

115TH CONGRESS
1ST SESSION

H. R. 1253

To authorize the Secretary of Health and Human Services to make loans and loan guarantees for constructing or renovating, or planning construction or renovation of, qualified psychiatric and substance abuse treatment facilities, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 28, 2017

Mr. KILMER (for himself, Ms. HERRERA BEUTLER, Mr. MURPHY of Pennsylvania, and Ms. EDDIE BERNICE JOHNSON of Texas) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To authorize the Secretary of Health and Human Services to make loans and loan guarantees for constructing or renovating, or planning construction or renovation of, qualified psychiatric and substance abuse treatment facilities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Mental Health and
5 Substance Abuse Treatment Accessibility Act of 2017”.

1 **SEC. 2. LOANS AND LOAN GUARANTEES.**

2 Part P of title III of the Public Health Service Act
3 is amended by inserting after section 399V–6 of such Act
4 (42 U.S.C. 280g–17) the following:

5 **“SEC. 399V–7. LOANS AND LOAN GUARANTEES FOR CON-**
6 **STRUCTING OR RENOVATING, OR PLANNING**
7 **CONSTRUCTION OR RENOVATION OF, CER-**
8 **TAIN QUALIFIED PSYCHIATRIC AND SUB-**
9 **STANCE ABUSE TREATMENT FACILITIES.**

10 “(a) IN GENERAL.—The Secretary may—

11 “(1) make loans and loan guarantees for the
12 purpose of constructing or renovating, including
13 planning the construction or renovation of, a quali-
14 fied psychiatric treatment facility or a qualified sub-
15 stance abuse treatment facility to public, private for-
16 profit, or private not-for-profit—

17 “(A) psychiatric treatment facilities;

18 “(B) substance abuse treatment facilities;

19 “(C) psychiatric hospitals; and

20 “(D) alliances of such facilities or hos-
21 pitals; and

22 “(2) subject to subsection (d), make loans and
23 loan guarantees for refinancing loans that were
24 made for such purpose to an entity listed in para-
25 graph (1).

1 “(b) PREFERENCE.—In making loans and loan guar-
2 antees under this section, the Secretary shall give pref-
3 erence to psychiatric treatment facilities and substance
4 abuse treatment facilities that propose to construct or ren-
5 ovate a qualified psychiatric treatment facility or qualified
6 substance abuse treatment facility in a county that has
7 insufficient inpatient psychiatric or substance abuse treat-
8 ment capacity.

9 “(c) TERMS AND CONDITIONS.—Loans and loan
10 guarantees under this section shall be made on such terms
11 and conditions as the Secretary may prescribe, subject to
12 the provisions of this section including the following:

13 “(1) The Secretary may allow credit to a pro-
14 spective borrower only where—

15 “(A) it is necessary to increase the number
16 of psychiatric or substance use disorder treat-
17 ment beds to enhance the public’s access to
18 acute inpatient mental health and substance
19 abuse services; and

20 “(B) a credit subsidy is the most efficient
21 way to achieve such increase (on a borrower-by-
22 borrower basis).

23 “(2) The final maturity of loans made or guar-
24 anteed under this section shall not exceed a period
25 of 20 years, or the period of 50 percent of the useful

1 life of any physical asset to be financed by the loan,
2 whichever is less as determined by the Secretary.

3 “(3) The Secretary may not make a loan guar-
4 antee under this section, with respect to any bor-
5 rower, in excess of 80 percent of any potential loss
6 on the loan.

7 “(4) The Secretary may not make any loan or
8 loan guarantee under this section if the loan will be
9 subordinated—

10 “(A) to another debt contracted by the
11 borrower; or

12 “(B) to any other claims against the bor-
13 rower in the case of default.

14 “(5) The Secretary may not make any loan
15 guarantee under this section unless the Secretary
16 determines that—

17 “(A) the lender is responsible; and

18 “(B) adequate provision is made for serv-
19 icing the loan on reasonable terms and pro-
20 tecting the financial interest of the United
21 States.

22 “(6) The Secretary may not make any loan
23 guarantee under this section if the income from the
24 loan will be excluded from gross income for purposes
25 of chapter 1 of the Internal Revenue Code of 1986.

1 “(7) The Secretary may not make any loan or
2 loan guarantee under this section unless—

3 “(A) the loan and interest supplements on
4 any loan guarantee will be at an interest rate
5 that is set by reference to a benchmark interest
6 rate on marketable Treasury securities with a
7 similar maturity to the loan being made or
8 guaranteed; and

9 “(B) the minimum interest rate on the
10 loan—

11 “(i) will be no less than the estimated
12 cost to the Government of making the loan
13 plus 1 percent, with the goal of keeping
14 the interest rate below the interest rate of
15 a comparable and competitive private sec-
16 tor benchmark financial instrument; and

17 “(ii) will be adjusted, as determined
18 by the Secretary, every quarter to take ac-
19 count of changes in the interest rate of the
20 benchmark financial instrument.

21 “(8) The Secretary may not make any loan or
22 loan guarantee under this section unless—

23 “(A) fees or premiums on the loan or loan
24 guarantee and corresponding insurance cov-
25 erage will be set at levels that minimize the cost

1 to the Government (as defined in section 502(5)
2 of the Federal Credit Reform Act of 1990) of
3 insuring such loan or loan guarantee, while sup-
4 porting achievement of increasing the inpatient
5 psychiatric and substance abuse bed count, as
6 applicable, to enhance the public's access to
7 acute inpatient mental health and substance
8 abuse services;

9 “(B) the minimum guarantee fee or insur-
10 ance premium imposed by the Government will
11 be no less than the level sufficient to cover all
12 of the estimated costs to the Government of the
13 expected default claims, plus one percent; and

14 “(C) loan guarantee fees imposed by the
15 Government will be reviewed every six months
16 to ensure that the fees imposed on new loan
17 guarantees are at a level sufficient to satisfy
18 subparagraph (B) based on the most recent es-
19 timates of such costs.

20 “(9) The provisions of any loan guarantee
21 under this section shall state that the guarantee is
22 conclusive evidence that—

23 “(A) the guarantee has been properly ob-
24 tained;

1 “(B) the underlying loan qualified for the
2 guarantee; and

3 “(C) except in the case of fraud or mate-
4 rial misrepresentation by the holder of the loan,
5 the guarantee will be presumed to be valid,
6 legal, and enforceable.

7 “(10) The Secretary may not make any loan or
8 loan guarantee under this section unless—

9 “(A) the borrower finances at least 25 per-
10 cent of the funded project from other sources;
11 and

12 “(B) the borrower uses funds that were
13 not derived from Federal loans or loan guaran-
14 tees to pay the fees or premiums on the loan or
15 loan guarantee under this section.

16 “(11) The Secretary—

17 “(A) shall prescribe explicit standards for
18 use in periodically assessing the credit risk of
19 new and existing direct loans and guaranteed
20 loans; and

21 “(B) shall not make a loan or loan guar-
22 antee under this section unless the Secretary
23 finds that there is a reasonable assurance of re-
24 payment.

1 “(d) LIMITATION ON REFINANCING.—The authority
2 vested by subsection (a)(2)—

3 “(1) authorizes making loans and loan guaran-
4 tees only for refinancing loans that were entered into
5 on or before the date that is 24 months before the
6 date of enactment of the Mental Health and Sub-
7 stance Abuse Treatment Accessibility Act of 2017;
8 and

9 “(2) terminates on the date that is 24 months
10 after such date of enactment.

11 “(e) PAYMENT OF LOSSES.—

12 “(1) DEFAULT ON GUARANTEED LOANS.—If, as
13 a result of a default by a borrower under a loan
14 guaranteed under this section, after the holder
15 thereof has made such further collection efforts and
16 instituted such enforcement proceedings as the Sec-
17 retary may require, the Secretary determines that
18 the holder has suffered a loss—

19 “(A) the Secretary shall pay to such holder
20 75 percent of such loss, as specified in the
21 guarantee contract;

22 “(B) upon making any such payment, the
23 Secretary shall be subrogated to all the rights
24 of the recipient of the payment; and

1 “(C) the Secretary shall be entitled to re-
2 cover from the borrower the amount of any pay-
3 ments made pursuant to the guarantee con-
4 tract.

5 “(2) REQUIRED ENFORCE OF FEDERAL
6 RIGHTS.—The Attorney General of the United
7 States shall take such action as may be appropriate
8 to enforce any right accruing to the United States
9 as a result of the issuance of any guarantee under
10 this section.

11 “(3) FORBEARANCE.—Nothing in this section
12 precludes any forbearance for the benefit of the bor-
13 rower of a loan that is made or guaranteed under
14 this section which is agreed upon by the parties to
15 the loan and approved by the Secretary, provided
16 that budget authority for any resulting cost to the
17 Government (as defined in section 502(5) of the
18 Federal Credit Reform Act of 1990) is available.

19 “(f) DEFINITIONS.—In this section:

20 “(1) The term ‘qualified psychiatric treatment
21 facility’—

22 “(A) means a psychiatric hospital (or other
23 qualified treatment facility, as determined ap-
24 propriate by the Secretary) that is able to serve
25 patients ages 21 and older that—

1 “(i) will provide acute, short-term in-
2 patient psychiatric treatment services for
3 such patients;

4 “(ii) will provide outpatient services;
5 and

6 “(iii) may include a military services
7 program to meet the needs of active and
8 retired military servicemembers; and

9 “(B) excludes a facility that—

10 “(i) provides long-term inpatient care;

11 “(ii) is a health center (as defined in
12 section 330); and

13 “(iii) is part of or affiliated with a
14 prison (as defined in section 2246 of title
15 18, United States Code).

16 “(2) The term ‘qualified substance abuse treat-
17 ment facility’—

18 “(A) means a psychiatric hospital (or other
19 qualified treatment facility, as determined ap-
20 propriate by the Secretary) that is able to serve
21 patients ages 21 and older that—

22 “(i) will provide acute, short-term in-
23 patient substance abuse treatment services
24 for such patients;

1 “(ii) will provide outpatient services;

2 and

3 “(iii) may include a military services

4 program to meet the needs of active and

5 retired military servicemembers; and

6 “(B) excludes any facility described in

7 paragraph (1)(B).

8 “(3) The term ‘psychiatric hospital’ means—

9 “(A) an institution that—

10 “(i) is primarily engaged in providing,

11 by or under the supervision of one or more

12 physicians, psychiatric services for the di-

13 agnosis and treatment of mentally ill per-

14 sons or those suffering from substance

15 abuse disorders;

16 “(ii) satisfies the requirements of

17 paragraphs (3) through (9) of subsection

18 (e) of section 1861 of the Social Security

19 Act;

20 “(iii) maintains clinical records on all

21 patients and maintains such records as the

22 Secretary finds to be necessary to deter-

23 mine the degree and intensity of the treat-

24 ment provided to individuals entitled to

1 hospital insurance benefits under part A of
2 title XVIII of the Social Security Act; and

3 “(iv) meets such staffing requirements
4 as the Secretary finds necessary for the in-
5 stitution to carry out an active program of
6 treatment for individuals who are fur-
7 nished services in the institution; or

8 “(B) a distinct part of an institution that
9 satisfies clauses (i) and (ii) of subparagraph
10 (A) if such distinct part satisfies clauses (iii)
11 and (iv) of subparagraph (A).

12 “(g) FUNDING LIMITATIONS.—The Secretary may
13 provide loans and loan guarantees under this section—

14 “(1) only to the extent or in the amounts pro-
15 vided in advance in appropriation Acts; and

16 “(2) totaling not more than \$200,000,000 in
17 each of fiscal years 2018 through 2022.”.

18 **SEC. 3. MENTAL HEALTH AND SUBSTANCE USE TREAT-**
19 **MENT TRUST FUND.**

20 (a) ESTABLISHMENT.—There is established in the
21 Treasury of the United States a trust fund to be known
22 as the Mental Health and Substance Use Treatment Trust
23 Fund (in this section referred to as the “Trust Fund”).

24 (b) DEPOSITS.—There are hereby authorized to be
25 appropriated to the Trust Fund, to remain available until

1 expended, amounts equivalent to any revenues from the
2 program of loans and loan guarantees under section
3 399V–7 of the Public Health Service Act, as added by sec-
4 tion 2, that exceed the costs of carrying out such program.

5 (c) USE OF FUND.—Amounts in the Trust Fund
6 shall be available, as provided by appropriation Acts, for
7 block grants for community mental health services under
8 subpart I of part B of title XIX of the Public Health Serv-
9 ice Act (42 U.S.C. 300x et seq.).

10 **SEC. 4. SENSE OF CONGRESS.**

11 It is the sense of Congress that reversing the Federal
12 policy of denying Federal financial participation under the
13 Medicaid program for care and services for patients in an
14 institution for mental diseases is critically important to
15 improving access to mental health care services and treat-
16 ment.

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