



**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

April 24, 2018

Hon. Greg Walden
Chairman
Committee on Energy and Commerce
U.S. House of Representatives

Hon. Frank Pallone
Ranking Member
Committee on Energy and Commerce
U.S. House of Representatives

Dear Chairman Walden and Ranking Member Pallone:

The undersigned co-chairs of the Consortium for Citizens with Disabilities (CCD) Health, Long-Term Services and Supports, and Rights Task Forces write in opposition to proposals that expands coverage of institutional services in Medicaid without addressing gaps in Medicaid community services. CCD is the largest coalition of national organizations working together to advocate for Federal public policy that ensures the self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society.

CCD has advocated over the past several decades to eliminate the institutional bias in Medicaid and has worked with bipartisan Members of Congress on legislative proposals to help ensure Medicaid incentivizes states to enhance community-based alternatives to institutional services. We are extremely disappointed to see last week's discussion draft from the Energy and Commerce committee would enshrine additional institutional bias into Medicaid. The draft, a partial repeal Medicaid's Institutions of Mental Disease (IMD) exclusion, would allow states to obtain federal funds to provide services up to ninety days for individuals who receive treatment for substance use disorders (SUDs) in IMDs, as long as they maintain their current spending on IMD services in SUD facilities as well as psychiatric facilities and the state's current number of IMD beds in these facilities. This maintenance of effort provision would incentivize states to increase their institutional capacity with no comparable incentive to increase access to community-based services, which should form the backbone of any effective SUD treatment continuum.¹ This kind of institutional bias represents an unacceptable step backwards for

¹ Discussion Draft: A bill to amend title XIX of the Social Security Act to allow states to provide under Medicaid services certain individuals with substance use disorders in institutions for mental diseases, (April 5, 2018), <http://docs.house.gov/meetings/IF/IF14/20180411/108092/BILLS-115pih-ProvideIMDServicesUpto90DaysforMedicaidBeneficiarieswithSUD.pdf> and Discussion Draft: A bill to amend title XIX of the Social Security Act to allow States to provide under Medicaid services for certain individuals with substance use disorders in institutions for mental diseases, (April 23, 2018),

Medicaid.

People with mental health disabilities or substance use disorders often find themselves unable to access intensive community-based behavioral health services until they experience an acute crisis. Likewise, many cannot access services in the community when they are discharged following a crisis. The proposal before the committee locks states into maintaining a certain number of SUD and mental health institutional beds without requiring improved access to community-based services, which will likely create an over-reliance on institutional IMD treatment and may exacerbate the dearth of community-based behavioral health services. Expanding access to residential treatment in a vacuum could actually undermine overall efforts to ensure the availability of SUD treatment that meets all patients' needs.

We are also extremely concerned about how the Committee plans to offset the costs for this partial elimination of the IMD exclusion, and potential cuts to other Medicaid priorities. Prior scores have estimated that full repeal of the IMD exclusions costs between forty and sixty billion dollars over ten years.² Finding offsets to cover this large expense might crowd out or preclude badly needed investments to expand community-based services for people with SUD as well as other disabilities. Many of the services necessary to combat the opioid epidemic are already Medicaid-reimbursable. Additional federal resources and funding should prioritize assisting states with expanding these services.³ Improving access to community-based services is the most effective way to ensure that people with disabilities not only have access to the services they need, but also can also have lives, employment, and families in the community like everyone else.

Finally, we note that Medicaid already permits coverage of inpatient substance use disorder and mental health services in general hospitals, where there is the capacity to understand or treat medical issues that are co-occurring or whose symptoms need to be disentangled from symptoms of mental health issues or substance use disorder. It is also crucial to invest in and expand the cutting edge of innovative crisis services such as peer crisis respite, mobile crisis teams, and Naloxone and Medication Assisted Treatment (MAT). These services are not available in every state as they should be.

We ask all Members of Congress to reject proposals to expand institutional services in Medicaid and instead work toward bipartisan solutions that ensure that all people with disabilities have access to the comprehensive healthcare they need.

<https://docs.house.gov/meetings/IF/IF14/20180425/108241/BILLS-115pih-LimitedrepealoftheIMDExcl.pdf>.

We note that the MOE provision also mandated level funding for “active psychiatric care and treatment provided on an outpatient basis.” As we point out above, this is not an expansion of funding for community-based services—funding is already available for community-based services. The MOE only includes additional funding for—and incentivizes—institutional services.

² Cong. Budget Office, *Direct Spending Effects of Title V of H.R. 2646, Helping Families in Mental Health Crisis Act of 2015*, Cost Estimate (Nov. 3, 2015), <https://www.cbo.gov/publication/50956>.

³ Jennifer Lav, Nat'l Health Law Prog. Policy Implications of Repealing the IMD Exclusion (April 23, 2018), <http://www.healthlaw.org/publications/browse-all-publications/policy-implications-repealing-imd-exclusion#.Wt4VNojwYdV>

Sincerely,

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