

118TH CONGRESS  
1ST SESSION

# S. 971

To amend title XIX of the Social Security Act to remove the Medicaid coverage exclusion for inmates in custody pending disposition of charges, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MARCH 23, 2023

Mr. CASSIDY (for himself, Mr. MERKLEY, Mr. MARKEY, and Mr. TILLIS) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend title XIX of the Social Security Act to remove the Medicaid coverage exclusion for inmates in custody pending disposition of charges, 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 “Due Process Con-  
5 tinuity of Care Act”.

6 **SEC. 2. REMOVAL OF INMATE LIMITATION ON BENEFITS**  
7 **UNDER MEDICAID.**

8 (a) IN GENERAL.—The subdivision (A) of section  
9 1905(a) of the Social Security Act (42 U.S.C. 1396d(a))

1 following the last numbered paragraph of such section is  
2 amended by inserting “, or, at the option of the State,  
3 while in custody pending disposition of charges” after “pa-  
4 tient in a medical institution”.

5 (b) CONFORMING AMENDMENTS.—Section 5122 of  
6 division FF of the Consolidated Appropriations Act, 2023  
7 (Public Law 117–328) is amended—

8 (1) in subsection (a), by striking “Medicaid”  
9 and all that follows through “Section  
10 1902(a)(84)(A)” and inserting “MEDICAID.—Sec-  
11 tion 1902(a)(84)(A)”; and

12 (2) in subsection (c), by inserting “, except that  
13 if such date is later than the effective date described  
14 in section 2(c) of the Due Process Continuity of  
15 Care Act then the amendment made by subsection  
16 (a) shall take effect and apply to items and services  
17 furnished for periods beginning on or after the effec-  
18 tive date described in such section” before the pe-  
19 riod.

20 (c) EFFECTIVE DATE.—The amendments made by  
21 subsections (a) and (b) shall take effect on the 1st day  
22 of the 1st calendar quarter that begins on or after the  
23 date that is 60 days after the date of the enactment of  
24 this Act and shall apply to items and services furnished  
25 for periods beginning on or after such date.

1 **SEC. 3. PLANNING GRANTS.**

2 (a) IN GENERAL.—The Secretary shall award plan-  
3 ning grants to States to support providing medical assist-  
4 ance under the State Medicaid program to individuals who  
5 are eligible for such assistance as a result of the amend-  
6 ment made by section 2(a). The grants shall be used to  
7 prepare an application that meets the requirements of sub-  
8 section (b).

9 (b) APPLICATION REQUIREMENTS.—In order to be  
10 awarded a planning grant under this section, a State shall  
11 submit an application to the Secretary at such time and  
12 in such form and manner as the Secretary shall require,  
13 that includes the following information along with such  
14 additional information, provisions, and assurances, as the  
15 Secretary may require:

16 (1) A proposed process for carrying out each of  
17 the activities described in subsection (c) in the State.

18 (2) A review of State policies regarding the  
19 population of individuals who are eligible for medical  
20 assistance under the State Medicaid program as a  
21 result of the amendment made by section 2(a) with  
22 respect to whether such policies may create barriers  
23 to increasing the number of health care providers  
24 who can provide items and services for that popu-  
25 lation.

1           (3) The development of a plan, taking into ac-  
2           count activities described in subsection (c)(2), that  
3           will ensure a sustainable number of Medicaid-en-  
4           rolled providers under the State Medicaid program  
5           that can offer a full array of treatment and services  
6           to the patient population described in paragraph (2)  
7           as needed. Such plan shall include the following:

8                   (A) Specific activities to increase the num-  
9                   ber of providers that will offer physical health  
10                  treatment, as well as services related to behav-  
11                  ioral health treatment, including substance use  
12                  disorder treatment, recovery, or support serv-  
13                  ices (including short-term detoxification serv-  
14                  ices, outpatient substance use disorder services,  
15                  and evidence-based peer recovery services).

16                  (B) Milestones and timeliness for imple-  
17                  menting activities set forth in the plan.

18                  (C) Specific measurable targets for in-  
19                  creasing the number of providers under the  
20                  State Medicaid program who will treat the pa-  
21                  tient population described in paragraph (2).

22           (4) An assurance that the State consulted with  
23           relevant stakeholders, including the State agency re-  
24           sponsible for administering the State Medicaid pro-  
25           gram, Medicaid managed care plans, health care

1 providers, law enforcement personnel, officials from  
2 jails, and Medicaid beneficiary advocates, with re-  
3 spect to the preparation and completion of the appli-  
4 cation and a description of such consultation.

5 (c) ACTIVITIES DESCRIBED.—For purposes of sub-  
6 section (b)(1), the activities described in this subsection  
7 are the following:

8 (1) Activities that support the development of  
9 an initial assessment of the health treatment needs  
10 of patients who are in custody pending disposition of  
11 charges to determine the extent to which providers  
12 are needed (including the types of such providers  
13 and geographic area of need) to improve the number  
14 of providers that will treat patients in custody pend-  
15 ing disposition of charges under the State Medicaid  
16 program, including the following:

17 (A) An estimate of the number of individ-  
18 uals enrolled under the State Medicaid program  
19 who are in custody pending disposition of  
20 charges.

21 (B) Information on the capacity of pro-  
22 viders to provide treatment or services to such  
23 individuals enrolled under the State Medicaid  
24 program, including information on providers

1           who provide such services and their participa-  
2           tion under the State Medicaid program.

3                   (C) Information on the health care services  
4           provided under programs other than the State  
5           Medicaid program in jails to individuals who  
6           are in custody pending disposition of charges.

7           (2) Activities that, taking into account the re-  
8           sults of the assessment described in paragraph (1)  
9           with respect to the provision of treatment or services  
10          under the State Medicaid program, support the de-  
11          velopment of State infrastructure to recruit or con-  
12          tract with prospective health care providers, provide  
13          training and technical assistance to such providers,  
14          and secure a process for an electronic health record  
15          system for billing to reimburse for services provided  
16          by the correctional facility, outpatient providers,  
17          medical vendors, and contracted telehealth service  
18          providers to patients who are in custody pending dis-  
19          position of charges that are compliant with applica-  
20          ble requirements and regulations for State Medicaid  
21          programs.

22                   (3) Activities that ensure the quality of care for  
23          patients who are in custody pending disposition of  
24          charges, including formal reporting mechanisms for  
25          patient outcomes, and activities that promote par-

1        participation in learning collaboratives among providers  
2        treating this population.

3        (d) GEOGRAPHIC DIVERSITY.—The Secretary shall  
4        select States for planning grants under this section in a  
5        manner that ensures geographic diversity.

6        (e) FUNDING.—There are authorized to be appro-  
7        priated \$50,000,000 to carry out this section.

8        (f) DEFINITIONS.—In this section:

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

16          (2) SECRETARY.—The term “Secretary” means  
17          the Secretary of Health and Human Services.

18          (3) STATE.—The term “State” has the mean-  
19          ing given that term for purposes of title XIX of the  
20          Social Security Act (42 U.S.C. 1396 et seq.) in sec-  
21          tion 1101(a)(1) of such Act (42 U.S.C. 1301(a)(1)).

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