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November 18, 2016

Hon. Sylvia Burwell
Department of Health and Human Services
200 Independence Ave. SW
Washington, DC 20201

Secretary Burwell:

On behalf of the 1.6 million members of the American Federation of State, County and Municipal Employees, I submit the following comments on the Illinois Department of Healthcare and Family Services' *Behavioral Health Transformation – Illinois 1115 Waiver Proposal*. Many of our union's members work in the healthcare sector, and all of them are healthcare consumers; and we are fully committed to helping ensure the quality and efficiency of our nation's health care delivery system.

While our union supports many of the transformational goals articulated in the proposal, any attempt to leverage federal funds through a Medicaid waiver cannot serve as a substitute to adequately fund the community mental health system at the state level. In response to Gov. Rauner's budget cuts to behavioral health programs, many community mental health providers have laid off staff and have eliminated programs. The weakened community mental health system outlined in the State's waiver proposal is a direct result of the governor's refusal to fund these vital programs.

The Will County Health Department (WCHD) serves as an illustration of the effects of this intentional de-funding. A community mental health provider of more than 40 years, WCHD currently provides services to 1,800 adults with mental illness. WCHD was forced to eliminate adult sex offender treatment, domestic violence treatment and addiction treatment in 2015, due to insufficient state budget support. Further, WCHD abolished a critical program to improve post-hospital linkage to services/reduce hospital readmissions earlier this year, because the Rauner Administration had completely eliminated funding for the program.

We find it remarkable that the State seeks additional federal funding for programs emphasizing better coordination and linkage among services to strengthen the behavioral health system, when these are the very programs it has refused to fund through the state budget. We urge the Department of Health and Human Services to include a requirement that the State adequately fund vital behavioral health programs, if the waiver proposal is approved.

Additionally, we object to the State's specific proposal to allow Medicaid reimbursement for services provided at private-sector Institutes of Mental Disease

American Federation of State, County and Municipal Employees, AFL-CIO

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(IMDs) to individuals found unfit to stand trial (UST). This proposal is highly problematic for numerous reasons, and could endanger the health and safety of individuals seeking treatment, as well as those in the broader community.

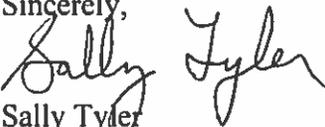
The 24 for-profit long term care IMDs, called Specialized Mental Health Rehabilitation Facilities (SMHRFs) in Illinois, have accrued a lengthy record of poor quality care. This substandard care includes inadequate staffing, lack of patient supervision, and improper medication use. Such violations resulted in the license revocation of four SMHRFs in recent years. I am attaching a compendium of press coverage documenting the significant quality lapses at the SMHRFs which was compiled by our Illinois affiliate.

It is important to note that long term care IMDs have already been given the flexibility to provide a higher level of care, and receive higher state reimbursement rates, through the Specialized Mental Health Rehabilitation Act (210 ILCS 49), passed in 2013. The statute allows long term care IMDs to establish units offering non-residential 23-hour triage, crisis stabilization (stays not to exceed 21 days) and transitional living units (up to 120 days). Most importantly, however, the statute specifically bars the placement of individuals in any of these programs who require a locked setting, require psychiatric hospitalization because of an acute psychiatric crisis, or have been found unfit to stand trial (UST).

Thus, any plan to utilize private long term care IMDs to treat UST individuals is not only bad health policy because of the facilities' record of substandard care, it is also prohibited under current Illinois law. The Illinois General Assembly has repeatedly rejected the private sector industry appeal that it be allowed to service individuals who require locked settings and those found UST, so we have no reason to think that the law will be changed to allow implementation of this component of the waiver proposal.

In conclusion, we support using Medicaid funds to help transform the behavioral health system, but stress that the foundation of such a newly-envisioned system must be robust funding at the state level for community mental health services. We urge the Department of Health and Human Services to require commitment from the state to adequately fund these programs, as part of any waiver agreement. We also urge the department to reject the state's request to use private IMDs to treat individuals found unfit to stand trial.

Thank you for the opportunity to comment on the State of Illinois' 1115 waiver proposal for behavioral health care. Please contact us with any questions.

Sincerely,

Sally Tyler
Senior Health Policy Analyst
Department of Research and
Collective Bargaining Services

ST/dd

Attachment

Illinois IMDs/SMHRFs

- **Less than five percent of the nursing homes in Illinois are IMDs, yet IMDs comprised 40 percent of the nursing homes that received license revocation notices from IDPH in 2010 and 2011.** Less than 30 of the hundreds of nursing facilities in Illinois are IMDs; however, four of the ten facilities that received license revocation notices in 2010 and 2011 were IMDs. During that period IDPH issued license revocations for the following IMDs: Somerset, Wincrest, Rainbow Beach and Columbus Manor. Of these four IMDs, both Somerset and Wincrest were successfully closed in 2010 and 2011. (*Chicago Tribune*, 5/28/2012; *Illinois Department of Public Health*)
- **In May 2011, the Inspector General of the US Department of Health and Human Services issued a report documenting the problem of widespread misuse of psychotropic medications in nursing homes.** Among other findings, the report stated that 22 percent of atypical antipsychotic drugs were not administered with CMS standards regarding unnecessary drug use. (<http://oig.hhs.gov/oei/reports/oei-07-08-00150.pdf>)
 - **A Chicago psychiatrist who treated patients at several IMDs including Somerset, Grasmere and Sacred Heart Home was responsible for the medication related deaths of three people, including a Somerset resident.** Dr. Michael Reinstein had three patients die of clozapine intoxication, including a Somerset Place resident without a kidney who was found to have five times the toxic level of clozapine when he died. While as a psychiatric medical director for multiple nursing facilities in Chicago including IMDs, Dr. Michael Reinstein billed for an improbably large number of patients and took \$490,000 from a drug company to promote an antipsychotic drug. Reinstein was accused of overbilling, falsifying research findings and overprescribing drugs for which he received kickbacks from drug companies. (*Chicago Tribune*, 11/10/2009; 11/11/2009)
- **Credible reviews of mental health care in nursing homes have found it to be generally inadequate, frequently unavailable and often of poor quality.** (http://www.pasrassist.org/sites/default/files/Bartels_MH_Svcs_in_Nursing_Homes_12_April2011_0.pdf, <http://mcr.sagepub.com/content/67/6/627.abstract>)
 - **According to the most recent staffing data for the IMDs listed on IDPH's nursing home website, not a single IMD has a physician on staff.** The IDPH website lists the numbers of employees by type at each facility; none of the IMDs listed even one full-time-equivalent physician on staff. (*Illinois Department of Public Health*, <http://www.idph.state.il.us/webapp/LTCApp/ltc.jsp>)
 - *Associated Press*: "The government also has discouraged nursing homes from providing specialized mental health services because research has shown the homes aren't equipped to provide treatment." (*AP*, 2/7/2010)
- **In 2010, the Illinois Department of Public Health closed Somerset Place, the largest IMD in Illinois, after an unsupervised resident was found murdered.** Repeated

inspections of the facility found lack of treatment, violence, abuse and mistreatment of residents at the facility. In the year prior to Somerset's closure, the IMD received \$15 million dollars in Illinois taxpayer money. (*Chicago Tribune*, 3/9/2010; *AP*, 2/7/2010)

- **IDPH reported that Somerset failed to notify police or file a missing person's report when the woman who was murdered, Maratta Walker, disappeared for days.** After surviving a cycle of drug addiction and prostitution, Maratta Walker was not supposed to leave Somerset Place unsupervised, but the IMD allowed her to leave the building alone and she was found 12 days later beaten to death in a nearby hotel room. Police say a paroled bank robber beat Walker to death after they met on the streets and engaged in drug use. Walker's sister stated: "I was so angry and hurt—I was outraged...All they had to do is keep her on restriction...I don't know how they let her get out. There needs to be something done about it." IDPH fined Somerset \$7,000 for allowing Walker to leave the facility unsupervised. State and federal investigators also fined the facility over \$80,000 for other violations including failure to monitor and treat numerous mentally ill patients. (*Chicago Tribune*, 12/1/2009)
- **In 2010, when Somerset's license was revoked, there were more allegations of sexual violence at the IMD than any other nursing home in Chicago.** Records showed seven reports of sexual violence at the facility since 2007. Authorities moved to revoke the facility's license due to citations for abuse, safety breaches and other issues. (*Chicago Tribune*, 1/27/2010)
- **A male Somerset resident told police he had beaten and raped a 57-year-old female resident after forcing his way into her bedroom, the woman was sent to the emergency room with a blood filled and swollen eye.** The woman told police and Somerset employees she had been sexually assaulted, but no arrest was made in the case. (*Chicago Tribune*, 1/27/2010)
- **Between 2009 and 2011, the 34 police reports of violence and assault at Rainbow Beach, a Chicago IMD, included charges against two male residents for allegedly holding down a female resident and raping her only two weeks after they had attempted to sexually assault another seriously disabled female resident.** Police reports and IDPH investigation records indicated a pattern of abuse at Rainbow Beach Care, an IMD based on the South side of Chicago. One of the men charged with the rape, had already been arrested in 2007 for assaulting and robbing another resident at the Rainbow Beach IMD facility, a crime for which he had spent 139 days in jail. (*Chicago Tribune*, 4/16/2012)
- **According to police data, the IMD, Rainbow Beach Care Center, was involved in seven reports of criminal sexual assault or abuse.** Since 2008, Rainbow Beach had received a total of seven reports of criminal sexual activity, more than any other Chicago nursing home. It was also the only Chicago nursing

home to have sexual abuse allegations that resulted in criminal charges. (*Chicago Tribune*, 4/16/2012)

- **A 61-year old woman said she was raped by a 47-year-old male Rainbow Beach resident with a physician's order for Depo-Provera, a form of chemical castration given to sex offenders, however the IMD had never carried out the order for the shots to be administered.** State health inspectors confirmed that the shots had never been given and said the facility had failed to investigate if the same man had raped a second woman. (*Chicago Tribune*, 1/27/2010)
- **Rainbow Beach had the highest number of police reports of assault and battery charges of any city nursing home.** IDPH investigations included records of one incident at Rainbow Beach where the IMD failed to monitor a male resident who repeatedly assaulted others and finally beat a woman's face for no obvious reason, breaking her nose and eyeglasses. (*Chicago Tribune*, 4/16/2012)
- **An assistant director of IDPH said she was also concerned that residents with mental illnesses were not receiving the therapy and treatment they needed and the state had issued five "immediate jeopardy" citations against Rainbow Beach and had been attempting to revoke the facility's license since April 2010.** IDPH began unsuccessfully moving to revoke the IMD's license in 2010 and had issued five "immediate jeopardy" citations since 2009, when the state first found that the IMD failed to properly evaluate or treat violent and sexually aggressive residents. (*Chicago Tribune*, 4/16/2012)
- **Following string of sexual assaults and battery allegations, IDPH placed two monitors at the IMD facility in an attempt to increase safety enforcement; however, in a shocking move, Rainbow Beach managed to persuade a Cook County judge to issue a temporary restraining order to bar the state monitors from the facility.** State authorities said the move indicated how vigorously some nursing home operators were using the justice system to fight enforcement efforts even as the industry lobbied to pass legislation to water down new nursing home reforms. (*Chicago Tribune*, 4/16/2012)
- **Rainbow Beach, a for-profit just like all Illinois IMDs, received \$8 million dollars yearly in Medicaid funds between 2006 and 2010.** During that period, the facility paid \$3.8 million in dividends and distributions to owners, made \$2 million in profits, paid \$1.5 million in rent to the owner's family and also paid companies associated with the owner's family for consulting, clerical work and other services. Eric Rothner was listed at the facility's owner through 2010. (*Chicago Tribune*, 4/16/2012)
 - **In 2011, Rainbow Beach's owner, Eric Rothner, transferred ownership of the IMD to a family trust following the overwhelming reports of violence, abuse and neglect.** (*Chicago Tribune*, 4/16/2012)

- **Eric Rothner and his family members, the former owners of Rainbow Beach as well as Somerset Place, one of the IMDs closed by IDPH for mistreatment of residents, currently own at least four additional IMDs that are still in operation.** These IMDs include Bryn Mawr Care, Greenwood Care, Wilson Care and Grasmere Place. (*Illinois Department of Health; Illinois Department of Healthcare and Family Services; Chicago Tribune, 3/9/2010; 4/16/2012*)
 - **After a federal jury found that one of Rothner’s female employees was improperly denied benefits, a federal judge found that Eric Rothner had his nursing home management company improperly pay him \$900,000 before going bankrupt in “a deliberate attempt to conceal and divert assets to avoid paying the judgment.”** U.S. Magistrate Judge Geraldine Soat Brown made the statement in support of Kathleen Ryl-Kuchar, a former employee of Care Centers Inc., one of Rothner’s nursing home management companies. A federal jury had found that Care Centers improperly denied family leave benefits to Ryl-Kuchar, who then racked up extensive attorney fees during the years-long case. By making the \$900,000 in payments to Rothner and then declaring bankruptcy, Judge Soat Brown found that Rothner was deliberately attempting to avoid paying the \$435,000 the federal jury had awarded to Ryl-Kuchar. (*Chicago Tribune, 3/9/2010*)

- **Wincrest Nursing Center, an IMD, was closed in 2011 after regulators documented poorly trained staff, failure to supervise residents and failure to provide them with adequate psychiatric services.** Wincrest received fines totaling more than \$400,000 before it was shuttered in 2010. (*Chicago Tribune, 3/19/2011; 3/17/2011*)
 - **Investigators found that residents of Wincrest were inadequately supervised, that social service staff was unqualified, that residents lived with regular violence, commonly were involved with drug abuse, and that many residents were not receiving the medications they had been prescribed.** Investigators also found evidence that a woman was prostituting herself in the neighborhood to earn money for drugs and that a man who had previously pulled a knife on a housemate, was in position of another weapon. (*Chicago Tribune, 3/19/2011; 3/17/2011*)

- **Illinois Attorney General Lisa Madigan launched an investigation after receiving evidence that Grasmere Place, an IMD in Chicago, received prior warning of a supposedly unannounced investigation by the Attorney General’s office.** A facility administrator at Grasmere Place tipped investigators off to the problem after meeting the investigating officials in the IMD’s lobby and saying, “What took you so long?” The investigators returned a few weeks later and found fewer staff, overflowing toilets and worse conditions. (*AP, 9/2/2010*)
 - **Investigating authorities found that residents at Grasmere House, a Chicago IMD were overmedicated.** Despite an alleged tip-off to the investigation, investigators found overmedicated patients and some residents who appeared capable of living in less restrictive settings. (*AP, 9/2/2010*)

- **Multiple residents at Grasmere were convicted of felony drug charges and arrested for drugs, retail theft and other crimes.** Nursing home magnate Eric Rothner owns the IMD. (*AP*, 9/2/2010)
- **In 2012, Albany Care, an IMD, was criticized in the press for having the second highest number of serious deficiencies of any nursing home in Illinois, while Illinois was itself ranked third in the nation for nursing home deficiencies.** Illinois ranked third among states for the number of times federal officials suspended payments to nursing homes over serious deficiencies. In December of 2012, the *Chicago Tribune* reported that the past three years, payments from Medicare and Medicaid were suspended 91 times at 78 homes, a step taken when deficiencies at a facility are so serious that regulators press for immediate improvements. The data listed Albany Care as holding the second-highest number of deficiencies in the state. (*Chicago Tribune*, 12/23/2012)
- **In 2011, police believed that a resident set multiple fires at different locations throughout Columbus Manor IMD, resulting in a fire that injured a resident in her 60s.** The injured woman suffered from smoke inhalation. (*Chicago Sun-Times*, 3/19/2011)
- **In 2010, the *Associated Press* found that Illinois taxpayers spent \$122 million a year on for-profit IMDs, “twice as much as they would if the residents lived in other types of housing.”** In addition, Illinois relied more on nursing homes to house young and middle-aged adults with mental illness than any other state. Mark Heyrman of Mental Health America said, “IMDs do not serve a useful function in our system of care for people with serious mental illnesses...Almost everyone in IMDs could be getting better care at the same or less cost in the community.” (2/7/2010)
- **Alliance for Living PAC, the IMD owners’ Political Action Committee has spent hundreds of thousands of dollars attempting to influence Illinois lawmakers.** (*Illinois Department of Elections*)
 - **The IMD PAC contributed a total of \$123,350 to Mike Madigan between 2007 and 2012.** (*Illinois Department of Elections*)
 - **The IMD PAC contributed a total of \$34,000 to John Cullerton between 2008 and 2012.** (*Illinois Department of Elections*)
 - **The IMD PAC contributed a total of \$12,500 to Sara Feigenholtz between 2008 and 2012.** (*Illinois Department of Elections*)
 - **The IMD PAC contributed a total of \$108,068 to Illinois’ Senate Democratic Victory Fund between 2009 and 2012.** (*Illinois Department of Elections*)
 - **The IMD PAC contributed a total of \$10,250 to Lou Lang between 2007 and 2011.** (*Illinois Department of Elections*)