

118TH CONGRESS
1ST SESSION

H. R. 5804

To authorize the Secretary of Health and Human Services to make loans and loan guarantees for planning, constructing, or renovating pediatric or adult mental health treatment facilities and pediatric or adult substance use disorder treatment facilities, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 28, 2023

Mr. KILMER (for himself and Mr. BACON) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To authorize the Secretary of Health and Human Services to make loans and loan guarantees for planning, constructing, or renovating pediatric or adult mental health treatment facilities and pediatric or adult substance use disorder treatment facilities, 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 “Mental Health Infra-
5 structure Improvement Act of 2023”.

1 **SEC. 2. LOANS AND LOAN GUARANTEES.**

2 Part P of title III of the Public Health Service Act
3 is amended by inserting after section 399V–7 of such Act
4 (42 U.S.C. 280g–17) the following:

5 **“SEC. 399V–8. LOANS AND LOAN GUARANTEES FOR PLAN-**
6 **NING, CONSTRUCTING, OR RENOVATING ELI-**
7 **GIBLE FACILITIES FOR PEDIATRIC OR ADULT**
8 **MENTAL HEALTH AND SUBSTANCE USE DIS-**
9 **ORDER SERVICES.**

10 “(a) IN GENERAL.—The Secretary may—

11 “(1) make loans and loan guarantees to eligible
12 entities for the purpose of—

13 “(A) constructing or renovating, including
14 planning the construction or renovation of, a
15 pediatric or adult mental health treatment facil-
16 ity or a pediatric or adult substance use dis-
17 order treatment facility;

18 “(B) improving digital infrastructure, tele-
19 health capabilities, or other patient care infra-
20 structure at such a facility; or

21 “(C) adding, or converting beds to, adult
22 or pediatric psychiatric and substance use inpa-
23 tient beds at such a facility; and

24 “(2) subject to subsection (e), make loans and
25 loan guarantees for refinancing loans that were
26 made for such purpose to an eligible entity.

1 “(b) PREFERENCE.—In making loans and loan guar-
2 antees under this section, the Secretary shall give pref-
3 erence to eligible entities proposing to construct or ren-
4 ovate a pediatric or adult mental health treatment facility,
5 or a pediatric or adult substance use disorder treatment
6 facility, that will—

7 “(1) increase the number of pediatric or adult
8 psychiatric beds or pediatric or adult substance use
9 disorder beds in a county that has insufficient psy-
10 chiatric or substance use disorder treatment bed ca-
11 pacity;

12 “(2) provide mental health or substance use
13 disorder services in a high-need rural or
14 underresourced community;

15 “(3) provide multiple services across the con-
16 tinuum of mental health or substance use disorder
17 care; or

18 “(4) have the capacity to provide integrated or
19 specialized mental health and substance use disorder
20 care for complex cases or patients with medical co-
21 morbidities.

22 “(c) SET-ASIDE.—The Secretary shall allocate at
23 least 25 percent of the funds under this section for any
24 fiscal year for awards to construct or renovate facilities
25 serving primarily pediatric populations.

1 “(d) TERMS AND CONDITIONS.—Loans and loan
2 guarantees under this section shall be made on such terms
3 and conditions as the Secretary may prescribe, subject to
4 the provisions of this section including the following:

5 “(1) The Secretary may allow credit to a pro-
6 spective borrower only where—

7 “(A) it is necessary to increase the number
8 of psychiatric or substance use disorder treat-
9 ment facilities to enhance the public’s access to
10 a comprehensive continuum of mental health
11 and substance use disorder services; and

12 “(B) a credit subsidy is the most efficient
13 way to achieve such increase (on a borrower-by-
14 borrower basis).

15 “(2) The final maturity of loans made or guar-
16 anteed under this section shall not exceed a period
17 of 20 years, or the period of 50 percent of the useful
18 life of any physical asset to be financed by the loan,
19 whichever is less as determined by the Secretary.

20 “(3) The Secretary may not make a loan guar-
21 antee under this section, with respect to any bor-
22 rower, in excess of 80 percent of any potential loss
23 on the loan.

1 “(4) The Secretary may not make any loan or
2 loan guarantee under this section if the loan will be
3 subordinated—

4 “(A) to another debt contracted by the
5 borrower; or

6 “(B) to any other claims against the bor-
7 rower in the case of default.

8 “(5) The Secretary may not make any loan
9 guarantee under this section unless the Secretary
10 determines that—

11 “(A) the lender is responsible; and

12 “(B) adequate provision is made for serv-
13 icing the loan on reasonable terms and pro-
14 tecting the financial interest of the United
15 States.

16 “(6) The Secretary may not make any loan
17 guarantee under this section if the income from the
18 loan will be excluded from gross income for purposes
19 of chapter 1 of the Internal Revenue Code of 1986.

20 “(7) The Secretary may not make any loan or
21 loan guarantee under this section unless—

22 “(A) the loan and interest supplements on
23 any loan guarantee will be at an interest rate
24 that is set by reference to a benchmark interest
25 rate on marketable Treasury securities with a

1 similar maturity to the loan being made or
2 guaranteed; and

3 “(B) the minimum interest rate on the
4 loan—

5 “(i) will be no less than the estimated
6 cost to the Government of making the loan
7 plus 1 percent, with the goal of keeping
8 the interest rate below the interest rate of
9 a comparable and competitive private sec-
10 tor benchmark financial instrument; and

11 “(ii) will be adjusted, as determined
12 by the Secretary, every quarter to take ac-
13 count of changes in the interest rate of the
14 benchmark financial instrument.

15 “(8) The Secretary may not make any loan or
16 loan guarantee under this section unless—

17 “(A) fees or premiums on the loan or loan
18 guarantee and corresponding insurance cov-
19 erage will be set at levels that minimize the cost
20 to the Government (as defined in section 502(5)
21 of the Federal Credit Reform Act of 1990) of
22 insuring such loan or loan guarantee, while sup-
23 porting achievement of enhancing the public’s
24 access to a comprehensive continuum of mental
25 health and substance use disorder services, in-

1 including increasing the number of inpatient psy-
2 chiatric and substance use disorder bed counts
3 in areas with insufficient bed capacity;

4 “(B) the minimum guarantee fee or insur-
5 ance premium imposed by the Government will
6 be no less than the level sufficient to cover all
7 of the estimated costs to the Government of the
8 expected default claims, plus one percent; and

9 “(C) loan guarantee fees imposed by the
10 Government will be reviewed every six months
11 to ensure that the fees imposed on new loan
12 guarantees are at a level sufficient to satisfy
13 subparagraph (B) based on the most recent es-
14 timates of such costs.

15 “(9) The provisions of any loan guarantee
16 under this section shall state that the guarantee is
17 conclusive evidence that—

18 “(A) the guarantee has been properly ob-
19 tained;

20 “(B) the underlying loan qualified for the
21 guarantee; and

22 “(C) except in the case of fraud or mate-
23 rial misrepresentation by the holder of the loan,
24 the guarantee will be presumed to be valid,
25 legal, and enforceable.

1 “(10) The Secretary may not make any loan or
2 loan guarantee under this section unless—

3 “(A) the borrower finances at least 25 per-
4 cent of the funded project from other sources;
5 and

6 “(B) the borrower uses funds that were
7 not derived from Federal loans or loan guaran-
8 tees to pay the fees or premiums on the loan or
9 loan guarantee under this section.

10 “(11) The Secretary—

11 “(A) shall prescribe explicit standards for
12 use in periodically assessing the credit risk of
13 new and existing direct loans and guaranteed
14 loans; and

15 “(B) shall not make a loan or loan guar-
16 antee under this section unless the Secretary
17 finds that there is a reasonable assurance of re-
18 payment.

19 “(e) LIMITATION ON REFINANCING.—The authority
20 vested by subsection (a)(2)—

21 “(1) authorizes making loans and loan guaran-
22 tees only for refinancing loans that are entered into
23 on or before the date that is 24 months before the
24 date of enactment of the Mental Health Infrastruc-
25 ture Improvement Act of 2023; and

1 “(2) terminates on the date that is 24 months
2 after such date of enactment.

3 “(f) PAYMENT OF LOSSES.—

4 “(1) DEFAULT ON GUARANTEED LOANS.—If, as
5 a result of a default by a borrower under a loan
6 guaranteed under this section, after the holder
7 thereof has made such further collection efforts and
8 instituted such enforcement proceedings as the Sec-
9 retary may require, the Secretary determines that
10 the holder has suffered a loss—

11 “(A) the Secretary shall pay to such holder
12 75 percent of such loss, as specified in the
13 guarantee contract;

14 “(B) upon making any such payment, the
15 Secretary shall be subrogated to all the rights
16 of the recipient of the payment; and

17 “(C) the Secretary shall be entitled to re-
18 cover from the borrower the amount of any pay-
19 ments made pursuant to the guarantee con-
20 tract.

21 “(2) REQUIRED ENFORCE OF FEDERAL
22 RIGHTS.—The Attorney General of the United
23 States shall take such action as may be appropriate
24 to enforce any right accruing to the United States

1 as a result of the issuance of any guarantee under
2 this section.

3 “(3) FORBEARANCE.—Nothing in this section
4 precludes any forbearance for the benefit of the bor-
5 rower of a loan that is made or guaranteed under
6 this section which is agreed upon by the parties to
7 the loan and approved by the Secretary, provided
8 that budget authority for any resulting cost to the
9 Government (as defined in section 502(5) of the
10 Federal Credit Reform Act of 1990) is available.

11 “(g) DEFINITIONS.—In this section:

12 “(1) The term ‘children’s hospital’ means a
13 hospital that predominantly serves patients under
14 the age of 18.

15 “(2) The term ‘critical access hospital’ has the
16 meaning given to such term in section 1861(mm) of
17 the Social Security Act.

18 “(3) The term ‘eligible entity’ includes public,
19 private for-profit, and private not-for-profit—

20 “(A) hospitals including general acute hos-
21 pitals, psychiatric hospitals, critical access hos-
22 pitals, rural emergency hospitals, sole commu-
23 nity hospitals, children’s hospitals, and other
24 hospitals as specified by the Secretary;

1 “(B) substance use disorder treatment fa-
2 cilities;

3 “(C) mental health treatment facilities;

4 “(D) facilities that employ licensed mental
5 health and substance use disorder professionals,
6 such as child and adult psychiatrists, child and
7 adult psychologists, advanced practice nurses,
8 social workers, licensed professional counselors,
9 or other licensed professionals that provide
10 mental health or substance use disorder services
11 to pediatric or adult patients;

12 “(E) alliances of hospitals or facilities list-
13 ed in any of clauses (i), (ii), (iii), (iv), and (vi);
14 and

15 “(F) other facilities as determined by the
16 Secretary.

17 “(4) The term ‘mental health treatment facil-
18 ity’—

19 “(A) includes—

20 “(i) a child or adult outpatient facility
21 that provides—

22 “(I) intensive outpatient services;

23 “(II) partial hospitalization serv-
24 ices;

1 “(III) crisis intervention and sta-
2 bilization; or

3 “(IV) other mental, behavioral,
4 or emotional health services deemed
5 appropriate by the Secretary;

6 “(ii) a hospital (including a general
7 acute hospital, a psychiatric hospital, a
8 critical access hospital, a rural emergency
9 hospital, a sole community hospital, a chil-
10 dren’s hospital, or other type of hospital as
11 specified by the Secretary) that—

12 “(I) provides acute, short-term
13 inpatient psychiatric treatment serv-
14 ices or outpatient services; and

15 “(II) may include a military serv-
16 ices program to meet the needs of ac-
17 tive and retired military
18 servicemembers; and

19 “(iii) a facility within or near an
20 emergency department for providing dis-
21 charge planning and instructions to emer-
22 gency department patients in need of men-
23 tal health or substance use disorder treat-
24 ment and transfer to an appropriate men-

1 tal health or substance use disorder treat-
2 ment care setting; and

3 “(B) excludes a facility that provide long-
4 term inpatient care.

5 “(5) The term ‘substance use disorder treat-
6 ment facility’—

7 “(A) includes—

8 “(i) a child or adult outpatient facility
9 that provides outpatient substance use dis-
10 order services; and

11 “(ii) a hospital (including a general
12 acute hospital, a psychiatric hospital, a
13 critical access hospital, a rural emergency
14 hospital, a sole community hospital, a chil-
15 dren’s hospital, or other type of hospital as
16 specified by the Secretary) that—

17 “(I) provides acute, short-term
18 inpatient substance use disorder treat-
19 ment services or outpatient services;
20 and

21 “(II) may include a military serv-
22 ices program to meet the needs of ac-
23 tive and retired military
24 servicemembers; and

1 “(B) excludes any facility described in
2 paragraph (1)(B).

3 “(6) The term ‘psychiatric hospital’ has the
4 meaning given to such term in section 1861(f) of the
5 Social Security Act.

6 “(7) The term ‘rural emergency hospital’ has
7 the meaning given to such term in section
8 1861(kkk) of the Social Security Act.

9 “(8) The term ‘sole community hospital’ has
10 the meaning given to such term in section
11 1886(d)(5)(D)(iii) of the Social Security Act.

12 “(h) FUNDING LIMITATIONS.—The Secretary may
13 provide loans and loan guarantees under this section—

14 “(1) only to the extent or in the amounts pro-
15 vided in advance in appropriation Acts; and

16 “(2) totaling not more than \$200,000,000 for
17 each of fiscal years 2024 through 2028.”.

18 **SEC. 3. MENTAL HEALTH AND SUBSTANCE USE TREAT-**
19 **MENT TRUST FUND.**

20 (a) ESTABLISHMENT.—There is established in the
21 Treasury of the United States a trust fund to be known
22 as the Mental Health and Substance Use Treatment Trust
23 Fund (in this section referred to as the “Trust Fund”).

24 (b) DEPOSITS.—There are hereby authorized to be
25 appropriated to the Trust Fund, to remain available until

1 expended, amounts equivalent to any revenues from the
2 program of loans and loan guarantees under section
3 399V-7 of the Public Health Service Act, as added by sec-
4 tion 2, that exceed the costs of carrying out such program.

5 (c) USE OF FUND.—Amounts in the Trust Fund
6 shall be available, as provided by appropriation Acts, for
7 block grants for community mental health services under
8 subpart I of part B of title XIX of the Public Health Serv-
9 ice Act (42 U.S.C. 300x et seq.).

○