

115TH CONGRESS  
2D SESSION

# H. R. 5789

To amend title XIX of the Social Security Act to provide for Medicaid coverage protections for pregnant and post-partum women while receiving inpatient treatment for a substance use disorder, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 15, 2018

Mr. FOSTER (for himself and Mr. GUTHRIE) introduced the following bill;  
which was referred to the Committee on Energy and Commerce

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## A BILL

To amend title XIX of the Social Security Act to provide for Medicaid coverage protections for pregnant and post-partum women while receiving inpatient treatment for a substance use disorder, 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,*

1 **SECTION 1. MEDICAID COVERAGE PROTECTION FOR PREG-**  
2 **NANT AND POST-PARTUM WOMEN WHILE RE-**  
3 **CEIVING INPATIENT TREATMENT FOR A SUB-**  
4 **STANCE USE DISORDER; STATE OPTION FOR**  
5 **COVERAGE OF ROOM AND BOARD FOR**  
6 **CERATIN INFANTS WITH NEONATAL ABSTI-**  
7 **NENCE SYNDROME.**

8 (a) MEDICAID COVERAGE FOR PREGNANT AND POST-  
9 PARTUM WOMEN WHILE RECEIVING INPATIENT TREAT-  
10 MENT FOR A SUBSTANCE USE DISORDER.—

11 (1) IN GENERAL.—Section 1905(a) of the So-  
12 cial Security Act (42 U.S.C. 1396d(a)) is amended  
13 by adding at the end the following new sentence: “In  
14 the case of a woman who is eligible for medical as-  
15 sistance on the basis of being pregnant (including  
16 through the end of the month in which the 60-day  
17 period beginning on the last day of her pregnancy  
18 ends) (or is eligible for medical assistance on an-  
19 other basis and is pregnant or was pregnant during  
20 the previous one-year period (in this sentence, such  
21 a woman shall be referred to as an ‘other pathway  
22 eligible pregnant woman’)), who is a patient in an  
23 institution for mental diseases for purposes of re-  
24 ceiving treatment for a substance use disorder, and  
25 who was enrolled for medical assistance under the  
26 State plan immediately before becoming a patient in

1 an institution for mental diseases or who becomes el-  
2 ible to enroll for such medical assistance while  
3 such a patient, the exclusion specified in the subdivi-  
4 sion (B) following paragraph (29) of the first sen-  
5 tence shall not be construed as prohibiting Federal  
6 financial participation for medical assistance for  
7 items or services that are provided to the woman  
8 outside of the institution during, in the case of a  
9 woman who is eligible for medical assistance on the  
10 basis of being pregnant, the period of such eligibility  
11 on such basis and through the end of the month in  
12 which the one-year period beginning on the last day  
13 of her pregnancy ends (and, in the case of an other  
14 pathway eligible pregnant woman, the period during  
15 which the woman satisfies the description of being  
16 such an other pathway eligible pregnant woman, in-  
17 cluding through the end of the month in which the  
18 one-year period beginning on the last day of her  
19 pregnancy ends) to the extent such items or services  
20 would be treated as medical assistance for such  
21 woman during such period if such woman were not  
22 a patient in the institution.”.

23 (2) EFFECTIVE DATE.—

24 (A) IN GENERAL.—Except as provided in  
25 subparagraph (B), the amendment made by

1 paragraph (1) shall take effect with respect to  
2 medical assistance provided on or after January  
3 1, 2019.

4 (B) EXCEPTION IF STATE LEGISLATION  
5 REQUIRED.—In the case of a State plan under  
6 title XIX of the Social Security Act which the  
7 Secretary of Health and Human Services deter-  
8 mines requires State legislation (other than leg-  
9 islation appropriating funds) in order for the  
10 plan to meet the additional requirements im-  
11 posed by the amendment made by paragraph  
12 (1), the State plan shall not be regarded as fail-  
13 ing to comply with the requirements of such  
14 title solely on the basis of its failure to meet  
15 these additional requirements before the first  
16 day of the first calendar quarter beginning after  
17 the close of the first regular session of the  
18 State legislature that begins after the date of  
19 the enactment of this Act. For purposes of the  
20 previous sentence, in the case of a State that  
21 has a 2-year legislative session, each year of  
22 such session shall be deemed to be a separate  
23 regular session of the State legislature.

24 (b) MEDICAID STATE PLAN OPTION TO ENTER INTO  
25 PROVIDER AGREEMENTS WITH RESIDENTIAL PEDIATRIC

1 RECOVERY CENTERS.—Section 1902 of the Social Secu-  
2 rity Act (42 U.S.C. 1396a) is amended—

3 (1) in subsection (a)—

4 (A) in paragraph (82), by striking “and”  
5 at the end;

6 (B) in paragraph (83), by striking the pe-  
7 riod at the end and inserting “; and”; and

8 (C) by inserting after paragraph (83) the  
9 following new paragraph:

10 “(84) at the option of the State and in accord-  
11 ance with paragraph (2) of subsection (nn), begin-  
12 ning January 1, 2019, for making medical assist-  
13 ance available on an inpatient or outpatient basis at  
14 a residential pediatric recovery center (as defined in  
15 paragraph (1) of such subsection) for infants who  
16 are under 1 year of age with neonatal abstinence  
17 syndrome.”; and

18 (2) by adding at the end the following new sub-  
19 section:

20 “(nn) RESIDENTIAL PEDIATRIC RECOVERY CEN-  
21 TER.—

22 “(1) DEFINITION.—For purposes of subsection  
23 (a)(84), the term ‘residential pediatric recovery cen-  
24 ter’ means a center or facility that—

1           “(A) provides comprehensive treatment to  
2           infants who are under 1 year of age with a di-  
3           agnosis of neonatal abstinence syndrome, which  
4           includes at least access to early and periodic  
5           screening, diagnostic and treatment; physician  
6           and nursing services; supportive counseling;  
7           comprehensive evaluation and assessment and  
8           service planning by State licensed counselors or  
9           social workers; targeted case management serv-  
10          ices by State licensed or educated professionals;  
11          education and supportive counseling and case  
12          management of family members of such infants;  
13          room and board costs for such infants; and fa-  
14          cilitation of arrangements within such facilities  
15          whereby such infants reside with their mother  
16          when applicable; and

17           “(B) provides treatment services in accord-  
18          ance with guidelines issued by the American  
19          Academy of Pediatrics and American College of  
20          Obstetricians and Gynecologists relating to ma-  
21          ternal care and infant care with respect to neo-  
22          natal abstinence syndrome.

23           “(2) CLARIFICATION.—Nothing in subsection  
24          (a)(84) shall be construed as including as medical  
25          assistance room and board services for any indi-

1       vidual other than an infant described in such sub-  
2       section.”.

3       (c) GUIDANCE.—Not later than one year after the  
4       date of the enactment of this Act, the Secretary of Health  
5       and Human Services shall issue guidance to improve care  
6       for infants with neonatal abstinence syndrome and their  
7       mothers. Such guidance shall include—

8               (1) the types of services, including post-dis-  
9       charge services and parenting supports, for mothers  
10      and fathers of babies with neonatal abstinence syn-  
11      drome that States may cover under the Medicaid  
12      program under title XIX of the Social Security Act;

13              (2) best practices from States with respect to  
14      innovative or evidenced-based payment models that  
15      focus on prevention, screening, treatment, plans of  
16      safe care, and post-discharge services for mothers  
17      and fathers with substance use disorders and babies  
18      with neonatal abstinence syndrome that improve  
19      care and clinical outcomes;

20              (3) recommendations for States on available fi-  
21      nancing options under the Medicaid program under  
22      title XIX of such Act and under the Children’s  
23      Health Insurance Program under title XXI of such  
24      Act for Children’s Health Insurance Program  
25      Health Services Initiative funds for home visiting

1 services for parents with substance use disorders  
2 and infants with neonatal abstinence syndrome; and

3 (4) guidance and technical assistance to State  
4 Medicaid agencies regarding additional flexibilities  
5 and incentives related to screening, prevention, and  
6 post-discharge services, including parenting sup-  
7 ports, under contracts with Medicaid managed care  
8 organizations.

9 (d) GAO STUDY.—Not later than one year after the  
10 date of the enactment of this Act, the Comptroller General  
11 of the United States shall conduct a study, and submit  
12 to Congress a report, addressing gaps in coverage for  
13 pregnant women with substance use disorder under the  
14 Medicaid program under title XIX of the Social Security  
15 Act, and gaps in coverage for postpartum women with sub-  
16 stance use disorder who had coverage during their preg-  
17 nancy under the Medicaid program under such title.

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