

117TH CONGRESS
1ST SESSION

S. 2697

To amend title XIX of the Social Security Act to remove the Medicaid coverage exclusion for inmates in custody pending disposition of charges, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 10, 2021

Mr. CASSIDY (for himself, Mr. MERKLEY, and Mr. MARKEY) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend title XIX of the Social Security Act to remove the Medicaid coverage exclusion for inmates in custody pending disposition of charges, 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 “Due Process Con-
5 tinuity of Care Act”.

6 **SEC. 2. REMOVAL OF INMATE LIMITATION ON BENEFITS**
7 **UNDER MEDICAID.**

8 (a) IN GENERAL.—The subdivision (A) of section
9 1905(a) of the Social Security Act (42 U.S.C. 1396d(a))

1 following paragraph (31) of such section is amended by
2 inserting “or, at the option of the State, while in custody
3 pending disposition of charges” after “patient in a medical
4 institution”.

5 (b) EFFECTIVE DATE.—The amendment made by
6 subsection (a) shall take effect on the 1st day of the 1st
7 calendar quarter that begins after the date that is 60 days
8 after the date of the enactment of this Act and shall apply
9 to items and services furnished for periods beginning on
10 or after such date.

11 **SEC. 3. PLANNING GRANTS.**

12 (a) IN GENERAL.—The Secretary shall award plan-
13 ning grants to at least 10 States to support providing
14 medical assistance under the State Medicaid program to
15 individuals who are eligible for such assistance as a result
16 of the amendment made by section 2(a). The grants shall
17 be used to prepare an application that meets the require-
18 ments of subsection (b).

19 (b) APPLICATION REQUIREMENTS.—In order to be
20 awarded a planning grant under this section, a State shall
21 submit an application to the Secretary at such time and
22 in such form and manner as the Secretary shall require,
23 that includes the following information along with such
24 additional information, provisions, and assurances, as the
25 Secretary may require:

1 (1) A proposed process for carrying out each of
2 the activities described in subsection (c) in the State.

3 (2) A review of State policies regarding the
4 population of individuals who are eligible for medical
5 assistance under the State Medicaid program as a
6 result of the amendment made by section 2(a) with
7 respect to whether such policies may create barriers
8 to increasing the number of health care providers
9 who can provide items and services for that popu-
10 lation.

11 (3) The development of a plan, taking into ac-
12 count activities described in subsection (c)(2), that
13 will ensure a sustainable number of Medicaid-en-
14 rolled providers under the State Medicaid program
15 that can offer a full array of treatment and services
16 to the patient population described in paragraph (2)
17 as needed. Such plan shall include the following:

18 (A) Specific activities to increase the num-
19 ber of providers that will offer physical health
20 treatment, as well as services related to behav-
21 ioral health treatment, including substance use
22 disorder treatment, recovery, or support serv-
23 ices (including short-term detoxification serv-
24 ices, outpatient substance use disorder services,
25 and evidence-based peer recovery services).

1 (B) Milestones and timeliness for imple-
2 menting activities set forth in the plan.

3 (C) Specific measurable targets for in-
4 creasing the number of providers under the
5 State Medicaid program who will treat the pa-
6 tient population described in paragraph (2).

7 (4) An assurance that the State consulted with
8 relevant stakeholders, including the State agency re-
9 sponsible for administering the State Medicaid pro-
10 gram, Medicaid managed care plans, health care
11 providers, law enforcement personnel, officials from
12 jails, and Medicaid beneficiary advocates, with re-
13 spect to the preparation and completion of the appli-
14 cation and a description of such consultation.

15 (c) ACTIVITIES DESCRIBED.—For purposes of sub-
16 section (b)(1), the activities described in this subsection
17 are the following:

18 (1) Activities that support the development of
19 an initial assessment of the health treatment needs
20 of patients who are in custody pending disposition of
21 charges to determine the extent to which providers
22 are needed (including the types of such providers
23 and geographic area of need) to improve the number
24 of providers that will treat patients in custody pend-

1 ing disposition of charges under the State Medicaid
2 program, including the following:

3 (A) An estimate of the number of individ-
4 uals enrolled under the State Medicaid program
5 who are in custody pending disposition of
6 charges.

7 (B) Information on the capacity of pro-
8 viders to provide treatment or services to such
9 individuals enrolled under the State Medicaid
10 program, including information on providers
11 who provide such services and their participa-
12 tion under the State Medicaid program.

13 (C) Information on the health care services
14 provided under programs other than the State
15 Medicaid program in jails to individuals who
16 are in custody pending disposition of charges.

17 (2) Activities that, taking into account the re-
18 sults of the assessment described in paragraph (1)
19 with respect to the provision of treatment or services
20 under the State Medicaid program, support the de-
21 velopment of State infrastructure to recruit or con-
22 tract with prospective health care providers, provide
23 training and technical assistance to such providers,
24 and secure a process for an electronic health record
25 system for billing to reimburse for services provided

1 by the correctional facility, outpatient providers,
2 medical vendors, and contracted telehealth service
3 providers to patients who are in custody pending dis-
4 position of charges that are compliant with applica-
5 ble requirements and regulations for State Medicaid
6 programs.

7 (3) Activities that ensure the quality of care for
8 patients who are in custody pending disposition of
9 charges, including formal reporting mechanisms for
10 patient outcomes, and activities that promote par-
11 ticipation in learning collaboratives among providers
12 treating this population.

13 (d) GEOGRAPHIC DIVERSITY.—The Secretary shall
14 select States for planning grants under this section in a
15 manner that ensures geographic diversity.

16 (e) FUNDING.—Out of any money in the Treasury
17 not otherwise appropriated, there are appropriated to the
18 Secretary to carry out this section, \$50,000,000, to re-
19 main available until expended.

20 (f) DEFINITIONS.—In this section:

21 (1) MEDICAID PROGRAM.—The term “Medicaid
22 program” means, with respect to a State, the State
23 program under title XIX of the Social Security Act
24 (42 U.S.C. 1396 et seq.) including any waiver or
25 demonstration under such title or under section

1 1115 of such Act (42 U.S.C. 1315) relating to such
2 title.

3 (2) SECRETARY.—The term “Secretary” means
4 the Secretary of Health and Human Services.

5 (3) STATE.—The term “State” has the mean-
6 ing given that term for purposes of title XIX of the
7 Social Security Act (42 U.S.C. 1396 et seq.) in sec-
8 tion 1101(a)(1) of such Act (42 U.S.C. 1301(a)(1)).

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