

118TH CONGRESS  
1ST SESSION

# S. 3118

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

OCTOBER 24, 2023

Mr. CASEY (for himself, Mr. MERKLEY, Ms. DUCKWORTH, Ms. SMITH, Mr. BLUMENTHAL, Mr. REED, Ms. BALDWIN, Mrs. GILLIBRAND, Mr. SANDERS, Ms. WARREN, Ms. STABENOW, Mr. WHITEHOUSE, Mr. BOOKER, Mr. WELCH, Mr. KAINE, Ms. KLOBUCHAR, Mr. FETTERMAN, Mr. VAN HOLLEN, Mr. MARKEY, Mr. HEINRICH, and Mr. WYDEN) 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 “HCBS Relief Act of  
5 2023”.

1 **SEC. 2. ADDITIONAL SUPPORT FOR MEDICAID HOME AND**  
2 **COMMUNITY-BASED SERVICES.**

3 (a) INCREASED FMAP.—

4 (1) IN GENERAL.—Notwithstanding section  
5 1905(b) of the Social Security Act (42 U.S.C.  
6 1396d(b)), in the case of an HCBS program State,  
7 the Federal medical assistance percentage deter-  
8 mined for the State under section 1905(b) of such  
9 Act and, if applicable, increased under subsection  
10 (y), (z), or (aa) of section 1905 of such Act (42  
11 U.S.C. 1396d), or section 1915(k) of such Act (42  
12 U.S.C. 1396n(k)), shall be increased by 10 percent-  
13 age points with respect to expenditures of the State  
14 under the State Medicaid program for home and  
15 community-based services that are provided during  
16 fiscal years 2024 and 2025. In no case may the ap-  
17 plication of the previous sentence result in the Fed-  
18 eral medical assistance percentage determined for a  
19 State being more than 95 percent.

20 (2) DEFINITIONS.—In this section:

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

1           (B) HOME AND COMMUNITY-BASED SERV-  
2           ICES.—The term “home and community-based  
3           services” means home health care services au-  
4           thorized under paragraph (7) of section 1905(a)  
5           of the Social Security Act (42 U.S.C.  
6           1396d(a)), behavioral health services authorized  
7           under paragraph (13) of such section, personal  
8           care services authorized under paragraph (24)  
9           of such section, PACE services authorized  
10          under paragraph (26) of such section, services  
11          authorized under subsections (b), (c), (i), (j),  
12          and (k) of section 1915 of such Act (42 U.S.C.  
13          1396n), such services authorized under a waiver  
14          under section 1115 of such Act (42 U.S.C.  
15          1315), and such other services specified by the  
16          Secretary.

17          (b) CONDITION.—The condition described in this sub-  
18          section, with respect to a State, is that the State submits  
19          an application to the Secretary, at such time and in such  
20          manner as specified by the Secretary, that includes, in ad-  
21          dition to such other information as the Secretary shall re-  
22          quire—

23                  (1) a description of which activities described in  
24          subsection (d) that a State plans to implement and

1 a description of how it plans to implement such ac-  
2 tivities;

3 (2) assurances that all Federal funds attrib-  
4 utable to the increase under subsection (a) will be—

5 (A) expended by the State in accordance  
6 with this section not later than September 30,  
7 2027; and

8 (B) used—

9 (i) to implement the activities de-  
10 scribed in subsection (d);

11 (ii) to supplement, and not supplant,  
12 the level of State funds expended for home  
13 and community-based services for eligible  
14 individuals through programs in effect as  
15 of the date of the enactment of this sec-  
16 tion; and

17 (iii) to increase reimbursement rates  
18 for home and community-based services to  
19 a level that will support recruitment and  
20 retention of a sufficient workforce to pro-  
21 vide home and community-based services  
22 to eligible individuals; 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 the purposes described in  
15 paragraph (2).

16           (2) FOCUSED AREAS OF HCBS IMPROVE-  
17 MENT.—The purposes described in this paragraph,  
18 with respect to a State, are the following:

19           (A) To increase rates for home health  
20 agencies and agencies that employ direct sup-  
21 port professionals (including independent pro-  
22 viders in a self-directed or consumer-directed  
23 model) to provide home and community-based  
24 services under the State Medicaid program,  
25 provided that any agency or individual that re-

1 ceives payment under such an increased rate in-  
2 creases the compensation it pays its home  
3 health workers or direct support professionals.

4 (B) To provide paid sick leave, paid family  
5 leave, and paid medical leave for home health  
6 workers and direct support professionals.

7 (C) To provide hazard pay, overtime pay,  
8 and shift differential pay for home health work-  
9 ers and direct support professionals.

10 (D) To improve stability of home health  
11 worker and direct support professional jobs, in-  
12 cluding consistent hours, scheduling, pay, and  
13 benefit eligibility.

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

19 (F) To purchase emergency supplies and  
20 equipment, which may include items not typi-  
21 cally covered under the Medicaid program, such  
22 as personal protective equipment, necessary to  
23 enhance access to services and to protect the  
24 health and well-being of home health workers  
25 and direct support professionals.

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

4 (H) To recruit new home health workers  
5 and direct support professionals.

6 (I) To support family care providers of eli-  
7 gible individuals with needed supplies, equip-  
8 ment, and services, which may include such  
9 items as family caregiver pay and respite serv-  
10 ices.

11 (J) To pay for training for home health  
12 workers and direct support professionals.

13 (K) To pay for assistive technologies, staff-  
14 ing, and training to facilitate eligible individ-  
15 uals' communication, and other costs incurred  
16 in order to facilitate community integration and  
17 ensure an individual's person-centered service  
18 plan continues to be fully implemented.

19 (L) To prepare information and public  
20 health and educational materials in accessible  
21 formats (including formats accessible to people  
22 with low literacy or intellectual disabilities)  
23 about prevention, treatment, recovery and other  
24 aspects of communicable diseases and threats to  
25 the health of eligible individuals, their families,

1 and the general community served by agencies  
2 described in subparagraph (A).

3 (M) To protect the health and safety of  
4 home health workers and direct support profes-  
5 sionals during public health emergencies and  
6 natural disasters.

7 (N) To pay for interpreters to assist in  
8 providing home and community-based services  
9 to eligible individuals and to inform the general  
10 public about communicable diseases and other  
11 public health threats.

12 (O) To allow day services providers to pro-  
13 vide home and community-based services.

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

21 (Q) To assist eligible individuals who had  
22 to relocate to a nursing facility or institutional  
23 setting from their homes in—

24 (i) moving back to their homes (in-  
25 cluding by paying for moving costs, first



1 month's rent, and other one-time expenses  
2 and start-up costs);

3 (ii) resuming home and community-  
4 based services;

5 (iii) receiving mental health services  
6 and necessary rehabilitative service to re-  
7 gain skills lost while relocated; and

8 (iv) while funds attributable to the in-  
9 creased FMAP under this section remain  
10 available, continuing home and community-  
11 based services for eligible individuals who  
12 were served from a waiting list for such  
13 services during the emergency period de-  
14 scribed in section 1135(g)(1)(B) of the So-  
15 cial Security Act (42 U.S.C. 1320b-  
16 5(g)(1)(B)).

17 (e) REPORTING REQUIREMENTS.—

18 (1) STATE REPORTING REQUIREMENTS.—Not  
19 later than December 31, 2027, any State with re-  
20 spect to which an application is approved by the Sec-  
21 retary pursuant to subsection (c) shall submit a re-  
22 port to the Secretary that contains the following in-  
23 formation:

1 (A) Activities and programs that were  
2 funded using Federal funds attributable to such  
3 increase.

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

6 (C) The number of eligible individuals who  
7 were able to resume home and community-  
8 based services as a result of such activities and  
9 programs.

10 (2) HHS EVALUATION.—

11 (A) IN GENERAL.—The Secretary shall  
12 evaluate the implementation and outcomes of  
13 this section in the aggregate using an external  
14 evaluator with experience evaluating home and  
15 community-based services, disability programs,  
16 and older adult programs.

17 (B) EVALUATION CRITERIA.—For pur-  
18 poses of subparagraph (A), the external eval-  
19 uator shall—

20 (i) document and evaluate changes in  
21 access, availability, and quality of home  
22 and community-based services in each  
23 HCBS program State;

24 (ii) document and evaluate aggregate  
25 changes in access, availability, and quality

1 of home and community-based services  
2 across all such States; and

3 (iii) evaluate the implementation and  
4 outcomes of this section based on—

5 (I) the impact of this section on  
6 increasing funding for home and com-  
7 munity-based services;

8 (II) the impact of this section on  
9 achieving targeted access, availability,  
10 and quality of home and community-  
11 based services; and

12 (III) promising practices identi-  
13 fied by activities conducted pursuant  
14 to subsection (d) that increase access  
15 to, availability of, and quality of home  
16 and community-based services.

17 (C) DISSEMINATION OF EVALUATION FIND-  
18 INGS.—The Secretary shall—

19 (i) disseminate the findings from the  
20 evaluations conducted under this para-  
21 graph to—

22 (I) all State Medicaid directors;  
23 and

24 (II) the Committee on Energy  
25 and Commerce of the House of Rep-

1                   representatives, the Committee on Fi-  
2                   nance of the Senate, and the Special  
3                   Committee on Aging of the Senate;  
4                   and

5                   (ii) make all evaluation findings pub-  
6                   licly available in an accessible electronic  
7                   format and any other accessible format de-  
8                   termined appropriate by the Secretary.

9                   (D) OVERSIGHT.—Each State with respect  
10                  to which an application is approved by the Sec-  
11                  retary pursuant to subsection (c) shall ensure  
12                  adequate oversight of the expenditure of Fed-  
13                  eral funds pursuant to such increase in accord-  
14                  ance with the Medicaid regulations, including  
15                  section 1115 and 1915 waiver regulations and  
16                  special terms and conditions for any relevant  
17                  waiver or grant program.

18                  (3) NON-APPLICATION OF THE PAPERWORK RE-  
19                  DUCTION ACT.—Chapter 35 of title 44, United  
20                  States Code (commonly referred to as the “Paper-  
21                  work Reduction Act of 1995”), shall not apply to the  
22                  provisions of this subsection.

23                  (f) ADDITIONAL DEFINITIONS.—In this section:

24                  (1) ELIGIBLE INDIVIDUAL.—The term “eligible  
25                  individual” means an individual who is eligible for or

1 enrolled for medical assistance under a State Med-  
2 icaid program.

3 (2) MEDICAID PROGRAM.—The term “Medicaid  
4 program” means, with respect to a State, the State  
5 program under title XIX of the Social Security Act  
6 (42 U.S.C. 1396 et seq.) (including any waiver or  
7 demonstration under such title or under section  
8 1115 of such Act (42 U.S.C. 1315) relating to such  
9 title).

10 (3) SECRETARY.—The term “Secretary” means  
11 the Secretary of Health and Human Services.

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

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