



July 15, 2019

The Honorable Chuck Grassley  
Chairman  
U.S. Senate Finance Committee  
135 Hart Senate Office Building  
Washington, DC 20510

The Honorable Ron Wyden  
Ranking Member  
U.S. Senate Finance Committee  
221 Dirksen Senate Office Building  
Washington, DC 20510

Dear Chairman Grassley and Senator Wyden:

The National Organization of State Associations for Children (NOSAC) is seeking your assistance in the implementation of the Family First Prevention Services Act (FFPSA).

We appreciate your efforts to pass and implement the FFPSA, however with the inclusion of the definition of a Qualified Residential Treatment Program (QRTP), there is an unintended consequence for which we are advocating a resolution. In certain prescribed cases, the FFPSA requires states to place children in a QRTP in order for the state/district/tribe to draw down Title IV-E funds. However, based on the current Center for Medicaid Services (CMS) definition and how a QRTP is defined in the FFPSA, a QRTP would be considered an Institution for Mental Diseases (IMD). If a QRTP is considered an IMD, then the state would be prohibited from using federal Medicaid reimbursement for care provided to children in a QRTP with more than 16 beds.

This IMD exclusion, found in section 1905(a)(B) of the Social Security Act, prohibits “payments with respect to care or services for any individual who has not attained 65 years of age and who is a patient in an institution for mental diseases” except for “inpatient psychiatric hospital services for individuals under age 21.” The law goes on to define “institutions for mental diseases” as any “hospital, nursing facility, or other institution of more than 16 beds, that is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care, and related services.” In the State Medicaid Manual, the federal Department of Health and Human Services (HHS) interprets the IMD exclusion to include “any institution that, by its overall character is a facility established and maintained primarily for the care and treatment of individuals with mental diseases.”

NOSAC is concerned when states try to comply with FFPSA, as soon as October 1, 2019, thousands of children in the foster care system will not be able to access Medicaid funds for their medical and mental health treatment needs while they are placed in a QRTP. For example, in Kentucky, over 90% of the 29 agencies who will likely apply to become a QRTP have more than 16 total licensed beds (even though most of the children reside in units/cottages/building with less than 16 beds). This would impact over 800 children in Kentucky alone. Your action is urgently needed to ensure this does not happen!

It is our understanding that resolution could be secured through regulatory changes or CMS guidance. **We are asking you to communicate with CMS officials and ask them to make the regulatory change or issue the guidance to allow QRTP’s to be an exception to the IMD exclusion.** The use of Title IV-E funding, as well as Medicaid, are critical components in meeting the needs of children served in the foster care system. NOSAC believes it is a partnership between the federal and state governments to care for our country’s foster children and cover the cost of this care. Without this change or guidance to ensure QRTP’s are not prohibited from receiving federal Medicaid funds, the entire cost of a child’s health care when residing in a QRTP, will fall to the states. During a time when the opioid crisis is increasing the number of children in the foster care system

across our country, this fiscal burden would be devastating to states and will prolong, or even eliminate, their implementation of FFPSA.

Thank you for your consideration of this request and we look forward to working with you to correct this unintended consequence of the FFPSA.

Sincerely,



Michelle M. Sanborn, Past President  
NOSAC

  
Janet Reynolds Snyder, President  
NOSAC