



September 11, 2023

The Honorable Ron Wyden
Chair
Finance Committee
U.S. Senate

The Honorable Mike Crapo
Ranking Member
Finance Committee
U.S. Senate

The Honorable Cathy McMorris Rodgers
Chair
Committee on Energy & Commerce
U.S. House of Representatives

The Honorable Frank Pallone
Ranking Member
Committee on Energy & Commerce
U.S. House of Representatives

Dear Senators Wyden and Crapo, and Representatives McMorris Rodgers and Pallone:

The Consortium for Constituents with Disabilities (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 free from racism, ableism, sexism, and xenophobia, as well as LGBTQ+ based discrimination and religious intolerance.

The undersigned members of CCD's Long Term Services and Supports Task Force write to express concerns with the proposal in H.R. 4531 to modify the Institution for Mental Diseases (IMD) exclusion for youth in foster care who reside in Qualified Residential Treatment Programs (QRTPs).

Children—including children with disabilities—belong with families. When they cannot be with their family of origin, they should be in family-like settings. To the

extent that group homes are used, small (less than 17 beds) is better.¹ Landmark legislation--the Family First Prevention Services Act--was enacted in 2018 to help make this a reality. Now is not the time to undermine this progress and make it easier for states to obtain federal funding to keep foster children in institutions.

We recognize that the version of H.R. 4531 that was reported out of the Committee on Energy and Commerce contained an amendment in the nature of a substitute that would not completely eliminate the IMD exclusion for QRTPs, but would instead lift the IMD exclusion “for items and services furnished to such an individual outside of” a QRTP. We are concerned that this exception is so broad that it risks swallowing the rule. There is no definition included of what is “inside” or what is “outside” of a QRTP. We know from our experiences as advocates that there is a monumental difference between simply saying a service is provided “outside of” the four walls of an institution and ensuring that such outside services are truly community-based and integrated.

Furthermore, this focus on the IMD exclusion is misplaced. To the extent that youth enrolled in Medicaid need inpatient services, such services are already covered via the “psych 21” benefit. Children under 21 can obtain long term inpatient services in psychiatric residential treatment facilities, as long as those facilities meet very specific conditions of participation intended to protect youth who are admitted. Changes to the IMD exclusion will not solve the very real problems that exist regarding lack of access to high quality mental health services for children and youth.

We ask instead for Congress to focus on ensuring children’s right to community-based services so that children can live, and thrive, in their own communities.

Thank you for your attention to this. Please feel free to reach out to Jennifer Lav at lav@healthlaw.org with any questions or concerns.

Sincerely,

¹ American Academy of Pediatrics, Children’s Defense Fund, Foster Club, Think of Us, and Youth Law Center (Jan. 2022), The Path to Well-being for Children and Youth in Foster Care Relies on Quality Family-Based Care, <https://familyfirstact.org/resources/path-well-being-children-and-youth-foster-care-relies-quality-family-based-care-what%E2%80%99s>

