

114TH CONGRESS
1ST SESSION

S. 298

To amend titles XIX and XXI of the Social Security Act to provide States with the option of providing services to children with medically complex conditions under the Medicaid program and Children’s Health Insurance Program through a care coordination program focused on improving health outcomes for children with medically complex conditions and lowering costs, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 28, 2015

Mr. GRASSLEY (for himself, Mr. BENNET, Mr. PORTMAN, Mr. NELSON, Mr. BLUNT, Mr. BROWN, Mr. KIRK, and Mrs. MURRAY) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend titles XIX and XXI of the Social Security Act to provide States with the option of providing services to children with medically complex conditions under the Medicaid program and Children’s Health Insurance Program through a care coordination program focused on improving health outcomes for children with medically complex conditions and lowering costs, 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. SHORT TITLE.**

2 This Act may be cited as the “Advancing Care for
3 Exceptional Kids Act of 2015” or the “ACE Kids Act of
4 2015”.

5 **SEC. 2. FINDINGS.**

6 Congress finds the following:

7 (1) Approximately 3,000,000 children in the
8 United States suffer from medically complex condi-
9 tions and approximately 2,000,000 of such children
10 are enrolled in State plans under the Medicaid pro-
11 gram under title XIX of the Social Security Act.

12 (2) Such children account for an estimated 6
13 percent of Medicaid enrollees and approximately 40
14 percent of children’s Medicaid spending is due to the
15 severity of the illnesses of such children.

16 (3) The creation of nationally designated chil-
17 dren’s hospital networks focused upon better coordi-
18 nation and integration of care for such pediatric
19 population will result in improved health outcomes
20 and savings under the Medicaid program and the
21 Children’s Health Insurance Program under title
22 XXI of the Social Security Act.

1 **SEC. 3. ESTABLISHMENT OF MEDICAID AND CHIP CARE CO-**
2 **ORDINATION PROGRAM FOR CHILDREN WITH**
3 **MEDICALLY COMPLEX CONDITIONS AS MED-**
4 **ICAID STATE OPTION.**

5 (a) **MEDICAID.**—Title XIX of the Social Security Act
6 (42 U.S.C. 1396 et seq.) is amended by adding at the end
7 the following new section:

8 “**MEDICAID CHILDREN’S CARE COORDINATION PROGRAMS**
9 **FOR CHILDREN WITH COMPLEX MEDICAL CONDITIONS**

10 “**SEC. 1947. (a) IN GENERAL.**—Beginning January
11 1, 2016, a State, at its option as a State plan amendment,
12 may elect to provide medical assistance for items and serv-
13 ices furnished to eligible children enrolled in an MCCC
14 program that meets the requirements of this section. As
15 a condition on an eligible child’s receipt of medical assist-
16 ance under this title, the State shall require, under such
17 an amendment, that the eligible child be enrolled in a
18 MCCC program that meets the requirements of this sec-
19 tion.

20 “(b) **MCCC PROGRAM REQUIREMENTS.**—An MCCC
21 program meets the requirements of this section if the
22 MCCC program—

23 “(1) coordinates, integrates, and provides for
24 the furnishing of the full range of MCCC program
25 services to eligible children enrolled in the program;

1 “(2) enrolls eligible children in accordance with
2 subsection (c);

3 “(3) is operating under a program agreement
4 that meets the requirements of subsection (d); and

5 “(4) meets the pediatric network adequacy
6 standards developed under subsection (e).

7 “(c) ELIGIBILITY DETERMINATIONS; ASSIGN-
8 MENT.—

9 “(1) ENROLLMENT.—Subject to the assignment
10 requirements of paragraph (2), the enrollment and
11 disenrollment of eligible children in an MCCC pro-
12 gram shall be carried out in accordance with the re-
13 quirements of this section and the applicable pro-
14 gram agreement.

15 “(2) NETWORK ASSIGNMENT.—

16 “(A) IN GENERAL.—Eligible children shall
17 be prospectively enrolled in an MCCC program
18 by the State by assigning such eligible children
19 to a nationally designated children’s hospital
20 network for an initial period of up to 90 days
21 beginning on the date on which the child is as-
22 signed to such hospital network, unless the
23 child opts not to participate in any MCCC pro-
24 gram in accordance with a process established
25 by the State.

1 “(B) BASIS FOR INITIAL ASSIGNMENT.—

2 Such an assignment shall be made as follows:

3 “(i) First, by considering the preva-
4 lence of visits by the child to a pediatrician
5 or other specialist who is participating in
6 the nationally designated children’s hos-
7 pital network.

8 “(ii) Second, by considering the selec-
9 tion of the child’s family.

10 “(iii) Third, by considering the loca-
11 tion of the primary residence of the child.

12 “(iv) Fourth, by considering the prox-
13 imity of the child to regional referral net-
14 works established by the nationally des-
15 ignated children’s hospital network.

16 “(C) LIMITATION ON CERTAIN ASSIGN-
17 MENTS.—In the case of the assignment of a
18 child under subparagraph (A) through the con-
19 sideration of a factor specified in clause (iii) or
20 (iv) of subparagraph (B), such an assignment
21 may only be made to a nationally designated
22 children’s hospital network that ensures access
23 to a medical home that is located not more than
24 30 miles of the primary residence of the child.

1 “(D) REASSIGNMENT.—Following the 90-
2 day period referred to in subparagraph (A), the
3 child may elect—

4 “(i) to be assigned to the nationally
5 designated children’s hospital network of
6 their choice that has a program agreement
7 in effect with respect to an MCCC pro-
8 gram in which the child is eligible to enroll;
9 or

10 “(ii) to not participate in any MCCC
11 program and receive care through enroll-
12 ment in the State plan under this title or
13 the State child health plan under title
14 XXI.

15 “(d) PROGRAM AGREEMENTS.—

16 “(1) IN GENERAL.—The Secretary, in close co-
17 operation with the State administering agencies
18 electing to provide the medical assistance described
19 in subsection (a), shall establish procedures for en-
20 tering into, extending, and terminating program
21 agreements under this section.

22 “(2) TERMS.—

23 “(A) IN GENERAL.—A program agreement
24 entered into under this section by the Sec-
25 retary, a State administering agency, and a na-

1 tionally designated children’s hospital network
2 shall provide for each of the following terms:

3 “(i) The agreement shall designate
4 the service area of the MCCC program
5 that is the subject of the agreement.

6 “(ii) The agreement shall be effective
7 for a contract year, but may be extended
8 for additional contract years in the absence
9 of a notice by a party to terminate, and is
10 subject to termination by the Secretary
11 and the State administering agency at any
12 time for cause (as provided under the
13 agreement).

14 “(iii) The agreement shall require
15 that the nationally designated children’s
16 hospital network submit care management
17 network and coverage plans to the Sec-
18 retary that are centered around medical
19 home models and that describe the govern-
20 ance of the network.

21 “(iv) The agreement shall require the
22 hospital network to meet all applicable re-
23 quirements imposed by State and local
24 laws.

1 “(v) The agreement shall require such
2 State, in the case of eligible children who
3 are residents of the State, to make pay-
4 ments to the hospital network, regardless
5 of whether MCCC program services are
6 furnished to such eligible children in an-
7 other State.

8 “(vi) The agreement shall require that
9 the standards and measures developed
10 under subsection (e) be applied to the hos-
11 pital network, including measures requir-
12 ing, with respect to network adequacy
13 standards, that the hospital network estab-
14 lish such provider networks for primary,
15 secondary, and tertiary care as are nec-
16 essary to ensure the adequate furnishing of
17 MCCC program services to eligible children
18 enrolled in the MCCC program that is the
19 subject of the agreement.

20 “(vii) The agreement shall require the
21 hospital network to comply with the data
22 collection and recordkeeping requirements
23 of subparagraph (C).

24 “(viii) The agreement shall require
25 the hospital network to accept as payment

1 any payment made using the risk-based
2 methodology developed under subsection
3 (g).

4 “(ix) The agreement shall contain
5 such additional terms and conditions as
6 the parties may agree to, so long as such
7 terms and conditions are consistent with
8 this section.

9 “(B) SERVICE AREA REQUIREMENTS.—In
10 designating a service area under subparagraph
11 (A)(i), the Secretary (in consultation with the
12 relevant State administering agency) shall—

13 “(i) ensure that such service area pro-
14 vides convenient access for eligible children
15 to MCCC program services, without lim-
16 iting the size of, or number of, nationally
17 designated children’s hospital networks
18 providing such services; and

19 “(ii) ensure that such hospital net-
20 works and the population of eligible chil-
21 dren in the proposed service area are suffi-
22 cient to support the delivery of MCCC pro-
23 gram services and to avoid the unnecessary
24 duplication of services and the impairment

1 of the financial and service viability of an-
2 other MCCC program.

3 “(C) DATA AND RECORDKEEPING RE-
4 QUIREMENTS.—The data collection and record-
5 keeping requirements under this subparagraph,
6 with respect to a nationally designated chil-
7 dren’s hospital network, are as follows:

8 “(i) The hospital network shall collect
9 claims data on claims submitted with re-
10 spect to eligible children who are furnished
11 MCCC program services under an MCCC
12 program. Such data shall be reported in a
13 standardized format and made available to
14 the public for purposes of establishing a
15 national database on such claims.

16 “(ii) The hospital network shall main-
17 tain, and provide the Secretary and the
18 State administering agency access to, the
19 records relating to the MCCC program op-
20 erated by the hospital network, including
21 pertinent financial, medical, and personnel
22 records.

23 “(iii) The hospital network shall sub-
24 mit to the Secretary and the State admin-
25 istering agency such reports as the Sec-

1 retary finds (in consultation with the State
2 administering agency) necessary to monitor
3 the operation, cost, and effectiveness of the
4 MCCC program operated by the hospital
5 network.

6 “(3) TERMINATION OF AGREEMENTS.—The
7 Secretary shall issue regulations establishing the cir-
8 cumstances under which—

9 “(A) the Secretary or a State admin-
10 istering agency may terminate a MCCC pro-
11 gram agreement for cause; and

12 “(B) a nationally designated children’s
13 hospital network may terminate such an agree-
14 ment after appropriate notice to the Secretary,
15 the State administering agency, and enrollees.

16 “(e) QUALITY ASSURANCE.—

17 “(1) DEVELOPMENT OF STANDARDS AND MEAS-
18 URES.—The Secretary shall, in consultation with na-
19 tionally designated children’s hospital networks and
20 national pediatric policy organizations (such as the
21 Children’s Hospital Association and the American
22 Academy of Pediatrics)—

23 “(A) establish a national set of quality as-
24 surance and improvement protocols and proce-
25 dures to apply under MCCC programs;

1 “(B) develop pediatric quality measures;

2 “(C) develop pediatric network adequacy
3 standards for access by eligible children to
4 MCCC program services; and

5 “(D) develop criteria for national pediatric-
6 focused care coordination for eligible children.

7 “(2) USE OF PQMP MEASURES.—In carrying
8 out paragraph (1), the Secretary shall apply, to the
9 extent applicable, child health quality measures and
10 measures for centers of excellence for children with
11 complex needs developed under this title, title XXI,
12 and section 1139A and take into account HEDIS
13 quality measures as required under section
14 1852(e)(3) and other quality measures.

15 “(f) STANDARD MEDICAID DATA SET.—

16 “(1) IN GENERAL.—The Secretary, the States,
17 and the nationally designated children’s hospital net-
18 works shall collaborate to obtain consistent and
19 verifiable Medicaid Analytic Extract data or a com-
20 parable data set and shall establish data-sharing
21 agreements to further support collaborative planning
22 and care coordination for medically complex chil-
23 dren.

24 “(2) CLAIMS ANALYSIS.—The Secretary shall—

1 “(A) perform claims analysis on the data
2 set developed under paragraph (1) to determine
3 the utilization of items and services furnished
4 under an MCCC program to eligible children;
5 and

6 “(B) for purposes of building a national
7 database, submit to Congress, and make pub-
8 licly available on the Internet site of the Cen-
9 ters for Medicare and Medicaid services, a re-
10 port on such claims in a standardized format.

11 “(3) PAYMENT FOR REPORTING INCENTIVES.—
12 The State plan may provide for pay-for-reporting in-
13 centives during the first two years of any program
14 agreement entered into under this section to ensure
15 participation and analysis of consistent data under
16 this paragraph to enable the development of an ap-
17 propriate risk-based payment methodology under
18 subsection (g).

19 “(g) PAYMENTS TO NATIONALLY DESIGNATED CHIL-
20 DREN’S HOSPITAL NETWORKS.—

21 “(1) IN GENERAL.—The State plan shall pro-
22 vide for payment to nationally designated children’s
23 hospital networks pursuant to the terms of a pro-
24 gram agreement using a risk-based payment meth-

1 odology (or methodologies) established in accordance
2 with this subsection.

3 “(2) TRANSITION FROM FEE-FOR-SERVICE TO
4 RISK-BASED PAYMENT MODEL.—

5 “(A) IN GENERAL.—Subject to subpara-
6 graph (B), payment to nationally designated
7 children’s hospital networks under this sub-
8 section shall be based initially on a fee-for-serv-
9 ice payment model and shall gradually transi-
10 tion, over a 5-year period, to an equitable, risk-
11 based payment model using a methodology de-
12 veloped under paragraph (3). For the first two
13 years of such period, a nationally designated
14 children’s hospital network may receive, in addi-
15 tion to any fee-for-service payments made to
16 such hospital network, per capita care coordina-
17 tion payments with respect to expenditures for
18 items and services furnished to eligible children
19 enrolled in the MCCC program operated by the
20 hospital network through medical home pro-
21 grams and other care coordination activities for
22 which an all-inclusive payment model is more
23 suitable than fee-for-service reimbursement.

24 “(B) EXCEPTION FOR CERTAIN STATES.—
25 Subparagraph (A) shall not apply in the case of

1 a State that, as of the date of the enactment
2 of this section, uses a risk-based payment meth-
3 odology with respect to payments made for
4 items and services furnished to eligible children
5 under the State plan or State child health plan.

6 “(C) DATA ANALYSIS DURING INITIAL PE-
7 RIOD.—During the first two years of the imple-
8 mentation of an MCCC program, the Secretary
9 shall analyze data collected under subsection (f)
10 for purposes of developing a risk-based payment
11 methodology that would be implemented begin-
12 ning with the third year of implementation of
13 the MCCC program.

14 “(3) DEVELOPMENT OF RISK-BASED PAYMENT
15 METHODOLOGY.—The relevant State administering
16 agency shall develop, in coordination with the Med-
17 icaid and CHIP Payment and Access Commission
18 and the pediatric health care provider community,
19 payment methodologies for payment under the State
20 plan in accordance with this subsection that—

21 “(A) take into account the data analyzed
22 under paragraph (2)(C);

23 “(B) are actuarially sound, determined
24 using an actuarial method that ensures that

1 such methodologies reflect historic pediatric
2 claims data;

3 “(C) include—

4 “(i) a risk adjustment method, re-in-
5 surance system, or risk-corridor procedure
6 to account for variations in acuity of the
7 eligible children enrolled in MCCC pro-
8 grams; and

9 “(ii) a shared savings approach, which
10 may include a form of bundled payment or
11 risk-reward payment model that aligns
12 payment with both cost savings and quality
13 improvement; and

14 “(D) may provide for a model for making
15 payments other than payments made on a per-
16 member, per-month basis.

17 “(h) WAIVERS OF REQUIREMENTS.—

18 “(1) IN GENERAL.—With respect to carrying
19 out an MCCC program under this section, the fol-
20 lowing provisions of law shall not apply:

21 “(A) Section 1902(a)(1), relating to
22 statewideness.

23 “(B) Section 1902(a)(10), insofar as such
24 section relates to comparability of services
25 among different population groups.

1 “(C) Sections 1902(a)(23) and 1915(b)(4),
2 relating to freedom of choice of providers.

3 “(D) Section 1903(m)(2)(A), insofar as
4 such section would prohibit a nationally des-
5 ignated children’s hospital network from receiv-
6 ing certain payments.

7 “(E) Such other provisions of this title,
8 title XVIII, sections 1128A and 1128B, and
9 any provisions of the Federal antitrust laws as
10 the Secretary determines are inapplicable or the
11 waiver of which are necessary for purposes of
12 carrying out an MCCC program under this sec-
13 tion.

14 “(2) APPLICATION IN STATES OPERATING
15 UNDER DEMONSTRATION PROJECTS.—

16 “(A) IN GENERAL.—In the case of any
17 State which is providing medical assistance to
18 its residents under a waiver described in sub-
19 paragraph (B), the Secretary shall not require
20 that the State meet the requirements of this
21 section in the same manner as the State would
22 be required to meet such requirements if the
23 State had in effect a plan approved under this
24 title.

1 “(B) WAIVER DESCRIBED.—A waiver de-
2 scribed in this subparagraph is a waiver grant-
3 ed under section 1115 under which a State—

4 “(i) provides for coverage through a
5 medicaid managed care plan of all or a
6 certain proportion of MCCC program serv-
7 ices furnished to eligible children in the
8 State through a nationally designated chil-
9 dren’s hospital network;

10 “(ii) assigns such eligible children to
11 such a network in accordance with sub-
12 section (c);

13 “(iii) requires that the State and such
14 network enter into a program agreement
15 that meets the requirements applicable to
16 program agreements under subsection (d);
17 and

18 “(iv) uses a payment methodology to
19 make payments made for MCCC program
20 services furnished to eligible children that
21 is consistent with the requirements of sub-
22 section (g).

23 “(i) PREEMPTION OF STATE LAW.—A State may not
24 impose any requirement on the nationally qualified chil-
25 dren’s hospital network’s operation of a MCCC program

1 under a program agreement that meets the requirements
2 of this section that is inconsistent with or would otherwise
3 impede the satisfaction by such hospital network of the
4 requirements of this section (including the requirements
5 of such program agreement).

6 “(j) DEFINITIONS.—In this section:

7 “(1) ELIGIBLE CHILD.—The term ‘eligible
8 child’ means, with respect to an MCCC program, an
9 individual who is under the age of 18 and who—

10 “(A) is eligible for medical assistance
11 under the State plan under this title or child
12 health assistance under the State child health
13 plan under title XXI; and

14 “(B) has a chronic, physical, develop-
15 mental, behavioral, or emotional condition
16 that—

17 “(i) affects two or more body systems;

18 “(ii) requires intensive care coordina-
19 tion to avoid excessive hospitalizations or
20 emergency department visits; or

21 “(iii) meets the criteria for medical
22 complexity using risk adjustment meth-
23 odologies (such as Clinical Risk Groups or
24 another recognized pediatric population
25 grouping system) agreed upon by the Sec-

1 retary in coordination with a national
2 panel of pediatric experts.

3 “(2) MCCC PROGRAM.—The term ‘MCCC pro-
4 gram’ means a Medicaid coordinated care program
5 that provides eligible children with MCCC program
6 services through a nationally designated children’s
7 hospital network in accordance with a program
8 agreement that meets the requirements of subsection
9 (d).

10 “(3) MCCC PROGRAM SERVICES.—The term
11 ‘MCCC program services’ means the full range of
12 items and services for which medical assistance is
13 available under a State plan for children, including
14 pediatric care management services and pediatric-fo-
15 cused care coordination and health promotion, as
16 specified in the program agreement.

17 “(4) NATIONALLY DESIGNATED CHILDREN’S
18 HOSPITAL NETWORK.—The term ‘nationally des-
19 ignated children’s hospital network’ means a net-
20 work of hospitals and health care providers—

21 “(A) anchored by a qualified children’s
22 hospital or hospitals with principal governance
23 responsibility over the hospital network;

1 “(B) in which the full complement of
2 health care providers needed to provide the best
3 care for children in the network participate; and

4 “(C) that represents the interests of physi-
5 cians, other health care providers, parents of
6 medically complex children, and other relatives
7 of such children.

8 “(5) PROGRAM AGREEMENT.—The term ‘pro-
9 gram agreement’ means an agreement between a na-
10 tionally designated children’s hospital network, the
11 Secretary, and a State administering agency for the
12 operation of an MCCC program by the hospital net-
13 work in the State that meets the requirements of
14 this section.

15 “(6) QUALIFIED CHILDREN’S HOSPITAL.—The
16 term ‘qualified children’s hospital’ means a chil-
17 dren’s hospital that—

18 “(A) qualifies to receive payment under
19 section 340E of the Public Health Service Act
20 (relating to children’s hospitals that operate
21 graduate medical education programs); or

22 “(B) meets 3 or more of the following cri-
23 teria:

24 “(i) MINIMUM PEDIATRIC DIS-
25 CHARGES.—The hospital has at least 5,000

1 annual pediatric discharges (including neo-
2 nates, but excluding obstetrics and normal
3 newborns) for the most recent cost report-
4 ing period for which data are available.

5 “(ii) MINIMUM NUMBER OF BEDS.—
6 The hospital has 100 licensed pediatric
7 beds, not including beds in neonatal inten-
8 sive care units but including beds in pedi-
9 atric intensive care units and other acute
10 care beds.

11 “(iii) ACCESS TO PEDIATRIC EMER-
12 GENCY SERVICES.—The hospital has access
13 (through ownership or otherwise) to pedi-
14 atric emergency services.

15 “(iv) MEDICAID RELIANT.—At least
16 30 percent of the pediatric discharges or
17 inpatient days (excluding observation days)
18 in the hospital for the most recent cost re-
19 porting period for which data are available
20 were children eligible for medical assist-
21 ance under this title or for children’s
22 health assistance under title XXI.

23 “(v) AFFILIATION WITH ACCREDITED
24 PEDIATRIC RESIDENCY TRAINING PRO-
25 GRAM.—The hospital sponsors or is affili-

1 ated with a pediatric residency program
2 that is accredited by the Accreditation
3 Council for Graduate Medical Education.

4 “(vi) PEDIATRIC MEDICAL HOME PRO-
5 GRAMS.—The hospital has established and
6 implemented demonstrable pediatric med-
7 ical home programs dedicated to medically
8 complex children.

9 “(7) STATE ADMINISTERING AGENCY.—The
10 term ‘State administering agency’ means, with re-
11 spect to the operation of an MCCC program in a
12 State, the agency of that State (which may be the
13 single agency responsible for administration of the
14 State plan under this title in the State) responsible
15 for administering program agreements under this
16 section.”.

17 (b) INCLUSION AS MEDICAL ASSISTANCE.—Section
18 1905(a) of the Social Security Act (42 U.S.C. 1396d(a))
19 is amended—

20 (1) in paragraph (28), by striking “and” at the
21 end;

22 (2) by redesignating paragraph (29) as para-
23 graph (30); and

24 (3) by inserting after paragraph (28) the fol-
25 lowing new paragraph:

1 “(29) items and services furnished under an
2 MCCC program under section 1947 to eligible chil-
3 dren enrolled in an MCCC program under such sec-
4 tion; and”.

5 (c) APPLICATION UNDER CHIP.—Section 2107(e)(1)
6 of the Social Security Act (42 U.S.C. 1397gg(e)(1)) is
7 amended by adding at the end the following new subpara-
8 graph:

9 “(P) Section 1947 (relating to Medicaid
10 children’s care coordination programs for chil-
11 dren with complex medical conditions).”.

12 (d) REGULATIONS.—Not later than 120 days after
13 the date of the enactment of this Act, the Secretary of
14 Health and Human Services shall make rules on the
15 record, after opportunity for an agency hearing to carry
16 out the amendments made by this section in accordance
17 with sections 556 and 557 of title 5, United States Code.

○