

118TH CONGRESS
1ST SESSION

S. 2128

To amend title XIX of the Social Security Act to increase Federal Medicaid funding for States that provide intensive community-based services for adults with serious mental illness, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 22, 2023

Mrs. GILLIBRAND 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 Medicaid funding for States that provide intensive community-based services for adults with serious mental illness, 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 “Strengthening Med-
5 icaid for Serious Mental Illness Act”.

6 **SEC. 2. PURPOSES.**

7 The purposes of this Act are the following:

1 (1) To amend title XIX of the Social Security
2 Act to increase Federal Medicaid funding for States
3 that provide intensive community-based services for
4 adults with serious mental illness.

5 (2) To increase access to intensive community-
6 based services in the most integrated setting appro-
7 priate.

8 (3) To prevent unnecessary hospitalization or
9 other institutionalization.

10 (4) To promote continuity of care and coverage
11 for young adults after they turn 21 and age out of
12 the early and periodic screening, diagnostic, and
13 treatment services benefit.

14 **SEC. 3. INCREASED FMAP FOR PROVIDING INTENSIVE COM-**
15 **MUNITY-BASED SERVICES UNDER MEDICAID.**

16 (a) IN GENERAL.—Section 1915 of the Social Secu-
17 rity Act (42 U.S.C. 1396n) is amended by adding at the
18 end the following new subsection:

19 “(m) STATE PLAN AMENDMENT OPTION TO PRO-
20 VIDE INTENSIVE COMMUNITY-BASED SERVICES FOR EL-
21 DERLY AND DISABLED INDIVIDUALS.—

22 “(1) IN GENERAL.—Subject to the succeeding
23 provisions of this subsection, beginning January 1,
24 2025, a State may provide through a State plan
25 amendment for the provision of medical assistance

1 for intensive community-based services (not includ-
 2 ing room and board) for eligible individuals (as de-
 3 fined in paragraph (2)), without determining that
 4 but for the provision of such services the individuals
 5 would require the level of care provided in a hos-
 6 pital, nursing facility, or intermediate care facility
 7 described in section 1905(d), but only if the State
 8 meets the following requirements:

9 “(A) APPLICATION OF HCBS STATE PLAN
 10 AMENDMENT REQUIREMENTS.—

11 “(i) IN GENERAL.—Except as pro-
 12 vided in clause (ii), the State satisfies the
 13 requirements described in subparagraphs
 14 (A) through (J) of subsection (i)(1) (ex-
 15 cept that, in applying such subparagraphs
 16 for purposes of this subsection, each ref-
 17 erence to ‘home and community-based
 18 services’ shall be deemed to be a reference
 19 to ‘intensive community-based services’).

20 “(ii) MODIFICATION OF ASSESSMENT
 21 REQUIREMENT.—In applying subparagraph
 22 (F)(i) of subsection (i)(1) for purposes of
 23 this subsection, ‘or 1 or more activity of
 24 daily living and 1 or more instrumental ac-
 25 tivity of daily living (as defined in sub-

1 section (k)(6)(F))’ shall be inserted after
 2 ‘2 or more activities of daily living (as de-
 3 fined in section 7702B(c)(2)(B) of the In-
 4 ternal Revenue Code of 1986)’.

5 “(B) APPLICATION OF REGULATIONS.—In
 6 providing intensive community-based services
 7 under this subsection, the State complies with
 8 the regulations applicable to home and commu-
 9 nity-based services provided under subsection
 10 (i) under subpart M of part 441 of title 42,
 11 Code of Federal Regulations, including sections
 12 441.710 (commonly known as the ‘HCBS set-
 13 tings rule’) and 441.725 of such title, except to
 14 the extent that such regulations are incon-
 15 sistent with this subsection.

16 “(2) DEFINITIONS.—In this subsection:

17 “(A) ADULT WITH A SERIOUS MENTAL
 18 ILLNESS; SERIOUS MENTAL ILLNESS.—

19 “(i) ADULT WITH A SERIOUS MENTAL
 20 ILLNESS.—The term ‘adult with a serious
 21 mental illness’ has the meaning given that
 22 term by the Secretary pursuant to section
 23 1912(c) of the Public Health Service Act.

24 “(ii) SERIOUS MENTAL ILLNESS.—
 25 The term ‘serious mental illness’ means a

1 diagnosable mental, behavioral or emo-
2 tional disorder that meets the criteria for
3 qualifying an individual as an adult with a
4 serious mental illness.

5 “(B) ASSERTIVE COMMUNITY TREAT-
6 MENT.—The term ‘assertive community treat-
7 ment’ means services for the treatment of men-
8 tal illness that are provided through an evi-
9 dence-based practice that—

10 “(i) improves outcomes for individuals
11 with severe mental illness who are at high
12 risk of homelessness, psychiatric crisis, or
13 hospitalization, or are involved in the
14 criminal justice system;

15 “(ii) is comprised of a multidisci-
16 plinary staff, including peer specialists,
17 who work as a team to provide the individ-
18 ualized psychiatric treatment, rehabilita-
19 tion, and support services clients need for
20 the maximum reduction of physical or
21 mental disability and restoration to their
22 best possible functional level;

23 “(iii) ensures that there is 1 direct
24 care staff person for every 10 clients; and

1 “(iv) provides services 24 hours a day,
2 7 days a week, for as long as needed and
3 wherever they are needed.

4 “(C) ELIGIBLE INDIVIDUAL.—The term
5 ‘eligible individual’ means an individual—

6 “(i) who is eligible for medical assist-
7 ance under the State plan or under a waiv-
8 er of such plan;

9 “(ii) who is age 21 or older;

10 “(iii) whose income does not exceed
11 150 percent of the poverty line (as defined
12 in section 2110(e)(5)); and

13 “(iv) who is an adult with a serious
14 mental illness.

15 “(D) INTENSIVE CASE MANAGEMENT.—
16 The term ‘intensive case management’ means a
17 type of case management service (as defined in
18 section 440.169 of title 42, Code of Federal
19 Regulations)—

20 “(i) that is reliable, systematic, flexi-
21 ble, and coordinated, designed to answer
22 the unique combination of health and so-
23 cial care needs of individuals with serious
24 mental illness;

1 “(ii) that is a long-term, intensive ap-
2 proach to supporting an individual in the
3 community by providing a comprehensive
4 range of treatment, rehabilitation, and
5 support services;

6 “(iii) that helps individuals with seri-
7 ous mental illness acquire material re-
8 sources (such as food, shelter, clothing,
9 and medical care) and improve their psy-
10 chosocial functioning;

11 “(iv) that provides sufficient support
12 to individuals with serious mental illness to
13 keep them involved in community life and
14 encourage growth towards greater auton-
15 omy and develop coping skills to meet the
16 demands of community life;

17 “(v) that ensures continuity of care
18 among treatment agencies;

19 “(vi) in which a case manager, work-
20 ing alone or as part of a team, makes 4 or
21 more face-to-face contact with a client each
22 month; and

23 “(vii) in which the case manager-to-
24 client ratio does not exceed 1:12.

1 “(E) INTENSIVE COMMUNITY-BASED SERV-
2 ICES.—The term ‘intensive community-based
3 services’ means a set of psychosocial rehabilita-
4 tion services that includes all of the following:

5 “(i) Assertive community treatment.

6 “(ii) Supported employment.

7 “(iii) Peer support services.

8 “(iv) Qualifying community-based mo-
9 bile crisis intervention services.

10 “(v) Intensive case management.

11 “(vi) Housing-related activities and
12 services, including individual housing tran-
13 sition services, individual housing and ten-
14 ancy sustaining services, and State-level
15 housing-related collaborative activities, as
16 those services are described in the informa-
17 tional bulletin published by the Center for
18 Medicaid and CHIP Services on June 26,
19 2015, with the subject ‘Coverage of Hous-
20 ing-Related Activities and Services for In-
21 dividuals with Disabilities’.

22 “(vii) Such other psychosocial reha-
23 bilitation services as a State may request
24 and the Secretary may approve.

1 “(F) PEER SUPPORT SERVICES.—The term
2 ‘peer support services’ means culturally com-
3 petent individual and group services for individ-
4 uals with serious mental illness that promote
5 recovery, resiliency, engagement, socialization,
6 self-sufficiency, self-advocacy, development of
7 natural supports, and identification of strengths
8 through structured activities such as group and
9 individual coaching to set recovery goals and
10 identify steps to reach the goals. Such services
11 aim to prevent relapse, empower beneficiaries
12 through strength-based coaching, support link-
13 ages to community resources, and to educate
14 beneficiaries and their families about their con-
15 ditions and the process of recovery. Such serv-
16 ices include the following:

17 “(i) Participating in the treatment
18 planning process.

19 “(ii) Mentoring and assisting the ben-
20 eficiary with problem solving, goal setting,
21 and skill building.

22 “(iii) Encouraging a beneficiary’s in-
23 terest in pursuing and maintaining treat-
24 ment services.

1 “(iv) Providing support and linkages
2 to facilitate participation in recovery-based
3 activities.

4 “(v) Sharing experiential knowledge,
5 hope, and skills.

6 “(vi) Advocating for the beneficiary.

7 “(G) QUALIFYING COMMUNITY-BASED MO-
8 BILE CRISIS INTERVENTION SERVICES.—The
9 term ‘qualifying community-based mobile crisis
10 intervention services’ means, with respect to a
11 State, items and services for which medical as-
12 sistance is available under the State plan under
13 this title or a waiver of such plan, that are—

14 “(i) furnished to an individual other-
15 wise eligible for medical assistance under
16 the State plan (or waiver of such plan)
17 who is—

18 “(I) outside of a hospital or other
19 facility setting; and

20 “(II) experiencing a mental
21 health or substance use disorder cri-
22 sis;

23 “(ii) furnished by a multidisciplinary
24 mobile crisis team—

1 “(I) that includes at least 1 be-
2 havioral health care professional who
3 is capable of conducting an assess-
4 ment of the individual, in accordance
5 with the professional’s permitted
6 scope of practice under State law, and
7 other professionals or paraprofes-
8 sionals with appropriate expertise in
9 behavioral health or mental health cri-
10 sis response, including nurses, social
11 workers, peer support specialists, and
12 others, as designated by the State in
13 the State plan amendment under this
14 subsection;

15 “(II) whose members are trained
16 in trauma-informed care, de-escalation
17 strategies, and harm reduction;

18 “(III) that is able to respond in
19 a timely manner and, where appro-
20 priate, provide—

21 “(aa) screening and assess-
22 ment;

23 “(bb) stabilization and de-
24 escalation; and

1 “(cc) coordination with, and
2 referrals to, health, social, and
3 other services and supports as
4 needed, and health services as
5 needed;

6 “(IV) that maintains relation-
7 ships with relevant community part-
8 ners, including medical and behavioral
9 health providers, primary care pro-
10 viders, community health centers, cri-
11 sis respite centers, and managed care
12 organizations (if applicable); and

13 “(V) that maintains the privacy
14 and confidentiality of patient informa-
15 tion consistent with Federal and State
16 requirements; and

17 “(iii) available 24 hours per day,
18 every day of the year.

19 “(H) SUPPORTED EMPLOYMENT.—The
20 term ‘supported employment’ means ongoing
21 supports that are furnished to individuals who,
22 because of their serious mental illness, need in-
23 tensive support to obtain and maintain an indi-
24 vidual job in competitive or customized employ-
25 ment, or self-employment, in an integrated work

1 setting in the general workforce at or above
2 their State’s minimum wage, but not less than
3 the customary wage and level of benefits paid
4 by the employer for the same or similar work
5 performed by individuals without disabilities.
6 The desired outcome of all supported employ-
7 ment services is sustained paid employment at
8 or above the minimum wage in an integrated
9 setting in the general workforce, in a job that
10 meets personal and career goals.

11 “(3) INCREASE FMAP FOR MEDICAL ASSIST-
12 ANCE FOR INTENSIVE COMMUNITY-BASED SERV-
13 ICES.—

14 “(A) IN GENERAL.—During each fiscal
15 quarter that a State meets the requirements de-
16 scribed in subparagraphs (B) through (D), the
17 Federal medical assistance percentage applica-
18 ble to the State for the quarter (as determined
19 under section 1905(b) without regard to any
20 adjustments applicable under such section or
21 any other provision of law) shall be increased by
22 the applicable number of percentage points (as
23 determined under subparagraph (E) but not to
24 exceed 100 percent) with respect to amounts
25 expended by the State for medical assistance

1 for intensive community-based services fur-
2 nished to eligible individuals during such quar-
3 ter under a State plan amendment under this
4 subsection.

5 “(B) SERVICE QUALITY CRITERIA.—

6 “(i) IN GENERAL.—The State shall
7 provide eligible individuals with intensive
8 community-based services in accordance
9 with such quality criteria as the Secretary
10 shall by regulation establish.

11 “(ii) CRITERIA REQUIREMENTS.—The
12 criteria established by the Secretary under
13 clause (i) shall be designed to ensure that
14 eligible individuals receive the intended
15 benefits of receipt of the services, including
16 avoiding preventable hospitalization or
17 other institutionalization. The criteria will
18 be adjusted as needed to account for fu-
19 ture developments and best practice. The
20 criteria shall include the following:

21 “(I) The standards for assertive
22 community treatment in the Tool for
23 Measurement of Assertive Community
24 Treatment (TMACT), Dartmouth As-
25 sertive Community Treatment Scale

1 (DACTS), or other generally accepted
2 tool for evaluating assertive commu-
3 nity treatment.

4 “(II) Individual Placement and
5 Support (IPS) standards for sup-
6 ported employment services.

7 “(III) Securing and maintaining
8 scattered-site housing with a Housing
9 First approach as the goal for hous-
10 ing-related activities and services.

11 “(C) INTEGRATED SETTING.—Eligible in-
12 dividuals shall receive intensive community-
13 based services—

14 “(i) in the most integrated setting ap-
15 propriate; and

16 “(ii) without limiting access to any
17 such service on the basis of—

18 “(I) the individual’s need for as-
19 sistance with activities of daily living
20 or instrumental activities of daily liv-
21 ing;

22 “(II) receipt of other disability
23 support services;

24 “(III) the presence of additional
25 disabilities such as a physical, commu-

1 nication, intellectual, developmental,
2 or other disability or a record or his-
3 tory of having such a disability; or

4 “(IV) the existence of co-occur-
5 ring substance use disorders or a
6 record or history of having such sub-
7 stance use disorders.

8 “(D) DATA COLLECTION AND REPORT-
9 ING.—Not less frequently than once every 2
10 years, the State shall collect and report data to
11 the Secretary, including with respect to dispari-
12 ties in access to, or receipt of, intensive commu-
13 nity-based services, according to criteria estab-
14 lished by the Secretary and the Secretary shall
15 analyze and report such findings to Congress.
16 The criteria shall include the collection and re-
17 porting of data with respect to the following:

18 “(i) Demographic characteristics of el-
19 igible individuals who receive intensive
20 community-based services, including but
21 not limited to, race, ethnicity, disability
22 status, disability category, age, sex, sex
23 characteristics, sexual orientation, gender
24 identity, primary language, rural or urban
25 environment, and service setting.

1 “(ii) The utilization of intensive com-
2 munity-based services, including units of
3 service and duration of receipt of service,
4 per eligible individual receiving services.

5 “(iii) Consumer outcomes, as meas-
6 ured via a quality service review tool and
7 methodology approved by the Secretary.

8 “(E) APPLICABLE NUMBER OF PERCENT-
9 AGE POINTS.—For purposes of subparagraph
10 (A)—

11 “(i) if a State offers at least 1 but
12 under 2 of the categories of intensive com-
13 munity-based services described in clauses
14 (i) through (vii) of paragraph (2)(E) in a
15 quarter, the applicable number of percent-
16 age points for the State and quarter is 3
17 percentage points;

18 “(ii) if a State offers at least 2 but
19 under 3 of the categories of intensive com-
20 munity-based services described in clauses
21 (i) through (vii) of paragraph (2)(E) in a
22 quarter, the applicable number of percent-
23 age points for the State and quarter is 7
24 percentage points;

1 “(iii) if a State offers at least 3 but
2 under 4 of the categories of intensive com-
3 munity-based services described in clauses
4 (i) through (vii) of paragraph (2)(E) in a
5 quarter, the applicable number of percent-
6 age points for the State and quarter is 12
7 percentage points;

8 “(iv) if a State offers at least 4 but
9 under 5 of the categories of intensive com-
10 munity-based services described in clauses
11 (i) through (vii) of paragraph (2)(E) in a
12 quarter, the applicable number of percent-
13 age points for the State and quarter is 18
14 percentage points; and

15 “(v) if a State offers at least 5 of the
16 categories of intensive community-based
17 services described in clauses (i) through
18 (vii) of paragraph (2)(E) in a quarter, the
19 applicable number of percentage points for
20 the State and quarter is 25 percentage
21 points.

22 “(4) APPLICATION OF HCBS STATE PLAN
23 AMENDMENT PROVISIONS.—Paragraphs (3), (4), (5),
24 (6), and (7) of subsection (i) shall apply to State
25 plan amendments under this subsection and inten-

1 sive community-based services in the same manner
2 as such paragraphs apply to State plan amendments
3 under such subsection (i) and home and community-
4 based services.

5 “(5) FUNDING FOR STATE PLANNING
6 GRANTS.—

7 “(A) IN GENERAL.—There is appropriated,
8 out of any funds in the Treasury not otherwise
9 appropriated, \$20,000,000 to the Secretary for
10 purposes of implementing, administering, and
11 making planning grants to States as soon as
12 practicable for purposes of developing a State
13 plan amendment request to provide intensive
14 community-based services under this subsection,
15 to remain available until expended.

16 “(B) USE OF FUNDS.—A State shall use
17 funds received under a grant under this sub-
18 section to engage in planning activities for a
19 State plan amendment under this subsection,
20 including—

21 “(i) collaborative activities, at the
22 State and Federal level, with providers of
23 housing-related services;

24 “(ii) developing service quality cri-
25 teria; and

1 “(iii) developing the infrastructure
2 necessary to implement the State plan
3 amendment, including data infrastructure
4 and staffing.”.

5 (b) RULE OF CONSTRUCTION.—Nothing in this Act
6 or the amendments made by this Act may be construed
7 to limit the entitlement of children and youth who are eli-
8 gible for medical assistance under a State Medicaid pro-
9 gram to receive intensive community-based services
10 through the early and periodic screening, diagnostic, and
11 treatment services benefit.

○