

114TH CONGRESS
2D SESSION

H. R. 6512

To authorize the Secretary of Health and Human Services to make loans and loan guarantees for constructing or renovating, or planning construction or renovation of, qualified psychiatric and substance abuse treatment facilities, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 8, 2016

Mr. KILMER (for himself, Ms. HERRERA BEUTLER, and Mr. MURPHY of Pennsylvania) 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 constructing or renovating, or planning construction or renovation of, qualified psychiatric and substance abuse 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 and
5 Substance Abuse Treatment Accessibility Act of 2016”.

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–6 of such Act
4 (21 U.S.C. 355f) the following:

5 **“SEC. 399V–7. LOANS AND LOAN GUARANTEES FOR CON-**
6 **STRUCTING OR RENOVATING, OR PLANNING**
7 **CONSTRUCTION OR RENOVATION OF, CER-**
8 **TAIN QUALIFIED PSYCHIATRIC AND SUB-**
9 **STANCE ABUSE TREATMENT FACILITIES.**

10 “(a) IN GENERAL.—The Secretary may make loans
11 and loan guarantees for constructing or renovating, in-
12 cluding planning the construction or renovation of, a
13 qualified psychiatric treatment facility or a qualified sub-
14 stance abuse treatment facility to public, private for-prof-
15 it, or private not-for-profit—

16 “(1) psychiatric treatment facilities;

17 “(2) substance abuse treatment facilities;

18 “(3) psychiatric hospitals; and

19 “(4) alliances of such facilities or hospitals.

20 “(b) PREFERENCE.—In making loans and loan guar-
21 antees under this section, the Secretary shall give pref-
22 erence to psychiatric treatment facilities and substance
23 abuse treatment facilities that propose to construct or ren-
24 ovate a qualified psychiatric treatment facility or qualified
25 substance abuse treatment facility in a county that has

1 insufficient inpatient psychiatric or substance abuse treat-
2 ment capacity.

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

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

9 “(A) it is necessary to increase the number
10 of psychiatric or substance use disorder treat-
11 ment beds to enhance the public’s access to
12 acute inpatient mental health and substance
13 abuse services; and

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

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

22 “(3) The Secretary may not make a loan guar-
23 antee under this section, with respect to any bor-
24 rower, in excess of 80 percent of any potential loss
25 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 increasing the inpatient
24 psychiatric and substance abuse bed count, as
25 applicable, to enhance the public’s access to

1 acute inpatient mental health and substance
2 abuse services;

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

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

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

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

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

21 “(C) except in the case of fraud or mate-
22 rial misrepresentation by the holder of the loan,
23 the guarantee will be presumed to be valid,
24 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 “(d) PAYMENT OF LOSSES.—

20 “(1) DEFAULT ON GUARANTEED LOANS.—If, as
21 a result of a default by a borrower under a loan
22 guaranteed under this section, after the holder
23 thereof has made such further collection efforts and
24 instituted such enforcement proceedings as the Sec-

1 retary may require, the Secretary determines that
2 the holder has suffered a loss—

3 “(A) the Secretary shall pay to such holder
4 75 percent of such loss, as specified in the
5 guarantee contract;

6 “(B) upon making any such payment, the
7 Secretary shall be subrogated to all the rights
8 of the recipient of the payment; and

9 “(C) the Secretary shall be entitled to re-
10 cover from the borrower the amount of any pay-
11 ments made pursuant to the guarantee con-
12 tract.

13 “(2) REQUIRED ENFORCE OF FEDERAL
14 RIGHTS.—The Attorney General of the United
15 States shall take such action as may be appropriate
16 to enforce any right accruing to the United States
17 as a result of the issuance of any guarantee under
18 this section.

19 “(3) FORBEARANCE.—Nothing in this section
20 precludes any forbearance for the benefit of the bor-
21 rower of a loan that is made or guaranteed under
22 this section which is agreed upon by the parties to
23 the loan and approved by the Secretary, provided
24 that budget authority for any resulting cost to the

1 Government (as defined in section 502(5) of the
2 Federal Credit Reform Act of 1990) is available.

3 “(e) DEFINITIONS.—In this section:

4 “(1) The term ‘qualified psychiatric treatment
5 facility’—

6 “(A) means a psychiatric hospital (or other
7 qualified treatment facility, as determined ap-
8 propriate by the Secretary) that is able to serve
9 patients ages 21 and older that—

10 “(i) will provide acute, short-term in-
11 patient psychiatric treatment services for
12 such patients;

13 “(ii) will provide outpatient services;
14 and

15 “(iii) may include a military services
16 program to meet the needs of active and
17 retired military service members; and

18 “(B) excludes a facility that—

19 “(i) provides long-term inpatient care;

20 “(ii) is a health center (as defined in
21 section 330); and

22 “(iii) is part of or affiliated with a
23 prison (as defined in section 2246 of title
24 18, United States Code).

1 “(2) The term ‘qualified substance abuse treat-
2 ment facility’—

3 “(A) means a psychiatric hospital (or other
4 qualified treatment facility, as determined ap-
5 propriate by the Secretary) that is able to serve
6 patients ages 21 and older that—

7 “(i) will provide acute, short-term in-
8 patient substance abuse treatment services
9 for such patients;

10 “(ii) will provide outpatient services;
11 and

12 “(iii) may include a military services
13 program to meet the needs of active and
14 retired military service members; and

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

17 “(3) The term ‘psychiatric hospital’ means—

18 “(A) an institution that—

19 “(i) is primarily engaged in providing,
20 by or under the supervision of one or more
21 physicians, psychiatric services for the di-
22 agnosis and treatment of mentally ill per-
23 sons or those suffering from substance
24 abuse disorders;

1 “(ii) satisfies the requirements of
2 paragraphs (3) through (9) of subsection
3 (e) of section 1861 of the Social Security
4 Act;

5 “(iii) maintains clinical records on all
6 patients and maintains such records as the
7 Secretary finds to be necessary to deter-
8 mine the degree and intensity of the treat-
9 ment provided to individuals entitled to
10 hospital insurance benefits under part A of
11 title XVIII of the Social Security Act; and

12 “(iv) meets such staffing requirements
13 as the Secretary finds necessary for the in-
14 stitution to carry out an active program of
15 treatment for individuals who are fur-
16 nished services in the institution; or

17 “(B) a distinct part of an institution that
18 satisfies clauses (i) and (ii) of subparagraph
19 (A) if such distinct part satisfies clauses (iii)
20 and (iv) of subparagraph (A).

21 “(f) FUNDING LIMITATIONS.—The Secretary may
22 provide loans and loan guarantees under this section—

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

1 “(2) totaling not more than \$200,000,000 in
2 each of fiscal years 2018 through 2022.”.

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

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

9 (b) DEPOSITS.—There are hereby authorized to be
10 appropriated to the Trust Fund, to remain available until
11 expended, amounts equivalent to any revenues from the
12 program of loans and loan guarantees under section
13 399V–7 of the Public Health Service Act, as added by sec-
14 tion 2, that exceed the costs of carrying out such program.

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

20 **SEC. 4. SENSE OF CONGRESS.**

21 It is the sense of Congress that reversing the Federal
22 policy of denying Federal financial participation under the
23 Medicaid program for care and services for patients in an
24 institution for mental diseases is critically important to

- 1 improving access to mental health care services and treat-
- 2 ment.

