Congressional Advocacy Tools
In Support of Fixing the IMD Issue for QRTPs
AND
In Support of Delaying the 50% Well-Supported Requirement
July 23, 2019

PLEASE TAKE ACTION IMMEDIATELY!
CONGRESS DEPARTS FOR RECESS IN JUST A FEW DAYS

There are two urgent issues to ask the members of your congressional delegation to take care of. The first is to ensure that Qualified Residential Treatment Programs (QRTPs) are exempted from the IMD Exclusion. The second is to delay the requirement that states must use 50% of their evidence-based practices for the new IV-E Prevention Program from the “well-supported” category. This toolkit equips you to advocate on just the IMD Fix or to advocate for both the IMD Fix and the delay of the 50% well-supported requirement.

The toolkit includes:

1. A list of helpful resources
2. Template email messages
3. Template phone scripts
4. Template voice message scripts
5. Data template for state facts related to the IMD Fix
6. One-pager (front-to-back) on the IMD issue and requested fix
7. FAQs on the IMD issue
8. One-pager on the need to delay the 50% well-supported requirement

You are urged to take action immediately, as the House departs for summer recess this Friday, July 26 and the Senate departs for recess next week. If there is no known solution for one or both issues by the end of this week, we will be back in touch to let you know the next phase of the campaign strategy.

Helpful Resources

Find your congresspersons. To find the names and contact information for the members of your congressional delegation follow this [link to Congress.gov].

Learn if your congressperson(s) is on a committee of jurisdiction. See if your state has a Member on the Senate Finance Committee or the House Ways and Means Subcommittee on Worker and Family Support.

Remember - Outreach to ALL members of your congressional delegation is critical. If you do not have a Member on either of these two committees, your voice is still critical as your Members of Congress will still likely contact these committee offices. Elevating our voices on this issue and educating all congressional offices is key.
Let us know if we can help. Contact Michelle Sanborn with Children’s Alliance of Kentucky and NOSAC (Michelle@childrensalliancemy.org); Lisette Burton with Boys Town and ACRC (Lisette.burton@boystown.org); or Marlo Nash with Saint Francis Ministries (marlo.nash@st-francis.org) for assistance.

All three of us are working with states and federal congressional offices in support of a successful implementation of the Family First Prevention Services Act, including putting together this campaign and toolkit. We are happy to help.

**Template Email Messages (personalization is recommended):**

**IMD Fix Only**
When [INSERT STATE] supports child and family well-being, we ensure that everyone can reach their full potential and contribute their skills and talents to benefit our communities. We appreciate the work you did to pass the Family First Prevention Services Act of 2018 (FFPSA) and believe it holds the promise of improving our state’s response to child maltreatment and restoring the health, safety and well-being of thousands of children and families. As was the case prior to the FFPSA, children and youth who are eligible for Title IV-E foster care payments are also eligible for Medicaid. However, with the inclusion of the definition of Qualified Residential Treatment Programs (QRTPs) in the law, there is an unintended consequence that would put children and youth in foster care at risk of losing their Medicaid coverage. We need your help to address this issue immediately.

Under a new provision enacted in FFPSA, children who are eligible for Title IV-E foster care payments may be placed in a QRTP in order to receive treatment for serious emotional or behavioral issues. Our concern is that the definition for QRTPs included in FFPSA would result in QRTPs being classified as an Institution for Mental Diseases (IMD), as defined by the Centers for Medicare and Medicaid Services (CMS). If a QRTP is considered an IMD, then states would be prohibited from using federal Medicaid for medical care provided to children in a QRTP with more than 16 beds. For [INSERT STATE], over X% of the X# of the organizations that are likely to be needed in as QRTPs offer more than 16 licensed foster care placements (beds) for critically needed treatment. This is estimated to impact X# of children and youth in [INSERT STATE].

While this is an issue for most states, there are states that are working to implement FFPSA as early as October 1 and urgently need to resolve this issue in order to stay on track.

Medicaid coverage for children in foster care is imperative. It is a high risk for states to implement the congregate care provisions in the law without the certainty that Medicaid services can be maintained for this population.

We are asking that Congress work with CMS and the Administration for Children and Families (ACF) to issue guidance that clarifies that QRTPs are not subject to the IMD Exclusion.
IMD/Well-Supported Delay Combined Message
The Family First Prevention Services Act (Family First) was signed into law as part of the federal Bipartisan Budget Act of 2018. Family First can dramatically shift [INSERT STATE]’s ability to keep families together and support the needs of children in foster care beginning October 1, 2019, but we urgently need Congress to fix two barriers that will prevent [INSERT STATE] from implementing the law.

1. To realize the full potential in the Family First Act, Congress must act immediately to delay the 50% well-supported requirement and reimburse states for all promising, supported, and well-supported services that prevent children from entering foster care.

[INSERT STATE] has the opportunity to use the Family First provisions to strengthen family well-being by providing mental health services, substance abuse prevention and treatment services, and in-home parent skill-building services, including individual and family counseling, to eligible families. Under the law, all services must be promising, supported, or well-supported practices, and 50% of all service provision must be well-supported. Because of delays in the newly created Title IV-E Prevention Services Clearinghouse, only 6 programs have been identified as well-supported – not nearly enough to give states the flexibility to meet the diverse needs of children and families.

This delay would maintain the already high standards of the promising, supported and well-supported requirements, while giving ACF, states, and child welfare system stakeholders time to develop and evaluate additional evidence-based practices that meet the "well-supported" criteria. Such delays have been proposed in bi-partisan and bi-cameral bills, including the Family First Transition and Support Act (S.1376, H.R.2702) and the Family First Transition Assistance Act of 2019 (H.R.3017).

2. To protect the Medicaid health coverage of children in foster care who need trauma-responsive treatment, Congress must work with CMS and the Administration for Children and Families to ensure Qualified Residential Treatment Programs (QRTPs) are not considered Institutions for Mental Diseases.

Under a provision enacted in Family First, children who are eligible for Title IV-E foster care payments may be placed in a QRTP in order to receive treatment for serious emotional or behavioral issues. The definition of QRTPs will result in QRTPs being classified as Institutions for Mental Diseases (IMD), as defined by the Centers for Medicare and Medicaid Services (CMS). If a QRTP is considered an IMD, then states would be prohibited from using federal Medicaid for all medical care provided to children who are in a QRTP with more than 16 beds. For [INSERT STATE], over X% of the X# of the organizations that are likely to be needed in as QRTPs offer more than 16 licensed foster care placements (beds) for critically needed treatment. This is estimated to impact X# of children and youth in [INSERT STATE].

The Family First Act is too important to get these two things wrong. Please work urgently to delay the 50% well-supported requirement for prevention services AND ensure foster children with trauma don’t lose their health coverage just because they need a QRTP.
Phone Call Script: IMD Fix Only and IMD/Well-Supported Delay Combined Message

**IMD Fix**
Hi, this is [INSERT NAME]. I’m a constituent and I want to ask Senator/Representative [INSERT CONGRESSPERSON’S NAME] to get Congress to work with CMS and ACF* to address a barrier to our state’s implementation of the Family First Act. This is an urgent matter. The law is going to cause an unintended consequence of taking away health coverage for foster children receiving trauma-responsive care in Qualified Residential Treatment Programs (QRTPs) that serve more than 16 children.

[Share state/personal/organizational stake in the issue]

We need [INSERT CONGRESSPERSON’S NAME] to ensure that QRTPs are not treated as Institutions of Mental Disease so children in foster care maintain access to Medicaid even when they require treatment in a QRTP to address trauma. If I can leave my email address and phone number, I would be happy to discuss the issue further with a member of [INSERT CONGRESSPERSON’S NAME] staff. Thank you for your time.

*CMS = Centers for Medicare and Medicaid Services
*ACF = Administration for Children and Families

**IMD/Well-Supported Delay Combined Message**
Hi, this is [INSERT NAME]. I’m a constituent and I want to ask Senator/Representative [INSERT CONGRESSPERSON’S NAME] to urgently address two issues that are impacting our state’s ability to implement the Family First Act.

**First,** we appreciate that federal Title IV-E funds can now be used for evidence-based programs and services to keep families together; but Congress must act immediately to change the law and allow federal reimbursement for all promising, supported, and well-supported programs through 2026. Currently, the law requires that 50% of services must be well-supported, however the new federal Clearinghouse to evaluate programs is behind schedule and has only identified 6 well-supported programs. [INSERT STATE] needs more options to prevent children from entering foster care, and the Clearinghouse needs more time to evaluate programs and services and add them to the list.

**Second,** the law is going to cause an unintended consequence of taking away health coverage for foster children receiving trauma-responsive care in Qualified Residential Treatment Programs (QRTPs) that serve more than 16 children.

[Share state/personal/organizational stake in the issue]

We need [INSERT CONGRESSPERSON’S NAME] to work with CMS and ACF to ensure that QRTPs are not treated as Institutions of Mental Disease so foster children receiving treatment in a QRTP don’t lose access to Medicaid.
The Family First Act is the most important piece of child welfare legislation in decades, and we need [INSERT CONGRESSPERSON’S NAME]’s leadership to address both of these issues that are critical to [INSERT STATE]’s ability to implement the law. If I can leave my email address and phone number, I would be happy to discuss the issue further with a member of [INSERT CONGRESSPERSON’S NAME] staff. Thank you for your time.
*CMS = Centers for Medicare and Medicaid Services
*ACF = Administration for Children and Families

Voice Message Script: IMD Fix Only and IMD/Well-Supported Delay Combined Message

IMD Fix
Hi, this is [INSERT NAME]. I’m a constituent and I want to ask Senator/Representative [INSERT CONGRESSPERSON’S NAME] to get Congress to work with CMS and ACF* to address a barrier to our state’s implementation of the Family First Act. This is an urgent matter, as the law goes into effect October 1, 2019. The law is going to cause an unintended consequence of taking away Medicaid for foster children receiving treatment in a Qualified Residential Treatment Program. Please contact me so that I can share more information. You can reach me at [INSERT YOUR EMAIL ADDRESS AND PHONE NUMBER].
*CMS = Centers for Medicare and Medicaid Services
*ACF = Administration for Children and Families

IMD/Well-Supported Delay Combined
Hi, this is [INSERT NAME]. I’m a constituent and I want to ask Senator/Representative [INSERT CONGRESSPERSON’S NAME] to take action to fix two barriers that will prevent [INSERT STATE] from implementing the Family First Prevention Services Act. This is an urgent matter, as the law goes into effect October 1, 2019. First, Congress must act immediately to delay the 50% well-supported requirement and reimburse states for all promising, supported, and well-supported services that prevent children from entering foster care. Second, Congress must work with CMS and ACF* to ensure that foster children receiving treatment in a Qualified Residential Treatment Program don’t lose access to Medicaid. Please contact me so that I can share more information. You can reach me at [INSERT YOUR EMAIL ADDRESS AND PHONE NUMBER].
*CMS = Centers for Medicare and Medicaid Services
*ACF = Administration for Children and Families

Data Template for Pulling State-Level Data for IMD Fix
Your case will be much stronger if you are able to gather the following data to include in your correspondence with your members of Congress:

Over (1. X%) of the (2. X#) of the organizations that are likely to be needed in [INSERT STATE] as QRTPs offer more than 16 licensed foster care placements (beds) for foster children who critically need mental and behavioral health treatment. This would impact/is estimated to impact (3. X#) of children and youth in [INSERT STATE].
Data Points to fill in
1. Percentage/estimated percentage of congregate care programs that are designated as QRTPs, or will need to be QRTPs, and have more than 16 beds
2. Total number of congregate care programs that are assessed to be needed as QRTPs (or anticipated to be needed)
3. Number of children and youth that are likely to need placement and treatment in a QRTP in a given year

Here is an example statement:
In Kentucky, over 90% of the 29 agencies who will likely apply to become QRTPs have more than 16 total licensed beds (even though most of the children reside in units/cottages/buildings with less than 16 beds). This would impact over 800 children in Kentucky alone.

If you don't have state level data, share the impact from the perspective of your organization and the children and families you serve.
Immediate 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) has 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 (FFPSA) 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 are Institutions of Mental Diseases (IMDs)
Among other requirements, QRTPs must be licensed, accredited, and have registered or licensed nursing staff and licensed clinical staff onsite 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 considers QRTPs to be Institutions for Mental Diseases (IMDs).

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 foster children receiving treatment while placed in a QRTP with more than 16 beds.

Thousands of foster children will lose coverage
When states begin 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, 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 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 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 key provisions of the FFPSA.

Your action is urgently needed!
A fix is needed immediately. Congress needs to work with officials at the CMS and the Administration for Children and Families to issue guidance that clarifies that QRTPs are not IMDS and should be an exception to the IMD exclusion.
The definition of an Institution of Mental Diseases (IMD)
The IMD exclusion, found in section 1905(a)(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.”
FAQs on the IMD Issue

Q: QRTPs were created to address trauma and not to treat “mental disease,” so does the IMD Rule apply?
A: Yes. Medicaid auditors can determine whether a program is an IMD based on the "character" of a program, not how it defines itself or how the state defines it. QRTPs over 16 beds, providing treatment, with clinical and nursing staff, and with over 50% of youth served having a mental health diagnosis would fit the character of an IMD.

Q: My organization is not a Medicaid provider but we want to be designated as a QRTP. Do I need to worry about the IMD Rule?
A: Yes. The IMD exclusion follows the child. Even if the provider not licensed as a mental health facility and is paid for services through a funding stream that is not Medicaid, the issue is that children while placed in a facility classified as an IMD are not eligible for Medicaid to cover any health service provided by the IMD or a by third-parties outside the IMD.

Q: My organization is a Psychiatric Residential Treatment Facility (PRTF), and we want to be designated as a QRTP. Do I need to worry about the IMD Rule?
A: No. QRTP is just a designation for eligibility for federal Title IV-E funding, thus if you are a PRTF, you are already exempted from the IMD exclusion. The “Psych Under-21 benefit” allows only three types of IMDS: psychiatric hospitals, psychiatric units of general hospitals, and PRTFs, each defined in Medicaid regulations. Not all QRTPs need to be PRTFs, and not all states have PRTFs. Congress could have made PRTFs the fourth eligible specified setting, but instead Congress intentionally defined a new setting to allow flexibility in the types of QRTPs states could utilize to meet the varied assessed needs of children without requiring “medical necessity”.

Q: My program utilizes a “cottage home” model or has several units, but each home or unit has 16 beds or less, and we want to be designated as a QRTP. Does the IMD Rule apply to my organization?
A: Yes. Generally, a facility with multiple smaller units on a campus setting could be considered an IMD if there are more than 16 “beds” total. If you provide multiple services on a campus, here is an example of the complicated considerations to determine whether or not you could avoid IMD classification.

Q: On November 13, 2018, the Centers for Medicare & Medicaid Services (CMS) informed state Medicaid directors about a new option that would allow states to receive reimbursement for short-term psychiatric care provided in an IMD for adults with serious mental illness (SMI) or children with serious emotional disturbance (SED). Is this 1115 Medicaid demonstration waiver a solution to the QRTP/IMD challenge?
A: No. The SED waiver offers no additional access to IMDs that are not already exempted through the Psych Under-21 Benefit (see above). Additionally, states will be expected to achieve a statewide average length of stay of 30 days for beneficiaries receiving care in IMDS pursuant to this SMI/SED demonstration opportunity. Because Congress allowed 30 days for assessment of QRTP need, 60 days for judicial approval, and 30 days for youth to transition from the intervention, QRTP interventions were clearly contemplated by Congress to last longer than 30 days.
Q: How do we know QRTPs are considered IMDs by CMS?
A: The state of Kentucky received notice from the regional CMS office that QRTPs as defined in the Family First Act are likely IMDs.

Q: Does Congress support a fix to the QRTP/IMD issue?
A: There appears to be agreement between Congress and the Administration that a solution is necessary. Congress, CMS, and ACF are in discussions regarding the solution, and advocacy is necessary to underscore the urgency of the issue, as several states expect providers to be designated as QRTPs on October 1, 2019, and all states are planning now for Family First implementation.
Immediate Action Needed!
Enact an easy fix to support implementation of the
Family First Prevention Services Act’s new IV-E-Funded Prevention Programs

The Family First Act helps keeps families together
Beginning as early as October 1, 2019, the Family First Act allows the use of federal Title IV-E funds to keep families together and safely prevent the placement of children into foster care, by providing the following tools to build well-being for eligible children, their families, and pregnant and parenting foster youth: mental health services, substance abuse prevention and treatment services, and in-home parent skill-building services, including individual and family counseling.

Family First prevention programs must meet evidence-based requirements
Under the Family First Act, these services must be trauma-informed and meet evidence-based requirements that are promising, supported, or well-supported practices as defined in the law.

Congress needs to address an easy-to-fix barrier in the law
Action by Congress is needed to amend a provision of the law that is acting as a barrier to states’ capacity to implement prevention programs and keep more families together.

Delay the requirement that 50% of the evidence-based programs must be “well-supported”
To remedy problems that are outside of the control of states, Congress should delay the requirement that 50% of the evidence-based practices are "well-supported". This delay would maintain the already high standards of the promising, supported and well-supported requirements, while giving ACF, states, and child welfare system stakeholders time to develop and evaluate additional evidence-based practices that meet the "well-supported" criteria. Such delays have been proposed in bipartisan and bi-cameral bills, including the Family First Transition and Support Act (S.1376, H.R.2702) and the Family First Transition Assistance Act of 2019 (H.R.3017).

A common sense and temporary change
This common sense and temporary change will advance us more quickly toward the shared goals at the heart of this new law: ensuring the federal government supports keeping families together and ensuring that states utilize programs and services that work.

Background on what is causing the need for the delay
Families are diverse in their needs and states require a broad array of services to effectively support their strengths and challenges. Currently, the Title IV-E Prevention Services Clearinghouse has only identified 6 programs that meet the “well-supported” criteria. This creates extremely limited options for states to be able to meet the 50% well-supported threshold. The Title IV-E Prevention Services Clearinghouse is also evaluating programs at a much slower rate than hoped for, having just released the initial list of approved programs in June 2019, well past the October 1, 2018 deadline.

As a result of these two factors, states are unlikely to be able to fully implement the Family First Act unless funding is available for all promising, supported, and well-supported programs while the research catches up to practice and the Clearinghouse continues to evaluate evidence-based programs and services that states are currently using, or would like to use, to produce positive outcomes for children and families.