January 13, 2023

Michelle Baass, Director
Department of Health Care Services
Sent Via Email: CalBHCBC@dhcs.ca.gov

Re: CalBH-CBC Demonstration

Dear Director Baass:

Thank you for the opportunity to provide feedback on DHCS's concept paper for the California Behavioral Health Community-Based Continuum. As advocates for California's most vulnerable children and youth in foster care and juvenile justice systems, the Youth Law Center provides these comments on the impact of this proposal on these children and youth. We understand the critical importance of a robust and accessible behavioral health services and support system to the well being and health of system impacted youth and their families and support DHCS's efforts to use waiver authority to build out and enhance the continuum of care where existing Medicaid law does not allow. We hope our comments are helpful in fine tuning the waiver application so that it is tailored to meet the special needs of system impacted children and youth.

A. Inclusion of Activity Stipends

We support DHCS's proposal related to funding enrichment activities to promote social and emotional well-being and resilience, manage stress, build self-confidence, and counteract the harmful effects of trauma. We agree that providing these services and support will greatly promote behavioral health, wellness, and help young people heal from trauma and believe these interventions must be easily accessible to young people.

Youth Law Center, along with our partners at California Youth Connection (CYC), are eager to collaborate with DHCS and CDSS to further develop this proposal and ensure that funds are accessible to young people across the state. We also encourage DHCS to provide greater specificity to ensure that California is able to leverage both Medi-Cal and Title IV-E funds to support an array of non-traditional interventions, including enrichment activities, and clarify the degree to which Medi-Cal and the EPSDT guarantee are currently able to cover enrichment

activities and non-traditional interventions even without a waiver. These clarifications will assist in stretching resources as far as possible and will also help identify if and how this proposal could expand over time to cover other young people, such as those involved in the juvenile justice system.

In order to ensure this section of the proposal is implemented to allow maximum access to children, youth and families, we would request that DHCS, in collaboration with the Department of Social Services, convene a stakeholder workgroup including youth with experience in foster care, advocates, resource families, providers, and caseworkers to design the program elements, processes for ensuring access to youth and families, and youth- centered evaluation and accountability processes.

B. Waiving the IMD Exclusion

We strongly oppose waiving the Institutions for Mental Disease–IMD–exclusion through Section 1115 because of the great potential harmful impact on children and youth involved in the child welfare and juvenile justice systems. We are concerned that waiving the IMD exclusion will increase the risk of institutionalization for these young people. It is clear that children and youth do best with families in the community with treatment and care provided in that setting and that large residential mental health facilities for young people are particularly susceptible to low quality services and instances of abuse in the form of unnecessary and excessive use of restraint and seclusion.[1] CMS has indicated that its interest in waivers is to test the allegation that the IMD exclusion is a factor causing the over-reliance on emergency departments to respond to mental health needs and is an impediment to providing access to needed acute care.[2] It is premature to test this proposition when recent legislative changes have not been fully implemented.

Waiving the IMD exclusion is not only at odds with longstanding Medicaid law, it is also at odds with recent changes in federal child welfare law, the Family First Prevention Services Act,[3] and state law that has aimed to reduce institutional care and ensure that when it is used, it is of high quality, short term, and focused on a transition to a less restrictive setting. California has

[1] Cal. Health Care Found., Medi-Cal Behavioral Health Services: Demand Exceeds Supply Despite Expansions (Sept. 2021), https://www.chcf.org/publication/medi-cal-behavioral-health-services-demand-exceeds-supply-despite-expansions/; Jocelyn Wiener, Unanswered Cries: Why California Faces a Shortage of Mental Health Workers (Sept. 8, 2022), https://calmatters.org/health/2022/09/california-shortage-mental-health-workers/.

[2] CMS, Letter to Medicaid Directors, November 12, 2018, at page 12.

[3] P.L. 115-123 (2018).

worked hard to strike the right balance to ensure that young people have the best chance at a family and community based care and treatment while providing limited, but available options when clinical care is needed in residential settings. To the extent that short term residential clinical care is needed, options have been provided, once fully vetted, through the legislative process. In the last two years, the legislature has developed standards and requirements for Short Term Residential Therapeutic Programs (STRTPs) so they are aligned with federal law and eligible for IV-E reimbursement.[4] It has recently created the option of the Medicaid reimbursable Psychiatric Residential Treatment Facility (PRTF) in state law, which can provide clinical care in larger residential facilities through the passage AB 2317. While we have concerns about the use of PRTFs for children in foster care, AB 2317 includes protections for these children and youth that are not addressed in the proposal to waive the IMD exclusion for facilities that meet the size, facility, and program criteria for institutions designed primarily for the treatment of mental disease but do not/cannot meet the PRTF criteria. In addition, the legislature has allocated funds to help IMDs reduce their size and meet the requirements of STRTPs to maximize federal reimbursement and assist providers in the transition further reducing the need for a waiver.

The negative impact of a waiver option is far reaching and would likely impact counties' decision on whether to participate in the expansion of community-based mental health services and lead to increased out-of-county placements for young people. Creating this option reduces the pressure on counties to develop a community based continuum of care and meet their legal obligation under the Americans with Disabilities Act and the federal child welfare law to place a youth in the least restrictive and most family-like setting. More young people are likely to be placed out of county and further from family, undoing years of efforts to get young people closer to home and family.

We are also concerned that the proposal does not include specifics on the process for granting waivers and how, if waivers are granted, quality of care will be ensured. We believe that the milestones and reporting that CMS requires are inadequate to sufficiently improve quality in IMDs and think the State should go further.

California has worked hard to invest in and move stakeholders–advocate, service providers, agency staff, and the court–in the direction of reducing the use of institutional care in foster care and has committed to providing and growing legally required community based options. Allowing a waiver of the IMD exclusion will undo the progress we have made and will make further progress even more difficult. California and DHCS should prioritize heavily investing in efforts to increase mental health community-based provider capacity and availability with a

[4] These requirements have been codified at WIC 16501.1 (d), 4096 (g), and 361.22.

focus on providers that serve young people impacted by the child welfare and juvenile justice systems.

C. Exemption From The Length-of-Stay Limitations on Stays in STRTPs that are IMDs

We strongly oppose any proposal to reverse state policy and allow unlimited lengths of stay for the first two years for young people in STRTPs that are IMDs. As mentioned above, children do best with family and in family-like settings, and the harm from ongoing institutionalization of children has been well-documented.[5] If children must be placed in inpatient or residential settings, it should be short term; a placement lasting years should not be contemplated. Regardless of how CMS is interpreting its own guidance, we strongly urge DHCS to not request an exception to the 30-day average length-of-stay in STRTPs. DHCS has offered no reasons why it wants to permit long-term stays and what problem the State is seeking to address. We do not believe such authority is appropriate or necessary. Existing provider efforts to reduce the size of STRTPs to under 16 beds and other efforts to keep children and youth in foster care in family and community settings instead of group residential care is the direction the State should be pursuing. As mentioned above, the option of care in an STRTP or PRTF is permissible under current law and the standards and protections for care in those placement types has been developed through the legislative process.

D. County Option for Enhanced Community Based Services for Justice System Impacted Individuals and Other Subpopulations

DHCS proposes to add adult critical behavioral health and related services, but limits the availability of these services to certain counties by creating an option. We see particular value in these services for transition aged youth who are system impacted. Under the Early and Periodic Screening, Diagnostic and Treatment (EPSDT) requirement, these services must be provided to young adults who are under age 21 when needed. These services are instrumental in supporting community and family based placement for young people and supporting longstanding efforts to reduce the use of institutional care. Rather than providing them as a county option, we urge California to use Section 1905(a) and 1915(i) state plan authority, in addition to leveraging managed care flexibilities, to cover these services for all individuals who need them. This

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[5] American Academy of Pediatrics, et al, The Path to Well-being for Children and Youth in Foster Care Relies on Quality Family-Based Care (Jan. 18, 2022), https://familyfirstact.org/sites/default/files/QRTP%20and%20IMD%20One%20Pager.pdf; Think of Us, Away From Home Youth Experiences of Institutional Placements in Foster Care (July 2021), https://assets.website-files.com/60a6942819ce8053cefd0947/60f6b1eba474362514093f96_Away%20From%20Home%20-%20Report.pdf .

approach will also serve racial and economic equity goals, by eliminating geography as a determinant of access to services.

E. Community Health Worker Option

Young people with experience in foster care and the juvenile justice system have provided feedback that access to service providers from their own community is a key component of effective treatment that complements other more traditional services and supports. Integrating the Community Health Worker workforce within the specialty behavioral health delivery systems in California has the potential to meaningfully assist counties in reducing disparities and improve access and engagement in services for system impacted young people.

We urge DHCS to include the Community Health Worker Service as a required benefit under County Mental Health Plans rather than as a state option as is proposed. As DHCS states, this benefit will support county behavioral health providers to perform outreach and support engagement of beneficiaries in behavioral health prevention and treatment services. This benefit is so critical because it can improve engagement and access to care by leveraging the strength and skill of community members. It is a culturally responsive community-based service that supports some of the most vulnerable community members and is crucial for engaging racial and ethnic groups who are traditionally underserved or inappropriately served.

Thanks again for the opportunity to provide feedback. We look forward to partnering with you as California moves forward with the waiver application.

Sincerely,

Jenny Pokempner, Youth Law Center