



Senator Orrin Hatch  
Chairman  
Committee on Finance  
U.S. Senate

Senator Ron Wyden  
Ranking Member  
Committee on Finance  
U.S. Senate

June 11, 2018

Open Executive Session to Consider an Original Bill Entitled Helping to End Addiction and  
Lessen (HEAL) Substance Use Disorders Act of 2018

Tuesday, June 12, 2018

Dear Chairman Hatch and Ranking Member Wyden:

The Bazelon Center for Mental Health Law submits this statement for the record in advance of the Senate Committee on Finance Executive Session listed above. 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.

We have serious concerns about the amendment proposed by Senators Portman, Cardin, and Brown entitled “Medicaid Coverage for Addiction Recovery Expansion Act” or “Medicaid CARE Act.” In addition to substantive policy concerns, the lack of information about the offset leaves us extremely concerned about the possibility of major cuts to other parts of the Medicaid program. It is unnecessary for Congress to adopt this proposal when states may *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 service for something already covered and requires billions of dollars of offsetting cuts to other critical services. 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>

These demonstration waivers are not only an available option, but a better option than the amendment proposal. 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 states that have already secured approval from CMS for demonstration waivers covering SUD services for individuals in IMDs, many more states already have demonstration waiver applications pending. 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

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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>.

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>2</sup>

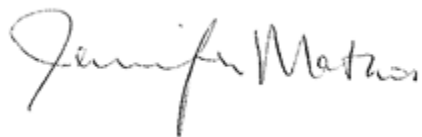
In addition, we note that the need for acute inpatient behavioral health services is directly related to the availability of outpatient services in the community, both before and after a crisis. Increasing access to outpatient community-based services decreases the crises that lead to hospitalization 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 substance 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 National Health Law Program points out, are primarily in community services for individuals with behavioral health disabilities—such as MAT, housing, and intensive behavioral health treatment teams.<sup>3</sup> Simply throwing federal money at inpatient services without a comprehensive strategy to respond to the opioid epidemic is an irresponsible use of federal funds.

Most importantly, however, this proposal would cover services that are already coverable and federally reimbursable through the Medicaid program—an unnecessary policy change that would require a cost offset and effectively impose billions in cuts to other 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>2</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/>.

<sup>3</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>.