



January 21, 2021

**Re: FFPSA and Congregate Care**

Dear Members of the California Congressional Delegation:

On behalf of the County Welfare Directors Association of California, the California State Association of Counties, and the County Behavioral Health Directors Association of California we are requesting your support to enact legislation to assist our state in making the implementation of the Family First Prevention Services Act (FFPSA) a success. Specifically, there is a provision that limits our ability to place our most at-risk youth in congregate care settings. A provision in the FFPSA which created Qualified Residential Treatment Programs (QRTPs) had the unintended effect of interacting with Medicaid's Institutions for Mental Disease (IMD) exclusion. Consequently, a number of our foster youth will be left without the therapeutic and medical benefits of the Medicaid program for which they would otherwise be entitled to as a foster youth.

Signed into law on February 9, 2018, the FFPSA limits federal reimbursement for non-family foster care placements to certain childcare institutions designated as QRTPs. These QRTPs must support the needs of children in foster care who cannot be safely placed in a family foster home. QRTPs must have a trauma-informed treatment model that is designed to address their needs, including clinical needs as appropriate, of children with serious emotional or behavioral disorders or disturbances and be able to implement the necessary treatment identified in the child's assessment.

In July 2019, a Centers for Medicare and Medicaid Services (CMS) regional office provided states with confusing guidance on whether QRTPs established by the FFPSA would be considered an IMD and would therefore be subject to the "IMD exclusion," which would deny them federal reimbursement for services. CMS has since indicated that some QRTPs could be considered IMDs.

Medicaid's long-standing IMD exclusion prohibits the federal government from reimbursing states for services rendered to certain Medicaid-eligible individuals who 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 has created a long-standing and expensive barrier to use Medicaid to provide inpatient treatment and access to quality care. A change in statute is necessary to carve out or otherwise ensure that the IMD exclusion does not apply to QRTPs.

On July 3, 2020, California's Department of Health Care Services (DHCS) sent a letter to the Region 9 CMS office requesting that it determine that California's Short Term Residential Therapeutic Program Facilities (STRTPs) were distinct from IMDs. CMS, however, declined make that designation.

Foster youth often have unique needs and significant trauma which requires individualized treatment and support, including access to necessary behavioral health services which encompasses both specialty

mental health and substance use disorder treatment/services. These supports and services often help stabilize children and youth in various treatment programs to step down from higher level care into community and home-based placements. These services are provided on a continuum and may continue to be provided to mitigate re-entry into higher level care and/or the juvenile justice system. Creating unnecessary barriers for foster children and youth to be placed in appropriate settings to receive individualized support, including behavioral health services, runs counter to the intent and objectives of FFPSA.

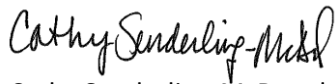
California counties, CWDA's 58 county human services directors and CBHDA's 58 county behavioral health directors are committed to a thoughtful and successful transition to FFPSA, but that transition would be challenging even in the best of times - especially in light of the challenges brought upon by the pandemic. The layer of complexity and uncertainty associated with the interaction between the IMD exclusion and QRTPs compounds this difficulty. CWDA, CSAC and CBHDA want to work with you to either craft legislative language clarifying that QRTP's are not IMDs and/or otherwise exempt them from the IMD requirements. We are open to other solutions to enable counties to implement the critical prevention services provisions in the FFPSA while counties work to comply with the QRTP issues.

If you have any questions about our positions, please contact Tom Joseph, representing both CWDA and CSAC, at [tj@paragonlobbying.com](mailto:tj@paragonlobbying.com) or 202.449.0398.

Sincerely,



Graham Knaus  
Executive Director, CSAC  
[gknaus@counties.org](mailto:gknaus@counties.org)



Cathy Senderling-McDonald  
Executive Director, CWDA  
[csend@cwda.org](mailto:csend@cwda.org)



Michelle Cabrera  
Executive Director, CBHDA  
[mcabrera@cbhda.org](mailto:mcabrera@cbhda.org)