

117TH CONGRESS
1ST SESSION

S. 2210

To amend title XIX of the Social Security Act to expand access to home and community-based services (HCBS) under Medicaid, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 24, 2021

Mr. CASEY (for himself, Mr. WYDEN, Mr. SCHUMER, Mrs. MURRAY, Ms. DUCKWORTH, Mr. BROWN, Ms. HASSAN, Mrs. GILLIBRAND, Mr. WHITEHOUSE, Mr. DURBIN, Ms. BALDWIN, Mr. MARKEY, Mr. BLUMENTHAL, Ms. WARREN, Mr. REED, Mrs. SHAHEEN, Mr. VAN HOLLEN, Ms. SMITH, Mr. MERKLEY, Mr. BOOKER, Mr. LEAHY, Mr. PADILLA, Mr. SCHATZ, Ms. KLOBUCHAR, Mr. KAINE, Mr. BENNET, Mr. WARNOCK, Mr. SANDERS, Mr. PETERS, Mr. LUJÁN, Mr. HEINRICH, Ms. HIRONO, Ms. STABENOW, Mrs. FEINSTEIN, Ms. ROSEN, Mr. CARDIN, Mr. MURPHY, Ms. CANTWELL, Mr. MENENDEZ, and Mr. KING) 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 expand access to home and community-based services (HCBS) under Medicaid, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Better Care Better Jobs Act”.

1 (b) TABLE OF CONTENTS.—The table of contents for
 2 this Act is as follows:

Sec. 1. Short title; table of contents.
 Sec. 2. Definitions.

TITLE I—EXPANDING ACCESS TO MEDICAID HOME AND
 COMMUNITY-BASED SERVICES

Sec. 101. HCBS infrastructure improvement planning grants.
 Sec. 102. HCBS Infrastructure Improvement Program.
 Sec. 103. Reports; technical assistance; other administrative requirements.
 Sec. 104. Quality measurement and improvement.

TITLE II—OTHER PROVISIONS

Sec. 201. MACPAC study and report on Appendix K emergency home and
 community-based services (HCBS) 1915(c) waivers.
 Sec. 202. Making permanent the State option to extend protection under Med-
 icaid for recipients of home and community-based services
 against spousal impoverishment.
 Sec. 203. Permanent extension of Money Follows the Person Rebalancing dem-
 onstration.

3 **SEC. 2. DEFINITIONS.**

4 In this Act:

5 (1) APPROPRIATE COMMITTEES OF CON-
 6 GRESS.—The term “appropriate committees of Con-
 7 gress” means the Committee on Energy and Com-
 8 merce of the House of Representatives, the Com-
 9 mittee on Education and Labor of the House of
 10 Representatives, the Committee on Finance of the
 11 Senate, the Committee on Health, Education, Labor
 12 and Pensions of the Senate, and the Special Com-
 13 mittee on Aging of the Senate.

14 (2) DIRECT CARE WORKER; DIRECT CARE
 15 WORKFORCE.—The terms “direct care worker” and
 16 “direct care workforce” mean—

- 1 (A) a direct support professional;
- 2 (B) a personal care attendant;
- 3 (C) a direct care worker;
- 4 (D) a home health aide; and
- 5 (E) any other relevant worker, as deter-
- 6 mined by the Secretary.

7 (3) ELIGIBLE INDIVIDUAL.—The term “eligible
8 individual” means an individual who is eligible for
9 and enrolled for medical assistance under a State
10 Medicaid program and includes an individual who
11 becomes eligible for medical assistance under a State
12 Medicaid program when removed from a waiting list.

13 (4) HEALTH PLAN.—The term “health plan”
14 means a group health plan or health insurance
15 issuer (as such terms are defined in section 2791 of
16 the Public Health Service Act (42 U.S.C. 300gg–
17 91)).

18 (5) HCBS PROGRAM IMPROVEMENT STATE.—
19 The term “HCBS program improvement State”
20 means a State with an HCBS infrastructure im-
21 provement plan approved by the Secretary under
22 section 101(d).

23 (6) HOME AND COMMUNITY-BASED SERV-
24 ICES.—The term “home and community-based serv-

ices” means any of the following (whether provided on a fee-for-service, risk, or other basis):

(A) Home health care services authorized under paragraph (7) of section 1905(a) of the Social Security Act (42 U.S.C. 1396d(a)).

(B) Personal care services authorized under paragraph (24) of such section.

(C) PACE services authorized under paragraph (26) of such section.

(D) Home and community-based services authorized under subsections (b), (c), (i), (j), and (k) of section 1915 of such Act (42 U.S.C. 1396n), such services authorized under a waiver under section 1115 of such Act (42 U.S.C. 1315), and such services provided through coverage authorized under section 1937 of such Act (42 U.S.C. 1396u–7).

(E) Case management services authorized under section 1905(a)(19) of the Social Security Act (42 U.S.C. 1396d(a)(19)) and section 1915(g) of such Act (42 U.S.C. 1396n(g)).

(F) Rehabilitative services, including those related to behavioral health, described in section 1905(a)(13) of such Act (42 U.S.C. 1396d(a)(13)).

1 (G) Such other services specified by the
2 Secretary.

3 (7) INSTITUTIONAL SETTING.—The term “insti-
4 tutional setting” means—

5 (A) a skilled nursing facility (as defined in
6 section 1819(a) of the Social Security Act (42
7 U.S.C. 1395i–3(a)));

8 (B) a nursing facility (as defined in section
9 1919(a) of such Act (42 U.S.C. 1396r(a)));

10 (C) a long-term care hospital (as described
11 in section 1886(d)(1)(B)(iv) of such Act (42
12 U.S.C. 1395ww(d)(1)(B)(iv)));

13 (D) an institution (or distinct part thereof)
14 described in section 1905(d) of such Act (42
15 U.S.C. 1396d(d)));

16 (E) an institution (or distinct part thereof)
17 which is a psychiatric hospital (as defined in
18 section 1861(f) of such Act (42 U.S.C.
19 1395x(f))) or that provides inpatient psychiatric
20 services in another residential setting specified
21 by the Secretary;

22 (F) an institution (or distinct part thereof)
23 described in section 1905(i) of such Act (42
24 U.S.C. 1396d(i)); and

1 (G) any other relevant facility, as deter-
 2 mined by the Secretary.

3 (8) MEDICAID PROGRAM.—The term “Medicaid
 4 program” means, with respect to a State, the State
 5 program under title XIX of the Social Security Act
 6 (42 U.S.C. 1396 et seq.) (including any waiver or
 7 demonstration under such title or under section
 8 1115 of such Act (42 U.S.C. 1315) relating to such
 9 title).

10 (9) SECRETARY.—The term “Secretary” means
 11 the Secretary of Health and Human Services.

12 (10) STATE.—The term “State” has the mean-
 13 ing given such term for purposes of title XIX of the
 14 Social Security Act (42 U.S.C. 1396 et seq.).

15 **TITLE I—EXPANDING ACCESS TO**
 16 **MEDICAID HOME AND COM-**
 17 **MUNITY-BASED SERVICES**

18 **SEC. 101. HCBS INFRASTRUCTURE IMPROVEMENT PLAN-**
 19 **NING GRANTS.**

20 (a) IN GENERAL.—Not later than 12 months after
 21 the date of enactment of this Act, the Secretary shall
 22 award planning grants to States for the purpose of ex-
 23 panding access to home and community-based services and
 24 strengthening the direct care workforce that provides such
 25 services by developing HCBS infrastructure improvement

1 plans that meet the requirements of subsections (b) and
 2 (c).

3 (b) CONTENT REQUIREMENTS.—In order to meet the
 4 requirements of this subsection, an HCBS infrastructure
 5 improvement plan shall include, with respect to a State,
 6 the following:

7 (1) EXISTING MEDICAID HCBS LANDSCAPE.—

8 (A) ELIGIBILITY AND BENEFITS.—A de-
 9 scription of—

10 (i) the existing standards, pathways,
 11 and methodologies for eligibility for home
 12 and community-based services, including
 13 limits on assets and income;

14 (ii) the home and community-based
 15 services available under the State Medicaid
 16 program; and

17 (iii) utilization management standards
 18 for such services.

19 (B) ACCESS.—An assessment of the extent
 20 to which home and community-based services
 21 are available to eligible individuals in the State,
 22 including—

23 (i) estimates of the number of eligible
 24 individuals who are on a waitlist for such
 25 services;

(ii) estimates of the number of individuals who would be eligible individuals but are not enrolled in the State Medicaid program or on a waitlist for such services;

(iii) a description of the home and community-based services not available under the State Medicaid program;

(iv) a description of the populations for which the State is unable to provide home and community-based services under the State Medicaid program that are provided under the Medicaid programs of other States; and

(v) a description of barriers to accessing home and community-based services identified by eligible individuals and families of such individuals.

(C) UTILIZATION.—An assessment of the utilization of home and community-based services in the State.

(D) SERVICE DELIVERY STRUCTURES.—A description of the service delivery structures for providing home and community-based services in the State, including with respect to the use and models of self-direction, the provision of

1 services by agencies, the ownership of service
2 provider agencies, the use of managed care
3 versus fee-for-service to provide such services,
4 and the supports provided for family caregivers.

5 (E) WORKFORCE.—A description of the
6 characteristics of the direct care workforce that
7 provides home and community-based services,
8 including the number of full- and part-time di-
9 rect care workers, the average and range of di-
10 rect care worker wages, the benefits provided to
11 direct care workers, the turnover and vacancy
12 rates of direct care worker positions, the mem-
13 bership of direct care workers in labor organiza-
14 tions or professional organizations, and the
15 race, ethnicity, and gender of such workforce.

16 (F) PAYMENT RATES.—A description of
17 the payment rates for home and community-
18 based services, including when such rates were
19 last updated, an assessment of the extent to
20 which authorized services are not delivered as a
21 result of such rates being insufficient, and the
22 extent to which payment rates are passed
23 through to direct care worker wages.

24 (G) QUALITY.—A description of how the
25 quality of home and community-based services

1 is measured and monitored, including how the
 2 State uses beneficiary and family caregiver ex-
 3 perience of care surveys to assess the quality of
 4 home and community-based services provided
 5 by the State.

6 (H) LONG-TERM SERVICES AND SUPPORTS
 7 PROVIDED IN INSTITUTIONAL SETTINGS.—A de-
 8 scription of—

9 (i) the extent to which eligible individ-
 10 uals receive long-term services and sup-
 11 ports in institutional settings in the State;
 12 and

13 (ii) the populations provided such
 14 services and supports.

15 (I) HCBS SHARE OF OVERALL MEDICAID
 16 LTSS SPENDING.—For the most recent fiscal
 17 year for which data is available, the percentage
 18 of expenditures made by the State under the
 19 State Medicaid program for long-term services
 20 and supports that are for home and community-
 21 based services.

22 (J) DEMOGRAPHIC DATA.—Each assess-
 23 ment required under subparagraphs (B) and
 24 (C), and the description required under sub-
 25 paragraph (H)(ii) shall include, to the extent

1 available, data disaggregated by disability sta-
2 tus, age, income, gender, race, ethnicity, geog-
3 raphy, primary language, sexual orientation,
4 gender identity, and type of service setting.

5 (2) ANNUAL MEASURES AND REPORTS.—A de-
6 scription of the State plan for—

7 (A) annually measuring and reporting
8 on—

9 (i) the availability and utilization of
10 home and community-based services;

11 (ii) the characteristics of the direct
12 care workforce that provides home and
13 community-based services and the race,
14 ethnicity, and gender of such workforce;

15 (iii) changes in payment rates for
16 home and community-based services; and

17 (iv) progress with respect to imple-
18 mentation of the activities, benchmarks,
19 and improvement activities provided under
20 subsection (jj) of section 1905 of the So-
21 cial Security Act (as added under section
22 102); and

23 (B) collecting and reporting disaggregated
24 data by disability status, age, income, gender,
25 race, ethnicity, geography, primary language,

1 sexual orientation, gender identity, and type of
2 service setting for the information required by
3 clause (i) of subparagraph (A).

4 (3) IMPLEMENTATION AND GOALS FOR HCBS
5 IMPROVEMENTS.—A description of how the State
6 will—

7 (A) conduct the activities, benchmarks,
8 and improvement activities provided under sub-
9 section (jj) of section 1905 of the Social Secu-
10 rity Act (as added under section 102), including
11 how the State plans to meet the benchmarks
12 described in paragraph (5) of such subsection
13 and, if applicable, the additional HCBS im-
14 provement efforts described in paragraph (3) of
15 such subsection;

16 (B) identify and reduce barriers to access-
17 ing home and community-based services, includ-
18 ing for individuals in institutional settings, indi-
19 viduals experiencing homelessness or housing
20 instability, and individuals in regions with low
21 or no access to such services;

22 (C) identify and reduce disparities in ac-
23 cess to, and utilization of, home and commu-
24 nity-based services by disability status, age, in-
25 come, gender, race, ethnicity, geography, pri-

1 mary language, sexual orientation, gender iden-
2 tity, and type of service setting;

3 (D) coordinate implementation of the
4 HCBS infrastructure improvement plan among
5 the State Medicaid agency, agencies serving in-
6 dividuals with disabilities, the elderly, and other
7 relevant State and local agencies; and

8 (E) facilitate access to related supports by
9 coordinating with State and local agencies and
10 organizations that provide housing, transpor-
11 tation, employment, nutrition, and other serv-
12 ices and supports.

13 (c) DEVELOPMENT AND SUBMISSION REQUIRE-
14 MENTS.—In order to meet the requirements of this sub-
15 section, an HCBS infrastructure improvement plan
16 shall—

17 (1) be developed with input from stakeholders
18 through a public notice and comment process that
19 includes consultation with eligible individuals who
20 are recipients of home and community-based serv-
21 ices, family caregivers of such recipients, providers,
22 health plans, direct care workers, chosen representa-
23 tives of direct care workers, and aging, disability,
24 and workforce advocates;

1 (2) be submitted for approval by the Secretary
 2 not later than 24 months after the date on which
 3 the State was awarded the planning grant under this
 4 section; and

5 (3) be publicly available in the final version
 6 submitted to the Secretary on a State Internet
 7 website.

8 (d) APPROVAL; PUBLICATION.—

9 (1) IN GENERAL.—The Secretary shall approve
 10 an HCBS infrastructure improvement plan if the
 11 plan—

12 (A) is complete; and

13 (B) provides assurances to the satisfaction
 14 of the Secretary that the State will meet the re-
 15 quirements of the HCBS Infrastructure Im-
 16 provement Program established under sub-
 17 section (jj) of section 1905 of the Social Secu-
 18 rity Act (42 U.S.C. 1396d), as added by section
 19 102, and achieve the benchmarks for improve-
 20 ment established by such program.

21 (2) PUBLICATION.—The Secretary, acting
 22 through the Administrator of the Centers for Medi-
 23 care & Medicaid Services, shall make publicly avail-
 24 able on an Internet website—

1 (A) the final version of each approved
 2 HCBS infrastructure improvement plan; and

3 (B) in the case of any HCBS infrastruc-
 4 ture improvement plan submitted for approval
 5 that is not approved—

6 (i) the submitted plan;

7 (ii) the decision not approving such
 8 plan; and

9 (iii) information relating to why the
 10 plan was not approved.

11 (e) CONTINUATION OF AMERICAN RESCUE PLAN ACT
 12 INCREASED FMAP FOR HCBS FOR STATES AWARDED A
 13 PLANNING GRANT.—

14 (1) FMAP.—

15 (A) IN GENERAL.—Notwithstanding sub-
 16 sections (b) or (ff) of section 1905 of the Social
 17 Security Act (42 U.S.C. 1396d), subject to sub-
 18 paragraph (C), in the case of a State that is
 19 awarded a planning grant under this section
 20 and meets the maintenance of effort require-
 21 ments under paragraph (2), the Federal med-
 22 ical assistance percentage determined for the
 23 State under such subsection (b) (or such sub-
 24 section (ff), if applicable) and, if applicable, as
 25 increased under subsection (y), (z), (aa), or (ii)

1 of such section, section 1915(k) of such Act (42
 2 U.S.C. 1396n(k)), or section 6008 of the Fami-
 3 lies First Coronavirus Response Act (Public
 4 Law 116–127), shall be increased by 10 per-
 5 centage points (but not to exceed 95 percent)
 6 with respect to amounts expended by the State
 7 Medicaid program for medical assistance for
 8 home and community-based services that are
 9 provided during HCBS planning period (as de-
 10 fined in subparagraph (B)).

11 (B) HCBS PLANNING PERIOD.—In this
 12 paragraph, the term “HCBS planning period”
 13 means, with respect to a State, the period—

14 (i) beginning on the date on which the
 15 State is awarded a planning grant under
 16 this section; and

17 (ii) ending on the earlier of—

18 (I) the first day of the first fiscal
 19 quarter for which the State is an
 20 HCBS program improvement State;
 21 and

22 (II) the date that is 3 years after
 23 the date on which the State is award-
 24 ed such a grant.

1 (C) RULE OF APPLICATION IN CASE OF
2 OVERLAP WITH PERIOD FOR AMERICAN RESCUE
3 PLAN INCREASE.—If the HCBS planning period
4 for a State begins during the HCBS program
5 improvement period (as defined under sub-
6 section (a)(2)(A) of section 9817 of the Amer-
7 ican Rescue Plan Act (Public Law 117–2)), and
8 the State meets the HCBS program require-
9 ments under subsection (b) of such section, the
10 increase in the Federal medical assistance per-
11 centage that would otherwise apply to the State
12 under subparagraph (A) of this paragraph shall
13 not apply during any portion of the HCBS pro-
14 gram improvement period (as defined under
15 subsection (a)(2)(A) of section 9817 of the
16 American Rescue Plan Act (Public Law 117–
17 2)) for which the State receives an increase in
18 the Federal medical assistance percentage in
19 accordance with that section.

20 (D) NONAPPLICATION OF TERRITORIAL
21 FUNDING CAPS.—Any payment made to Puerto
22 Rico, the Virgin Islands, Guam, the Northern
23 Mariana Islands, or American Samoa for ex-
24 penditures on medical assistance that are sub-
25 ject to the Federal medical assistance percent-

1 age increase specified under subparagraph (A)
2 shall not be taken into account for purposes of
3 applying payment limits under subsections (f)
4 and (g) of section 1108 of the Social Security
5 Act (42 U.S.C. 1308).

6 (2) MAINTENANCE OF EFFORT REQUIRE-
7 MENTS.—For purposes of paragraph (1)(A), the re-
8 quirements of this paragraph are, with respect to
9 the period for which a State is awarded a planning
10 grant under this section, the State shall not—

11 (A) lower the amount, duration, or scope
12 of home and community-based services available
13 under the State Medicaid program (relative to
14 the services available under the program as of
15 the date on which the State was awarded such
16 grant); or

17 (B) adopt more restrictive standards,
18 methodologies, or procedures for determining
19 eligibility, benefits, or services for receipt of
20 home and community-based services under the
21 State Medicaid program, including with respect
22 to utilization management or cost-sharing, than
23 the standards, methodologies, or procedures ap-
24 plicable as of the date on which the State was
25 awarded such grant.

1 (f) FUNDING.—

2 (1) IN GENERAL.—Out of any funds in the
3 Treasury not otherwise appropriated, there is appro-
4 priated to the Secretary for purposes of awarding
5 planning grants under this section, \$100,000,000
6 for fiscal year 2022, to remain available until ex-
7 pended.

8 (2) TECHNICAL ASSISTANCE AND GUIDANCE.—
9 The Secretary shall reserve \$5,000,000 of the
10 amount appropriated under paragraph (1) for pur-
11 poses of issuing guidance and providing technical as-
12 sistance to States seeking or awarded a planning
13 grant under this section.

14 **SEC. 102. HCBS INFRASTRUCTURE IMPROVEMENT PRO-**
15 **GRAM.**

16 (a) ENHANCED FMAP FOR HCBS PROGRAM IM-
17 PROVEMENT STATES.—Section 1905 of the Social Secu-
18 rity Act (42 U.S.C. 1396d) is amended—

19 (1) in subsection (b), by striking “and (ii)” and
20 inserting “(ii), and (jj)”; and

21 (2) by adding at the end the following new sub-
22 section:

23 “(jj) ENHANCED FEDERAL MEDICAL ASSISTANCE
24 PERCENTAGE FOR HCBS PROGRAM IMPROVEMENT
25 STATES.—

1 “(1) IN GENERAL.—

2 “(A) INCREASED FEDERAL FINANCIAL
3 PARTICIPATION.—Subject to paragraph (5), in
4 the case of a State that is an HCBS program
5 improvement State and meets the requirements
6 described in paragraphs (2) and (4), for each
7 fiscal year quarter that begins on or after the
8 first date on which a State is an HCBS pro-
9 gram improvement State—

10 “(i) notwithstanding subsection (b) or
11 (ff), subject to subparagraph (B), with re-
12 spect to amounts expended during the
13 quarter by such State for medical assist-
14 ance for home and community-based serv-
15 ices, the Federal medical assistance per-
16 centage for such State and quarter (as de-
17 termined for the State under subsection
18 (b) and, if applicable, increased under sub-
19 section (y), (z), (aa), or (ii), or section
20 6008(a) of the Families First Coronavirus
21 Response Act) shall be increased by 10
22 percentage points (but not to exceed 95
23 percent); and

24 “(ii) notwithstanding the per centum
25 specified in section 1903(a)(7), with re-

1 spect to amounts expended during the
2 quarter and before October 1, 2031, for
3 administrative costs for expanding and en-
4 hancing home and community-based serv-
5 ices, including for enhancing the Medicaid
6 data and technology infrastructure, modi-
7 fying rate setting processes, adopting,
8 using, and reporting quality measures and
9 beneficiary and family caregiver experience
10 surveys, adopting or improving training
11 programs for direct care workers and fam-
12 ily caregivers, and adopting, carrying out,
13 or enhancing programs that register quali-
14 fied direct care workers or connect bene-
15 ficiaries to qualified direct care workers,
16 such per centum shall be increased to 80
17 percent.

18 “(B) ADDITIONAL HCBS IMPROVEMENT
19 EFFORTS.—Subject to paragraph (5), in addi-
20 tion to the increase to the Federal medical as-
21 sistance percentage under subparagraph (A)(i),
22 with respect to amounts expended for medical
23 assistance during the first 4 fiscal quarters
24 throughout which an HCBS program improve-
25 ment State has implemented a program to sup-

1 port self-directed care that meets the require-
2 ments of paragraph (3) (in addition to meeting
3 the requirements described in paragraph (2)),
4 the Federal medical assistance percentage for
5 such State and each such quarter with respect
6 to such amounts shall be further increased by
7 2 percentage points (but not to exceed 95 per-
8 cent).

9 “(C) NONAPPLICATION OF TERRITORIAL
10 FUNDING CAPS.—Any payment made to Puerto
11 Rico, the Virgin Islands, Guam, the Northern
12 Mariana Islands, or American Samoa for ex-
13 penditures that are subject to an increase in the
14 Federal medical assistance percentage under
15 subparagraph (A)(i) or (B), or an increase in
16 an applicable Federal matching percentage
17 under subparagraph (A)(ii), shall not be taken
18 into account for purposes of applying payment
19 limits under subsections (f) and (g) of section
20 1108.

21 “(2) REQUIREMENTS.—The requirements de-
22 scribed in this paragraph, with respect to a State
23 and a fiscal year quarter, are the following:

24 “(A) MAINTENANCE OF EFFORT.—

1 “(i) IN GENERAL.—Except as pro-
2 vided under clause (ii), the State does
3 not—

4 “(I) lower the amount, duration,
5 or scope of home and community-
6 based services available under the
7 State plan or waiver (relative to the
8 home and community-based services
9 available under the plan or waiver as
10 of the date on which the State was
11 awarded a planning grant under sec-
12 tion 101 of the Better Care Better
13 Jobs Act); or

14 “(II) adopt more restrictive
15 standards, methodologies, or proce-
16 dures for determining eligibility, bene-
17 fits, or services for receipt of home
18 and community-based services, includ-
19 ing with respect to utilization manage-
20 ment or cost-sharing and the amount,
21 duration, and scope of available home
22 and community-based services, than
23 the standards, methodologies, or pro-
24 cedures applicable as of such date.

1 “(ii) EXCEPTION.—On or after Octo-
 2 ber 1, 2028, a State may modify such
 3 standards, methodologies, or procedures if
 4 the State demonstrates that such modifica-
 5 tions shall not result in—

6 “(I) home and community-based
 7 services that are less comprehensive
 8 or lower in amount, duration, or
 9 scope;

10 “(II) fewer individuals (overall
 11 and within particular beneficiary pop-
 12 ulations) receiving home and commu-
 13 nity-based services; or

14 “(III) increased cost-sharing for
 15 home and community-based services.

16 “(B) ACCESS TO SERVICES.—The State
 17 enhances, expands, or strengthens home and
 18 community-based services by doing all of the
 19 following:

20 “(i) Addressing access barriers and
 21 disparities in access or utilization identified
 22 in the State HCBS infrastructure improve-
 23 ment plan.

1 “(ii) Expanding financial eligibility
2 criteria for home and community-based
3 services up to Federal limits.

4 “(iii) Requiring coverage of personal
5 care services for all eligible populations re-
6 ceiving home and community-based serv-
7 ices in the State.

8 “(iv) Using ‘no wrong door’ programs,
9 providing presumptive eligibility for home
10 and community-based services, and improv-
11 ing home and community-based services
12 counseling and education programs.

13 “(v) Expanding access to behavioral
14 health services and coordination with em-
15 ployment, housing, and transportation sup-
16 ports.

17 “(vi) Providing supports to family
18 caregivers, which shall include providing
19 respite care, and may include providing
20 such services as caregiver assessments,
21 peer supports, or paid family caregiving.

22 “(vii) Adopting, expanding eligibility
23 for, or improving coverage provided under
24 a Medicaid buy-in program authorized

1 under subclause (XIII), (XV), or (XVI) of
2 section 1902(a)(10)(A)(ii).

3 “(C) STRENGTHENED AND EXPANDED
4 WORKFORCE.—

5 “(i) IN GENERAL.—The State
6 strengthens and expands the direct care
7 workforce that provides home and commu-
8 nity-based services by—

9 “(I) adopting processes to ensure
10 that payments for home and commu-
11 nity-based services are sufficient to
12 ensure that care and services are
13 available to the extent described in the
14 State HCBS infrastructure improve-
15 ment plan; and

16 “(II) updating, developing, and
17 adopting qualification standards and
18 training opportunities for the con-
19 tinuum of providers of home and com-
20 munity-based services, including pro-
21 grams for independent providers of
22 such services and agency direct care
23 workers, as well as unique programs
24 and resources for family caregivers.

1 “(ii) PAYMENT RATES.—In carrying
2 out clause (i)(I), the State shall—

3 “(I) address insufficient payment
4 rates for delivery of home and com-
5 munity-based services, with an empha-
6 sis on supporting the recruitment and
7 retention of the direct care workforce,
8 as identified during the period in
9 which the State HCBS infrastructure
10 improvement plan was developed and
11 during subsequent years;

12 “(II) update payment rates for
13 home and community-based services
14 at least every 2 years through a trans-
15 parent process involving meaningful
16 input from stakeholders, including re-
17 cipients of home and community-
18 based services, family caregivers of
19 such recipients, providers, health
20 plans, direct care workers, chosen rep-
21 resentatives of direct care workers,
22 and aging, disability, and workforce
23 advocates; and

1 “(III) ensure that increases in
 2 the payment rates for home and com-
 3 munity-based services are—

4 “(aa) at a minimum, propor-
 5 tionately passed through to direct
 6 care workers and in a manner
 7 that is determined with input
 8 from the stakeholders described
 9 in subclause (II); and

10 “(bb) incorporated into pay-
 11 ment rates for home and commu-
 12 nity-based services provided
 13 under this title by a managed
 14 care entity (as defined in section
 15 1932(a)(1)(B)) or a prepaid in-
 16 patient health plan or prepaid
 17 ambulatory health plan, as de-
 18 fined in section 438.2 of title 42,
 19 Code of Federal Regulations (or
 20 any successor regulation)), under
 21 a contract with the State.

22 “(3) HCBS IMPROVEMENT TO SUPPORT SELF-
 23 DIRECTED MODELS FOR THE DELIVERY OF SERV-
 24 ICES.—For purposes of paragraph (1)(B), the re-
 25 quirements of this paragraph, with respect to a

1 State and a fiscal year quarter, are that the State
2 establishes directly or by contract with 1 or more
3 non-profit entities, a program for the performance of
4 all of the following functions:

5 “(A) Registering qualified direct care
6 workers and assisting beneficiaries in finding
7 direct care workers.

8 “(B) Undertaking activities to recruit and
9 train independent providers to enable bene-
10 ficiaries to direct their own care, including by
11 providing or coordinating training for bene-
12 ficiaries on self-directed care.

13 “(C) Ensuring the safety of, and sup-
14 porting the quality of, care provided to bene-
15 ficiaries, such as by conducting background
16 checks and addressing complaints reported by
17 recipients of home and community-based serv-
18 ices.

19 “(D) Facilitating coordination between
20 State and local agencies and direct care workers
21 for matters of public health, training opportuni-
22 ties, changes in program requirements, work-
23 place health and safety, or related matters.

24 “(E) Supporting beneficiary hiring of inde-
25 pendent providers of home and community-

1 based services through an agency with choice or
2 similar model, including by processing applica-
3 ble tax information, collecting and processing
4 timesheets, submitting claims and processing
5 payments to such providers.

6 “(F) To the extent a State permits bene-
7 ficiaries to hire a family member or individual
8 with whom they have an existing relationship to
9 provide home and community-based services,
10 providing support to beneficiaries who wish to
11 hire a caregiver who is a family member or in-
12 dividual with whom they have an existing rela-
13 tionship, such as by facilitating enrollment of
14 such family member or individual as a provider
15 of home and community-based services under
16 the State plan or a waiver of such plan.

17 “(G) Ensuring that program policies and
18 procedures allow for cooperation with labor or-
19 ganizations that bargain on behalf of direct
20 care workers in the case of a State in which the
21 direct care workers in the State have elected to
22 join, or form, such a labor organization, or, in
23 the case of a State in which such workers have
24 not joined or formed such a labor organization,

1 are neutral with regard to such workers joining
2 or forming such a labor organization.

3 “(4) QUALITY, REPORTING, AND OVERSIGHT.—
4 The requirements described in this paragraph, with
5 respect to a State and a fiscal year quarter, are the
6 following:

7 “(A) The State adopts the core quality
8 measures for home and community-based serv-
9 ices developed by the Secretary under section
10 104 of the Better Care Better Jobs Act, or an
11 alternate set of quality measures approved by
12 the Secretary, and, at the option of the State,
13 expands the use of beneficiary and family care-
14 giver experience surveys.

15 “(B) The State designates an HCBS om-
16 budsman office that—

17 “(i) operates independently from the
18 State Medicaid agency and managed care
19 entities;

20 “(ii) provides direct assistance to
21 beneficiaries and their families; and

22 “(iii) identifies and reports systemic
23 problems to State officials, the public, and
24 the Secretary.

1 “(C) Beginning with the 5th fiscal year
2 quarter for which the State is an HCBS pro-
3 gram improvement State, and annually there-
4 after, the State reports on the components of
5 the existing home and community-based serv-
6 ices landscape reported in the State HCBS in-
7 frastructure improvement plan, including with
8 respect to—

9 “(i) the availability and utilization of
10 home and community-based services,
11 disaggregated by disability status, age, in-
12 come, gender, race, ethnicity, geography,
13 primary language, sexual orientation, gen-
14 der identity, and type of service setting;

15 “(ii) the characteristics of the direct
16 care workforce that provides home and
17 community-based services workforce and
18 the race, ethnicity, and gender of such
19 workforce;

20 “(iii) changes in payment rates for
21 home and community-based services;

22 “(iv) implementation of the activities
23 to strengthen and expand access to home
24 and community-based services and the di-
25 rect care workforce that provides such

services in accordance with the requirements of subparagraphs (B) and (C) of paragraph (2);

“(v) if applicable, implementation of the activities described in paragraph (3); and

“(vi) the progress made with respect to meeting the benchmarks for demonstrating improvements required in paragraph (5).

“(5) BENCHMARKS FOR DEMONSTRATING IMPROVEMENTS.—An HCBS program improvement State shall cease to be eligible for an increase in the Federal medical assistance percentage under paragraph (1)(A)(i) or (1)(B) or an increase in an applicable Federal matching percentage under paragraph (1)(A)(ii) beginning with the 29th fiscal year quarter that begins on or after the first date on which a State is an HCBS program improvement State, unless, not later than 90 days before the first day of such fiscal year quarter, the State submits to the Secretary a report demonstrating the following improvements:

“(A) Increased availability of home and community-based services in the State relative

1 to such availability as reported in the State
2 HCBS infrastructure improvement plan and ad-
3 justed for demographic changes in the State
4 since the submission of such plan.

5 “(B) Increased utilization and availability
6 of home and community-based services by popu-
7 lations with the lowest utilization and avail-
8 ability of such services (as reported in the State
9 HCBS infrastructure improvement plan) rel-
10 ative to the utilization of such services by such
11 populations as reported in such plan and ad-
12 justed for demographic changes in the State
13 since the submission of such plan.

14 “(C) Evidence that a majority of direct
15 care workers receive competitive wages and ben-
16 efits.

17 “(D) With respect to the percentage of ex-
18 penditures made by the State for long-term
19 services and supports that are for home and
20 community-based services, in the case of an
21 HCBS program improvement State for which
22 such percentage (as reported in the State
23 HCBS infrastructure improvement plan) was—

24 “(i) less than 50 percent, the State
25 demonstrates that the percentage of such

1 expenditures has increased to at least 50
 2 percent since the plan was approved; and
 3 “(ii) at least 50 percent, the State
 4 demonstrates that such percentage has not
 5 decreased since the plan was approved.

6 “(6) DEFINITIONS.—In this subsection, the
 7 terms ‘direct care worker’, ‘direct care workforce’,
 8 ‘HCBS program improvement State’, and ‘home and
 9 community-based services’ have the meanings given
 10 those terms in section 2 of the Better Care Better
 11 Jobs Act.”.

12 **SEC. 103. REPORTS; TECHNICAL ASSISTANCE; OTHER AD-**
 13 **MINISTRATIVE REQUIREMENTS.**

14 (a) REPORTS.—The Secretary shall submit to the ap-
 15 propriate committees of Congress the following reports re-
 16 lating to the HCBS Infrastructure Improvement Program
 17 established under this title:

18 (1) INITIAL REPORT.—Not later than 4 years
 19 after the date of enactment of this Act, a report that
 20 includes the following:

21 (A) A description of the HCBS infrastruc-
 22 ture improvement plans approved by the Sec-
 23 retary under section 101(d).

24 (B) A description of the national landscape
 25 with respect to gaps in coverage of home and

community-based services, disparities in access to, and utilization of, such services, and barriers to accessing such services.

(C) A description of the national landscape with respect to the direct care workforce that provides home and community-based services, including with respect to compensation, benefits, and challenges to the availability of such workers.

(2) SUBSEQUENT REPORTS.—Not later than 7 years after the date of enactment of this Act, and every 3 years thereafter, a report that includes the following:

(A) The number of HCBS program improvement States.

(B) A summary of the progress being made by such States with respect to strengthening and expanding access to home and community-based services and the direct care workforce that provides such services and meeting the benchmarks for demonstrating improvements required under section 1905(jj)(5) of the Social Security Act (as added by section 102).

(C) A summary of outcomes related to home and community-based services core qual-

1 ity measures and beneficiary and family care-
2 giver surveys.

3 (D) A summary of the challenges and best
4 practices reported by States in expanding ac-
5 cess to home and community-based services and
6 supporting and expanding the direct care work-
7 force that provides such services.

8 (b) TECHNICAL ASSISTANCE; GUIDANCE; REGULA-
9 TIONS.—The Secretary shall provide HCBS program im-
10 provement States with technical assistance related to car-
11 rying out the HCBS infrastructure improvement plans ap-
12 proved by the Secretary under section 101(d) and meeting
13 the requirements and benchmarks for demonstrating im-
14 provements required under section 1905(jj) of the Social
15 Security Act (as added by section 102) and shall issue
16 such guidance or regulations as necessary to carry out this
17 title and the amendments made by this title, including
18 guidance specifying how States shall assess and track the
19 availability of home and community-based services over
20 time.

21 (c) RECOMMENDATIONS TO GUIDE INFRASTRUC-
22 TURE IMPROVEMENT.—

23 (1) IN GENERAL.—Not later than 18 months
24 after the date of enactment of this Act, the Sec-
25 retary shall coordinate with the Secretary of Labor

1 and the Administrator of the Centers for Medicare
2 & Medicaid Services for purposes of issuing rec-
3 ommendations for the Federal Government and for
4 States to strengthen the direct care workforce that
5 provides home and community-based services, in-
6 cluding with respect to how the Federal Government
7 should classify the direct care workforce, how such
8 Administrator and State Medicaid programs can en-
9 force and support the provision of competitive wages
10 and benefits across the direct care workforce, includ-
11 ing for workers with particular skills or expertise,
12 and how State Medicaid programs can support
13 training opportunities and other related efforts that
14 support the provision of quality home and commu-
15 nity-based services care.

16 (2) STAKEHOLDER CONSULTATION.—In devel-
17 oping the recommendations required under para-
18 graph (1), the Secretary shall ensure that such rec-
19 ommendations are informed by consultation with re-
20 cipients of home and community-based services, fam-
21 ily caregivers of such recipients, providers, health
22 plans, direct care workers, chosen representatives of
23 direct care workers, and aging, disability, and work-
24 force advocates.

1 (d) FUNDING.—Out of any funds in the Treasury not
 2 otherwise appropriated, there is appropriated to the Sec-
 3 retary for purposes of carrying out this section,
 4 \$10,000,000 for fiscal year 2022, to remain available until
 5 expended.

6 **SEC. 104. QUALITY MEASUREMENT AND IMPROVEMENT.**

7 (a) DEVELOPMENT AND PUBLICATION OF CORE AND
 8 SUPPLEMENTAL SETS OF HCBS QUALITY MEASURES.—

9 (1) IN GENERAL.—Not later than 2 years after
 10 the date of enactment of this Act, the Secretary
 11 shall identify and publish for general comment a rec-
 12 ommended core set and supplemental set of home
 13 and community-based services quality measures for
 14 use by State Medicaid programs, health plan and
 15 managed care entities that enter into contracts with
 16 such programs, and providers of items and services
 17 under such programs.

18 (2) REGULAR REVIEWS AND UPDATES.—The
 19 Secretary shall review and update the recommended
 20 core set and supplemental set of home and commu-
 21 nity-based services quality measures published under
 22 paragraph (1) not less frequently than once every
 23 year.

24 (3) REQUIREMENTS.—

1 (A) INTERAGENCY COLLABORATION;
2 STAKEHOLDER INPUT.—In developing the rec-
3 ommended core set and supplemental set of
4 home and community-based services quality
5 measures under paragraph (1), and subse-
6 quently reviewing and updating such core and
7 supplemental sets, the Secretary shall—

8 (i) collaborate with the Administrator
9 of the Centers for Medicare & Medicaid
10 Services, the Administrator of the Admin-
11 istration for Community Living, the Direc-
12 tor of the Agency for Healthcare Research
13 and Quality, and the Administrator of the
14 Substance Abuse and Mental Health Serv-
15 ices Administration; and

16 (ii) ensure that such core and supple-
17 mental sets are informed by input from
18 stakeholders, including recipients of home
19 and community-based services, family care-
20 givers of such recipients, providers, health
21 plans, direct care workers, chosen rep-
22 resentatives of direct care workers, and
23 aging, disability, and workforce advocates.

24 (B) REFLECTIVE OF FULL ARRAY OF
25 SERVICES.—Such recommended core set and

1 supplemental set of home and community-based
2 services quality measures shall—

3 (i) reflect the full array of home and
4 community-based services and recipients of
5 such services, including adults and chil-
6 dren; and

7 (ii) include—

8 (I) outcomes-based measures;

9 (II) measures of availability of
10 services;

11 (III) measures of provider capac-
12 ity and availability;

13 (IV) measures related to person-
14 centered care;

15 (V) measures specific to self-di-
16 rected care;

17 (VI) measures related to transi-
18 tions to and from institutional care;

19 and

20 (VII) beneficiary and family care-
21 giver surveys.

22 (C) DEMOGRAPHICS.—Such recommended
23 core set and supplemental set of home and com-
24 munity-based services quality measures shall
25 allow for the collection of data that is disaggre-

gated by disability status, age, income, gender, race, ethnicity, geography, primary language, sexual orientation, gender identity, and type of service setting.

(4) FUNDING.—Out of any funds in the Treasury not otherwise appropriated, there is appropriated to the Secretary for purposes of carrying out this subsection, \$5,000,000 for fiscal year 2022, to remain available until expended.

(b) STATE ADOPTION AND REPORTS.—

(1) IN GENERAL.—Not later than 2 years after the date on which the Secretary publishes the recommended core set and supplemental set of home and community-based services quality measures under subsection (a)(1), and annually thereafter, each State Medicaid program shall use such core and supplemental sets (or an alternative set of quality measures approved by the Secretary) to report information to the Secretary regarding the quality of home and community-based services provided under such program.

(2) PROCESS.—The information required under paragraph (1) shall be reported using a standardized format and procedures established by the Secretary. Such procedures shall allow a State Medicaid pro-

1 gram to report such information separately or as
 2 part of the annual reports required under sections
 3 1139A(c) and 1139B(d) of the Social Security Act
 4 (42 U.S.C. 1320b–9a, 1320b–9b).

5 (3) PUBLICATION OF QUALITY MEASURES.—
 6 Each State Medicaid program shall periodically
 7 make the information reported to the Secretary
 8 under paragraph (1) available to the public.

9 (4) INCREASED FEDERAL MATCHING RATE FOR
 10 ADOPTION AND REPORTING.—Section 1903(a)(3) of
 11 the Social Security Act (42 U.S.C. 1396b(a)(3)) is
 12 amended—

13 (A) in subparagraph (F)(ii), by striking
 14 “plus” after the semicolon and inserting “and”;
 15 and

16 (B) by inserting after subparagraph (F),
 17 the following:

18 “(G) 80 percent of so much of the sums
 19 expended during such quarter as are attrib-
 20 utable to the reporting of information regarding
 21 the quality of home and community-based serv-
 22 ices in accordance with section 104(b) of the
 23 Better Care Better Jobs Act; and”.

1 **TITLE II—OTHER PROVISIONS**

2 **SEC. 201. MACPAC STUDY AND REPORT ON APPENDIX K** 3 **EMERGENCY HOME AND COMMUNITY-BASED** 4 **SERVICES (HCBS) 1915(C) WAIVERS.**

5 (a) IN GENERAL.—The Medicaid and CHIP Payment
 6 and Access Commission (referred to in this section as
 7 “MACPAC”) shall conduct a study and submit to Con-
 8 gress a report on the accelerated changes and emergency
 9 amendments to home and community-based services waiv-
 10 ers under section 1915(c) of the Social Security Act (42
 11 U.S.C. 1396n(c)) approved for States during the COVID–
 12 19 pandemic using the Appendix K template issued by the
 13 Centers for Medicare & Medicaid Services on March 22,
 14 2020.

15 (b) REPORT.—The report submitted under subsection
 16 (a) shall—

17 (1) describe the specific types of flexibilities or
 18 other program changes adopted by States using the
 19 Appendix K template;

20 (2) evaluate the efficiency, management, and
 21 success and failures of such flexibilities and program
 22 changes; and

23 (3) include recommendations for legislative and
 24 administrative actions to continue specific flexibili-
 25 ties, program changes, and innovative service deliv-

1 ery models that increase access to care in home and
 2 community settings.

3 **SEC. 202. MAKING PERMANENT THE STATE OPTION TO EX-**
 4 **TEND PROTECTION UNDER MEDICAID FOR**
 5 **RECIPIENTS OF HOME AND COMMUNITY-**
 6 **BASED SERVICES AGAINST SPOUSAL IMPOV-**
 7 **ERISHMENT.**

8 (a) IN GENERAL.—Section 1924(h)(1)(A) of the So-
 9 cial Security Act (42 U.S.C. 1396r–5(h)(1)(A)) is amend-
 10 ed by striking “is described in section
 11 1902(a)(10)(A)(ii)(VI)” and inserting the following: “is
 12 eligible for medical assistance for home and community-
 13 based services provided under subsection (c), (d), or (i)
 14 of section 1915, under a waiver approved under section
 15 1115, or who is eligible for such medical assistance by rea-
 16 son of being determined eligible under section
 17 1902(a)(10)(C) or by reason of section 1902(f) or other-
 18 wise on the basis of a reduction of income based on costs
 19 incurred for medical or other remedial care, or who is eligi-
 20 ble for medical assistance for home and community-based
 21 attendant services and supports under section 1915(k)”.

22 (b) CONFORMING AMENDMENT.—Section 2404 of the
 23 Patient Protection and Affordable Care Act (42 U.S.C.
 24 1396r–5 note) is amended by striking “September 30,

1 2023” and inserting “the date of enactment of the Better
2 Care Better Jobs Act”.

3 **SEC. 203. PERMANENT EXTENSION OF MONEY FOLLOWS**
4 **THE PERSON REBALANCING DEMONSTRATION.**
5

6 (a) IN GENERAL.—Subsection (h) of section 6071 of
7 the Deficit Reduction Act of 2005 (42 U.S.C. 1396a note)
8 is amended—

9 (1) in paragraph (1)—

10 (A) in subparagraph (I), by inserting
11 “and” after the semicolon;

12 (B) by amending subparagraph (J) to read
13 as follows:

14 “(G) \$450,000,000 for each fiscal year
15 after fiscal year 2021.”; and

16 (C) by striking subparagraph (K); and

17 (2) in paragraph (2), by striking “September
18 30, 2023” and inserting “September 30 of such fis-
19 cal year”.

20 (b) REDISTRIBUTION OF UNEXPENDED GRANT
21 AWARDS.—Subsection (e)(2) of section 6071 of the Deficit
22 Reduction Act of 2005 (42 U.S.C. 1396a note) is amended
23 by adding at the end the following new sentence: “Any
24 portion of a State grant award for a fiscal year under this
25 section that is unexpended by the State at the end of the

1 fourth succeeding fiscal year shall be rescinded by the Sec-
2 retary and added to the appropriation for the fifth suc-
3 ceeding fiscal year.”.

○