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## Recommendations to the Opioid Commission for the Interim Report

July 18, 2017

The President's Commission on Combating Drug Addiction and the Opioid Crisis (Commission) is recommending several areas of action:

- Part I: Immediate action items that can be implemented immediately by Executive Order or through existing federal agency authority.
- Part II: Short-term action steps for Congress to take after the summer recess.
- Part III: Important next steps that can be adopted in the coming months by a wide range of stakeholders to combat the opioid epidemic.

### **Part I: Immediate Action Items**

The Commission strongly recommends several initial steps which should be implemented immediately by Executive Order or through federal agency actions as highlighted below.

#### **Declaring an Emergency**

- The President should declare an emergency under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121-5208) for states that have drug overdose rates above the national average, which will allow the Federal Emergency Management Agency to provide grants, technical support, and services to states in the form of individual assistance, public assistance, and hazard mitigation.
- Secretary Price should declare a public health emergency (PHE) as authorized under 42 U.S.C. § 247d, which will allow the Secretary to, among other things:
  - Issue grants, provide expense reimbursement, and enter into short-term contracts to address the opioid epidemic.
  - Conduct and support investigations into the cause, treatment, or prevention of a disease or disorder.
  - Allow broader prescribing of buprenorphine through the practice of telemedicine in areas of special need, with the concurrence of the Drug Enforcement Administration (DEA) Administrator, as specified in 21 U.S.C § 802(54)(D).
- The Federal response as part of the emergency declaration under the Stafford Act and the PHE should coordinate with the Opioid Grant Program created by the 21<sup>st</sup> Century Cures Act and ensure that evidence-based practices are heavily relied upon as part of the emergency response and the Opioid Grant Program. This will include:
  - State reports submitted under subsection (d) of Section 1003 of the 21<sup>st</sup> Century Cures Act in conjunction with the Opioid Grant Program created by subsection (c) of that Section must include documentation that:
    - Actions have been taken to improve the state's PDMP and how those actions incorporated known best practices.
    - The state used evidence-based prevention practices for its prevention programs.



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- The training provided to practitioners incorporated best practices for prescribing opioids, pain management, recognizing potential cases of substance abuse, referral of patients to treatment programs, and overdose prevention.
- Access to applicable services was supported, including to Federally-certified opioid treatment programs.
- Other public health activities were implemented at the state level as part of the Opioid Grant Program.

### Expanding Treatment

- Secretary Price should use the waiver process established by Section 1135 of the Social Security Act (42 U.S.C. § 1320b-5) to:
  - Temporarily modify Medicare, Medicaid, and Children's Health Insurance Plan (CHIP) requirements to augment treatment capacity.
  - Loosen the Health Insurance Portability and Accountability Act of 1996 (HIPAA) restrictions to allow notification of families of persons who have overdosed and been revived.
- The President and key federal agencies should take the following steps to expand Medication-Assisted Treatment (MAT), which research has overwhelmingly shown to be an effective evidence-based treatment for opioid use disorder:
  - The U.S. Centers for Medicare and Medicaid Services (CMS) should send a state health official letter requesting that state Medicaid programs cover all U.S. Food and Drug Administration (FDA)-approved MAT drugs for opioid use disorder without prior authorization.
  - The President through Executive Order should require that the Federal Bureau of Prisons eliminate its exclusion of MAT in federal prisons.
  - The DEA should finalize regulations implementing the Ryan Haight Act that clarify the special registration process that practitioners may utilize to prescribe buprenorphine through telemedicine.
- The federal agencies should ensure access to treatment by taking the following steps:
  - CMS should establish enhanced reimbursement rates for the existing behavioral health integration (BHI) and collaborative care model (CoCM) codes to increase the use of integrated care, which generates strong return on investment and successful outcomes.<sup>1</sup>
  - As part of the action plan for enhanced enforcement required by Section 13002 of the 21st Century Cures Act, the U.S. Department of Health and Human Services (HHS), with input and direction from leading parity experts, should direct all regulatory agencies that enforce The Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA), including state insurance commissioners, to use a standardized private-sector parity compliance tool that will facilitate more rigorous audits of health plans' substance use disorder (SUD) medical management practices.

### Restricting Illegal Opioid Distribution

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<sup>1</sup> See The Kennedy Forum's Issue Brief "Fixing Behavioral Health Care In America: A National Call for Integrating and Coordinating Specialty Behavioral Health Care with the Medical System" (2015 43 pgs). [http://thekennedyforum.org/wp-content/uploads/2017/06/KennedyForum-BehavioralHealth\\_FINAL\\_3.pdf](http://thekennedyforum.org/wp-content/uploads/2017/06/KennedyForum-BehavioralHealth_FINAL_3.pdf).



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- Key federal agencies, including DEA, Department of Homeland Security (DHS), Federal Bureau of Investigations (FBI), and Department of Justice (DOJ), should coordinate pursuant to the Controlled Substances Act to:
  - Intercept fentanyl (and other synthetic opioids) in envelopes and packages at mail processing and distribution centers.
  - Increase detection efforts using enhanced technology, more manpower, and expanded canine deployment.

### **Implementing Consumer Protections**

- The President, the FDA and state/local agencies should take the following actions to prevent overdose deaths:
  - The President should challenge every American to save the National Poison Help Line number (800-222-1222) in their phones (this can also be done by texting POISON to 797979).
  - HHS, along with state and local departments of health, should publicize the National Poison Help Line (800-222-1222) as the initial point of contact for opioid exposures.
  - The FDA should expedite the drug facts label (DFL) process for making naloxone available everywhere for over-the-counter sales.
  - The FDA should require opioid manufacturers to add the National Poison Help Line (800-222-1222) on all prescription opioid labels.
  - The FDA should continue its review of the safety and effectiveness of all prescription opioids, and exercise its authority to request removal of specific opioids due to abuse risks.

### **Part II: Areas of Specific Focus for Congress After Summer Recess**

The Commission encourages Congress, when it returns from summer recess, to address the national opioid crisis by enacting legislation to:

- Improve access to evidence-based SUD residential treatment services within Medicaid, Medicare, TRICARE, the Veterans Health Administration, and the Federal Employee Health Benefit Program.
- Improve public and private coverage of all forms of MAT including buprenorphine, methadone, and naltrexone.
- Encourage private-sector investment in SUD treatment facilities by expanding the New Markets Tax Credit Program and the EB-5 residency program to include investment in such facilities in geographic areas of extreme need.
- Pursue criminal justice reforms that place non-violent drug users in treatment instead of jail, utilize MAT for those with SUD who are incarcerated, and allow criminal records to be expunged after successful treatment and reintegration into society.
- Grant the Department of Labor (DOL) the authority to impose civil monetary penalties on health plans that violate MHPAEA.

### **Part III: Other Action Items**

The Commission recommends several other actions that can be adopted in the coming months by a wide range of stakeholders to combat the opioid epidemic:



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### Coverage and Treatment

#### *Parity Enforcement*

The Commission should encourage federal and state regulators to actively enforce parity laws to ensure access to SUD treatment.<sup>2</sup> Here are some important recommendations to achieve that goal:

- Require regulators to levy penalties against any health plan that violates the federal parity law. This should include a request to the U.S. Department of Treasury to exercise its existing authority under 26 U.S.C. § 4980D to levy excise taxes on health plans that violate MHPAEA.
- Pursuant to the action plan for enhanced enforcement required by Section 13002 of the 21st Century Cures Act, demand that all regulatory agencies that enforce MHPAEA, including state insurance commissioners, use a standardized parity compliance tool created by leading parity experts that will facilitate more rigorous audits of health plans' SUD medical management practices.
- Encourage robust federal and state investigations and publish details regarding parity violations to alert the public.
- Make sure that health plans cannot qualify for Medicare or Medicaid payments if a plan has had two or more documented parity violations.
- Require health plans to follow existing appeal requirements, including timeframes, when there is an adverse benefit determination.
- Promote new requirements to standardize and improve the appeals process.<sup>3</sup>
- Promote health plan integrity by holding health plans accountable for other types of offenses such as fraudulent billing practices, anti-competitive activities, and deceptive marketing.

#### *Medication Assisted Treatment*

- CMS should require all federally-qualified health centers (FQHCs) to mandate that their staff physicians, physician assistants, and nurse practitioners possess DATA 2000 waivers to prescribe buprenorphine.
- HHS should use the A-19 process through Office of Management and Budget to recommend legislation that will reduce commercial insurance barriers to MAT, such as dangerous fail-first protocols, onerous and frequent prior authorization requirements, and the placement of MAT medications on the most expensive formulary tiers.
- Pregnant women with opioid use disorder should be connected with appropriate MAT during pregnancy and remain in treatment after they have given birth.<sup>4</sup>

#### *Suicide Prevention*

- The VA must fund and support treatment interventions for veterans, who are particularly vulnerable to suicides if they are coping with a SUD.

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<sup>2</sup> See The Kennedy Forum and the Parity Implementation Coalition's "Parity Resource Guide for Addiction & Mental Health Consumers, Providers and Advocates" (2015 102 pgs). [http://thekennedyforum.org/wp-content/uploads/2017/06/KennedyForum-ResourceGuide\\_FINAL\\_2.pdf](http://thekennedyforum.org/wp-content/uploads/2017/06/KennedyForum-ResourceGuide_FINAL_2.pdf).

<sup>3</sup> See The Kennedy Forum's Issue Brief "Filing an Appeal Based On a Parity Violation" (2017 17 pgs). <https://paritytrack.org/resources/issue-briefs/>.

<sup>4</sup> See The Kennedy Forum's Guide for the 115<sup>th</sup> Congress, page 26 for Senate, Page 32 for House. [http://thekennedyforum.org/wp-content/uploads/2017/06/The\\_New\\_Frontier\\_CongressGuide.pdf](http://thekennedyforum.org/wp-content/uploads/2017/06/The_New_Frontier_CongressGuide.pdf)





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- The DoD, VA, Education, HHS, DOJ, DOL should sign MOU's with behavioral health advocacy organizations and networks such as the American Foundation for Suicide Prevention and the National Action Alliance for Suicide Prevention, to collaborate, at no cost to the government, on suicide prevention, education, mental health programs at the federal, state and local levels.
- The Director of the National Institutes of Health (NIH) should prioritize suicide prevention research, as well as substance use disorder research from current appropriations or discretionary funds.
- Availability of evidence-based information about means restriction should be included in medical schools, nursing schools, and all other types of medical education programs.
- Safe storage of any types of lethal means must be prioritized while protecting individual rights.
- All federally-administered health systems and facilities should follow the latest protocols of the Zero Suicide model put forth by the National Action Alliance for Suicide Prevention, the Suicide Prevention Resource Center, and supported by The Substance Abuse and Mental Health Services Administration (SAMHSA).
- The Indian Health Services, a division of HHS, must develop a strategy to address the high incidence of suicide and untreated SUDs in Native American communities.<sup>5</sup>

### *Sharing Information to Coordinate Care*

- Congress should pass the bipartisan Overdose Prevention and Patient Safety Act in the House, or Jessie's Law in the Senate, which will allow substance use treatment information to be shared among providers and health systems without the prior written consent of the patient.

### *Institutions for Mental Diseases (IMD) Exclusion*

- When scoring any legislation that modifies the IMD exclusion, the Congressional Budget Office must consider any potential cost savings or offsets that may be found in the Temporary Assistance for Needy Families Program spending, DEA spending, DOJ spending, the DOL Unemployment Insurance Program, Social Security Disability Insurance spending, federal spending directed to first responders, and the many other federal costs that may be reduced.

### *Supportive Services*

- U.S. Department of Housing & Urban Development (HUD) should eliminate the provision in the Housing Choice Voucher Program that bars applications from persons with non-violent, non-distribution drug arrests or convictions.
- Congress should increase HUD vouchers for supportive housing for people in recovery.
- Expand recovery community centers as specified in the Comprehensive Addiction and Recovery Act (CARA).
- Expand other supportive services such as peer support, community integration, job and skill training, education services, and 12-step programs.
- Congress should expand eligibility for supplemental security income and supplemental security disability income to include people with SUDs.<sup>6</sup>

<sup>5</sup> See The Kennedy Forum's Guide for the 115<sup>th</sup> Congress, page 26 for Senate, page 32 for House. [http://thekennedyforum.org/wp-content/uploads/2017/06/The\\_New\\_Frontier\\_CongressGuide.pdf](http://thekennedyforum.org/wp-content/uploads/2017/06/The_New_Frontier_CongressGuide.pdf)

<sup>6</sup> See The Kennedy Forum's Guide for the 115<sup>th</sup> Congress, page 27 for Senate, page 34 for House. [http://thekennedyforum.org/wp-content/uploads/2017/06/The\\_New\\_Frontier\\_CongressGuide.pdf](http://thekennedyforum.org/wp-content/uploads/2017/06/The_New_Frontier_CongressGuide.pdf)



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- Congress must extend Medicaid coverage to cover evidence-based housing support programs.<sup>7</sup>

### *Quality of Care*

- HHS should support:
  - The dissemination of clinical practice guidelines for addiction treatment, such as the ASAM *National Practice Guideline for the Use of Medications in the Treatment of Addiction Involving Opioid Use*.
  - The development and validation of quality measures for addiction treatment.
  - Provider certification programs that could provide patients, families and payers with a reliable indicator that providers are delivering a certain quality or level of care.
- CMS should make Medicaid and Medicare reimbursement contingent upon the use of measurement-based care by 2022.<sup>8</sup>
- Congress should expand upon the provisions of the Excellence in Mental Health Act that were included in the Protecting Access to Medicare Act of 2014 and implement alternative payment models that incentivize coordination between community-based services.<sup>9</sup>
- Congress should appropriate federal funding to the Centers for Disease Control and Prevention to sponsor Fetal Alcohol Syndrome Disorder Practice and Implementation Centers (PICs) in every region.<sup>10</sup>

### *Integrated Care*

- SAMHSA should expand the use of certified community behavioral health clinics (CCBHCs) beyond the current eight-state pilot.
- Through the proper federal and state authorities, allow SUD and mental health treatment providers to be eligible to receive grants for health information technology adoption, implementation, and training.

### *Evidence-based Standards*

- Through public and private sector partnerships, identify and recommend funding to replicate or scale promising evidence-based practices that incorporate:
  - Discharge planning and a warm handoff to treatment, immediately after revival from an overdose
  - Other brain fitness interventions that mitigate or prevent opioid abuse risks.<sup>11</sup>

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<sup>7</sup> See The Kennedy Forum's Guide for the 115<sup>th</sup> Congress, page 28 for Senate, page 34 for House. <http://thekennedyforum.org/wp-content/uploads/2017/06/The-New-Frontier-CongressGuide.pdf>

<sup>8</sup> See The Kennedy Forum's Issue Brief "A national Call for Measurement-Based Care in the Delivery of Behavioral Health Services" (2015 37 pgs). [http://thekennedyforum.org/wp-content/uploads/2017/06/KennedyForum-ResourceGuide\\_FINAL\\_2.pdf](http://thekennedyforum.org/wp-content/uploads/2017/06/KennedyForum-ResourceGuide_FINAL_2.pdf). See also Measurement-Based Care Supplement at [http://thekennedyforum.org/wp-content/uploads/2017/06/MBC\\_supplement.pdf](http://thekennedyforum.org/wp-content/uploads/2017/06/MBC_supplement.pdf).

<sup>9</sup> See The Kennedy Forum's Guide for the 115<sup>th</sup> Congress, page 25 for Senate, page 31 for House. <http://thekennedyforum.org/wp-content/uploads/2017/06/The-New-Frontier-CongressGuide.pdf>

<sup>10</sup> See The Kennedy Forum's Guide to the 115<sup>th</sup> Congress, page 26 for Senate, page 32 for House. <http://thekennedyforum.org/wp-content/uploads/2017/06/The-New-Frontier-CongressGuide.pdf>

<sup>11</sup> See The Kennedy Forum's Issue Brief "Promoting Brain Health and Brain Fitness: A National Call for Action" (2015 54 pgs). [http://thekennedyforum.org/wp-content/uploads/2017/06/issue-brief-Brain-Fitness\\_160725.pdf](http://thekennedyforum.org/wp-content/uploads/2017/06/issue-brief-Brain-Fitness_160725.pdf).



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- HHS, DOJ, The Office of National Drug Control Policy, and the White House Office of Science and Technology Policy (OSTP) should work to create a national set of standards for medical examiners to follow when investigating overdose deaths, including recommendations for detecting poly-drug interactions.

### *Provider Accountability*

- Investigate, prosecute, and shut down fly-by-night SUD treatment facilities, while identifying best practices for SUD inpatient treatment, such as integration of MAT into inpatient treatment protocols and mandatory discharge planning that includes direct linkages to outpatient care.
- Prohibit payments for referrals to SUD treatment.
- Crack down on misleading advertising by SUD treatment facilities.

### *Promoting Technology Assisted Treatment*

- Numerous electronic tools, applications and new treatment approaches have been developed to improve behavioral health outcomes, including SUD treatments, which have yet to see widespread adoption, despite their commercial availability and the existence of clinical evidence to support their use.<sup>12</sup> The Commission should recommend the following:
  - Encourage applicable regulatory bodies to implement more efficient and timely processes to approve new technologies for SUD treatments. This includes implementing a fast-track review process for any new evidence-based technologies supporting SUD treatments by CMS, FDA, and the US Preventive Services Task Force (USPSTF).
  - Encourage private and public payers to do a better job reimbursing for emerging technology-assisted SUD treatments. For example, additional Current Procedural Terminology (CPT) codes should be established that can be used when billing for technology-based treatments, digital interventions, and biomarker-based interventions.
  - Advocate for greater investment by the NIH and other funding bodies to accelerate the dissemination of new and emerging treatments.

## **Prevention and Early Intervention**

### *Evidence-Based Prevention*

- SAMHSA's Center for the Application of Prevention Technologies (CAPT) should examine the National Registry of Evidence-based Programs and Practices (NREPP) and identify the most effective evidence-based prevention programs and practices (EBPP) and recommend those programs and practices that should be replicated and scaled.
- Federal and state governments should:
  - Invest resources in scaling EBPPs and customizing them for specific priority audiences such as youth, veterans, and persons with chronic pain.

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<sup>12</sup> See The Kennedy Forum's Issue Brief "New Technologies for Improving Behavioral Health: A National Call for Accelerating the Use of New Methods for Assessing and Treating Mental Health and Substance Use Disorders" (2015 44 pgs). [http://thekennedyforum.org/wp-content/uploads/2017/06/02\\_cura06\\_issue-brief-Technology\\_digital.pdf](http://thekennedyforum.org/wp-content/uploads/2017/06/02_cura06_issue-brief-Technology_digital.pdf).



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- Continue and increase mandatory substance use prevention funding through the Substance Abuse Prevention and Treatment (SAPT) Block Grant and make receipt of funds contingent on the use of best EBPPs identified by CAPT.
- Partner with private corporations to establish and fund a major public education campaign to promote the use of other prevention strategies that will reduce drug use initiation and prevent escalation to dependence and addiction.
- Educate the public about modes of treatment that have been shown to be effective.
- Move to eliminate unscrupulous liquor advertisements that target youth and young adults in print, Internet, and social media mediums.
- Enforce federal laws that prohibit the sale of marijuana for recreational use, when appropriate.

### *Screening and Early Intervention*

- Through public and private partnerships, we should:
  - Make screening, brief intervention, and referral to treatment (SBIRT) services reimbursable when provided by any qualified practitioner.
  - Require all facilities that receive federal funding to train all of their providers in substance use disorder and misuse screening.
  - Add substance use screening and remission measures to quality measurement initiatives, such as the CMS-AHIP Core Quality Measures Collaborative.
  - Quadruple annual appropriations for the Foster Care Program under Title IV-E of the Security Act, to provide adequate support for the children who have been subjected to trauma and adverse childhood experiences (ACEs).<sup>13</sup>
  - Establish, under the auspices of the CDC, a broad and coordinated behavioral health surveillance system that tracks prevalence rates, types of treatment being used, availability of care, and comorbidities with other illnesses.<sup>14</sup>

### *Prescription Drug Monitoring Programs (PDMPs)*

- CMS should not provide any reimbursement through Medicaid or Medicare to providers or facilities that do not participate and/or use the PDMP available in the provider's state.

## **Criminal Justice**

### *Jail Diversion*

- The DOJ should promote model programs like the Police Assisted Addiction and Recovery Initiative, which originated in Gloucester, Massachusetts.
- The federal government should increase funding for drug court programs that encourage MAT.
- The DOJ must avoid a return to mandatory minimum sentencing for nonviolent drug offenders and encourage treatment as the primary response.

### *Treatment for Inmates*

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<sup>13</sup> See The Kennedy Forum's Guide to the 115<sup>th</sup> Congress, page 26 for Senate, page 32 for House. <http://thekennedyforum.org/wp-content/uploads/2017/06/The-New-Frontier-CongressGuide.pdf>

<sup>14</sup> See The Kennedy Forum's Guide to the 115<sup>th</sup> Congress, page 28 for Senate, page 34 for House. <http://thekennedyforum.org/wp-content/uploads/2017/06/The-New-Frontier-CongressGuide.pdf>





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- All federal prison medical staff should be trained to recognize and treat substance use disorders and withdrawal symptoms.
- The DOJ should fund MAT under the Residential Substance Abuse Treatment (RSAT) program.
- The Health Resources and Services Administration (HRSA) should work with SAMHSA to incorporate MAT competencies and accreditation standards into academic curricula across medical, social service, and criminal justice disciplines.
- CMS should reduce federal financial participation for all Medicaid services to any state that terminates rather than suspends Medicaid eligibility for those incarcerated.
- Federal prisons should provide every person leaving their custody with a reentry plan that includes initial appointments and contact information for substance use and mental health treatment services and supportive housing.

### *Expungement of Criminal Records*

- Criminal records should be expunged after successful reintegration into society and recovery have been achieved by those with non-violent, non-distribution drug convictions.

### **Workforce**

- All federally-supported medical, nursing, and other clinician training programs should be required to incorporate a curriculum regarding the diagnosis and treatment of addiction.
- Federal agencies that employ prescribing clinicians should disseminate and implement the CDC's *Guideline for Prescribing Opioids for Chronic Pain*.
- The FDA and DEA should require that clinicians who apply for a registration to prescribe controlled substances demonstrate competency in safe prescribing, pain management, and substance use disorder identification.
- CMS should extend eligibility for the Medicare and Medicaid EHR Incentive Program to include all behavioral health professionals providing care at psychiatric hospitals, mental health treatment facilities, and substance use treatment facilities.<sup>15</sup>
- Congress should increase funding for the National Health Service Corps scholarship and loan repayments program to increase the supply of behavioral health professionals.<sup>16</sup>
- The FDA should incorporate the CDC's *Guideline* into its Risk Evaluation and Mitigation Strategy (REMS) for Extended-Release and Long-Acting Opioid Analgesics.
- HRSA should create distinct categories for addiction health professional shortage areas (HPSAs) that are distinct from mental health HPSAs.
- Congress should pass the bipartisan S. 1453 which would make providers who serve in facilities that provide SUD specialty treatment eligible for the National Health Service Corps Program.

### **Preserve Medicaid**

- If before the issuance of the interim report, the Senate has not repealed the Affordable Care Act, it should be this Commission's recommendation that Congress understands Medicaid is the largest payor for SUD treatment and that any rolling back of Medicaid funding or any

<sup>15</sup> See The Kennedy Forum's Guide to the 115<sup>th</sup> Congress, page 29 for Senate, page 33 for House. [http://thekennedyforum.org/wp-content/uploads/2017/06/The\\_New\\_Frontier\\_CongressGuide.pdf](http://thekennedyforum.org/wp-content/uploads/2017/06/The_New_Frontier_CongressGuide.pdf)

<sup>16</sup> See The Kennedy Forum's Guide to the 115<sup>th</sup> Congress, page 26 for Senate, page 32 for House. [http://thekennedyforum.org/wp-content/uploads/2017/06/The\\_New\\_Frontier\\_CongressGuide.pdf](http://thekennedyforum.org/wp-content/uploads/2017/06/The_New_Frontier_CongressGuide.pdf)



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replacement of insurance reimbursement with block grants is a step backward from what we know works in addressing this crisis.

- Congress should pass the Mental and Behavioral Health Care Bump Act, which requires Medicaid to reimburse states for 90 percent of the cost of providing new mental and behavioral health services in excess of states' certain spending.<sup>17</sup>

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<sup>17</sup> See The Kennedy Forum's Guide to the 115<sup>th</sup> Congress, page 23 for Senate, page 30 for House <http://thekennedyforum.org/wp-content/uploads/2017/06/The-New-Frontier-CongressGuide.pdf>