

## **NACBH TALKING POINTS: A BETTER APPROACH TO CHILDREN'S MENTAL HEALTH**

### **NACBH Request: Support legislation that:**

Adopts a public health approach to the identification and treatment of mental health disorders in children and adolescents.

Improves prevention, early identification and timely intervention services.

Offers a comprehensive array of both 24-hour and non 24-hour care so that the clinically-indicated level of intensity is available.

Expands access to providers in all child-serving systems, i.e., schools, public and private health care systems, child welfare, and juvenile justice, and removes barriers to coordinating care across systems.

Promotes social-emotional development, trauma-informed services, and healthy and stable families.

### **NACBH Request: Support/improve bills to strengthen the system:**

Increasing Behavioral Health Treatment Act [HR 2611] to repeal the Medicaid IMD exclusion

Pending bill to exempt QRTPs from identification as Medicaid IMDs

RISE from Trauma Act [S 2086] to expand support for children who have experienced trauma and address the cycle of violence and addiction

Parity Implementation Assistance Act [HR 3753, S 1962] to provide grants to states for compliance oversight

Parity Enforcement Act [HR 1364] to establish monetary penalties for health insurers and plan sponsors that violate federal parity law

Keeping All Students Safe Act [HR 3474, S 1858] to restrict the use of seclusion and restraint in public and non-public schools – amendments to the bill are needed

Representation for Exceptional Military Families Act [HR 4021] to establish the Exceptional Family Member Program Advisory Council at the Department of Defense, to improve accommodations for military families with special educational or health needs

Mental health bills passed by the House of Representatives in May 2021

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## **Increasing Behavioral Health Treatment Act [HR 2611]**

In late April, Representative Grace Napolitano (D-CA) introduced [HR 2611](#), the Increasing Behavioral Health Treatment Act, which would repeal the [Medicaid IMD exclusion](#). It would require states to submit plans to increase access to outpatient and community-based behavioral health treatment including crisis stabilization services, and to improve data sharing and coordination between physical health, mental health, and addiction treatment providers and first responders. It is a very clean approach to resolving the largest and longest-standing violation of parity principles that has been tolerated in American health care.

To avoid possible confusion, we mention another IMD-related bill, the Jim Ramstad Legacy of Recovery Act, which has been characterized as closing the IMD “loophole,” but would not affect beneficiaries under age 21. Recently re-introduced by Rep. Tom Emmer (R-MN), the bill would eliminate the 15-day/month limit on treatment in IMDs for adults Medicaid enrollees aged 21-64.

## **Pending bill to exempt QRTPs from identification as Medicaid IMDs**

A more urgent priority than repealing the Medicaid IMD exclusion is to resolve its conflict with the Title IV-E foster care program. October 1, 2021 is the deadline for states to implement a complicated array of prevention, congregate care, after-care, and other provisions of the sweeping child welfare reform packaged in the Family First Prevention Services Act. Without a change in the Medicaid law, CMS officials have stated that they do not have the authority to waive the IMD exclusion beyond very limited Section 1115 waivers. The requirements of those waivers are not consistent with the intended use of the child caring institutions allowed by Family First.

States may not legally claim a federal Medicaid match for any health care services received by children residing in excluded IMDs. While all four types of child caring institutions that are eligible for IV-E room and board are at risk of identification as excluded IMDs, Qualified Residential Treatment Programs (QRTPs) are the most visible. And only QRTPs are defined in federal law so, at this point, only QRTPs could be removed from the scope of the IMD exclusion without larger amendments to both the Medicaid and IV-E statutes. That is the legislative fix that states and providers are advocating for: to take QRTPs out of the IMD picture, which would remove the biggest barrier to implementation of the Family First Prevention Services Act.

## **Parity Implementation Assistance Act [HR 3753, S 1962]**

In the first week of June, the bipartisan Parity Implementation Assistance Act was introduced in both the House and the Senate to build on the Mental Health Parity Compliance Act which was passed in late 2020. That law provided federal and state health insurance regulators with additional tools to monitor and assure compliance with parity laws. This bill would authorize \$25 million in grants to states to support oversight of plans they regulate (i.e., non-ERISA plans), as long as they exercise their authority to collect and review physical health/behavioral health comparative analyses from insurers. Senators Chris Murphy (D-CT) and Bill Cassidy (R-LA), who have partnered on a number of behavioral health initiatives in recent years, introduced [S 1962](#), and Representatives Tony Cardenas (D-CA) and Brian Fitzpatrick (R-PA) introduced the companion bill, [HR 3753](#), which has gained three additional co-sponsors as of July 16.

## **Parity Enforcement Act [HR 1364]**

On February 25, Representative Donald Norcross (D-NJ) reintroduced the Parity Enforcement Act, with Representatives Brian Fitzpatrick (R-PA), Joe Courtney (D-CT), and Ann Kuster (D-NH) as original co-sponsors. As of July 16, nine additional House members have signed on. Currently, the Department of Labor (DOL) is only able to require employers to reimburse their workers after there are parity violations in their self-funded insurance plans; DOL cannot take action against the insurance company that is offering the insurance plan. That leaves DOL with no front-end enforcement mechanism to ensure compliance with federal parity requirements. [HR 1364](#) would amend the Employee Retirement Income Security Act (ERISA) to provide DOL the authority to investigate and levy monetary penalties against health insurers and plan sponsors that violate the Mental Health Parity and Addiction Equity Act.

## **Keeping All Students Safe Act [HR 3474, S 1858]**

Updated on July 22, following discussion during the Public Policy (Virtual) Conference:

On May 26, the Keeping All Students Safe Act ([HR 3474](#) and [S 1858](#)) was reintroduced for the sixth consecutive Congress. As written, the bill would make it illegal for any school program receiving federal funds for education [see Covered Entities, below] to seclude a child or use mechanical restraints, chemical restraints, physical restraints that restrict breathing or are otherwise life-threatening, or any form of aversive behavioral health intervention. It would ban written plans that include the use of restraint. It provides for civil actions against organizations; earlier versions provided for civil actions against individuals. It would provide grant funding for states to establish, implement, and enforce policies, procedures, monitoring and enforcement systems that must be developed within two years of the law's enactment. It would also require states to collect and report annually on the use of seclusion and restraint in schools, making the data publicly available while protecting student privacy.

As of July 16, there are 74 co-sponsors in the House and 14 in the Senate. NACBH supports many of the provisions and certainly the intention of the bill. We are working with colleagues at other national organizations on recommendations to refine the definition of covered entities and which interventions may be allowed at some with appropriate clinical capacity and oversight. As in all legislation that applies to a broad swath of programs, a consistent lexicon and apples-to-apples reporting requirements are critical.

Covered entities: "PROGRAM. The term 'program' means (A) all of the operations of a local educational agency, system of vocational education, or other school system; (B) a program that serves children who receive services for which financial assistance is provided in accordance with the Head Start Act 17 (42 U.S.C. 9831 et seq.); or (C) an elementary school or secondary school that is not a public school that enrolls a student who receives special education and related services under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et 23 seq.)."

### National organizations supporting KASSA 2021:

Alliance Against Seclusion and Restraint

The Arc

Association of University Centers on Disabilities (AUCD)

Autism Society of America  
Autistic Self Advocacy Network (ASAN)  
Bazelon Center for Mental Health Law  
Center for Public Representation  
CommunicationFIRST  
Council for Exceptional Children (CEC)  
Council of Parent Attorneys and Advocates (COPAA)  
Council of State Administrators of Vocational Rehabilitation (CSAVR)  
Disability Rights Education & Defense Fund Family Alliance to Stop Abuse and Neglect  
Higher Education Consortium for Special Education (HECSE)  
Learning Disabilities Association of America (LDA)  
National Association of School Psychologists (NASP)  
National Autism Association  
National Center for Learning Disabilities (NCLD)  
National Center for Parent Leadership, Advocacy, and Community Empowerment (National PLACE)  
National Center for Special Education in Charter Schools  
National Disability Rights Network (NDRN)SPAN Parent Advocacy Network  
National Parent Teacher Association (National PTA)  
National Association of Secondary School Principals (NASSP)  
National Association of State Directors of Special Education (NASDSE)  
RespectAbility

State Organizations supporting KASSA 2021:

The Arc of Arizona  
The Arc of Maryland  
The Arc of New Jersey  
The Arc of Wisconsin  
Family Voices NJ  
Parents Place of Maryland  
Parents Reaching Out (NM)

## **Representation for Exceptional Military Families Act [HR 4021]**

On June 17, Representatives Joe Wilson (R-SC) and Elaine Luria (D-VA) introduced [HR 4021](#), the Representation for Exceptional Military Families Act, to establish a new advisory council at the Department of Defense. The Exceptional Family Member Program (EFMP) Advisory Council would provide the first-hand experience and recommendations of military families needed to improve well-documented deficiencies in the program.

EFMP is a mandatory enrollment program for service members who have a family member with special needs requiring specialized medical care, treatment programs, or educational services. The purpose is to ensure that service members receive duty assignments to locations where the special needs can be met, by documenting the needs, identifying local resources, and connecting families with those resources. Respite care is also available, and families enrolled in EFMP may be eligible to enroll in the TRICARE Extended Care Health Option (ECHO) program, which pays for additional health care services and supplies, along the lines of Medicaid home and community-based waiver programs.

A February 2020 hearing of House Armed Services Subcommittee on Military Personnel found that very little progress had been made on the 2018 recommendations of the GAO for DOD to improve oversight of the program including developing performance metrics for duty assignment coordination and family support. Intermittent hearings and GAO reports do not provide the kind of sustained attention that is needed to ensure consistent implementation of EFMP across the military services and geographic locations. A dedicated Advisory Council would.

## **Leveraging Integrated Networks in Communities (LINC) to Address Social Needs Act [S 509]**

Introduced on March 1 by Senators Chris Murphy (D-CT) and Dan Sullivan (R-AK), the LINC Act would create grants to states to better integrate health care and social services using technology platforms and related infrastructure. States would enter into partnership with nonprofits to foster the use of technology platforms by health care providers and payers to improve cross-sector coordination, including developing funding models to make the platforms financially self-sufficient.

## **Mental Health Bills Passed by the House in May 2021:**

In mid-May, the House of Representatives passed a package of 12 mental health bills by an en bloc vote of 349-74, and an additional bill by a vote of 323-93. They were referred on to the Senate, where related or identical bills had already been introduced for about half of them:

### **HR 721, the Mental Health Services for Students Act of 2021**

authorizes grants to fund school-based mental health services. The program would support screening for social, emotional, mental, and behavioral issues, including suicide or substance use disorders; treatment and referral for these issues; development of evidence-based programs for students experiencing these issues; and other strategies for schools to support students and the communities that surround them. The goal of the program is to create partnerships between schools and community-based mental health professionals across the country. [related bill: [S 1841](#)]

### **HR 2877, the Behavioral Intervention Guidelines Act of 2021**

requires SAMHSA to develop best practices for schools to establish behavioral intervention teams and properly train them on how to intervene and avoid inappropriate use of mental health assessments and law enforcement. Not later than one year after enactment, best practices shall be made publicly available on an HHS website. [related bill: [S 1383](#)]

### **HR 433, The Family Support Services for Addiction Act of 2021**

authorizes the Secretary of Health and Human Services (HHS) to award grants to community organizations that develop, expand, and enhance evidence-informed family support services for families and family members living with substance use disorders or addiction. The grants may be used to build connections between family support networks, with behavioral health and primary care providers, and foster care services, among others. The grants may also be used to reduce stigma around addiction and addiction treatment, family support outreach activities, and connect families to peer support programs. [related bill: [S 485](#)]

### **[HR 1475, the Pursuing Equity in Mental Health Act](#)**

authorizes federal funding to address mental health disparities among underserved populations, including communities of color. The bill includes provisions to: create a grant program targeted at high-poverty communities for culturally and linguistically appropriate mental health services; support research into disparities in mental health; reauthorize the Minority Fellowship Program to support more students of color entering the mental health workforce; and study the impact of smartphones and social media on adolescents. [related bill: [S 1795](#)]

### **[HR 1205, the Improving Mental Health Access from the Emergency Department Act of 2021](#)**

authorizes SAMHSA to award grants to qualifying emergency departments for the purpose of supporting mental health services. Grant recipients must use funds to support the provision of follow-up services for individuals who present for care of acute mental health episodes, such as placement in appropriate facilities. [related bill: [S 2157](#)]

### **[HR 1324, the Effective Suicide Screening and Assessment in the Emergency Department Act of 2021](#)**

creates a grant program to improve the identification, assessment, and treatment of patients in emergency departments who are at risk for suicide by developing policies and procedures for identifying and assessing individuals who are at risk of suicide and enhancing the coordination of care for such individuals after discharge. [related bill: [S 467](#)]

### **[HR 1480, the Helping Emergency Responders Overcome \(HERO\) Act](#)**

creates a data system at the CDC to capture public safety officer suicide incidences and study successful interventions, authorize grants for peer support behavioral health and wellness programs within fire departments and emergency medical service agencies, and require the development of best practices for addressing post-traumatic stress disorder (PTSD) in public safety officers and educational materials.

### **[HR 586, the Suicide Training and Awareness Nationally Delivered for Universal Prevention \(STANDUP\) Act of 2021](#)**

requires state and tribal educational agencies that receive SAMHSA Project Aware grants to establish and implement a school-based student suicide awareness and prevention training policy and collect information on training activities. The training policy would be focused on grades six through 12 and would train students on self-harm and suicidal ideation. The bill would also ensure the school-based policies are culturally and linguistically appropriate. [related bill: [S 1391](#), [S 1543](#)]

### **[HR 2862, the Campaign to Prevent Suicide Act](#)**

directs HHS, in coordination with CDC and SAMHSA, to carry out a national suicide prevention media campaign to advertise the new 9-8-8 number, when it becomes effective, raise awareness for suicide prevention resources, and cultivate a more effective discourse on how to prevent suicide. The bill would also provide guidance to TV and social media companies on how to talk about suicide by creating a best practices toolkit.

### **[HR 2981, the Suicide Prevention Lifeline Improvement Act of 2021](#)**

increases the authorization funding level of the National Suicide Prevention Lifeline program to \$50 million each year, from fiscal year (FY) 2022 through FY 2024. The bill also directs HHS to establish a plan

for maintaining the program, including sharing certain data with CDC. In addition, the bill includes a pilot program to research, analyze, and employ various innovative technologies and platforms for suicide prevention and reports on the use and progress of the pilot.

#### **HR 2955, the Suicide Prevention Act**

establishes two grant programs to prevent self-harm and suicide. The CDC must award grants to state, local, and tribal health departments to expand surveillance of self-harm, and SAMHSA must award grants to hospital emergency departments for programs to prevent self-harm and suicide attempts among patients after discharge.

#### **HR 768, the Block, Report, And Suspend Suspicious Shipments Act of 2021**

creates additional requirements for drug manufacturers and distributors who discover a suspicious order for controlled substances. In addition to reporting a suspicious order of controlled substances to the DEA, a manufacturer or distributor must also exercise due diligence, decline to fill the order or series of orders, notify DEA of each suspicious order or series of orders and the indicators that led to the belief that filling such orders would be a violation.

#### **HR 1260, the Bipartisan Solution to Cyclical Violence Act of 2021**

creates a grant program at HHS to support trauma centers with violence intervention and violence prevention programs. Program support would be provided to conduct research to reduce the incidence of re-injury and re-incarceration caused by intentional violent trauma.