



Treatment Communities of America

February 16, 2018

The Honorable Orrin Hatch
Chairman
United States Senate
Committee on Finance
219 Dirksen
Washington, DC 20510

The Honorable Ron Wyden
Ranking Member
United States Senate
Committee of Finance
219 Dirksen
Washington, DC 20510

Dear Chairman Hatch and Ranking Member Wyden:

On behalf of Treatment Communities of America (TCA), I am writing to thank the Committee for the opportunity to provide comments that we believe will further your efforts to address the opioid epidemic.

One of the keys to expanding access to evidence-based Substance Use Disorder (SUD) treatment across the United States is to end the Medicaid Institutions for Mental Diseases (IMD) Exclusion. Providing relief from this 50 year-old, outdated prohibition would immediately expand proven treatment capacity amid the opioid crisis.

Treatment Communities of America (TCA) is a nonprofit, member-led professional association representing hundreds of community-based behavioral health treatment providers in the United States and Canada. TCA members are on the front lines of the opioid epidemic and stand ready to rapidly expand their treatment capacity to serve individuals in need.

As the Committee may be aware, the IMD Exclusion was put in place over fifty years ago; it prohibits the use of federal Medicaid financing for services provided to individuals between the ages of 21 and 65 in mental health facilities larger than 16 beds. While this policy may have been well-intended at the time, it no longer reflects the appropriate standard of care – especially as it has been applied to treatment for SUD. Instead, the IMD Exclusion prevents our most vulnerable Americans from receiving medically necessary, evidence-based treatment according to clinical guidelines. It is difficult if not impossible to reconcile the continued application of the IMD Exclusion with even the most basic interpretation of parity for behavioral health care on par with physical health. We would never bar a person with heart disease from being treated in a facility based on the number of beds in their hospital, and we should not allow people with SUD to be discriminated against under this antiquated policy.

Community-based treatment for individuals with substance use disorder (SUD) has been shown to be a highly effective mode of treatment. As you know, these communities require a census for the model to be effective, and the 16-bed limit as dictated by the IMD Exclusion does not allow

for a sufficient number of patients. Despite recent changes which now allow patients in such facilities to access 15 days of treatment, for the vast majority of SUD patients, 15 days is not sufficient time for them to achieve and maintain their recovery. In fact, data indicate that longer lengths of stay not only reduce readmissions and overdoses, but also reduce the long-term cost associated with treatment.

Fortunately, the tide is turning. In 2016, 43 Governors signed *A Compact to Fight Opioid Addiction*, which calls for the reducing of administrative barriers in Medicaid to ensure Americans have access to SUD treatment in their communities. The National Governors Association has called for the elimination of the IMD exclusion for SUD to help states expand access to addiction treatment. Congress is now pressing for relief from the burdensome IMD Exclusion. Already in the 115th Congress, bipartisan bills have been introduced to end or ease the IMD Exclusion. TCA has endorsed H.R. 2938, the Road to Recovery Act introduced by Rep. Brian Fitzpatrick (R-PA), which would repeal the IMD Exclusion as it applies to residential, nonhospital inpatient SUD treatment. TCA has also endorsed the Medicaid CARE Act (S. 1169/H.R. 2687) introduced by Senator Dick Durbin (D-IL) in the Senate and by Rep. Bill Foster (D-IL) in the House of Representatives that would provide relief from the IMD Exclusion by changing the current exclusion into a cap on Medicaid reimbursement for up to 40 beds at a residential, nonhospital treatment facility, ensure that there is no unintended incentive to reduce beds and treatment capacity to comply with the IMD Exclusion. We hope these bills will advance through the legislative process in the near-term, be passed by the House and Senate, and enacted into law.

Americans must receive the life-saving treatment they need, when they need it, without arbitrary restrictions, in order to prevent thousands of unnecessary deaths amid this epidemic. TCA is grateful for the consideration of our request by the Commission and trusts that the Commission will take decisive, historic action and help us to end the IMD Exclusion.

TCA appreciates that CMS has recognized the barriers imposed by the IMD Exclusion, and has developed 1115 waiver guidance allowing some states to waive the IMD Exclusion, to address these challenges amid the opioid epidemic. However, with more than 33,000 opioid-related deaths in 2015 alone, more needs to be done. Although CMS has implemented new regulations to assist with the lengthy waiver applications process, in essence, even the new waiver regulations have not changed a process that can cause a significant disruption to the treatment system. Further, the limited timeframe of waivers makes it difficult for states to gather the resources and infrastructure necessary to effectively undertake process. Additionally, it fails to provide the certainty needed for providers to make much-needed coordinated investment in our communities. Therefore, we believe that, at a minimum, the waiver application approval process as it relates to the IMD Exclusion should be streamlined and expedited so that access to treatment services can be expanded immediately. It should not take months or years to approve such waivers, and wholesale changes in a state's behavioral health system should not be required as a condition of approving waivers of the IMD Exclusion.

Waivers can be a useful tool for states as they continue to explore ways to effectively combat this epidemic devastating our nation's communities. However, they are not sufficient. Due to their fundamental nature, waivers are not an effective long term solution to providing the needed

SUD treatment this epidemic, and the next, demands. Americans must receive the life-saving treatment they need, when they need it, without arbitrary restrictions, in order to prevent thousands of unnecessary deaths.

Thank you again for the opportunity to contribute our thoughts and experience to the Committee's your efforts to explore and set policy to provide relief from the scourge of the opioid epidemic.

Sincerely,

A handwritten signature in black ink that reads "Kathy Icenhower, PhD". The signature is written in a cursive, flowing style.

Dr. Kathy Icenhower
TCA President