

117TH CONGRESS  
1ST SESSION

# S. 151

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

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 2, 2021

Mr. CASEY (for himself, Mr. BROWN, Mrs. SHAHEEN, Mr. MERKLEY, Mr. MARKEY, Ms. DUCKWORTH, Ms. WARREN, Mr. REED, Mr. MENENDEZ, Mrs. GILLIBRAND, Mr. BOOKER, Ms. SMITH, Mr. VAN HOLLEN, Ms. STABENOW, Ms. KLOBUCHAR, Ms. BALDWIN, Mr. SANDERS, Mr. BLUMENTHAL, and Mr. PETERS) introduced the following bill; which was read twice and referred to the Committee on Finance

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## 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 “COVID HCBS Relief  
5 Act of 2021”.

1 **SEC. 2. ADDITIONAL SUPPORT FOR MEDICAID HOME AND**  
 2 **COMMUNITY-BASED SERVICES DURING THE**  
 3 **COVID-19 EMERGENCY PERIOD.**

4 (a) INCREASED FMAP.—

5 (1) IN GENERAL.—Notwithstanding section  
 6 1905(b) of the Social Security Act (42 U.S.C.  
 7 1396d(b)), in the case of an HCBS program State,  
 8 the Federal medical assistance percentage deter-  
 9 mined for the State under section 1905(b) of such  
 10 Act and, if applicable, increased under subsection  
 11 (y), (z), or (aa) of section 1905 of such Act (42  
 12 U.S.C. 1396d), section 1915(k) of such Act (42  
 13 U.S.C. 1396n(k)), or section 6008(a) of the Fami-  
 14 lies First Coronavirus Response Act (Public Law  
 15 116–127), shall be increased by 10 percentage  
 16 points with respect to expenditures of the State  
 17 under the State Medicaid program for home and  
 18 community-based services that are provided during  
 19 the HCBS program improvement period. In no case  
 20 may the application of the previous sentence result  
 21 in the Federal medical assistance percentage deter-  
 22 mined for a State being more than 95 percent.

23 (2) DEFINITIONS.—In this section:

24 (A) HCBS PROGRAM IMPROVEMENT PE-  
 25 RIOD.—The term “HCBS program improve-

ment period” means, with respect to a State,  
the period—

(i) beginning on October 1, 2020; and

(ii) ending on September 30, 2022.

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

(C) HOME AND COMMUNITY-BASED SERVICES.—The term “home and community-based services” means home health care services authorized under paragraph (7) of section 1905(a) of the Social Security Act (42 U.S.C. 1396d(a)), behavioral health services authorized under paragraph (13) of such section, personal care services authorized under paragraph (24) of such section, PACE services authorized under paragraph (26) of such section, 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.

1           1315), and such other services specified by the  
2           Secretary.

3           (b) CONDITION.—The condition described in this sub-  
4 section, with respect to a State, is that the State submits  
5 an application to the Secretary, at such time and in such  
6 manner as specified by the Secretary, that includes, in ad-  
7 dition to such other information as the Secretary shall re-  
8 quire—

9           (1) a description of which activities described in  
10 subsection (d) that a state plans to implement and  
11 a description of how it plans to implement such ac-  
12 tivities;

13           (2) assurances that the Federal funds attrib-  
14 utable to the increase under subsection (a) will be  
15 used—

16           (A) to implement the activities described in  
17 subsection (d); and

18           (B) to supplement, and not supplant, the  
19 level of State funds expended for home and  
20 community-based services for eligible individ-  
21 uals through programs in effect as of the date  
22 of the enactment of this section; and

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

1 (c) APPROVAL OF APPLICATION.—Not later than 90  
 2 days after the date of submission of an application of a  
 3 State under subsection (b), the Secretary shall certify if  
 4 the application is complete. Upon certification that an ap-  
 5 plication of a State is complete, the application shall be  
 6 deemed to be approved for purposes of this section.

7 (d) ACTIVITIES TO IMPROVE THE DELIVERY OF  
 8 HCBS.—

9 (1) IN GENERAL.—A State shall work with  
 10 community partners, such as Area Agencies on  
 11 Aging, Centers for Independent Living, non-profit  
 12 home and community-based services providers, and  
 13 other entities providing home and community-based  
 14 services, to implement—

15 (A) the purposes described in paragraph

16 (2) during the COVID–19 public health emer-  
 17 gency period; and

18 (B) the purposes described in paragraph

19 (3) after the end of such emergency period.

20 (2) FOCUSED AREAS OF HCBS IMPROVE-

21 MENT.—The purposes described in this paragraph,  
 22 with respect to a State, are the following:

23 (A) To increase rates for home health  
 24 agencies and agencies that employ direct sup-  
 25 port professionals (including independent pro-

1           viders in a self-directed or consumer-directed  
2           model) to provide home and community-based  
3           services under the State Medicaid program,  
4           provided that any agency or individual that re-  
5           ceives payment under such an increased rate in-  
6           creases the compensation it pays its home  
7           health workers or direct support professionals.

8           (B) To provide paid sick leave, paid family  
9           leave, and paid medical leave for home health  
10          workers and direct support professionals.

11          (C) To provide hazard pay, overtime pay,  
12          and shift differential pay for home health work-  
13          ers and direct support professionals.

14          (D) To provide home and community-  
15          based services to eligible individuals who are on  
16          waiting lists for programs approved under sec-  
17          tions 1115 or 1915 of the Social Security Act  
18          (42 U.S.C. 1315, 1396n).

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

1           (F) To purchase emergency supplies and  
2           equipment, which may include items not typi-  
3           cally covered under the Medicaid program, such  
4           as personal protective equipment, necessary to  
5           enhance access to services and to protect the  
6           health and well-being of home health workers  
7           and direct support professionals.

8           (G) To pay for the travel of home health  
9           workers and direct support professionals to con-  
10          duct home and community-based services.

11          (H) To recruit new home health workers  
12          and direct support professionals.

13          (I) To support family care providers of eli-  
14          gible individuals with needed supplies and  
15          equipment, which may include items not typi-  
16          cally covered under the Medicaid program, such  
17          as personal protective equipment, and pay.

18          (J) To pay for training for home health  
19          workers and direct support professionals that is  
20          specific to the COVID–19 public health emer-  
21          gency.

22          (K) To pay for assistive technologies, staff-  
23          ing, and other costs incurred during the  
24          COVID–19 public health emergency period in  
25          order to facilitate community integration and

1 ensure an individual's person-centered service  
2 plan continues to be fully implemented.

3 (L) To prepare information and public  
4 health and educational materials in accessible  
5 formats (including formats accessible to people  
6 with low literacy or intellectual disabilities)  
7 about prevention, treatment, recovery and other  
8 aspects of COVID–19 for eligible individuals,  
9 their families, and the general community  
10 served by agencies described in subparagraph  
11 (A).

12 (M) To pay for interpreters to assist in  
13 providing home and community-based services  
14 to eligible individuals and to inform the general  
15 public about COVID–19.

16 (N) To allow day services providers to pro-  
17 vide home and community-based services.

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

1           (3) PERMISSIBLE USES AFTER THE EMER-  
 2           GENCY PERIOD.—The purpose described in this  
 3           paragraph, with respect to a State, is to assist eligi-  
 4           ble individuals who had to relocate to a nursing fa-  
 5           cility or institutional setting from their homes dur-  
 6           ing the COVID–19 public health emergency period  
 7           in—

8                   (A) moving back to their homes (including  
 9                   by paying for moving costs, first month’s rent,  
 10                  and other one-time expenses and start-up  
 11                  costs);

12                  (B) resuming home and community-based  
 13                  services;

14                  (C) receiving mental health services and  
 15                  necessary rehabilitative service to regain skills  
 16                  lost while relocated during the public health  
 17                  emergency period; and

18                  (D) while funds attributable to the in-  
 19                  creased FMAP under this section remain avail-  
 20                  able, continuing home and community-based  
 21                  services for eligible individuals who were served  
 22                  from a waiting list for such services during the  
 23                  public health emergency period.

24           (e) REPORTING REQUIREMENTS.—

1           (1) STATE REPORTING REQUIREMENTS.—Not  
2 later than December 31, 2023, any State with re-  
3 spect to which an application is approved by the Sec-  
4 retary pursuant to subsection (c) shall submit a re-  
5 port to the Secretary that contains the following in-  
6 formation:

7           (A) Activities and programs that were  
8 funded using Federal funds attributable to such  
9 increase.

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

12          (C) The number of eligible individuals who  
13 were able to resume home and community-  
14 based services as a result of such activities and  
15 programs.

16       (2) HHS EVALUATION.—

17           (A) IN GENERAL.—The Secretary shall  
18 evaluate the implementation and outcomes of  
19 this section in the aggregate using an external  
20 evaluator with experience evaluating home and  
21 community-based services, disability programs,  
22 and older adult programs.

23           (B) EVALUATION CRITERIA.—For pur-  
24 poses of subparagraph (A), the external eval-  
25 uator shall—

1 (i) document and evaluate changes in  
2 access, availability, and quality of home  
3 and community-based services in each  
4 HCBS program State;

5 (ii) document and evaluate aggregate  
6 changes in access, availability, and quality  
7 of home and community-based services  
8 across all such States; and

9 (iii) evaluate the implementation and  
10 outcomes of this section based on—

11 (I) the impact of this section on  
12 increasing funding for home and com-  
13 munity-based services;

14 (II) the impact of this section on  
15 achieving targeted access, availability,  
16 and quality of home and community-  
17 based services; and

18 (III) promising practices identi-  
19 fied by activities conducted pursuant  
20 to subsection (d) that increase access  
21 to, availability of, and quality of home  
22 and community-based services.

23 (C) DISSEMINATION OF EVALUATION FIND-  
24 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) COVID–19 PUBLIC HEALTH EMERGENCY  
 8           PERIOD.—The term “COVID–19 public health emer-  
 9           gency period” means the portion of the emergency  
 10          period described in paragraph (1)(B) of section  
 11          1135(g) of the Social Security Act (42 U.S.C.  
 12          1320b–5(g)) beginning on or after the date of the  
 13          enactment of this Act.

14          (2) ELIGIBLE INDIVIDUAL.—The term “eligible  
 15          individual” means an individual who is eligible for or  
 16          enrolled for medical assistance under a State Med-  
 17          icaid program.

18          (3) MEDICAID PROGRAM.—The term “Medicaid  
 19          program” means, with respect to a State, the State  
 20          program under title XIX of the Social Security Act  
 21          (42 U.S.C. 1396 et seq.) (including any waiver or  
 22          demonstration under such title or under section  
 23          1115 of such Act (42 U.S.C. 1315) relating to such  
 24          title).

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

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

