

RFK Jr. Agrees To Repeal IMD Exclusion, 'Fix' Nursing Home Staffing Mandate

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HHS Secretary nominee Robert F. Kennedy Jr. promised to work with senators to repeal the federal ban on Medicaid funding so-called Institutions for Mental Diseases, ensure the Medicare area wage index is fair to rural providers and “fix” the nursing home staffing rule.

Kennedy’s comments came during his confirmation hearing before the Senate Finance Committee Wednesday (Jan. 29), where Democrats spent much of their time grilling the nominee on his business dealings and stances on vaccine safety. Meanwhile, Republicans asked the environmental lawyer to work with them on nursing home staffing, retooling the geographic pay index and repealing the so-called IMD exclusion -- a ban on using federal Medicaid funds to pay for treatment at a mental health facility with more than 16 beds.

“This is a discriminatory exclusion, and it denies payment for medically necessary care based on the illness that is being treated, and it has perpetuated unequal coverage in mental health care,” Sen. Marsha Blackburn (R-TN) said. “So, if you're confirmed, when you're confirmed, will you commit to working with me on repealing this discriminatory exclusion and ensuring equal access to mental health care for Medicaid beneficiaries?”

“Yes,” Kennedy answered.

Congress has previously considered repealing or altering the IMD exclusion, but progress has been hindered by the historically high price tag. Advocates are hoping that will change since the Congressional Budget Office’s latest estimate at then-House Energy & Commerce Committee Chair Cathy McMorris Rodgers’ (R-WA) request found eliminating the IMD exclusion for some or all behavioral health treatments would cost between \$7.7 billion and \$38.4 billion -- far lower than the 2016 proposal’s estimate of \$40 billion to \$60 billion.

Meanwhile, Blackburn also asked Kennedy whether he and the CMS administrator nominee Mehmet Oz will work with senators to ensure the Medicare area wage index is balanced and fair to rural areas.

“Senator, both Dr. Oz and myself recognize that rural health care is in crisis in this country and that is catastrophic for our entire country,” Kennedy said. “And I talked a little bit about my commitment to rural health earlier in this hearing. The regional price points, as you know, are set by Congress and not by HHS. But I will certainly -- and I know Dr. Oz will certainly -- work with you to make them sensible.”

Sen. John Barrasso (R-WY) was interested in the HHS secretary nominee's views on the nursing home staffing rule -- a controversial Biden administration policy finalized about one year ago that would require facilities to meet 3.48 hours per resident day (HPRD) of total staffing, which includes at least 0.55 HPRD by registered nurses and 2.45 HPRD by nurse aides.

Experts say Republicans could repeal the final rule to use as a \$22 billion payfor in the next legislative package or the Trump administration could administratively axe the rule itself.

"I think the rule was well intentioned, but as you've [Barrasso] said and I've heard from many rural Senators, it will be a disaster for their states," Kennedy said. "Some of the nursing homes, these are staffing rules that require 24-hour staffing by medical professionals. Some of the nursing homes in rural areas simply do not have the available personnel or the economics to be able to do that."

And if nursing homes in rural communities close, Kennedy said the patient -- likely an elderly parent -- will have to move to a facility much farther away, making it harder for families to be involved in a loved one's care.

"When you move that nursing facility away from the community where the kids live, you're going to get much worse care," Kennedy said. "So the intention, although it was noble, was in reality for rural areas, at least, it is going to be a disaster." -- *Dorothy Mills-Gregg* (dmillsgregg@iwpnews.com)