



Center for Public
Representation

April 24, 2018

Hon. Greg Walden
Chairman
Committee on Energy and Commerce
U.S. House of Representatives

Hon. Frank Pallone
Ranking Member
Committee on Energy and Commerce
U.S. House of Representatives

Dear Chairman Walden and Ranking Member Pallone:

The Center for Public Representation (CPR) is writing to oppose the Energy and Commerce Committee's discussion draft proposal to provide a limited repeal of the Institutions for Mental Diseases (IMD) exclusion for adult Medicaid beneficiaries with substance use disorders (SUD).¹ CPR is a national legal advocacy organization that promotes the full integration and community participation of people with disabilities.

In our more than four decades of systemic reform efforts to improve state disability service systems, we have seen that when states overly-rely on institutional care instead of investing in community-based services, people with disabilities (including people with mental health needs) end up needlessly institutionalized. Due to a lack of community-based alternatives, these individuals often are stuck for prolonged periods of time or cycle in and out of institutions. Fortunately, many states have begun to "rebalance" their systems, investing in community-based services that are more cost-effective, lead to better outcomes, and further the right of people with disabilities to receive services in the "most integrated setting" under the Americans with Disabilities Act (ADA). We are deeply concerned that the current proposal before the Committee would incentivize unnecessary institutional care and could reverse the important progress that states have made in expanding their community-based systems of care.

People who need mental health services are more likely to experience a substance use disorder, and Medicaid beneficiaries with SUD have high rates of co-occurring physical and mental health conditions. Though the bill is targeted toward addressing SUD, many individuals with a range of disabilities, particularly people with mental health needs, would be impacted. We urge you to ensure that any proposed solution to address the important issue of SUD also furthers states' progress in expanding access to critical community-based mental services and helps them

¹ Discussion Draft: A bill to amend title XIX of the Social Security Act to allow states to provide under Medicaid services certain individuals with substance use disorders in institutions for mental diseases, (April 18, 2018), <https://docs.house.gov/meetings/IF/IF14/20180425/108241/BILLS-115pih-LimitedrepealoftheIMDExcl.pdf>

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comply with their obligation to provide services to people with disabilities in the most integrated setting under the ADA and the Supreme Court's decision in *Olmstead v. L.C.*

We are particularly concerned about the bill's "maintenance of effort" (MOE) provision, which would require states to maintain at least the current number of IMD beds and existing funding for IMDs. The MOE mandates investment in IMDs, regardless of the need, without a similar requirement to expand investment in community-based services, contrary to state rebalancing efforts and the ADA's principles of community integration. This proposal could lead to states over-relying on inpatient treatment and underinvesting in community-based alternatives.

While the bill is ostensibly aimed at individuals with SUD, the MOE provisions are focused on maintaining *all* IMD beds and funding across the board and expanding SUD beds. The need for inpatient SUD or psychiatric care is not static. In fact, as states invest in and expand critical community-based services like a mobile crisis services, Assertive Community Treatment teams, Intensive Case Management, and supported housing, the need for inpatient treatment decreases. These community services lead to decreased institutional admission and readmission rates, shorter lengths of stay, and fewer emergency room visits. Community-based treatment also supports independence, offers greater flexibility, may be less disruptive to family and work, and reduces stigma that can be a barrier to people seeking treatment. Requiring state investment in inpatient treatment in IMDs disconnected from actual need could undermine efforts to ensure the availability of the full range of SUD and mental health services that best meet people's needs.

Rather than locking in funding for an inpatient approach at IMDs through the bill's required MOE provision, we encourage you to consider options that allow states flexibility to address treatment for people with SUDs and other mental health needs. Expanding access to inpatient treatment in a vacuum could undermine efforts to ensure the availability of necessary and effective SUD and mental health services, encouraging more segregated, institutional-focused state systems.

Moreover, the bill is unnecessary. CMS already offers some flexibility in navigating the IMD exclusion to best serve people with SUD. For example, a number of states already have demonstration waivers (Section 1115 waivers) permitting federal Medicaid expenditures for IMDs, and almost a dozen more are pending. States can use this option to provide greater flexibility and best target treatments and services to the people who need them.

In sum, we encourage the Committee to rethink the approach in this bill, particularly the MOE provision. We strongly believe it would be a mistake to bolster funding of institutional care over building a multi-faceted health service system with functional community services capable of supporting individuals in ways that best addresses their needs. We urge the Committee to avoid cementing into Medicaid an institutional bias in mental health and SUD services and consider other ways to enhance Medicaid's ability to provide the needed services and supports for individuals with SUD and mental health needs.

We are available and would be happy to discuss any of these concerns or alternative solutions with you. Please contact Alison Barkoff (abarkoff@cpr-us.org or 202-854-1270) or Molly Burgdorf (mburgdorf@cpr-us.org or 202-713-5524) with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Alison Barkoff". The signature is fluid and cursive, with a long, sweeping tail on the final letter.

Alison Barkoff
Director of Advocacy