

September 21, 2021

The Honorable Richard Burr  
U.S. Senate  
217 Russell Senate Office Building  
Washington, DC 20510

The Honorable Dianne Feinstein  
U.S. Senate  
331 Hart Senate Office Building  
Washington, DC 20510



Dear Senators Burr and Feinstein,

On behalf of the Children's Defense Fund (CDF), I am writing to share our opposition to the *Ensuring Medicaid Continuity for Children in Foster Care Act of 2021 (S. 2689)*.

For nearly 50 years, CDF has advocated for children and sought strong support for families through the passage of laws and implementation of rules, programs, and services in their best interest. CDF's Leave No Child Behind® mission is to ensure every child a Healthy Start, a Head Start, a Fair Start, a Safe Start, and a Moral Start in life and successful passage to adulthood with the help of caring families and communities. CDF provides a strong, effective, and independent voice for *all* the children of America who cannot vote, lobby, or speak for themselves, with particular attention to the needs of poor children, children of color, and those with disabilities.

CDF worked closely with Congress for years to help shape and enact the *Family First Prevention Services Act of 2018* (Family First), and we have continued to work closely with Congress, the administration, and the states to implement the policy. The passage of Family First was a historic, bipartisan achievement offering long-overdue reforms to help children remain safely with their families and avoid the traumatic experience of entering foster care, emphasizing the importance of children growing up in families, and helping ensure children are placed in the least restrictive, most family-like setting appropriate to their needs when foster care is needed. CDF remains steadfastly committed to the ideals of Family First and to the fundamental promise of child welfare: that every child deserves the right to grow up in a safe, stable, and loving family. We are extremely concerned that this bill would undermine these ideals, leading more children to be placed in large institutional facilities that are not appropriate for their needs.

Driven by research and the collective wisdom of young people with lived experience in the child welfare system, Family First implemented critical safeguards to ensure that children are only placed in congregate care facilities (group homes, residential facilities, and other institutional settings) when they have a demonstrated need that cannot be met in a family-based setting. In these rare instances, Family First seeks to ensure that placement in congregate care is time-limited and that facilities are high-quality, trauma-informed, and adequately appointed to meet a child's developmental and behavioral health needs. To this end, the law creates the Qualified Residential Treatment Program (QRTP) distinction, requiring congregate care facilities to be accredited and to meet certain standards of care in order to receive Title IV-E maintenance payments.

While well-intentioned, the passage of S. 2689 would lead to significant unintended consequences for children in the care of the child welfare system. The Medicaid Institutions for Mental Disease (IMD) exclusion, which prevents Medicaid payments for any individual placed in an "institution of more than 16 beds that is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases," has long applied to child welfare as a way of protecting children from harsh, restrictive institutional placements. The introduction of the QRTP standard does not change the need for this oversight. Exempting QRTPs from the IMD exclusion would undermine the goals of Family First, weakening the standards of quality and leading more children to be placed in large-scale institutions, rather than promoting placements with family, as the law intends.

In considering any policy reform, the impact on children, particularly those children who have been made most vulnerable, must be our paramount concern. The potential unintended consequences of S. 2689 for children—that more children will be placed in larger institutions for longer periods—are too great for this bill to move forward. Decades of research shows that institutionalization is detrimental to children's development, well-being, and ability

to heal from the trauma they have experienced. The research is clear that children fare best when placed with families, particularly their own kin. Family First places a high value on the evidence base of prevention programs and, when evidence clearly demonstrates that unnecessary congregate care is harmful, expanding congregate care would be in direct opposition to the law's focus on research-driven interventions. Knowing this, CDF is especially concerned about the impact S. 2689 would have on children of color, particularly Black boys, and LGBTQ+ youth who are already placed in congregate care at disproportionately high rates and who experience worse outcomes from their time in the system.

Importantly, we must continue to center the wisdom and the solutions of youth who have lived experience in the system, who consistently describe terrible harms they experienced in congregate care. Youth spurred the creation of Family First and must continue to drive our reform efforts. The landmark *Away From Home* report, recently published by Think Of Us, features harrowing interviews with youth about their time in institutional settings and concludes that we must focus on building the conditions for youth to thrive in families, stating that no future reforms should “add to the legitimacy, resources, and power of institutional placements.” By removing critical oversight of congregate care and making it easier to place children in large-scale institutions, S. 2689 directly contradicts the wishes of youth with lived experience in the system and is antithetical to the ideal that those youth should be at the center of policymaking.

Should the interaction of the QRTP standard and the IMD exclusion threaten the well-being of children or create barriers to the implementation of Family First, CDF would support targeted administrative or legislative action to reach the ideals of Family First. However, while the significant harms of over-institutionalization of children have been well documented, there is no demonstrated need for this substantial exemption from Medicaid oversight. In the absence of demonstrable harm, the significant change to Medicaid law in S.2689 creates an unacceptable amount of risk for children.

CDF remains dedicated to realizing the ideals of Family First. We welcome the opportunity to work together with you to further the goals of keeping children safely with family and ensuring the highest quality of care for children who do enter the system. Regretfully, as the *Ensuring Medicaid Continuity for Children in Foster Care Act of 2021* would not further those goals and would create serious unintended consequences for children, CDF has no choice but to oppose this legislation.

If you have any questions, please contact Steven Olender at [solender@childrensdefense.org](mailto:solender@childrensdefense.org).

For our children,



Rev. Dr. Starsky Wilson  
President and CEO