

June xx, 2023

The Honorable Cathy McMorris Rodgers
Chair
Committee on Energy and Commerce
United States House of Representatives
Washington, DC 20515

The Honorable Frank Pallone, Jr.
Ranking Member
Committee on Energy and Commerce
United States House of Representatives
Washington, DC 20515

The Honorable Brett Guthrie, Chair
Subcommittee on Health
Committee on Energy and Commerce
United States House of Representatives
Washington, DC 20515

The Honorable Anna Eshoo, Ranking Member
Subcommittee on Health
Committee on Energy and Commerce
United States House of Representatives
Washington, DC 20515

Dear Chair Rodgers, Ranking Member Pallone, Chairman Guthrie, and Ranking Member Eshoo:

The undersigned organizations represent child welfare and health experts, administrators, service providers, community-based organizations, those with lived experience, and other stakeholders committed to strengthening and supporting youth and families. We appreciate the attention that Congress is paying to the child and adolescent mental health crisis happening across the country.¹

All children and adolescents deserve access to a full array of high-quality services to meet their individualized needs – including children in foster care. **The deadline has passed for implementation of all provisions of the landmark Family First Prevention Services Act. However, due in part to long-standing Medicaid law, we continue to see incomplete, delayed, and in some states no implementation of Qualified Residential Treatment Programs (QRTPs) and the protections they provide to youth in foster care. We write to formally request that Congress pass legislation exempting QRTPs from the Institution for Mental Diseases (IMD) exclusion.** This action is needed to support state QRTP implementation efforts and to ensure that thousands of youth in foster care with assessed behavioral and mental health needs can access supports and services from qualified professionals in QRTPs without risking the loss of their federal Medicaid coverage.

Background

All jurisdictions are now subject to the Family First Prevention Services Act (FFPSA), enacted in 2018 and effective in all states as of October 1, 2021.² FFPSA was designed to reform the way states address child maltreatment, with a focus on keeping families together. FFPSA created a new category of residential settings to serve children in foster care – Qualified Residential Treatment Programs (QRTPs). QRTPs are one of the few residential settings eligible for Title IV-E reimbursement, and they create an opportunity for increased oversight and accountability while improving outcomes for children who have identified behavioral and mental health needs.

In 2021, the Medicaid and CHIP Payment and Access Commission (MACPAC) created a Fact Sheet to advise Congress about the interaction between QRTPs and the IMD exclusion.³ As the FFPSA deadline approached, the Centers for Medicare & Medicaid Services (CMS) explained the difference between a QRTP and an IMD and confirmed that “given the interconnectedness of these two definitions, a QRTP facility with more than 16 beds will most likely qualify as an IMD.”⁴ In 2022, the National Association of Medicaid Directors issued a brief explaining how important this issue is to state Medicaid directors across the country and noting that “the IMD exclusion has prevented states from implementing Qualified Residential Treatment Facilities[.]”⁵

When the Family First Act was written, QRTPs were not intended to be considered institutions for mental diseases – the focus was providing safe, therapeutic, effective interventions to help children heal from trauma. Nevertheless, FFPSA puts in place guardrails against institutionalization and inappropriate placement that are more effective than an arbitrary size limit. Children in foster care access QRTP services only if a functional assessment, conducted by a qualified individual, confirms a child’s needs cannot be met in a foster family home. The intervention must be approved by a judge and, for longer stays, child welfare officials at the highest levels must provide approval. The QRTP is required to be treatment focused, trauma informed, and family driven. It is also required to provide six months of family-based aftercare to make sure that a youth’s reunification or placement in a home setting will be successful.

The IMD Exclusion is a Barrier to QRTP Implementation

In 2021, a diverse coalition of over 600 national, state, and local organizations signed a [joint letter](#) urging Congress to exempt QRTPs from the IMD exclusion.⁶ The coalition predicted that, “without the exemption for QRTPs, thousands of children in foster care who are vulnerable will be pushed into more restrictive placements, non-therapeutic shelters, unlicensed or unstable settings, or they will bounce from placement to placement without addressing their true needs – which is opposite the intent of the FFPSA.” Unfortunately, this is exactly what is happening across the country.⁷

In a handful of states attempting to comply with the IMD 16-bed limitation, QRTP capacity has been dramatically reduced, negatively impacting access to care. Some states are sending youth far from home and out of state to access treatment due to inadequate QRTP capacity. Exactly how to count to 16 is also a challenge. Many high-quality, licensed, and accredited residential providers are considered to have over 16 beds because the bed count includes all beds on a campus or under common ownership, rather than the number of beds in each separate unit, cottage, or family-style home. In states that have identified and retained QRTPs that are IMDs, those settings serve a vital role in the continuum of care, but those jurisdictions are filling the federal Medicaid gap using state dollars to cover the entire cost of children’s medical, dental, behavioral, and mental health care. At least 17 states are not currently implementing QRTPs.

With broad bipartisan, bicameral support, Congress recently removed the limitation on Medicaid federal financial participation for youth who are incarcerated pending disposition of charges.⁸ There is agreement that federal Medicaid is an important support for young people who are in detention and are vulnerable. Like justice-involved youth and pregnant and postpartum women needing residential SUD treatment, foster youth who need a QRTP deserve special consideration by Congress and continuity of federal Medicaid coverage in QRTPs that are IMDs.

FFPSA is a signature achievement for children and their families. We strongly agree with prioritizing prevention, including primary prevention, and stabilizing families so that foster care is not necessary. At the same time, FFPSA also explicitly recognizes a limited but important role for high-quality residential treatment. We need a full array of trauma-responsive services in place. For QRTPs to function as Congress intended, children must maintain their federal Medicaid coverage. Resolving the conflict between the IMD exclusion and QRTPs will help ensure children receive the right care at the right time with both the support of Title IV-E and Medicaid funding to meet their needs.

We appreciate your time and attention to this important issue and look to you for a straightforward legislative solution to this problem that will allow all states to confidently move forward with QRTP implementation. If you have any questions, please contact Lisette Burton, Chief Policy & Practice Advisor at Lburton@togetherthevoice.org.

Sincerely,

National Organizations

State Organizations

¹ H.Res.434 - *Declaring a mental health crisis among youth in the United States and expressing the pressing need for historic investments in mental health care for students*. 118th Congress (introduced May 22, 2023), available at <https://www.congress.gov/bill/118th-congress/house-resolution/434/text>; Senate HELP Full Committee Hearing, *Why Are So Many American Youth in a Mental Health Crisis? Exploring Causes and Solutions*. (June 8, 2023), available at <https://www.help.senate.gov/hearings/why-are-so-many-american-youth-in-a-mental-health-crisis-exploring-causes-and-solutions>.

² Enacted as part of [Public Law 115-123](#) (2018).

³ MACPAC Fact Sheet, Medicaid Coverage of Qualified Residential Treatment Programs for Children in Foster Care (August 2021), available at <https://www.macpac.gov/wp-content/uploads/2021/08/Medicaid-Coverage-of-Qualified-Residential-Treatment-Programs-for-Children-in-Foster-Care.pdf>.

⁴ See Question #5. Centers for Medicare & Medicaid Services, Qualified Residential Treatment Program (QRTP) Reimbursement: Family First Prevention Services Act (FFPSA) Requirements Q & A (Oct. 19, 2021), available at <https://www.medicaid.gov/federal-policy-guidance/downloads/faq101921.pdf>.

⁵ National Association of Medicaid Directors, Federal Policy Brief: The IMD Exclusion (April 2022), available at <https://medicaiddirectors.org/wp-content/uploads/2022/04/IMD-NAMD-Federal-Policy-Briefs.pdf>.

⁶ Members of Congress introduced The *Ensuring Medicaid Continuity for Children in Foster Care Act of 2021* (117th Congress [H.R.5414](#), [S. 2689](#)), bipartisan, bicameral legislation to ensure that children in foster care with assessed behavioral and mental health needs would not be at risk of losing their federal Medicaid coverage if placed in a QRTP over 16 beds.

⁷ Hughes, S., et al., *Why Foster Children Are Sleeping in Offices and What We Can Do About It*, American Enterprise Institute (April 4, 2023), available at <https://www.aei.org/wp-content/uploads/2023/04/Why-Foster-Children-Are-Sleeping-in-Offices-and-What-We-Can-Do-About-It.pdf?x91208>. See also, Liz Bowie and Hallie Miller, *Disability rights group sues Maryland for housing foster kids in hospitals*, The Baltimore Banner (May 30,

2023), <https://www.thebaltimorebanner.com/politics-power/state-government/disability-rights-lawsuit-maryland-N7SBE43BZFBH5NAX24XLPITB2Y/>; Theresa Clift, *California orders Sacramento County to remove all foster children from cells by June 16*, The Sacramento Bee (May 30, 2023), <https://www.sacbee.com/news/local/article275893376.html>; “Each week, NCDHHS is aware of at least 50 children statewide who are waiting in an emergency department or with a county department of social services. The majority of these children and youth are waiting to be admitted to a treatment setting that can address their complex behavioral health needs.” Daniel Pierce, *Foster children sleeping in jails, emergency rooms, and DSS offices amid a foster family shortage*, Queen City News (Mar. 2, 2023), <https://www.qcnews.com/news/u-s/north-carolina/foster-children-sleeping-in-jails-emergency-rooms-and-dss-offices-amid-a-foster-family-shortage/>.

⁸ Enacted as part of [Public Law No: 117-328](#) (2022). (pg. 1485-1486, Sec. 5122).