December 17, 2014

The Honorable Marilyn B. Tavenner, Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Administrator Tavenner:

In states across the country we are finding that the Centers for Medicare & Medicaid Services (CMS) regulation prohibiting federal matching Medicaid payments for Institutions of Mental Disease – known as the IMD Exclusion – has the unintended consequence of limiting treatment for those who need it the most. We ask that you review this policy in light of our improved understanding of addiction pathologies, the recent expansion of Medicaid coverage, and the growing demand for residential care for low-income patients with significant substance abuse disorders.

The IMD Exclusion was enacted in 1965 to prevent Medicaid funds from covering treatment in large psychiatric hospitals. Section 1905(a)(B) of the Social Security Act defines an IMD 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.” When the law was enacted in 1965, substance abuse was widely regarded as a mental health disorder, and facilities that treated SUDs fell under the jurisdiction of the IMD. The medical understanding and treatment of substance abuse and mental disorders has changed considerably since 1965. However, today’s community-based residential substance use disorders (SUD) treatment providers are still subject to the restrictions of the IMD Exclusion – a single unit of 16-beds or fewer per unique address.

For purposes of determining what constitutes a “mental disease,” CMS refers to mental disorders listed in the International Classification of Diseases, 9th Edition, (ICD-9), but provides exceptions for mental retardation, senility, and organic brain syndrome. However, the more recent ICD-10 reclassifies substance abuse disorders under the title of “Mental and Behavioral Disorders.” Given the new ICD-10 classification and the general medical community’s acceptance of substance abuse as a behavioral disorder as opposed to a mental disorder, the IMD Exclusion to SUD treatment is no longer appropriate.
Because the IMD Exclusion is largely inapplicable to hospitals, we are concerned that the newly eligible Medicaid population will be forced to seek expensive hospital-based treatment rather than cost-effective, clinically appropriate, community-based care.

As such, we hope you will re-assess the current IMD exclusion policy and use existing authorities to remove SUD treatment and facilities from the IMD Exclusion. This regulation must be modified if we are to address the disease of addiction responsibly.

We look forward to your timely response.

Sincerely,

Richard J. Durbin
United States Senator

Barbara Boxer
United States Senator

Patty Murray
United States Senator

Jack Reed
United States Senator

Charles E. Schumer
United States Senator

Robert Menendez
United States Senator

Maria Cantwell
United States Senator

Robert P. Casey, Jr.
United States Senator

Sheldon Whitehouse
United States Senator

Mark Kirk
United States Senator

Rob Portman
United States Senator

Kelly A. Ayotte
United States Senator
Elizabeth Warren
United States Senator

Heidi Heitkamp
United States Senator

Richard Blumenthal
United States Senator

Edward J. Markey
United States Senator

Cory A. Booker
United States Senator

Jeffrey A. Merkley
United States Senator