

Codified Disparity: The Medicaid IMD Exclusion, Discrimination, and Congressional Intent

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Outline

- IMD Exclusion
- Unconstitutional discrimination
- ADA
- Mental Health Parity and Addiction Equity Act of 2008
- Intent not to discriminate



IMD Exclusion

- Social Security Amendments of 1965
- Institutions for mental disease (IMDs)
 - 16 beds
 - primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases 42 U.S.C. § 1396d.
- One court that got it right
 - *Martin v. Voinovich*, 840 F. Supp. 1175 (S.D. Ohio 1993).
 - Should apply to SMI as opposed to other mental illnesses; a legitimate state interest
- Congressional intent via ADA



Equal Protection

- Reverse incorporation
- Standards of review
 - Heightened or intermediate scrutiny
- One court that got it right
 - *Martin v. Voinovich*, 840 F. Supp. 1175 (S.D. Ohio 1993).
 - Should apply to SMI as opposed to other mental illnesses; not a legitimate state interest
- Congressional intent via ADA



Americans with Disabilities Act

- Disability = “a physical or mental impairment that substantially limits one or more major life activities of such individual.” 42 U.S.C. § 12132.
- Equal access to transportation, institutionalization, and to public services. *Gorman v. Bartch*, 152 F.3d 907 (8th Cir. 1998).
- Considering the Congressional intent of the 101st Congress to extend federal protection to people with mental illness, the IMD exclusion’s singling out of people with disabilities is not only morally reprehensible but also contrary to legislative intent.



The Mental Health Parity and Addiction Equity Act of 2008

- Origins—HIPAA
- Wellstone & Domenici
 - Intent to end discrimination in healthcare
 - Sort of
 - Medicaid
 - Medicare
- Enforcement
 - ACA



Judicial Action or Repeal

- Intent
- Impact
- Discrimination
- Involuntary commitment
- Voluntarily seeking treatment

Questions/comments?

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