

117TH CONGRESS
2D SESSION

S. 4747

To amend title XIX of the Social Security Act to expand the availability of mental, emotional, and behavioral health services under the Medicaid program, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 2, 2022

Mr. PORTMAN (for himself and Mr. CASEY) 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 the availability of mental, emotional, and behavioral health services under the Medicaid program, 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 “Investing in Kids’
5 Mental Health Now Act of 2022”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents for this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

Sec. 3. Payment rate increase for pediatric behavioral health services.

Sec. 4. Guidance to States on supporting mental, emotional, and behavioral health services, and on the availability of telehealth under Medicaid.

Sec. 5. Ensuring children receive timely access to care.

1 **SEC. 3. PAYMENT RATE INCREASE FOR PEDIATRIC BEHAV-**
 2 **IORAL HEALTH SERVICES.**

3 (a) PAYMENT RATE INCREASE FOR PEDIATRIC BE-
 4 HAVIORAL HEALTH SERVICES.—Section 1902 of the So-
 5 cial Security Act (42 U.S.C. 1396a) is amended—

6 (1) in subsection (a)(13)—

7 (A) in subparagraph (B), by striking
 8 “and” at the end;

9 (B) in subparagraph (C), by adding “and”
 10 at the end; and

11 (C) by adding at the end the following new
 12 subparagraph:

13 “(D) that, for a 1-year period that begins
 14 not later than 6 months after the date of enact-
 15 ment of this subparagraph, the State shall pay
 16 for pediatric mental, emotional, and behavioral
 17 health services (as defined in subsection (tt))
 18 furnished during such period at a rate that is
 19 at least 1 percent, and not more than 9 per-
 20 cent, higher than the rate that was applicable
 21 to such services under the State plan as of the
 22 day before the date that is 6 months before the
 23 date of enactment of this subparagraph;”;

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

3 “(tt) PEDIATRIC MENTAL, EMOTIONAL, AND BEHAV-
4 IORAL HEALTH SERVICES DEFINED.—For purposes of
5 subsection (a)(13)(D), the term ‘pediatric mental, emo-
6 tional, and behavioral health services’ means at least 10
7 of the following services furnished by a health care pro-
8 vider, including hospitals, physicians, and other providers
9 determined by the Secretary, for the purposes of screening
10 for, identifying, diagnosing, or treating a mental, emo-
11 tional, or behavioral health condition, whether furnished
12 in-person or via telehealth:

13 “(1) Mental health and substance use disorder
14 screenings.

15 “(2) Mental health development assessments.

16 “(3) Mental health behavior assessments and
17 interventions.

18 “(4) Psychological and neuropsychological test-
19 ing and assessment.

20 “(5) Mental health primary prevention services.

21 “(6) Mental health and substance use disorder
22 case management services.

23 “(7) School-based mental health and substance
24 use disorder prevention, identification, and treat-
25 ment services.

- 1 “(8) Child and adolescent psychiatry and psy-
- 2 chology services.
- 3 “(9) Partial hospitalization services.
- 4 “(10) Day program services.
- 5 “(11) Intensive outpatient services.
- 6 “(12) Eating disorder treatment services.
- 7 “(13) Outpatient services.
- 8 “(14) Crisis residential services.
- 9 “(15) Crisis intervention and stabilization.
- 10 “(16) Inpatient psychiatric and psychological
- 11 services.
- 12 “(17) Individual therapy.
- 13 “(18) Family therapy.
- 14 “(19) Group therapy services.
- 15 “(20) Intensive in-home services.
- 16 “(21) Peer support services.
- 17 “(22) Provider-to-provider consultation services
- 18 involving primary care practitioners and mental
- 19 health care specialists, including child and adoles-
- 20 cent specialists.
- 21 “(23) Substance use disorder screening, includ-
- 22 ing SBIRT, and treatment.
- 23 “(24) Medication management.

1 “(25) Any other pediatric mental, emotional, or
 2 behavioral health service determined appropriate by
 3 the Secretary.”.

4 (b) UNDER MEDICAID MANAGED CARE PLANS.—
 5 Section 1932(f) of such Act (42 U.S.C. 1396u–2(f)) is
 6 amended—

7 (1) in the header, by inserting “AND PEDIATRIC
 8 MENTAL, EMOTIONAL, AND BEHAVIORAL HEALTH”
 9 before “SERVICES”;

10 (2) by inserting “and pediatric mental, emo-
 11 tional, and behavioral health services described in
 12 section 1902(a)(13)(D)” after “section
 13 1902(a)(13)(C)”; and

14 (3) by striking “such section” and inserting
 15 “section 1902(a)(13)”.

16 (c) INCREASE IN PAYMENT USING INCREASED
 17 FMAP.—Section 1905 of the Social Security Act (42
 18 U.S.C. 1396d) is amended by adding at the end the fol-
 19 lowing new subsection:

20 “(jj) INCREASED FMAP FOR ADDITIONAL EXPENDI-
 21 TURES FOR PEDIATRIC MENTAL, EMOTIONAL, AND BE-
 22 HAVIORAL HEALTH SERVICES.—Notwithstanding sub-
 23 section (b), with respect to the portion of the amounts ex-
 24 pended for medical assistance for services described in sec-
 25 tion 1902(a)(13)(D) that is furnished during the 1-year

1 period described in such section and that is attributable
 2 to the increase to the payment rate applicable to such
 3 services required under such section (or, by application,
 4 section 1932(f)), the Federal medical assistance percent-
 5 age for a State that is one of the 50 States or the District
 6 of Columbia shall be equal to 100 percent. The preceding
 7 sentence does not prohibit the payment of Federal finan-
 8 cial participation based on the Federal medical assistance
 9 percentage for amounts in excess of those specified in such
 10 sentence.”.

11 **SEC. 4. GUIDANCE TO STATES ON SUPPORTING MENTAL,**
 12 **EMOTIONAL, AND BEHAVIORAL HEALTH**
 13 **SERVICES, AND ON THE AVAILABILITY OF**
 14 **TELEHEALTH UNDER MEDICAID.**

15 (a) MENTAL, EMOTIONAL, AND BEHAVIORAL
 16 HEALTH SERVICES.—Not later than 180 days after date
 17 of enactment of this Act, the Secretary of Health and
 18 Human Services shall issue guidance to States on how to
 19 expand the provision of mental, emotional, and behavioral
 20 health services covered by State plans (or waivers of such
 21 plans) under title XIX of the Social Security Act (42
 22 U.S.C. 1396 et seq.), including a description of best prac-
 23 tices for effective programs, service provision for under-
 24 served communities, meeting the needs of children with

1 medical complexities, and recruitment and retention of
2 providers.

3 (b) MENTAL, EMOTIONAL, AND BEHAVIORAL TELE-
4 HEALTH SERVICES.—Not later than 1 year after date of
5 enactment of this Act, the Secretary of Health and
6 Human Services shall issue guidance to States on best
7 practices to sustain and enhance the availability of mental,
8 emotional, and behavioral telehealth services covered by
9 State plans (or waivers of such plans) under title XIX of
10 the Social Security Act (42 U.S.C. 1396 et seq.), including
11 expanding the originating site requirement, delivering
12 audio-only mental, emotional, and behavioral telehealth
13 services, and streamlining provider licensing,
14 credentialing, and enrollment protocols with respect to
15 telehealth services furnished across State lines.

16 **SEC. 5. ENSURING CHILDREN RECEIVE TIMELY ACCESS TO**
17 **CARE.**

18 (a) GUIDANCE TO STATES ON FLEXIBILITIES TO EN-
19 SURE PROVIDER CAPACITY TO PROVIDE PEDIATRIC MEN-
20 TAL, EMOTIONAL, AND BEHAVIORAL CRISIS CARE.—Not
21 later than 60 days after the date of enactment of this Act,
22 the Secretary of Health and Human Services shall provide
23 guidance to States on best practices to support children
24 in crisis or in need of intensive mental, emotional, or be-
25 havioral health services by using flexibilities for hospitals

1 and other providers under applicable laws, regulations,
 2 and guidance, including a description of how States are
 3 leveraging existing flexibilities to deliver crisis care.

4 (b) MANDATED REPORT TO CONGRESS REGARDING
 5 BARRIERS TO REPURPOSING OF BEDS, SPACE, AND
 6 STAFF TO ADDRESS PEDIATRIC BEHAVIORAL HEALTH
 7 NEEDS.—

8 (1) IN GENERAL.—Not later than 120 days
 9 after the date of enactment of this Act, the Sec-
 10 retary of Health and Human Services shall submit
 11 to the Congress a report with respect to regulatory,
 12 legal, and other barriers to care across the crisis
 13 continuum, including intermediate level care, such as
 14 intensive outpatient care or partial hospitalization,
 15 that identifies solutions to facilitate flexibility for
 16 children’s hospitals and other providers of mental,
 17 emotional, or behavioral health services.

18 (2) REQUIREMENTS.—In preparing a report
 19 under this subsection, the Secretary of Health and
 20 Human Services shall include in such report—

21 (A) a comprehensive list of laws, regula-
 22 tions, and guidance impacting children’s hos-
 23 pitals’ and other providers’ ability to repurpose
 24 immediately beds, space, and staff for children
 25 in need of mental, emotional, or behavioral

1 health services, including a description of the
2 rationale for each policy and corresponding ac-
3 tions required to repurpose such beds, space,
4 and staff; and

5 (B) recommendations on how children's
6 hospitals and other providers can immediately
7 expand access to mental, emotional, and behav-
8 ioral health services, such as intensive out-
9 patient care, partial hospitalization, and resi-
10 dential care, while also ensuring high quality
11 and safety.

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