

116TH CONGRESS  
1ST SESSION

# S. 3138

To amend titles XIX and XXI of the Social Security Act to require hospitals and certain other participating providers under Medicaid or the Children’s Health Insurance Program to disclose the provider’s policy on parental consent for the provision, withdrawal, or denial of life-sustaining treatment for minors, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

DECEMBER 19, 2019

Mr. LEE (for himself, Mr. HAWLEY, Mr. LANKFORD, Mr. CRAMER, and Mr. BRAUN) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend titles XIX and XXI of the Social Security Act to require hospitals and certain other participating providers under Medicaid or the Children’s Health Insurance Program to disclose the provider’s policy on parental consent for the provision, withdrawal, or denial of life-sustaining treatment for minors, 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 “Parental Accessibility  
5 Rights for Emergency and Negligent Treatment Act”.

1 **SEC. 2. LIFE-SUSTAINING TREATMENT PARENTAL CON-**  
 2 **SENT POLICY UNDER MEDICAID AND CHIP.**

3 (a) **MEDICAID.**—Section 1902(w) of the Social Secu-  
 4 rity Act (42 U.S.C. 1396a(w)) is amended—

5 (1) by striking “the implementation of such  
 6 rights;” and all that precedes it through “(w)(1)”  
 7 and inserting the following:

8 “(w)(1) For purposes of subsection (a)(57) and sec-  
 9 tions 1903(m)(1)(A) and 1919(c)(2)(E), the requirements  
 10 of this subsection are that a provider or organization (as  
 11 the case may be) maintain written policies and procedures  
 12 with respect to all individuals, and in the case of any  
 13 minor individuals (as defined in paragraph (4)(B)) with  
 14 respect to the parents and legal guardians of such individ-  
 15 uals, receiving medical care by or through the provider or  
 16 organization—

17 “(A) to provide, on an Internet website of the  
 18 provider or organization, and upon request of an in-  
 19 dividual or, in the case of a minor individual, at  
 20 least 1 parent or legal guardian of the minor indi-  
 21 vidual, written information to each such individual,  
 22 parent, or legal guardian concerning—

23 “(i) an individual’s rights under State law  
 24 (whether statutory or as recognized by the  
 25 courts of the State) to make decisions con-  
 26 cerning such medical care, including the right

1 to accept, withdraw, or refuse, a medical or sur-  
2 gical treatment or life-sustaining procedures, in-  
3 cluding hydration and sustenance, and the right  
4 to formulate advance directives (as defined in  
5 paragraph (4)(A));

6 “(ii) the provider’s or organization’s writ-  
7 ten policies respecting the implementation of  
8 such rights;

9 “(iii) in the case of a minor individual—

10 “(I) the disclosure of whether or not  
11 the consent of at least 1 parent or legal  
12 guardian of the minor individual is re-  
13 quired for the provision, withdrawal, or de-  
14 nial of life-sustaining procedures, including  
15 hydration and sustenance, or prior to a do-  
16 not-resuscitate order or similar physician’s  
17 order being instituted;

18 “(II) notice that the requirement to  
19 provide such disclosure must be noted in  
20 the minor individual’s medical records; and

21 “(III) if any such consent is required,  
22 the procedures for how the consent is ob-  
23 tained and recorded;”;

24 (2) in paragraph (2), by striking “adult indi-  
25 vidual” and inserting “individual, and in the case of

1 a minor individual, to at least 1 parent or legal  
2 guardian of the minor individual”;

3 (3) in paragraph (3), by striking “section” and  
4 inserting “subsection”; and

5 (4) in paragraph (4)—

6 (A) by striking “subsection, the term” and  
7 inserting “subsection—

8 “(A) the term”; and

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

10 “(B) the term ‘minor individual’ means an indi-  
11 vidual who is an unemancipated individual who has  
12 not attained 18 years of age.”.

13 (b) APPLICATION TO CHIP.—Section 2107(e)(1) of  
14 the Social Security Act (42 U.S.C. 1397gg(e)(1)) is  
15 amended—

16 (1) by redesignating subparagraphs (D)  
17 through (S) as subparagraphs (E) through (T), re-  
18 spectively; and

19 (2) by inserting after subparagraph (C) the fol-  
20 lowing:

21 “(D) Subsections (a)(57) and (w) of sec-  
22 tion 1902 (relating to maintenance of written  
23 policies and procedures respecting advance di-  
24 rectives and parental consent for the denial of

1           life-sustaining procedures for minor individ-  
2           uals).”.

3           (c) EFFECTIVE DATE.—

4           (1) IN GENERAL.—Subject to paragraph (2),  
5           the amendments made by this section shall apply to  
6           provider agreements entered into or renewed on or  
7           after January 1, 2020.

8           (2) EXCEPTION FOR STATE LEGISLATION.—In  
9           the case of a State plan under title XIX or XXI of  
10          the Social Security Act which the Secretary of  
11          Health and Human Services determines requires  
12          State legislation (other than legislation appro-  
13          priating funds) in order for the plan to meet the ad-  
14          ditional requirements imposed by the amendments  
15          made by this section, the State plan shall not be re-  
16          garded as failing to comply with the requirements of  
17          such title solely on the basis of its failure to meet  
18          these additional requirements before the first day of  
19          the first calendar quarter beginning after the close  
20          of the first regular session of the State legislature  
21          that begins after the date of the enactment of this  
22          Act.

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