



**CONSORTIUM FOR CITIZENS  
WITH DISABILITIES**

May 16, 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 members 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 the revised language of H.R. 5797 which would enshrine additional institutional bias into Medicaid.<sup>1</sup> H.R. 5797, a partial repeal of Medicaid's Institutions for Mental Diseases (IMD) exclusion, would allow states to obtain federal funds to provide services up to thirty or more days<sup>2</sup> for individuals who have "opioid use disorder" in IMDs for the next five years. This provision incentivizes 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 substance use disorder (SUD) treatment continuum. This kind of institutional bias represents an unacceptable step backwards for Medicaid. While we appreciate the bill's recognition that "access to outpatient care" is important, the bill does not expand access to necessary community-based services, nor does it provide any new funding for such services.

People with mental health disabilities or SUD 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 will likely create an over-reliance on institutional IMD treatment and may exacerbate the dearth of community-based behavioral health services. Expanding access

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<sup>1</sup> H.R. 5797, <https://docs.house.gov/meetings/IF/IF14/20180517/108343/BILLS-1155797ih-U1.pdf>.

<sup>2</sup> Section (1)(2)(B) could be interpreted to permit states to use federal matching funds for IMD stays beyond thirty days that are "medically necessary," rendering the thirty day limit moot.

to residential treatment in a vacuum would 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 exclusion costs between forty and sixty billion dollars over ten years.<sup>3</sup> 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.<sup>4</sup> Improving access to community-based services is the most effective way to ensure that people with disabilities and SUD not only have access to the services they need, but also can also have lives, employment, and families in the community like everyone else. We understand that the full Committee will be voting on this bill without a score from the Congressional Budget Office. The Energy and Commerce Committee has a history of thoughtful deliberative process, including public hearings, open comment periods on discussion drafts, and multi-stakeholder meetings. Given the importance of a comprehensive response to the SUD issues facing the country, this due diligence is particularly important and we urge the Committee to engage in this historical process.

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.

Sincerely,

American Association of People with Disabilities  
American Foundation for the Blind  
American Network of Community Options and Resources  
Association of University Centers on Disabilities  
Autistic Self Advocacy Network  
Bazelon Center for Mental Health Law  
Center for Public Representation

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<sup>3</sup> 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>.

<sup>4</sup> 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>

Disability Rights Education and Defense Fund  
Easterseals  
Epilepsy Foundation  
National Disability Rights Network  
National Health Law Program  
Paralyzed Veterans of America  
The Arc of the United States  
United Spinal Association