

United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

September 3, 2024

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Administrator Brooks-LaSure:

It is clear that protecting and strengthening access to behavioral health services, especially for children, is a top Biden Administration priority. As I share this goal, I am writing to request an update on the agency's work related to the care provided to youth enrolled in Medicaid in residential treatment facilities (RTFs).

On June 12, the Senate Committee on Finance (Committee) released findings from a two-year investigation into four RTF operators: Universal Health Services, Acadia Healthcare, Devereux Advanced Behavioral Health, and Vivant Behavioral Healthcare. The report, *Warehouses of Neglect: How Taxpayers Are Funding Systemic Abuse in Youth Residential Treatment Facilities*, provides substantive new information about the numerous instances of abysmal quality of care being provided to youth in congregate care settings by for-profit and nonprofit providers. This investigation uncovered instances of abuse, neglect, and substandard care in facilities by these operators, whose services are funded with billions of Medicaid dollars each year, for which the Committee has sole jurisdiction.

As you know, federal regulations dictate that RTFs are intended to provide intensive, short-term inpatient therapeutic services to a diverse group of high-need youth, like those who are a danger to themselves and/or others. Prior to placement in an RTF, children enrolled in Medicaid should be able to access a continuum of community-based behavioral health services to meet their needs, as required by Medicaid's Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) benefit. Ideally, children would only receive residential treatment when all other in-

community options have been exhausted and, following such intensive residential treatment, children would be able to progress to lower acuity settings, like outpatient care in the community. Many of these placements are funded by Medicaid dollars and the child welfare system.¹

Unfortunately, *Warehouses of Neglect* reveals a different story about the lives of many children in RTFs and their experiences, due to the predatory practices of these RTF operators. The investigation found that children suffer routine harms inside RTFs, including sexual, physical, and emotional abuse, unsafe and unsanitary conditions, and inadequate provision of behavioral health treatment. This risk of harm to children in RTFs is endemic to the operating model; to maximize per diem margins, RTF providers offer minimal therapeutic treatment in deficient physical settings with lean staff composed of individuals with inadequate educational background and training.

I realize there are children whose needs are best served by residential care, but, in too many instances, children are not receiving that level of care nor an acceptable caliber of care in RTFs. Congress must legislate to address these harmful gaps and I am hard at work drafting legislation which will include provisions to: (i) invest in community-based alternatives for care, (ii) strengthen the oversight of congregate care facilities, and (iii) raise the floor for congregate care standards. Together, these policies will better ensure that every child across the country receives appropriate, high-quality behavioral health care in the setting that best fits their needs, as is their federally protected right.

In the meantime, I have identified meaningful actions that the Centers for Medicare & Medicaid Services (CMS) can immediately take that will improve children's lives. I am also sending a letter to the Administration for Children and Families (ACF) today and I expect CMS and ACF to work in tandem on these efforts. My report identifies the following recommendations:

1. **CMS and ACF can and should do more to prioritize and coordinate rules for spending on community-based behavioral health services as an alternative to placement in RTFs, if possible and safe.** As prioritized by policies included in the Bipartisan Safer Communities Act, Congress has highlighted the need for clarity around the provision of care for children in Medicaid. Both CMS and ACF are major payors for RTF placements and have a responsibility to ensure treatment services are actually being provided with the available federal financing.

¹ According to company documents and conversations with the Committee cited in the report, 95 percent of Devereux Advanced Behavioral Health's RTF revenue came from Medicaid dollars and half of Vivant Behavioral Healthcare's facilities rely on public dollars for more than 75 percent of their revenue. *Warehouses of Neglect: How Taxpayers are Funding Systemic Abuse in Youth Residential Treatment Facilities* (June 12, 2024) at p. 23; https://www.finance.senate.gov/imo/media/doc/sfc_report_warehouses_of_neglect.pdf.

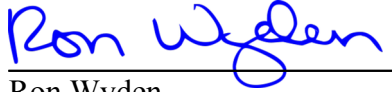
The agencies should issue joint guidance to states to assist them in understanding what behavioral health services are required to be available as part of the provision of EPSDT services as well as guidance prioritizing the availability and use of community-based behavioral health care and prevention services for all children, especially those in the child welfare system. This includes robust guidance about adherence to the Family First Prevention Services Act, and EPSDT that goes beyond describing state options and best practices, and instead establishes clear minimum requirements for keeping children safe and ensuring they are receiving medically necessary care. Similarly, CMS issued joint guidance with the Substance Abuse and Mental Health Services Administration (SAMHSA) to more effectively address mental health and substance use issues in schools.

2. **CMS and ACF should work together to clarify and streamline federal oversight requirements for RTFs.** CMS and ACF should take immediate and coordinated steps to improve RTF oversight. This could include joint recommendations or guidance prioritizing or requiring independent state licensure in place of reliance on third-party accreditation, as well as establishing standards for services and supports that must be provided by these facilities. It could also include guidance recommending that RTF companies employ streamlined review processes of all of their congregate care facilities and require company-wide changes in protocol after a serious adverse event occurs in a single facility. The agencies could also work together to establish a central, public-facing database containing critical information about RTF quality and adverse incidents. The agencies could require more robust data reporting by RTFs to federal entities, including information related to ownership, payment methodologies, serious incident reporting, length of stay, use of seclusion and restraint, out-of-state placements, and demographics of children in RTFs.
3. **CMS and ACF can work collaboratively to center perspectives of youth with lived experience.** CMS and ACF should take active steps to better engage with youth treated in congregate care programs. This could include establishing an advisory board composed of youth with lived experience in institutional placements who can share their perspective to inform congregate care policy development. The agencies could also promulgate joint guidance to states that focus on policies that protect specific groups of children, such as children identifying as LGBTQIA+, or with a history of child welfare involvement, develop training materials, and disseminate best practices related to placements.

To better understand the work CMS is undertaking to improve the lives of children in congregate care, please provide a written update on the steps you have made towards implementing these recommendations and the agency's plans for future work in this area, including a detailed timeline, by October 7, 2024. Please contact Committee staff with any questions.

Thank you for your tireless efforts to improve the quality of care for children with behavioral health needs in America. I look forward to working with you on this important issue.

Sincerely,



Ron Wyden

United States Senator

Chairman, Committee on

Finance

Enclosure: *Warehouses of Neglect: How Taxpayers Are Funding Systemic Abuse in Youth Residential Treatment Facilities*