



July 8, 2021

Chiquita Brooks-LaSure  
Administrator  
The Center for Medicare and Medicaid Services  
7500 Security Boulevard  
Baltimore, MD 21244

Dear Administrator Brooks-LaSure,

On behalf of the nation's Medicaid Directors, NAMD is requesting CMS revisit its interpretation of Qualified Residential Treatment Programs (QRTPs) and their intersection with the Medicaid Institutions for Mental Disease (IMD) exclusion. Current CMS guidance inhibits the goals of the Family First Prevention Services Act to promote deinstitutionalization of at-risk youth and poses unrealistic timeframes for state assessment of QRTPs to ascertain IMD status. We recommend:

- A minimum five-year transition period for states to conduct IMD assessments of their QRTPs
- CMS to provide greater deference to state IMD determinations
- Allow states to exclude QRTPs from the IMD definition
- Convene a federal and state working group including state Medicaid agencies, state child welfare agencies, and national associations to leverage the strategic opportunities for advancing child welfare within the Family First Act and navigate operational challenges associated with the Act.

The Families First Act created limits on the availability of Title IV-E foster care maintenance payments for care placements longer than 14 days, with the exception of QRTPs as defined in the Act. NAMD fully supports deinstitutionalization of the at-risk youth population and the objectives of the Families First Act. However, as the foster youth system across the states transitioned to meet the requirements of the Act and many settings worked to meet the definition of a Q RTP, it became quickly apparent that the IMD exclusion's 16-bed limit posed a significant barrier to Medicaid financing of services rendered in QRTPs.

CMS's September 2019 guidance on this topic exacerbates these barriers. While CMS guidance does not explicitly state that QRTPs are IMDs, it strongly suggests that presumption. It requires states to conduct thorough IMD assessments, which take significant time and resources and are complicated by the ongoing COVID-19 pandemic. Further, for states that have begun this process, CMS has not allowed the state to exclude QRTPs from the IMD definition. Many states are unlikely to complete this assessment process under the Family First Act's envisioned timelines.

CMS's provided options for exceptions to the IMD exclusion are not workable. One approach CMS offers is for states to certify QRTPs as Psychiatric Residential Treatment Facilities (PRTFs). However, doing so would simply maintain QRTPs as an institutional setting and would not realize the full potential of the service array envisioned under the Family First Act. The second approach is to utilize an 1115 substance

use disorder and/or serious mental illness waiver to provide IMD coverage for QRTP residents. Given that the 30-day average length of stay in an IMD remains a component of those waivers and lengths of stay in a QRTP average 120 days or more, it is improbable that states will meet the terms of the waiver, rendering this pathway ineffectual for most.

For all of the above reasons, NAMD recommends that CMS provide a five-year transition period for state IMD assessments. Since the Family First Act seeks a widespread transformation of the provision of care to foster youth and at-risk youth, a transition period of this length is warranted. The transition period could be modeled on the transition period under the home- and community-based settings rule, which requires a state transition plan and milestones towards compliance. This would be a reasonable mechanism to provide states with additional compliance time while continuing to assess progress. We also recommend CMS provide greater deference than has been on offer to date on state IMD assessments, including allowing the flexibility for states to exclude QRTPs from the definition of an IMD.

We appreciate consideration of these requests.

Sincerely,

A handwritten signature in black ink, appearing to read "Matt Salo". The signature is fluid and cursive, with a long horizontal stroke at the end.

Matt Salo  
Executive Director