July xx, 2021

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Charles Schumer
Majority Leader
U.S. Senate
Washington, D.C. 20510

The Honorable Kevin McCarthy
Minority Leader
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Mitch McConnell
Minority Leader
U.S. Senate
Washington, D.C. 20510

Dear Speaker Pelosi, Leader Schumer, Leader McCarthy, and Leader McConnell:

The undersigned organizations represent child welfare and health advocates, administrators, service providers, those with lived experience, and other stakeholders committed to strengthening and supporting children and families across our nation. In the wake of the global pandemic, our youth mental health crisis has worsened.[1] We want to ensure that all children and adolescents have access to a full array of high-quality services to meet their individualized needs – including children in foster care. **As we near the deadline for implementation of all provisions of the landmark Family First Prevention Services Act, we write to formally request that Congress pass legislation by October 1, 2021, exempting Qualified Residential Treatment Programs (QRTPs) from the Institution for Mental Diseases (IMD) exclusion.** Swift action is needed to ensure that thousands of children and youth in foster care with assessed behavioral and mental health needs can access supports and services from qualified professionals in QRTPs across the country without risking the loss of their federal Medicaid coverage.

Background

The Family First Prevention Services Act (FFPSA), enacted in 2018[2], was designed to reform the way states address child maltreatment. FFPSA created a new category of residential settings to serve children in foster care – Qualified Residential Treatment Programs. 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 assessed behavioral and mental health needs.

In July 2019, a Centers for Medicare and Medicaid Services (CMS) regional office notified Kentucky that QRTPs over 16 beds, as defined in FFPSA, are likely IMDs. In September 2019, CMS issued a Frequently Asked Questions document,[3] clarifying that QRTPs are not categorically IMDs and that IMD status is a state by state, facility by facility determination. However, in a July 30, 2020 letter[4] responding to an inquiry from the state of California, CMS noted that "QRTPs were added to title IV-E with no cross reference to Medicaid statute allowing them to be considered as an exception to the IMD exclusion." The letter went on to underscore that QRTPs are specifically defined as serving children with "serious emotional or behavioral disorders or disturbances," and CMS concluded that some facilities could be IMDs.

Medicaid's long-standing IMD exclusion prohibits the federal government from reimbursing states for inpatient or outpatient services rendered to certain individuals who are Medicaid-eligible while they are patients in IMDs. An IMD is defined as a hospital, nursing facility, or other institution of more than 16 beds that is primarily engaged in providing diagnoses, treatment, or care of persons with mental diseases, including ones that require medical attention, nursing care, and related services. Enacted prior to the de-institutionalization of mental health facilities, the policy was intended to prevent the "warehousing" of patients, but because IMDs are defined expansively to include facilities that "fit the character"[5] of an IMD, specialized settings providing trauma-responsive services to children and youth are being swept into the exclusion.

Why QRTP Status Must Be Clarified in Law

QRTPs were never 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 the very safeguards against inappropriate placements that the IMD exclusion was created to address. 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 focused. It is also required to provide six months of family-based aftercare supports to make sure that a youth's reunification or placement in a home setting will be successful.

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. Further, FFPSA did not include a size restriction in the QRTP requirements, and there is no evidence that programs with 16 beds produce better outcomes than programs with greater capacity.

Without a change in law clarifying that QRTPs are not institutions for mental diseases, even if they serve more than 16 children at a time, the result is that children who require high-quality residential interventions will lose access to federal Medicaid coverage while placed in some QRTPs; and the entire cost of their medical, dental, behavioral, and mental health care will fall to states and counties.

The risk of this fiscal burden is so devastatingly steep that we are seeing states prolonging, or even eliminating, their implementation of key provisions of the FFPSA. At least six states have indicated that they will not implement QRTPs. In six other states, *every* QRTP has more than the 16-bed limit allowed under the IMD rule. With children overstaying medical necessity in higher levels of care[6], boarding in emergency rooms across the country[7], and sleeping in child welfare offices and hotels because the interventions they need are not available[8], Congress should urgently eliminate this barrier to QRTP implementation.

Ultimately, 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.

FFPSA is a signature achievement for children and their families. We strongly agree with prioritizing 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 residential treatment. We must have the full array of trauma-responsive services in place, and for QRTPs to function as Congress intends, children must maintain their Medicaid coverage. Resolving the conflict between the IMD rule and QRTPs will help ensure all children receive the right care at the right time with both the support of Title IV-E and Medicaid 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 unintended technical problem that will allow all states to confidently move forward with QRTP and Family First implementation. If you have any questions, please contact Lisette Burton, Chief Policy & Practice Advisor at Lburton@togetherthevoice.org.

Sincerely,

National Organizations

State & Local Organizations

[1] "During 2020, the proportion of mental health–related emergency department (ED) visits among adolescents aged 12–17 years increased 31% compared with that during 2019." Ellen Yard, PhD, et al., *Emergency Department Visits for Suspected Suicide Attempts Among Persons Aged 12–25 Years Before and During the COVID-19 Pandemic — United States, January 2019–May 2021*, MMWR Morb Mortal Wkly Rep 2021;70:888–894 (June 11, 2021), *available at* https://tools.cdc.gov/medialibrary/index.aspx#/media/id/423518.

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

[3] Centers for Medicare & Medicaid Services, Qualified Residential Treatment Programs (QRTP) and Serious Mental Illness (SMI) and Serious Emotional Disturbance (SED) Demonstration Opportunity Technical Assistance Questions and Answers (Sep. 20, 2019), *available at* https://togetherthevoice.org/wp-content/uploads/2020/02/9.20.19_cms_faq_qrtps_002.pdf).

[4] Letter from Alissa Mooney DeBoy, Director Disabled and Elderly Health Programs Group, CMS Center for Medicaid and CHIP Services, to Jacey Cooper, Chief Deputy Director, Health Care Programs California Department of Health Care Services (July 30, 2020), *available at* https://togetherthevoice.org/wp-content/uploads/2020/09/20200730-CA-DHCS-STRTP-IMD-Exclusion-CMS-Response.pdf).

[5] In the State Medicaid Manual, the federal Department of Health and Human Services interprets the IMD exclusion to include "any institution that by its overall character is a facility established and maintained primarily for the care and treatment of individuals with mental diseases." Centers for Medicare and Medicaid Services, State Medicaid Manual, Part 4-Services §4390.A.1.

[6] An investigation by ProPublica Illinois in 2018 revealed the impact of a loss of 500 residential beds that had closed in recent years, contributing children languishing in psychiatric hospitals. Duaa Eldeib, *Hundreds of Illinois Children Languish in Psychiatric Hospitals After They're Cleared For Release*, ProPublica Illinois (June 5, 2018), https://features.propublica.org/stuck-kids/illinois-dcfs-children-psychiatric-hospitals-beyond-medical-necessity/. Similarly, Maryland began to quantify the number of children in foster who overstayed medical necessity in hospitals and psychiatric units, finding that, in the first 11 months of 2019, an average of 36 children per month were held in hospitals when not medically necessary. Pamela Wood, *With nowhere to go, foster children staying on in Maryland hospitals and psychiatric units after treatment*, Baltimore Sun (Feb. 3, 2020), https://www.baltimoresun.com/politics/bs-md-pol-ga-foster-children-hospitals-20200203-i3r5anhvxfgzna44nxhavu6dhe-story.html

[7] Children, both in and out of foster care, with mental and behavioral health needs are "boarding" in emergency rooms across the country because there are insufficient inpatient or step-down residential options to safely meet their needs. "There is no nationwide data on mental health boarding numbers or wait times, however doctors in New York, Massachusetts and Colorado have painted similar pictures of inundated [Emergency Departments]." Marlene Lenthang, *The boarding crisis: Why some kids are waiting days in the ER for psychiatric ward beds*, ABC News (July 1, 2021), https://abcnews.go.com/Health/boarding-crisis-kids-waiting-days-er-psychiatric-ward/story?id=78432739. In Connecticut, they are seeing not only an increased volume of children with behavioral health problems, but also children presenting with more acute illness. Adria Watson, *Children with psychiatric needs are overwhelming hospital emergency departments in CT*, The CT Mirror (May 25, 2021), https://ctmirror.org/2021/05/25/children-with-psychiatric-needs-are-overwhelming-hospital-emergency-departments-in-ct/. A doctor in Minnesota recently referred to the crisis of children languishing in hospitals as "unprecedented." Chris Serres, *'No place for a child': Minnesotans languish in ERs while awaiting mental health services*, Star Tribune (May 15, 2021), https://www.startribune.com/no-place-for-a-child-minnesota-children-languish-in-hospital-ers-while-awaiting-mental-health-servic/600057742/.

[8] Washington state just agreed to come up with a plan to end the practice of sheltering youth in foster in offices, cars, and hotels after being sued for rendering children "homeless" while in care. Elizabeth Amon, *Washington Will End Foster Youth Placement in Hotels, Offices and Cars*, The Imprint Youth & Family News (June 22, 2021), https://imprintnews.org/top-stories/washington-will-end-foster-youth-placement-in-hotels-offices-and-cars/56321. Washington has relied on "placement exceptions" for years, and most of the impacted children have significant behavioral health needs. Julia Lurie, Hundreds of Foster Kids are Sleeping in Hotels and Offices, Mother Jones (Dec. 11, 2020), https://www.motherjones.com/crime-justice/2020/12/the-pandemic-is-forcing-foster-kids-to-sleep-in-hotels-and-offices/. Similarly, Kansas entered into a settlement agreement last year after being sued for not providing sufficient mental health care and placement stability for children in foster care. Nomin Ujiyediin, Kansas Foster Care Advocates Settle Lawsuit Against the State, Kansas News Service (July 9, 2020), https://kansaspublicradio.org/kpr-news/kansas-foster-care-advocates-settle-lawsuit-against-state. After a lawsuit, Oregon has made progress but still relies on "hoteling" children in foster when an appropriate placement is not readily identified. Youth Rights & Justice, *Update: DHS Makes Progress on Ending Placement of Foster Youth in Hotels* (Feb. 25, 2021), https://youthrightsjustice.org/update-dhs-makes-progress-on-ending-placement-of-foster-youth-in-hotels/. "The number of Texas foster children placed in unlicensed facilities, like motels, churches and offices, surpassed 400 in June 2021," even though the total average monthly number of children in foster is lower compared to previous years. Reese Oxner and Neelam Bohra, *Texas foster care crisis worsens, with fast-growing numbers of kids sleeping in offices, hotels, churches*, Texas Tribune (July 19, 2021), https://www.texastribune.org/2021/07/19/texas-foster-care-crisis/; https://abc13.com/texas-foster-care-kids-crisis-children-sleep-at-offices/10897098/.