- (b) Each private hospital that pays assessments under this chapter and is eligible to receive medicaid payments and any psychiatric residential treatment facility licensed by the State of Wyoming, Department of Family Services that is eligible to receive medicaid payments shall be eligible to receive quarterly adjustment payments as provided in this section. The department shall distribute quarterly adjustment payments in an amount up to but not to exceed the applicable upper payment limit gap. The department shall establish a uniform methodology by which to distribute quarterly adjustment payments in compliance with applicable federal and state medicaid laws and regulations.
- (c) Quarterly adjustment payments shall not be used to offset any other payment by medicaid for hospital inpatient or outpatient services to medicaid beneficiaries, including without limitation any fee-for-service, per diem, private hospital inpatient adjustment or cost settlement payment.
- (d) No private hospital shall be guaranteed, expressly or otherwise, that any quarterly adjustment payment will equal or exceed the amount of the private hospital assessments due under this chapter.
- (e) Monies made available by this chapter shall not be used to replace other general revenues appropriated and funded by the legislature or other revenues used to support medicaid.

**ATTACHMENT B**

STATE: WYOMING

### Psychiatric Residential Treatment Facility Supplemental Payments – Private Hospitals

Subject to the provisions of this section, effective July 1, 2022, all psychiatric residential treatment facilities (PRTFs) owned or operated by licensed privately owned or operated hospitals meeting the definition of “health care provider” (pursuant to 42 CFR 433.52) located in Wyoming shall be eligible for a quarterly PRTF supplemental payment (PRTF SP) (based on an annual calculation). The PRTF SP will be the result of an analysis of each eligible PRTF’s customary charges and the prevailing charges for PRTFs in the locality providing services to Wyoming Medicaid patients.

In order to qualify to receive the PRTF SP, the PRTF must be:

- a) Licensed by the State of Wyoming
- b) Certified as a PRTF
- c) Enrolled as a Wyoming Medicaid provider and
- d) Owned by, under contract with, or affiliated with a private hospital and identified by the private hospital as a PRTF that is owned by, under contract with, or affiliated with said hospital.

The PRTF SP amount available for each PRTF owned or operated by a private hospital participating in the PRTF SP program will equal the difference between the lesser of customary charges of the PRTF and the prevailing charges in the locality for comparable services under comparable circumstances and the amount paid for the same services by the Wyoming Department of Health (the Department). Aggregate payments to PRTFs owned or operated by private hospitals shall not exceed the Medicaid upper payment limit (UPL) in accordance with section 1902(a)(30)(A) of the Social Security Act. The Department will perform the Medicaid UPL analysis prior to making the supplemental payments.

For services furnished by PRTFs owned or operated by a private hospital, the Department will collect the PRTF customary charges and the prevailing charges in the locality for comparable services under comparable circumstances from each PRTF participating in the PRTF SP program. The UPL for PRTFs is subject to the guidelines for the “Other Inpatient and Outpatient Facility” upper payment limits and is applied on a facility-specific basis (pursuant to 42 C.F.R. § 447.325).

The Department will extract paid claims for the preceding calendar year for PRTFs that qualify for inclusion in the PRTF SP program. The Department will calculate the PRTF SP and the UPL annually using the claims data from the most recently completed calendar year. PRTF SP estimates will be available July 1 of each year. The Department may add new PRTFs owned or operated by private hospitals to the PRTF SP program annually.

To have PRTFs included in the PRTF SP program, private hospitals must provide ownership or affiliation attestation documents and any other information required by the Department to calculate the PRTF SP.