



June 19, 2018

Oppose H.R. 5797, the IMD CARE Act

Dear Representative,

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 200 national organizations to promote and protect the civil and human rights of all persons in the United States, I write to express our opposition to H.R. 5797, a bill that would partially repeal the Institutions for Mental Diseases (IMD) exclusion for adult Medicaid beneficiaries with opioid use disorder (OUD). The Leadership Conference supports efforts to expand access to care for individuals suffering from OUD, but any policy changes in this area must be crafted so that they help all adult Medicaid beneficiaries with substance abuse disorders (SUD), rather than limiting aid to OUD. In addition, any approach should prioritize the continuum of care that individuals suffering from SUD need, instead of opening up the IMD exclusion as proposed in H.R. 5797. The Leadership Conference urges you to vote no on H.R. 5797.

This legislation offers a novel approach to addressing the opioid crisis in our country, but it should not be limited only to opioid use. H.R. 5797 bill would create a two-tier system by creating a partial repeal of the IMD exclusion for only those suffering from opioid addiction, while leaving behind individuals facing other SUDs, including addition to cocaine, methamphetamines, and alcohol. Today, deaths due to OUD overdose disproportionately affect non-Hispanic whites.¹ In contrast, cocaine use claims more African American lives than opioid use, and has been a larger problem than OUD for more than 20 years.² During the House Energy and Commerce committee markup on H.R. 5797, Rep. Bobby Rush (D-IL) noted that the opioid only approach offered by this bill may further racial disparities:

While I am glad, Mr. Chairman, that we are addressing the opioid issue, ignoring other addictions is not only a grave disservice – it is a gross injustice. Too often, Mr. Chairman, this committee and this House have paid attention to issues only when they affect the majority – the majority white population. This leaves far too many black and other brown Americans behind. Why it is – why is that instead of treatment – why is it, Mr. Chairman, that instead of treatment, minority Americans are subject to incarceration? Why is it, Mr. Chairman, that issues of this degree only generate headlines and action by this Congress when they come to a white face? Even more insulting, Mr. Chairman, when a crisis

¹ Kaiser Family Foundation, *Opioid Overdose Deaths by Race/Ethnicity* (2016), <https://www.kff.org/other/state-indicator/opioid-overdose-deaths-by-raceethnicity/?dataView=2¤tTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>

² Austin Frakt, *Overshadowed by the Opioid Crisis: A Comeback by Cocaine*, N.Y. TIMES, March 5, 2018, <https://www.nytimes.com/2018/03/05/upshot/overshadowed-by-the-opioid-crisis-a-comeback-by-cocaine.html>

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impacts the African-American community, it's seen by this body as a criminal justice crisis but when it affects the white community it's seen as a public health crisis? This bill as written, Mr. Chairman, adds insults to injury by once again excluding treatment for those who are primarily addicted to crack cocaine even though it serves as a gateway to the opioid addiction that we are seeing in every community across this nation.³

The opioid-only approach advocated in this bill is also flawed because it fails to take account of the evidence that many individuals suffering from OUD use multiple substances. As public health experts have noted, “an estimated 64 percent of people seeking care for an SUD use multiple substances. For those with an opioid use disorder, 41 percent had an alcohol use disorder, and 43 percent had another drug use disorder. About 30 percent suffer from depression.”⁴ In order to address the needs of those suffering from OUD, an opioid-only approach is insufficient.

In addition, The Leadership Conference believes that an effective approach would focus on the continuum of care that adults with SUDs need rather than focusing exclusively on IMDs. The core of H.R. 5797 is the partial repeal of the IMD exclusion for adult Medicaid beneficiaries with OUD. Even partially rolling back the IMD exclusion on using federal matching funds in Medicaid to pay for residential treatment in facilities with more than 16 beds that treat mental diseases may help incentivize funding to institutions at the expense of focusing on the long-term needs and continuum of care that SUD patients need to be well. A return to institutionalization as a policy should not be something that we as a society support. Instead, states should be able to continue following guidance from CMS that allows states to waive the IMD exclusion if the state also takes steps to ensure that people with SUDs have access to other care that they need, including preventative, treatment, and recovery services.

Finally, any legislation must not be based on cuts to other parts of Medicaid and should instead represent additional, new funding to address this public health crisis. H.R. 5797 would also create a fiscal cliff; after five years, any state that wanted to keep new IMD beds would have to fully absorb the cost of these beds. If Congress were to extend the repeal in five years, it would again have to identify offsets that would reduce funding for other Medicaid services or other programs.

For these reasons, we urge you to vote against H.R. 5797. If you have any questions, please contact Emily Chatterjee, Senior Counsel, at chatterjee@civilrights.org.

Sincerely,

Vanita Gupta
President & CEO

³ <https://energycommerce.house.gov/markups/energy-and-commerce-committee-vote-on-opioids-legislation/>

⁴ Michael Botticelli and Richard Frank, *Congress needs a broader approach to address opioid epidemic*, The Hill, June 10, 2018, <http://thehill.com/opinion/healthcare/391544-congress-needs-a-broader-approach-to-address-opioid-epidemic>