United States Senate
WASHINGTON, DC 20510

August 2, 2016

The Honorable Andy Slavitt
Acting Administrator
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

Dear Administrator Slavitt:

In December 2014, 18 bipartisan Senators wrote to the Centers for Medicare and Medicaid Services (CMS) regarding the Institutions for Mental Disease (IMD) Exclusion, which prohibits federal financial participation (FFP) for services furnished in an IMD setting to adults age 22-64 years. This existing policy limits treatment for those who need it most, is clinically inappropriate for proper care, and is rooted in an outdated definition of mental health. In light of the ongoing heroin and prescription opioid epidemic that is impacting communities across the nation, we urge CMS to take additional steps, utilizing existing authorities, to provide greater flexibility in ensuring patient access to medically necessary evidence-based substance abuse treatment.

Over the past two decades, CMS has taken important strides to expand eligibility, protect benefits, and improve provider capacity for the coverage of substance use disorder (SUD) services in Medicaid. The emergence of coordinated and integrated service delivery models that include behavioral health care services in Medicaid have improved outcomes and reduced costs. We also applaud CMS for its leadership in identifying innovative approaches to expand access to SUD treatment, through recent measures including the July 2015 1115 waiver guidance letter, the focus of the Innovation Accelerator Program on SUD treatment, the March 2016 mental health and SUD parity final rule, and the April 2016 Medicaid managed care final rule. Specifically, we commend CMS on the acknowledgement that the IMD Exclusion poses a barrier to beneficiary access to SUD treatment, and for incorporating new tools to mitigate the effect of this policy.

However, we remain concerned that these measures may be insufficient to respond to the opioid epidemic and will not afford enough states the opportunity to enact meaningful changes for beneficiaries. For example, only one state has received approval from CMS for an 1115 waiver for SUD treatment overhauls, whereas many states have indicated an inability to marshal the resources to undertake such a broad, budget-neutral proposal.

Furthermore, the recent managed care rule only allows for 15 days of care furnished in an IMD setting over a 30-day period to be eligible for FFP, and it is our understanding that only American Society of Addiction Medicine (ASAM) Level 4 facilities are eligible. We have serious concerns about limiting eligibility to medically managed intensive inpatient care settings, while precluding all types of Level 3 residential treatment facilities when such settings may be more clinically appropriate. Further, we question whether a 15-day length of stay is evidence-

based for SUD treatment, considering numerous studies suggesting the cost-savings, readmissions reductions, overdose preventions, and recovery efficacy from longer lengths of stay in residential settings as a patient progresses down the clinical continuum of care.

CMS' recent mental health and SUD parity final rule extends certain protections from the Wellstone-Domenici Mental Health Parity and Addiction Equity Act of 2008 to Medicaid managed care organizations. CMS noted in its fact sheet that this final rule "helps to prevent inequity between beneficiaries who have mental health or substance use disorder conditions in the commercial market and Medicaid." We seek clarification from CMS on whether the IMD Exclusion can be justified given these parity laws and regulations, especially considering the fact that Medicaid beneficiaries are not covered for medically necessary treatment within settings that play an important role within the continuum of care. Such an exclusion appears to be discriminatory to the estimated 12 percent of adult Medicaid beneficiaries ages 18-64 who have SUDs.

Our nation is in the midst of a heroin and prescription opioid epidemic that has shined a spotlight on barriers to patient access to life-saving care. Improved understanding of addiction pathologies have also informed novel therapies, and patients with SUDs can now manage addiction and reach recovery using medication-assisted treatments. There are numerous Congressional efforts underway seeking to address this issue, but we strongly urge CMS to use existing authorities to broaden treatment opportunities, such as by removing SUD treatment and facilities from the IMD Exclusion.

We look forward to your timely response.

Sincerely,

Richard J. Durbin
United States Senator

Susan Collins
United States Senator

Patty Murray
United States Senator

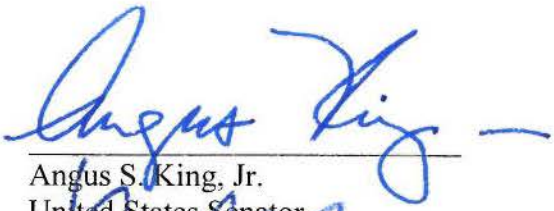
Lisa Murkowski
United States Senator

Barbara A. Mikulski
United States Senator

Shelley Moore Capito
United States Senator

Sherrod Brown
United States Senator

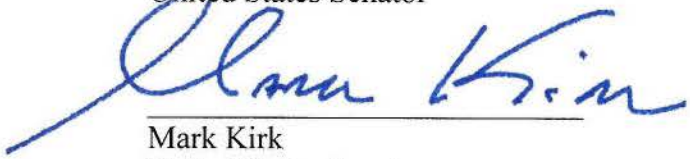
Kelly A. Ayotte
United States Senator



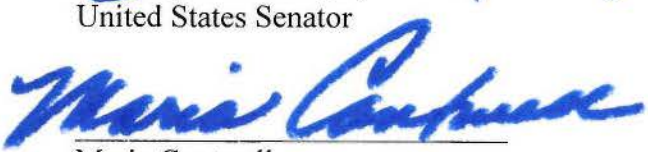
Angus S. King, Jr.
United States Senator

Rob Portman
United States Senator

Christopher S. Murphy
United States Senator

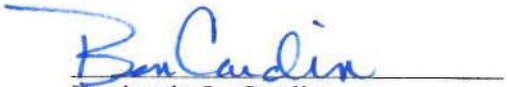


Mark Kirk
United States Senator



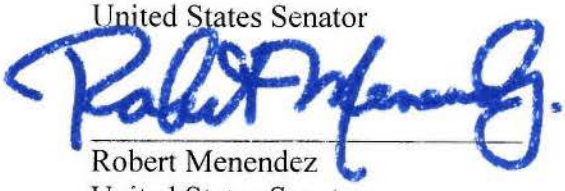
Maria Cantwell
United States Senator

Barbara Boxer
United States Senator

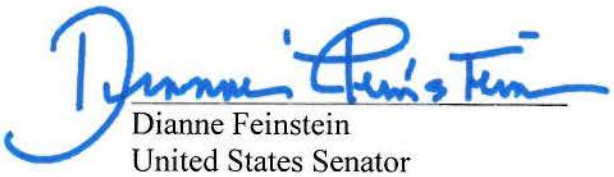


Benjamin L. Cardin
United States Senator

Robert P. Casey, Jr.
United States Senator



Robert Menendez
United States Senator



Dianne Feinstein
United States Senator

Jeanne Shaheen
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Richard Blumenthal
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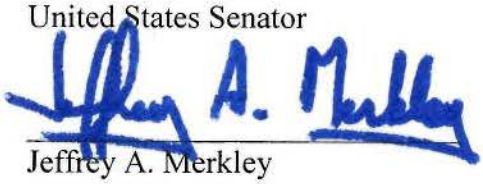
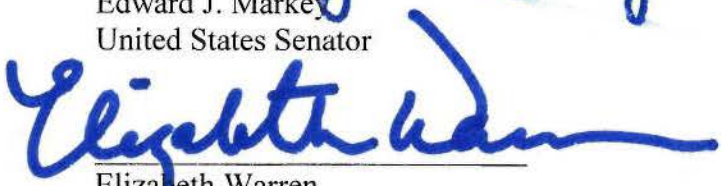
Edward J. Markey
United States Senator

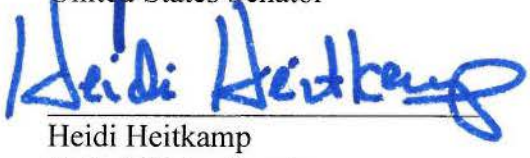


Jeffrey A. Merkley
United States Senator



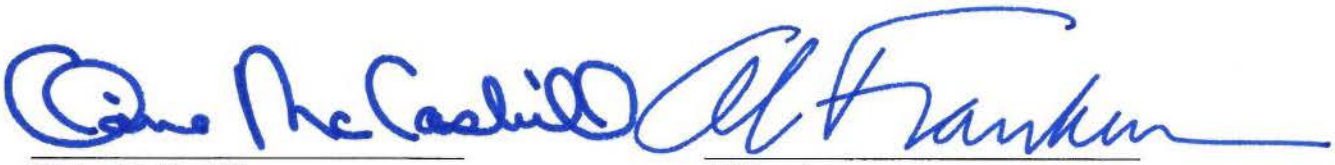
Elizabeth Warren
United States Senator

Kirsten Gillibrand
United States Senator



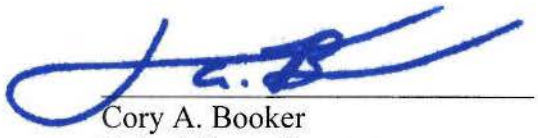
Heidi Heitkamp
United States Senator

Amy Klobuchar
United States Senator



Claire McCaskill
United States Senator

Al Franken
United States Senator



Cory A. Booker
United States Senator