

118TH CONGRESS
1ST SESSION

S. _____

To provide for an emergency increase in Federal funding to State Medicaid programs for expenditures on home and community-based services.

IN THE SENATE OF THE UNITED STATES

Mr. CASEY introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To provide for an emergency increase in Federal funding to State Medicaid programs for expenditures on home and community-based services.

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 “HCBS Relief Act of
5 2023”.

6 **SEC. 2. ADDITIONAL SUPPORT FOR MEDICAID HOME AND**
7 **COMMUNITY-BASED SERVICES.**

8 (a) INCREASED FMAP.—

9 (1) IN GENERAL.—Notwithstanding section
10 1905(b) of the Social Security Act (42 U.S.C.

1 1396d(b)), in the case of an HCBS program State,
2 the Federal medical assistance percentage deter-
3 mined for the State under section 1905(b) of such
4 Act and, if applicable, increased under subsection
5 (y), (z), or (aa) of section 1905 of such Act (42
6 U.S.C. 1396d), or section 1915(k) of such Act (42
7 U.S.C. 1396n(k)), shall be increased by 10 percent-
8 age points with respect to expenditures of the State
9 under the State Medicaid program for home and
10 community-based services that are provided during
11 fiscal years 2024 and 2025. In no case may the ap-
12 plication of the previous sentence result in the Fed-
13 eral medical assistance percentage determined for a
14 State being more than 95 percent.

15 (2) DEFINITIONS.—In this section:

16 (A) HCBS PROGRAM STATE.—The term
17 “HCBS program State” means a State that
18 meets the condition described in subsection (b)
19 by submitting an application described in such
20 subsection, which is approved by the Secretary
21 pursuant to subsection (c).

22 (B) HOME AND COMMUNITY-BASED SERV-
23 ICES.—The term “home and community-based
24 services” means home health care services au-
25 thorized under paragraph (7) of section 1905(a)

1 of the Social Security Act (42 U.S.C.
2 1396d(a)), behavioral health services authorized
3 under paragraph (13) of such section, personal
4 care services authorized under paragraph (24)
5 of such section, PACE services authorized
6 under paragraph (26) of such section, services
7 authorized under subsections (b), (c), (i), (j),
8 and (k) of section 1915 of such Act (42 U.S.C.
9 1396n), such services authorized under a waiver
10 under section 1115 of such Act (42 U.S.C.
11 1315), and such other services specified by the
12 Secretary.

13 (b) CONDITION.—The condition described in this sub-
14 section, with respect to a State, is that the State submits
15 an application to the Secretary, at such time and in such
16 manner as specified by the Secretary, that includes, in ad-
17 dition to such other information as the Secretary shall re-
18 quire—

19 (1) a description of which activities described in
20 subsection (d) that a State plans to implement and
21 a description of how it plans to implement such ac-
22 tivities;

23 (2) assurances that all Federal funds attrib-
24 utable to the increase under subsection (a) will be—

1 (A) expended by the State in accordance
2 with this section not later than September 30,
3 2027; and

4 (B) used—

5 (i) to implement the activities de-
6 scribed in subsection (d);

7 (ii) to supplement, and not supplant,
8 the level of State funds expended for home
9 and community-based services for eligible
10 individuals through programs in effect as
11 of the date of the enactment of this sec-
12 tion; and

13 ~~[(iii) to increase reimbursement rates~~
14 ~~for home and community-based services to~~
15 ~~a level that will support recruitment and~~
16 ~~retention of a workforce to provide home~~
17 ~~and community-based services to eligible~~
18 ~~individuals; and]~~

19 (3) assurances that the State will conduct ade-
20 quate oversight and ensure the validity of such data
21 as may be required by the Secretary.

22 (c) APPROVAL OF APPLICATION.—Not later than 90
23 days after the date of submission of an application of a
24 State under subsection (b), the Secretary shall certify if
25 the application is complete. Upon certification that an ap-

1 plication of a State is complete, the application shall be
2 deemed to be approved for purposes of this section.

3 (d) ACTIVITIES TO IMPROVE THE DELIVERY OF
4 HCBS.—

5 (1) IN GENERAL.—A State shall work with
6 community partners, such as Area Agencies on
7 Aging, Centers for Independent Living, non-profit
8 home and community-based services providers, and
9 other entities providing home and community-based
10 services, to implement the purposes described in
11 paragraph (2).

12 (2) FOCUSED AREAS OF HCBS IMPROVE-
13 MENT.—The purposes described in this paragraph,
14 with respect to a State, are the following:

15 (A) To increase rates for home health
16 agencies and agencies that employ direct sup-
17 port professionals (including independent pro-
18 viders in a self-directed or consumer-directed
19 model) to provide home and community-based
20 services under the State Medicaid program,
21 provided that any agency or individual that re-
22 ceives payment under such an increased rate in-
23 creases the compensation it pays its home
24 health workers or direct support professionals.

1 (B) To provide paid sick leave, paid family
2 leave, and paid medical leave for home health
3 workers and direct support professionals.

4 (C) To provide hazard pay, overtime pay,
5 and shift differential pay for home health work-
6 ers and direct support professionals.

7 (D) To improve stability of home health
8 worker and direct support professional jobs, in-
9 cluding consistent hours, scheduling, pay, and
10 benefit eligibility.

11 (E) To provide home and community-based
12 services to eligible individuals who are on wait-
13 ing lists for programs approved under sections
14 1115 or 1915 of the Social Security Act (42
15 U.S.C. 1315, 1396n).

16 (F) To expand home and community-based
17 services to facilitate reducing the census of
18 nursing facilities, intermediate care facilities,
19 psychiatric facilities, and other institutional or
20 congregate settings so that safety measures can
21 be effectively implemented within these settings.

22 (G) To purchase emergency supplies and
23 equipment, which may include items not typi-
24 cally covered under the Medicaid program, such
25 as personal protective equipment, necessary to

1 enhance access to services and to protect the
2 health and well-being of home health workers
3 and direct support professionals.

4 (H) To pay for the travel of home health
5 workers and direct support professionals to con-
6 duct home and community-based services.

7 (I) To recruit new home health workers
8 and direct support professionals.

9 (J) To support family care providers of eli-
10 gible individuals with needed supplies and
11 equipment, which may include items not typi-
12 cally covered under the Medicaid program, such
13 as personal protective equipment, and pay.

14 (K) To pay for training for home health
15 workers and direct support professionals.

16 (L) To pay for assistive technologies, staff-
17 ing, and other costs incurred in order to facili-
18 tate community integration and ensure an indi-
19 vidual's person-centered service plan continues
20 to be fully implemented.

21 (M) To prepare information and public
22 health and educational materials in accessible
23 formats (including formats accessible to people
24 with low literacy or intellectual disabilities)
25 about prevention, treatment, recovery and other

1 aspects of communicable diseases and threats to
2 the health of eligible individuals, their families,
3 and the general community served by agencies
4 described in subparagraph (A).

5 (N) To protect the health and safety of
6 home health workers and direct support profes-
7 sionals during public health emergencies and
8 natural disasters.

9 (O) To pay for interpreters to assist in
10 providing home and community-based services
11 to eligible individuals and to inform the general
12 public about communicable diseases and other
13 public health threats.

14 (P) To allow day services providers to pro-
15 vide home and community-based services.

16 (Q) To pay for other expenses deemed ap-
17 propriate by the Secretary to enhance, expand,
18 or strengthen Home and Community-Based
19 Services, including retainer payments, and ex-
20 penses which meet the criteria of the home and
21 community-based settings rule published on
22 January 16, 2014.

23 (R) To assist eligible individuals who had
24 to relocate to a nursing facility or institutional
25 setting from their homes in—

1 (i) moving back to their homes (in-
2 cluding by paying for moving costs, first
3 month's rent, and other one-time expenses
4 and start-up costs);

5 (ii) resuming home and community-
6 based services;

7 (iii) receiving mental health services
8 and necessary rehabilitative service to re-
9 gain skills lost while relocated; and

10 (iv) while funds attributable to the in-
11 creased FMAP under this section remain
12 available, continuing home and community-
13 based services for eligible individuals who
14 were served from a waiting list for such
15 services during the emergency period de-
16 scribed in section 1135(g)(1)(B) of the So-
17 cial Security Act (42 U.S.C. 1320b-
18 5(g)(1)(B)).

19 (e) REPORTING REQUIREMENTS.—

20 (1) STATE REPORTING REQUIREMENTS.—Not
21 later than December 31, 2027, any State with re-
22 spect to which an application is approved by the Sec-
23 retary pursuant to subsection (c) shall submit a re-
24 port to the Secretary that contains the following in-
25 formation:

1 (A) Activities and programs that were
2 funded using Federal funds attributable to such
3 increase.

4 (B) The number of eligible individuals who
5 were served by such activities and programs.

6 (C) The number of eligible individuals who
7 were able to resume home and community-
8 based services as a result of such activities and
9 programs.

10 (2) HHS EVALUATION.—

11 (A) IN GENERAL.—The Secretary shall
12 evaluate the implementation and outcomes of
13 this section in the aggregate using an external
14 evaluator with experience evaluating home and
15 community-based services, disability programs,
16 and older adult programs.

17 (B) EVALUATION CRITERIA.—For pur-
18 poses of subparagraph (A), the external eval-
19 uator shall—

20 (i) document and evaluate changes in
21 access, availability, and quality of home
22 and community-based services in each
23 HCBS program State;

24 (ii) document and evaluate aggregate
25 changes in access, availability, and quality

1 of home and community-based services
2 across all such States;

3 (iii) evaluate the implementation and
4 outcomes of this section based on—

5 (I) the impact of this section on
6 increasing funding for home and com-
7 munity-based services;

8 (II) the impact of this section on
9 achieving targeted access, availability,
10 and quality of home and community-
11 based services; and

12 (III) promising practices identi-
13 fied by activities conducted pursuant
14 to subsection (d) that increase access
15 to, availability of, and quality of home
16 and community-based services; and

17 **[(iv) compare the outcomes of the im-**
18 **plementation of, and funding provided**
19 **under, this section with the outcomes of**
20 **the implementation of, and funding pro-**
21 **vided under, section 9817 of the American**
22 **Rescue Plan Act of 2021 (42 U.S.C.**
23 **1396d note).]**

24 (C) DISSEMINATION OF EVALUATION FIND-
25 INGS.—The Secretary shall—

1 (i) disseminate the findings from the
2 evaluations conducted under this para-
3 graph to—

4 (I) all State Medicaid directors;
5 and

6 (II) the Committee on Energy
7 and Commerce of the House of Rep-
8 resentatives, the Committee on Fi-
9 nance of the Senate, and the Special
10 Committee on Aging of the Senate;
11 and

12 (ii) make all evaluation findings pub-
13 licly available in an accessible electronic
14 format and any other accessible format de-
15 termined appropriate by the Secretary.

16 (D) OVERSIGHT.—Each State with respect
17 to which an application is approved by the Sec-
18 retary pursuant to subsection (c) shall ensure
19 adequate oversight of the expenditure of Fed-
20 eral funds pursuant to such increase in accord-
21 ance with the Medicaid regulations, including
22 section 1115 and 1915 waiver regulations and
23 special terms and conditions for any relevant
24 waiver or grant program.

1 (3) NON-APPLICATION OF THE PAPERWORK RE-
2 DUCTION ACT.—Chapter 35 of title 44, United
3 States Code (commonly referred to as the “Paper-
4 work Reduction Act of 1995”), shall not apply to the
5 provisions of this subsection.

6 (f) ADDITIONAL DEFINITIONS.—In this section:

7 (1) ELIGIBLE INDIVIDUAL.—The term “eligible
8 individual” means an individual who is eligible for or
9 enrolled for medical assistance under a State Med-
10 icaid program.

11 (2) MEDICAID PROGRAM.—The term “Medicaid
12 program” means, with respect to a State, the State
13 program under title XIX of the Social Security Act
14 (42 U.S.C. 1396 et seq.) (including any waiver or
15 demonstration under such title or under section
16 1115 of such Act (42 U.S.C. 1315) relating to such
17 title).

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

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