

## Congressional Action Needed!

### Remove a Major Barrier to the Implementation of the Family First Prevention Services Act

The Family First Prevention Services Act of 2018 (FFPSA) was designed to help thousands of people reach their potential by transforming how states address child maltreatment. However, it includes a provision that presents a serious unintended consequence for children in the foster care system. Congressional engagement is needed right now to help fix it.

#### Qualified Residential Treatment Programs (QRTPs)

When Congress enacted the Family First Prevention Services Act, it created a new federal category for settings delivering trauma-informed treatment to foster children in a residential setting. The intent of Congress was to ensure the federal government funded interventions to address the symptoms of trauma and accompanying behavioral and emotional challenges for children with assessed need. Qualified Residential Treatment Programs (QRTPs) are now one of the few residential, or congregate, settings that are eligible for Title IV-E reimbursement.

#### QRTPs Should Not Be Considered Institutions for Mental Diseases (IMDs)

Among other requirements, QRTPs must be licensed, accredited, and have registered or licensed nursing staff and licensed clinical staff onsite according to the treatment model and available 24/7. Based on the Centers for Medicare and Medicaid Services (CMS) current definition\* and how a QRTP is defined in the FFPSA, CMS may consider QRTPs over 16 beds to be Institutions for Mental Diseases (IMDs).

### Institutions for Mental Diseases (IMDs)

FACILITIES WITH MORE THAN 16 BEDS



#### Children in foster care have critical health care needs

As was the case before FFPSA, foster children who are eligible for Title IV-E are categorically eligible for Medicaid. If a QRTP is defined as an IMD, then states are prohibited from drawing down federal Medicaid coverage for children in foster care while placed in that QRTP.

#### Thousands of children in foster care will lose coverage

All states must comply with FFPSA by the October 1, 2021 deadline, and states are relying on providers of all sizes to become QRTPs. Thousands of children in the foster care system may not be able to access Medicaid funds for their medical, dental, behavioral, and mental health care needs while they are placed in a QRTP with more than 16 beds. This is a serious unintended consequence of the FFPSA.

## **This issue is a threat to the implementation of the key provisions of FFPSA**

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. If QRTPs are not exempted from the IMD exclusion, then the entire cost of medical, dental, behavioral and mental health care for each child placed into QRTPs with more than 16 beds could fall to the states. In the wake of the global pandemic, as human services needs are increasing and state budgets are decreasing across our country, this fiscal burden would be devastating to states and will prolong, or even eliminate, their implementation of key provisions of the FFPSA. A lack of QRTP options could push children in foster care into more restrictive placements, the opposite intent of the FFPSA.

### **Your action is urgently needed!**

A fix is needed immediately. Congress needs to pass legislation exempting QRTPs from the IMD exclusionary rule. Experts at both CMS and the Children's Bureau have indicated that a legislative fix is necessary to address this issue.

### **\*The definition of an Institution for Mental Diseases (IMD)**

The IMD exclusion, found in section 1905(a)(30)(B) of the Social Security Act, prohibits Medicaid “payments with respect to the care or services for any individual who has not attained age 65 years of age and who is a patient in an institution for mental diseases” except for “in-patient 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.”