

117TH CONGRESS
1ST SESSION

S. 439

To amend title XIX of the Social Security Act to increase Federal support to State Medicaid programs during economic downturns, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 25, 2021

Mr. CASEY (for himself, Ms. CORTEZ MASTO, Mr. BENNET, Mr. BROWN, Mr. WYDEN, Mrs. SHAHEEN, Mr. MERKLEY, Mr. WARNER, Mr. MENENDEZ, Ms. ROSEN, Ms. SMITH, Mr. PETERS, Mr. BOOKER, Mr. VAN HOLLEN, Mr. TESTER, Ms. STABENOW, Mr. WHITEHOUSE, Mr. CARDIN, Ms. WARREN, Ms. KLOBUCHAR, Mr. KING, Ms. HASSAN, and Mr. CARPER) 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 increase Federal support to State Medicaid programs during economic downturns, 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 “Coronavirus Medicaid
5 Response Act”.

1 **SEC. 2. INCREASING FEDERAL SUPPORT TO STATE MED-**
 2 **ICAID PROGRAMS DURING ECONOMIC**
 3 **DOWNTURNS.**

4 (a) IN GENERAL.—Section 1905 of the Social Secu-
 5 rity Act (42 U.S.C. 1396d) is amended—

6 (1) in subsection (b), by striking “and (ff)” and
 7 inserting “(ff), and (hh)”; and

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

10 “(hh) INCREASED FMAP DURING ECONOMIC
 11 DOWNTURNS.—

12 “(1) IN GENERAL.—If a fiscal quarter that be-
 13 gins on or after January 1, 2020, is an economic
 14 downturn quarter (as defined in paragraph (2)) with
 15 respect to a State, then the Federal medical assist-
 16 ance percentage determined for the State and quar-
 17 ter under subsection (b) shall be equal to the per-
 18 centage determined for the State and quarter under
 19 paragraph (3).

20 “(2) ECONOMIC DOWNTURN QUARTER.—

21 “(A) IN GENERAL.—

22 “(i) IN GENERAL.—In this subsection,
 23 the term ‘economic downturn quarter’
 24 means, with respect to a State, a fiscal
 25 quarter during which the State’s unem-
 26 ployment rate for the quarter exceeds the

percentage determined for the State and quarter under clause (ii).

“(ii) THRESHOLD PERCENTAGE.—The percentage determined under this clause for a State and fiscal quarter is the percentage equal to the lower of—

“(I) the State unemployment rate at the 20th percentile of the distribution of the State’s quarterly unemployment rates for the 60-quarter period preceding the quarter involved, increased by 1 percentage point; and

“(II) the State’s average quarterly unemployment rate for the 12-quarter period preceding the quarter involved, increased by 1 percentage point.

“(B) UNEMPLOYMENT DATA.—

“(i) IN GENERAL.—Except as provided in clause (ii), for purposes of determining unemployment rates for a State and a quarter under this paragraph, the Secretary shall use data from the Local Area Unemployment Statistics from the Bureau of Labor Statistics.

1 “(ii) APPLICATION TO CERTAIN TER-
 2 RITORIES.—In the case of the Virgin Is-
 3 lands, Guam, the Northern Mariana Is-
 4 lands, American Samoa, or any other juris-
 5 diction for which suitable data from the
 6 Local Area Unemployment Statistics from
 7 the Bureau of Labor Statistics are unavail-
 8 able, the Secretary shall use data from the
 9 U–3 unemployment measure of the Bureau
 10 of Labor Statistics to make any necessary
 11 determinations under subparagraph (A).

12 “(3) INCREASED FMAP DURING ECONOMIC
 13 DOWNTURN QUARTER.—

14 “(A) IN GENERAL.—During a fiscal quar-
 15 ter that is an economic downturn quarter with
 16 respect to a State, the Federal medical assist-
 17 ance percentage for the State and quarter de-
 18 termined under subsection (b) shall be equal
 19 to—

20 “(i) the Federal medical assistance
 21 percentage determined for the State and
 22 quarter under subsection (b) without re-
 23 gard to this subsection (but including any
 24 increase to such percentage for such quar-
 25 ter made pursuant to section 6008(a) of

1 the Families First Coronavirus Response
2 Act); increased by

3 “(ii) the number of percentage points
4 (rounded to the nearest tenth of a percent-
5 age point) equal to the product of—

6 “(I) the number of percentage
7 points (rounded to the nearest tenth
8 of a percentage point) by which the
9 unemployment rate for the State and
10 quarter exceeds the percentage deter-
11 mined for the State and quarter
12 under paragraph (2)(A)(ii); and

13 “(II) 4.8.

14 “(B) RULES OF APPLICATION.—The fol-
15 lowing rules shall apply with respect to the Fed-
16 eral medical assistance percentage determined
17 for a State and an economic downturn quarter
18 under this subsection:

19 “(i) SCOPE OF APPLICATION.—Such
20 Federal medical assistance percentage shall
21 not apply for purposes of—

22 “(I) disproportionate share hos-
23 pital payments described in section
24 1923;

1 “(II) payments under part D of
2 title IV; or

3 “(III) any payments under this
4 title that are based on a Federal med-
5 ical assistance percentage determined
6 for a State under subsection (aa) (but
7 only to the extent that such Federal
8 medical assistance percentage is high-
9 er than the economic recovery
10 FMAP).

11 “(ii) LIMITATION.—In no case shall—

12 “(I) the Federal medical assist-
13 ance percentage determined for a
14 State and quarter pursuant to this
15 subsection exceed 95 percent; or

16 “(II) any increase to the Federal
17 medical assistance percentage deter-
18 mined for a State and quarter pursu-
19 ant to this subsection result in the ap-
20 plication of a Federal medical assist-
21 ance percentage that exceeds 95 per-
22 cent.

23 “(iii) APPLICATION TO CHIP.—Not-
24 withstanding the first sentence of section
25 2105(b), the application of this subsection

1 may result in the enhanced FMAP of a
 2 State for a fiscal year under such section
 3 exceeding 85 percent, but in no case may
 4 the application of this subsection before
 5 application of the second sentence of such
 6 section result in the enhanced FMAP of
 7 the State exceeding 95 percent.

8 “(4) ADVANCE PAYMENT; RETROSPECTIVE AD-
 9 JUSTMENT.—

10 “(A) IN GENERAL.—Prior to the beginning
 11 of each fiscal quarter that begins on or after
 12 July 1, 2020, the Secretary shall, with respect
 13 to each State—

14 “(i) make an initial determination,
 15 based on the projections made for the
 16 State and quarter under subparagraph
 17 (B), as to—

18 “(I) whether the application of
 19 this subsection is expected to result in
 20 the application of a higher Federal
 21 medical assistance percentage for the
 22 State and quarter than the percentage
 23 that would otherwise apply without re-
 24 gard to this subsection; and—

1 “(II) if the application of this
2 subsection is expected to result in
3 such a higher Federal medical assist-
4 ance percentage for the State and
5 quarter, what such higher percentage
6 is expected to be; and

7 “(ii) if the Secretary determines under
8 clause (i) that the application of this sub-
9 section is expected to result in the applica-
10 tion of a higher Federal medical assistance
11 percentage for the State and quarter than
12 the percentage that would otherwise apply
13 without regard to this subsection—

14 “(I) apply such higher Federal
15 medical assistance percentage of the
16 State for purposes of making pay-
17 ments to the State for amounts ex-
18 pended during such quarter as med-
19 ical assistance under the State plan;
20 and

21 “(II) take into account such
22 higher Federal medical assistance per-
23 centage of the State for purposes of
24 calculating the enhanced FMAP for

1 the State and quarter under section
 2 2105(b).

3 “(B) PROJECTION OF STATE UNEMPLOY-
 4 MENT RATES.—Prior to the beginning of each
 5 fiscal quarter that begins on or after July 1,
 6 2020, the Secretary, acting through the Chief
 7 Actuary of the Centers for Medicare & Medicaid
 8 Services, shall, using the most recently available
 9 data described in paragraph (2)(B), make pro-
 10 jections with respect to—

11 “(i) the unemployment rates for each
 12 State for such quarter;

13 “(ii) the threshold percentages de-
 14 scribed in paragraph (2)(A)(ii) for each
 15 State for such quarter; and

16 “(iii) the national unemployment rate
 17 for such quarter.

18 “(C) RETROSPECTIVE ADJUSTMENT.—As
 19 soon as practicable after final unemployment
 20 data becomes available for a fiscal quarter that
 21 begins on or after July 1, 2020, the Secretary
 22 shall, with respect to each State—

23 “(i) make a final determination with
 24 respect to the application of this subsection
 25 for purposes of determining the Federal

1 medical assistance percentage and en-
 2 hanced FMAP of the State for the quarter;
 3 and

4 “(ii) in accordance with section
 5 1903(d)(2) and section 2105(e), reduce or
 6 increase the amount payable to the State
 7 under section 1903(a) or section 2105 for
 8 a subsequent fiscal quarter to the extent of
 9 any overpayment or underpayment under
 10 either such section which the Secretary de-
 11 termines was made as a result of an incor-
 12 rect initial determination under subpara-
 13 graph (A)(i) with respect to the application
 14 of this subsection for purposes of deter-
 15 mining the Federal medical assistance per-
 16 centage and enhanced FMAP of the State
 17 for such prior fiscal quarter.

18 “(5) RETROSPECTIVE APPLICATION OF OVER-
 19 THE-LIMIT FMAP INCREASES.—

20 “(A) IN GENERAL.—If a State has excess
 21 percentage points with respect to an economic
 22 downturn quarter and an applicable FMAP (as
 23 determined under subparagraph (B)), the State
 24 may elect to apply such excess percentage
 25 points to increase such applicable FMAP for

one or more quarters during the look-back period for the State and economic downturn quarter in accordance with this paragraph.

“(B) EXCESS PERCENTAGE POINTS.—For purposes of this paragraph, the number of excess percentage points for a State, economic downturn quarter, and an applicable FMAP shall be equal to the number of percentage points by which—

“(i) the applicable FMAP for the State and quarter (after application of paragraph (3) but without regard to subparagraph (B)(ii) of such paragraph); exceeds

“(ii) 95 percent.

“(C) EFFECT OF APPLICATION OF EXCESS PERCENTAGE POINTS.—If a State elects to apply excess percentage points to an applicable FMAP to a quarter during a look-back period under this paragraph, the Secretary shall determine the additional amount of payment under section 1903(a) to which the State would have been entitled for such quarter if the applicable FMAP (as so increased) had been in effect for

1 such quarter, and shall treat such additional
2 amount as an underpayment for such quarter.

3 “(D) DISTRIBUTION OF EXCESS PERCENT-
4 AGE POINTS.—A State that has excess percent-
5 age points with respect to an economic down-
6 turn quarter and applicable FMAP may elect to
7 divide such points among more than 1 quarter
8 during the look-back period for such State and
9 quarter provided that no excess percentage
10 point (or fraction of an excess percentage point)
11 is applied to the applicable FMAP of more than
12 1 quarter.

13 “(E) LIMITATIONS.—

14 “(i) NO INCREASES OVER 100 PER-
15 CENT.—A State may not increase an appli-
16 cable FMAP for any quarter during a look-
17 back period under this paragraph if such
18 increase would result in the applicable
19 FMAP for such quarter exceeding 100 per-
20 cent.

21 “(ii) SCOPE OF APPLICATION.—Any
22 increase to an applicable FMAP of a State
23 for a fiscal quarter under this paragraph—

24 “(I) shall only apply with respect
25 to payments for amounts expended by

1 the State for medical assistance for
 2 services furnished during such quarter
 3 to which such applicable FMAP is ap-
 4 plicable; and

5 “(II) shall not apply with respect
 6 to payments described in paragraph
 7 (3)(B)(i).

8 “(F) DEFINITIONS.—In this paragraph:

9 “(i) APPLICABLE FMAP.—The term
 10 ‘applicable FMAP’ means, with respect to
 11 a State and fiscal quarter—

12 “(I) the Federal medical assist-
 13 ance percentage determined for the
 14 State and quarter under subsection
 15 (b);

16 “(II) the Federal medical assist-
 17 ance percentage applicable under sub-
 18 section (y);

19 “(III) the Federal medical assist-
 20 ance percentage applicable under sub-
 21 section (z)(2);

22 “(IV) the Federal medical assist-
 23 ance percentage determined for the
 24 State and quarter under subsection
 25 (ff); or

1 “(V) the enhanced FMAP deter-
 2 mined for the State and quarter
 3 under section 2105(b).

4 “(ii) LOOK-BACK PERIOD.—The term
 5 ‘look-back period’ means, with respect to a
 6 State and a fiscal quarter that is an eco-
 7 nomic downturn quarter for the State, the
 8 period of 4 fiscal quarters that ends with
 9 the fourth quarter which precedes the most
 10 recent fiscal quarters that was not an eco-
 11 nomic downturn quarter for the State.

12 “(6) REQUIREMENT FOR ALL STATES.—This
 13 subsection shall not apply to a State with respect to
 14 a fiscal quarter, if—

15 “(A) eligibility standards, methodologies,
 16 or procedures under the State plan or a waiver
 17 of such plan are more restrictive during such
 18 quarter than the eligibility standards, meth-
 19 odologies, or procedures, respectively, under
 20 such plan (or waiver) as in effect on the last
 21 day of the most recent fiscal quarter that was
 22 not an economic downturn quarter for the
 23 State;

24 “(B) the amount of any premium imposed
 25 by the State pursuant to section 1916 or 1916A

during such quarter, with respect to an individual enrolled under such plan (or waiver), exceeds the amount of such premium as of the date described in subparagraph (A); or

“(C) the State fails to provide that an individual who is enrolled for benefits under such plan (or waiver) as of the date described in subparagraph (A) or enrolls for benefits under such plan (or waiver) during the period beginning with such date and ending with the day before the first day of the next quarter that is not an economic downturn quarter for the State shall be treated as eligible for such benefits for not less than 12 months after such date or (if later) the date that such individual so enrolls unless the individual requests a voluntary termination of eligibility or the individual ceases to be a resident of the State.”.

(b) EXCLUSION OF ECONOMIC DOWNTURN FMAP INCREASES FROM TERRITORIAL CAPS; SPECIAL RULE FOR CHIP ALLOTMENTS.—

(1) EXCLUSION FROM TERRITORIAL CAPS.—

Section 1108 of the Social Security Act (42 U.S.C. 1308) is amended—

1 (A) in subsection (f), in the matter pre-
 2 ceding paragraph (1), by striking “subsection
 3 (g) and section 1935(e)(1)(B)” and inserting
 4 “subsections (g) and (h) and section
 5 1935(e)(1)(B)”; and

6 (B) by adding at the end the following:

7 “(h) EXCLUSION FROM CAPS OF AMOUNTS ATTRIB-
 8 UTABLE TO ECONOMIC DOWNTURN FMAP.—Any pay-
 9 ment made to a territory for a fiscal year in which the
 10 Federal medical assistance percentage for the territory is
 11 determined under section 1905(hh) shall not be taken into
 12 account for purposes of applying payment limits under
 13 subsections (f) and (g) to the extent that such payment
 14 exceeds the amount of the payment that would have been
 15 made to the territory for the year if the Federal medical
 16 assistance percentage for the territory had been deter-
 17 mined without regard to such section.”.

18 (2) CHIP ALLOTMENTS.—Section 2104(m) of
 19 the Social Security Act (42 U.S.C. 1397dd(m)) is
 20 amended—

21 (A) in paragraph (2)(B), in the matter
 22 preceding clause (i), by striking “paragraphs
 23 (5) and (7)” and inserting “paragraphs (5),
 24 (7), and (12)”; and

1 (B) by adding at the end the following new
2 paragraph:

3 “(12) SPECIAL RULE FOR ADJUSTING ALLOT-
4 MENTS DURING FISCAL YEARS WITH ECONOMIC
5 DOWNTURN QUARTERS.—

6 “(A) IN GENERAL.—If a fiscal quarter oc-
7 ccurring during fiscal year 2020 or any suc-
8 ceeding fiscal year is determined to be an eco-
9 nomic downturn quarter with respect to a State
10 (as determined under section 1905(hh)) then,
11 as soon as practicable after such determination,
12 the Secretary shall increase the allotment for
13 the State and fiscal year in accordance with
14 subparagraph (B).

15 “(B) AMOUNT OF INCREASE.—

16 “(i) IN GENERAL.—The amount of an
17 increase to the allotment of a State de-
18 scribed in subparagraph (A) for a fiscal
19 year shall be equal to the amount by which
20 Federal payments made to the State for
21 the preceding fiscal year under this title
22 would have been increased (without regard
23 to whether such payments would exceed
24 the amount of the State’s allotment for
25 such preceding fiscal year) if the enhanced

1 FMAP determined for the State for such
 2 preceding fiscal year had been increased to
 3 the same extent that the State's enhanced
 4 FMAP for the fiscal year involved is ex-
 5 pected to be increased as a result of the
 6 application of section 1905(hh) relative to
 7 the enhanced FMAP that would apply to
 8 the State for the fiscal year involved with-
 9 out the application of such section.

10 “(ii) INCLUSION OF PROJECTED IN-
 11 CREASES.—In increasing the allotment of a
 12 State for a fiscal year under this para-
 13 graph, the Secretary may base the calcula-
 14 tion of such increase on projections made
 15 by the Secretary with respect to—

16 “(I) the number of fiscal quar-
 17 ters during such fiscal year that will
 18 be economic downturn quarters; and

19 “(II) the effect that the applica-
 20 tion of section 1905(hh) is expected to
 21 have on the enhanced FMAP of the
 22 State for such fiscal year.

23 “(C) DISREGARD OF INCREASED PAY-
 24 MENTS FOR PURPOSES OF FUTURE ALLOT-
 25 MENTS.—Any Federal payment made to a State

1 under this title for a fiscal year in which the
 2 Federal medical assistance percentage for the
 3 State is determined under section 1905(hh)
 4 shall be disregarded when determining the allot-
 5 ment of the State for any subsequent year, in-
 6 cluding for purposes of applying this paragraph,
 7 to the extent that such payment exceeds the
 8 amount of the payment that would have been
 9 made to the State for the year if the Federal
 10 medical assistance percentage for the State and
 11 year had been determined without regard to
 12 such section.”.

13 (c) CONFORMING AMENDMENTS.—Section 1905(cc)
 14 of the Social Security Act (42 U.S.C. 1396d(cc)) is
 15 amended—

16 (1) by striking “and section 6008 of the Fami-
 17 lies First Coronavirus Response Act” and inserting
 18 “, section 6008 of the Families First Coronavirus
 19 Response Act, and subsection (hh) of this section”;
 20 and

21 (2) by inserting “, and, in applying such treat-
 22 ments to an increase in the Federal medical assist-
 23 ance percentage of a State under subsection (hh)
 24 with respect to a fiscal quarter that is an economic
 25 downturn quarter for the State, the reference to

1 ‘December 31, 2009’ shall be deemed to be a ref-
2 erence to ‘March 11, 2020’, or, if later, the last day
3 of the most recent fiscal quarter that was not an
4 economic downturn quarter for the State’’ before the
5 period.

○