

February 16, 2024

The Honorable Chuck Schumer, Majority Leader
The Honorable Mitch McConnell, Republican Leader
United States Senate
Washington, D.C. 20510

Dear Leader Schumer and Leader McConnell:

The undersigned represent national, state, and local medical, legal, service provider, child advocacy, individuals with lived experience, and disability rights organizations who are deeply committed to children at risk of entering or already involved with the child welfare system. As organizations dedicated to the well-being of children and families, we write to urge Congress to uphold the intent of the bipartisan *Family First Prevention Services Act of 2018* (“*Family First*”) to reduce unnecessary congregate care placements and prioritize family-based care when a child must be removed from their family and oppose the *Ensuring Medicaid Continuity for Children in Foster Care Act of 2023* (S. 3196).

We are grateful for Congress’ ongoing bipartisan work to support investments in pediatric mental health. These conversations also offer an opportunity to advance bipartisan policies that improve access to the trauma-informed mental health services young people in foster care need to heal and thrive. We are concerned about ongoing discussions that are narrowly focused on addressing their unmet needs by expanding the size of residential treatment settings. We oppose any efforts that undermine the original intent of *Family First* and would lead to more children being placed unnecessarily in large, costly residential settings for prolonged periods of time. **Accordingly, we ask you to oppose the *Ensuring Medicaid Continuity for Children in Foster Care Act of 2023* (S. 3196), which would weaken *Family First*’s protections for children through changes to the Medicaid Institution for Mental Disease (IMD) exclusion. We instead urge you to use this opportunity to invest in community-based trauma-informed mental health services to ensure young people receive the care they need in the least restrictive environment.**

The research is clear that children fare best in families. The goal of *Family First* is to apply downward pressure on the full continuum of child welfare involvement: fewer children unnecessarily in out-of-home care, and for children who require foster care, placement should be in a family-like setting whenever possible, with fewer children placed in congregate care. The requirements in *Family First* to significantly improve standards for congregate care placements (group homes, residential facilities, and other institutional settings) are critical to advancing that goal.

Family First made critical policy changes to improve standards for residential treatment. These reforms emphasize that children and youth should only enter such a setting if they have a need that cannot be met in a family placement, and if a particular setting is high-quality enough to meet those needs. *Family First* does this by creating a new program model, the Qualified Residential Treatment Program (Q RTP). The law is designed to ensure Q RTP placements are

appropriate, time-limited, and meet a child's treatment needs so that they do not languish in settings which do not support their growth, development, and healing. QRTPs also must offer aftercare supports to facilitate a transition to the community after residential treatment. These standards align with what child health experts know: children fare best in families.

A recent [report](#) found that while states have made initial progress in implementing *Family First*, there are still significant opportunities that remain to turn the vision of *Family First* into a reality for children and families, particularly in expanding access to mental health services and supporting the quality staffing needed for QRTPs.

Our organizations are concerned that the *Ensuring Medicaid Continuity for Children in Foster Care Act of 2023* (S. 3196) would undermine implementation of *Family First*. The Medicaid IMD exclusion prohibits the federal government from providing federal Medicaid funds to states for services rendered to Medicaid enrollees who are patients in certain large facilities (i.e., with more than 16 beds) that primarily provide mental health and substance use disorder treatment services. One of the reasons the IMD exclusion was created was to incentivize state investment in and reliance on community-based services, with an understanding that large, restrictive institutions were counterproductive in mental health treatment. Decades of research and lived experience has shown the same is true in child welfare; children fare best in the least restrictive settings possible, preferably with families. Lessening these longstanding Medicaid protections for children in foster care would be a step backwards.

Creating a broad federal exemption could have significant unintended consequences that lead to children and youth languishing in massive congregate care facilities. Young people in foster care do not need larger institutions. They need better community-based mental health services to prevent unnecessary institutionalization and to support their return to family after treatment when they do need care in a residential setting. Today, children at risk of entering or already involved with the child welfare system have limited and inadequate access to needed community-based mental health services and supports. As a result, many of these children experience placements in residential congregate care facilities to access mental health services, despite clear evidence that living in a family setting with access to community-based mental health supports and other wraparound services is best for children, and most cost-effective for jurisdictions. The QRTP model is a key piece of the continuum of support envisioned by *Family First*, and placements in these programs must be driven by the treatment needs of a child, not used as a stopgap measure to compensate for underinvestment in the services needed for successful family placement.

Congress does not need to enact a new policy to ensure the continuity of Medicaid enrollment or coverage for children in foster care, even in the case of institutional placement. Under existing law, children in foster care are already eligible for Medicaid, and remain eligible and enrolled regardless of placement. The IMD exclusion does not change a child's Medicaid eligibility or enrollment, nor does it limit the services that Medicaid must cover for enrolled children. Rather, the IMD exclusion means that if a state chooses to place children in facilities that meet the definition of an IMD, the state must bear the full cost of Medicaid-covered services for those children without the benefit of federal funds for those services.

The undersigned organizations strongly oppose the *Ensuring Medicaid Continuity for Children in Foster Care Act of 2023* (S. 3196). We urge Congress to uphold the intent of *Family First* and not weaken the law's core principles and quality-of-care standards. Rather than making an expensive and large-scale change to Medicaid law, we urge you to invest in the community-based services that support young people's success in families. This will help avoid unnecessary institutionalization, ensure there are needed supports for those transitioning from residential treatment to a family, and support a broader array of settings to prioritize family placements with needed community-based mental health services.

We look forward to working collaboratively with you on these and other critical child health and well-being issues. If you have any questions, please do not hesitate to contact Zach Laris in the American Academy of Pediatrics' Washington, D.C. office at 202/347-8600 or zlaris@aap.org.

Sincerely,

National Organizations

Access Ready Inc.
AIDS Alliance for Women, Infants, Children, Youth & Families
Allies for Independence
American Academy of Pediatrics
American Civil Liberties Union (ACLU)
Association of People Supporting Employment First (APSE)
Autistic Self Advocacy Network (ASAN)
Bazelon Center for Mental Health Law
Caring Across Generations
Center for Law and Social Policy (CLASP)
Children's Trust Fund Alliance
First Focus Campaign for Children
Muscular Dystrophy Association
NAPNAP Partners for Vulnerable Youth
National Association of Pediatric Nurse Practitioners
National Association of State Directors of Developmental Disabilities Services
National Center for Parent Leadership, Advocacy, and Community Empowerment (National PLACE)
National Disability Rights Network (NDRN)
National Health Law Program
The Arc of the United States
The National Foundation to End Child Abuse and Neglect
Youth Law Center

State and Local Organizations

Alabama

Alabama Chapter - American Academy of Pediatrics

Alaska

Alaska Chapter, American Academy of Pediatrics

Arizona

Arizona Chapter of the American Academy of Pediatrics

Arkansas

Arkansas Chapter, American Academy of Pediatrics

California

American Academy of Pediatrics, California

American Academy of Pediatrics, CA Chapter 3

AAP - Orange County Chapter

California Chapter 1, American Academy of Pediatrics

Disability Rights CA

Colorado

American Academy of Pediatrics, Colorado Chapter

Disability Law Colorado

Connecticut

Connecticut Chapter of the American Academy of Pediatrics

Delaware

Delaware Chapter of the American Academy of Pediatrics

District of Columbia

American Academy of Pediatrics, DC Chapter

Florida

Disability Rights Florida

Georgia

Georgia Chapter of the American Academy of Pediatrics

Hawaii

Hawaii Chapter, American Academy of Pediatrics

Idaho

Idaho Voices for Children

Illinois

Illinois Chapter American Academy of Pediatrics

Indiana

Indiana Chapter of the American Academy of Pediatrics

Iowa

Iowa Chapter, American Academy of Pediatrics

Kansas

Kansas Chapter American Academy of Pediatrics

Kentucky

KY AAP

Louisiana

Louisiana Chapter of the American Academy of Pediatrics

Maine

Disability Rights Maine

Maine Chapter, American Academy of Pediatrics

Maryland

Maryland Chapter, American Academy of Pediatrics

The Parents' Place of MD

Massachusetts

Disability Law Center

Massachusetts Chapter of the American Academy of Pediatrics

Michigan

Disability Rights Michigan

Michigan Disability Rights Coalition

Student Advocacy Center of Michigan

The Arc Kent County

The Arc Michigan

The Arc of Northern Michigan

The Arc Western Wayne County

Mississippi

Mississippi Chapter of the American Academy of Pediatrics

Montana

Montana Chapter of the American Academy of Pediatrics

Nebraska

Nebraska Chapter AAP

Nevada

Nevada Chapter, American Academy of Pediatrics

Nevada Disability Advocacy and Law Center

New Hampshire

New Hampshire Chapter, American Academy of Pediatrics

New Jersey

Family Voices NJ

SPAN Parent Advocacy Network

New Mexico

Native American Disability Law Center

New York

NYS AAP - Chapter 2

NYS AAP - Chapter 3

North Carolina

Disability Rights North Carolina

North Dakota

North Dakota Chapter of the American Academy of Pediatrics

North Dakota Protection & Advocacy Project

Ohio

Ohio Chapter, American Academy of Pediatrics

Oklahoma

Oklahoma Chapter American Academy of Pediatrics

Pennsylvania

PA Chapter, American Academy of Pediatrics

Rhode Island

American Academy of Pediatrics, Rhode Island Chapter

South Carolina

Disability Rights South Carolina
SCAAP

Tennessee

Family Voices of Tennessee
Tennessee Chapter of the American Academy of Pediatrics

Texas

Disability Rights Texas
Texas Pediatric Society

Utah

American Academy of Pediatrics, Utah Chapter

Washington

Washington Chapter of the American Academy of Pediatrics

West Virginia

West Virginia Chapter of the American Academy of Pediatrics

Wisconsin

Wisconsin Chapter of the American Academy of Pediatrics (WIAAP)

Wyoming

Wyoming Chapter - American Academy of Pediatrics

cc: The Honorable Ron Wyden, Chair, and The Honorable Mike Crapo, Ranking Member, Senate Committee on Finance