



June 15, 2018

Dear Member of Congress:

The Bazelon Center for Mental Health Law writes in opposition to H.R. 5797, the Individuals in Medicaid Deserve Care that is Appropriate and Responsible in its Delivery Act. The Bazelon Center is a national non-profit legal advocacy organization that promotes equal opportunity for individuals with mental disabilities in all aspects of life, including health care, community living, housing, education, employment, voting, and other areas.

Our primary concern is that it is unnecessary for Congress to adopt this proposal when states can *already* cover, and obtain Medicaid reimbursement for, services for individuals with substance use disorders in institutions for mental diseases (IMDs). The proposal creates an unnecessary new Medicaid coverage option for a service that is already coverable, and requires almost a billion dollars of offsetting cuts. The Trump Administration has provided clear guidance to states about how to cover these services and has already approved numerous waivers allowing it.<sup>1</sup>

In addition to being duplicative, this proposal is considerably more limited than the existing demonstration waiver program, providing funding only for inpatient services for individuals with opioid use disorder services, with no funding at all for expansion of needed community services. The demonstration waivers currently being used are a much better option than this proposal.<sup>2</sup> They require review from the Department of Health and Human Services, ensuring that states take a comprehensive and strategic approach to their behavioral health systems including the expansion of community-based services. In addition to the 13 states that have already secured approval from CMS for demonstration waivers covering SUD services for individuals in IMDs, 12 more states have demonstration waiver applications pending.<sup>3</sup> If Congress wishes to facilitate the most expeditious review of these waiver applications, we would urge Congress to instruct CMS to provide a template for these waivers or explore other ways to promote expedited review. Such waivers could mandate standards, such as coverage of all forms of Medication Assisted Treatment (MAT), as a condition of approval, to address some of the serious concerns raised by investigations into the quality of care provided in these IMD facilities.<sup>4</sup>

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<sup>1</sup> CENTERS FOR MEDICARE & MEDICAID SERVICES, DEAR STATE MEDICAID DIRECTOR: RE: STRATEGIES TO ADDRESS THE OPIOID EPIDEMIC (Nov. 1, 2017), <https://www.thenationalcouncil.org/wp-content/uploads/2017/11/smd-17-003.pdf>.

<sup>2</sup> The Hill, Michael Botticelli and Richard Frank, *Congress needs a broader approach to address opioid epidemic* (Jun 10, 2018), <http://thehill.com/opinion/healthcare/391544-congress-needs-a-broader-approach-to-address-opioid-epidemic>.

<sup>3</sup> Kaiser Family Foundation, MaryBeth Musumeci, *Key Questions about Medicaid Payment for Services in "Institutions for Mental Disease"* (Jun 14, 2018), <https://www.kff.org/medicaid/issue-brief/key-questions-about-medicare-payment-for-services-in-institutions-for-mental-disease/>.

<sup>4</sup> See NBC News, *Florida's Billion-Dollar Drug Treatment Industry Is Plagued by Overdoses, Fraud* (Jun. 25, 2017), <https://www.nbcnews.com/feature/megyn-kelly/florida-s-billion-dollar-drug-treatment-industry-plagued-overdoses-fraud-n773376>; Last Week Tonight, *Rehab* (May 20, 2018), <https://www.youtube.com/watch?v=hWQiXv0sn9Y>; Orange County Register, *Deaths, financial chaos bring scrutiny to Rehab Riviera recovery industry* (\*Jun. 4, 2018) <https://www.ocregister.com/2018/04/06/deaths-financial-chaos-bring-scrutiny-to-rehab-riviera-recovery-industry/>.

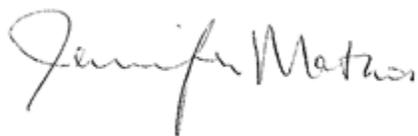
In addition, we note that the need for acute inpatient behavioral health services is directly related to the availability of outpatient services in the community, both before and after a crisis. The bill implicitly recognizes this issue by requiring states to plan how to “improve access to outpatient care during the period of the State plan amendment.” Increasing access to outpatient community-based services decreases the crises that lead to hospitalization and reduces inpatient admissions as well as allowing hospitals and residential treatment facilities to discharge individuals more quickly to the aftercare services they need. Proposals to repeal the IMD rule, in whole or in part, direct money to the most expensive service interventions instead of to cost-effective basic behavioral health services that often prevent the need for more intensive services.

It is unlikely that establishing a coverage category for opioid use disorder services provided to IMD residents will effectively address the opioid crisis. What other services will individuals have access to in order to prevent the types of crises that lead to inpatient admissions, or to support them once they leave the inpatient facility? Inpatient treatment is only one component of a behavioral health service system. Community-based services are critical to ensure that individuals struggling with opioid use can achieve stability and recovery as they live their everyday lives. Funding should be directed primarily at the service system gaps, which as The National Health Law Program points out, are primarily in community services—such as MAT, housing, and intensive behavioral health treatment teams.<sup>5</sup> Simply throwing federal money at a tiny subset of inpatient services without a comprehensive strategy to respond to the opioid epidemic is an irresponsible use of federal funds.

In addition to our substantive policy concerns with H.R. 5797, the lack of information about the offset leaves us extremely concerned. The Congressional Budget Office projects that the bill will cost \$991 million and no offset has been identified. Given this proposal would cover services that are already coverable and federally reimbursable through the Medicaid program, no services should be cut to pay for this change and any offset should be used to expand needed community-based services.

We are available and would be happy to discuss any of these concerns or alternative solutions such as the ones we have proposed above. Please contact Bethany Lilly ([bethanyl@bazelon.org](mailto:bethanyl@bazelon.org)) with any questions.

Sincerely,



Jennifer Mathis  
Director of Policy and Legal Advocacy

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<sup>5</sup> National Health Law Program, *Policy Implications of Repealing the IMD Exclusion* (April 18, 2018) <http://www.healthlaw.org/publications/browse-all-publications/policy-implications-repealing-imd-exclusion>.