

118TH CONGRESS  
1ST SESSION

# S. 3451

To amend titles XIX and XXI of the Social Security Act to provide mental health and substance use services to incarcerated individuals, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

DECEMBER 7, 2023

Mr. BOOKER 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 provide mental health and substance use services to incarcerated individuals, 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 “Rehabilitation and Re-  
5 covery During Incarceration Act”.

1 **SEC. 2. MODIFYING MEDICAID AND CHIP EXCLUSIONS RE-**  
 2 **LATING TO INCARCERATED INDIVIDUALS TO**  
 3 **ALLOW FOR PROVISION OF MENTAL HEALTH**  
 4 **AND SUBSTANCE USE SERVICES.**

5 (a) MEDICAID OPTION.—

6 (1) IN GENERAL.—Section 1905(a) of the So-  
 7 cial Security Act (42 U.S.C. 1396d(a)) is amended,  
 8 in the subdivision (A) following paragraph (31), by  
 9 inserting “, or, at the option of the State, in the  
 10 case of an eligible inmate (as defined in paragraph  
 11 (4) of section 1902(nn)), with respect to mental  
 12 health and substance use services described in para-  
 13 graph (5) of such section” before “); or”.

14 (2) ELIGIBLE INMATE AND MENTAL HEALTH  
 15 AND SUBSTANCE USE SERVICES DEFINED.—Section  
 16 1902(nn) of the Social Security Act (42 U.S.C.  
 17 1396a(nn)) is amended—

18 (A) in the subsection header, by inserting  
 19 “; ELIGIBLE INMATE; MENTAL HEALTH AND  
 20 SUBSTANCE USE SERVICES” after “PUBLIC IN-  
 21 STITUTION”;

22 (B) in the matter preceding paragraph (1),  
 23 by striking “and this subsection” and inserting  
 24 “, this subsection, and the subdivision (A) fol-  
 25 lowing the last numbered paragraph of section  
 26 1905(a)”;

1 (C) by adding at the end the following new  
2 paragraphs:

3 “(4) ELIGIBLE INMATE.—The term ‘eligible in-  
4 mate’ means an individual of any age who is an in-  
5 mate of a public institution and who—

6 “(A) was determined eligible for medical  
7 assistance under the State plan immediately be-  
8 fore becoming an inmate of such a public insti-  
9 tution; or

10 “(B) is determined eligible for such med-  
11 ical assistance while an inmate of a public insti-  
12 tution.

13 “(5) MENTAL HEALTH AND SUBSTANCE USE  
14 SERVICES.—The term ‘mental health and substance  
15 use services’ means such services for the treatment  
16 of a mental health condition or substance use dis-  
17 order as the Secretary shall specify by regulation.”.

18 (b) CHIP OPTION.—

19 (1) IN GENERAL.—Section 2110(b)(7) of the  
20 Social Security Act (42 U.S.C. 1397jj(b)(7)) is  
21 amended—

22 (A) in the paragraph header, by striking  
23 “EXCEPTION” and inserting “EXCEPTIONS”;

24 (B) by striking “In the case of” and in-  
25 serting the following:

1           “(A) PROVISION OF SCREENING, DIAG-  
2           NOSTIC, REFERRAL, AND CASE MANAGEMENT  
3           SERVICES PRE-RELEASE.—In the case of”;

4           (C) by adding at the end the following new  
5           subparagraph:

6           “(B) PROVISION OF MENTAL HEALTH AND  
7           SUBSTANCE USE DISORDER SERVICES WHILE  
8           AN INMATE.—

9           “(i) IN GENERAL.—In the case of a  
10           child who is an eligible inmate, the child  
11           shall not be considered to be described in  
12           paragraph (2)(A) with respect to mental  
13           health services and substance use disorder  
14           services otherwise covered under the State  
15           child health plan (or waiver of such plan).

16           “(ii) ELIGIBLE INMATE DEFINED.—  
17           For purposes of this subparagraph, the  
18           term ‘eligible inmate’ has the meaning  
19           given that term in section 1902(nn)(4), ex-  
20           cept that such section shall be applied  
21           by—

22           “(I) substituting ‘child health as-  
23           sistance’ for ‘medical assistance’ each  
24           place it appears; and

1                   “(II) by substituting ‘State child  
2                   health plan under title XXI’ for ‘State  
3                   plan’.”.

4                   (2) TECHNICAL AMENDMENT.—

5                   (A) IN GENERAL.—Section 5122(b) of divi-  
6                   sion FF of the Consolidated Appropriations  
7                   Act, 2023 (Public Law 117–328) is amended by  
8                   striking paragraph (1).

9                   (B) EFFECTIVE DATE.—The amendment  
10                  made by this paragraph shall take effect as if  
11                  included in the enactment of the Consolidated  
12                  Appropriations Act, 2023 (Public Law 117–  
13                  328).

14               (c) INCREASED FEDERAL MATCH FOR MENTAL  
15               HEALTH AND SUBSTANCE USE DISORDER SERVICES  
16               FURNISHED TO INCARCERATED INDIVIDUALS.—

17               (1) MEDICAID.—Section 1905 of the Social Se-  
18               curity Act (42 U.S.C. 1396d) is amended—

19                   (A) in subsection (b), by striking “and  
20                   (ii)” and inserting “(ii), and (jj)”; and

21                   (B) by adding at the end the following new  
22                   subsection:

23               “(jj) INCREASED FMAP FOR MENTAL HEALTH AND  
24               SUBSTANCE USE SERVICES FURNISHED TO INMATES.—

1           “(1) IN GENERAL.—Notwithstanding any other  
2 provision of this title except for paragraph (3), the  
3 Federal medical assistance percentage for a State,  
4 with respect to amounts expended by the State for  
5 medical assistance for mental health and substance  
6 use disorder services furnished to an eligible inmate  
7 (as such terms are defined in section 1902(n))  
8 shall be equal to 100 percent.

9           “(2) EXCLUSION OF EXPENDITURES FROM TER-  
10 RITORIAL CAPS.—Any payment made to a territory  
11 for expenditures for medical assistance that are sub-  
12 ject to the Federal medical assistance percentage  
13 specified under paragraph (1) shall not be taken into  
14 account for purposes of applying payment limits  
15 under subsections (f) and (g) of section 1108.

16           “(3) REQUIREMENT TO REINVEST ADDITIONAL  
17 FUNDS.—As a condition for the receipt of the in-  
18 crease under paragraph (1) to the Federal medical  
19 assistance percentage of a State, the State shall  
20 demonstrate to the satisfaction of the Secretary that  
21 the State will use the Federal funds attributable to  
22 such increase only for the following purposes:

23                   “(A) To improve health information tech-  
24 nology and data sharing between State Med-

1           icaid programs, jails and prisons, and commu-  
2           nity-based providers and support organizations.

3           “(B) To increase the treatment capacity of  
4           community-based providers who are particularly  
5           attuned to, and able to serve, the specific needs  
6           of individuals who are involved with the justice  
7           system or at risk of becoming involved in the  
8           justice system.

9           “(C) To expand or enhance community-  
10          based reentry services and supports provided by  
11          the State to incarcerated and formerly incarcer-  
12          ated individuals, including services and supports  
13          designed to meet the health-related social needs  
14          of such individuals.”.

15         (2) CHIP.—

16                 (A) IN GENERAL.—Section 2105 of the So-  
17                 cial Security Act (42 U.S.C. 1397ee) is amend-  
18                 ed—

19                         (i) in subsection (b), by striking  
20                         “(11)” and inserting “(11), (12), and  
21                         (13)”; and

22                         (ii) in subsection (c), by adding at the  
23                         end the following new paragraph:

1           “(13) ENHANCED PAYMENT FOR COVERAGE OF  
2 MENTAL HEALTH AND SUBSTANCE USE DISORDER  
3 SERVICES.—

4           “(A) IN GENERAL.—Notwithstanding sub-  
5 section (b) and subject to subparagraph (B),  
6 the enhanced FMAP for a State with respect to  
7 payments under subsection (a) for expenditures  
8 under the State child health plan (or a waiver  
9 of such plan) for mental health or substance  
10 use disorder services furnished to a targeted  
11 low-income child or a targeted low-income preg-  
12 nant woman who is an eligible inmate (as such  
13 term is defined in section 2110(b)(7)(B)(ii))  
14 shall be equal to 100 percent.

15           “(B) REQUIREMENT TO REINVEST ADDI-  
16 TIONAL FUNDS.—The requirement described in  
17 paragraph (3) of section 1905(jj) shall apply to  
18 Federal funds attributable to an increase in the  
19 enhanced Federal medical assistance percentage  
20 of a State under subparagraph (A) in the same  
21 manner as such requirement applies to Federal  
22 funds attributable to an increase to the Federal  
23 medical assistance percentage of a State under  
24 paragraph (1) of such section.”.



1 (B) ADJUSTING STATE CHIP ALLOTMENTS  
 2 TO ACCOUNT FOR INCREASED PAYMENTS FOR  
 3 COVERAGE OF MENTAL HEALTH AND SUB-  
 4 STANCE USE SERVICES FURNISHED TO ELIGI-  
 5 BLE INMATES.— Section 2104(m) of the Social  
 6 Security Act (42 U.S.C. 1397dd(m)) is amend-  
 7 ed—

8 (i) in paragraph (2)(B), in the matter  
 9 preceding clause (i), by striking “and  
 10 (12)” and inserting “(12), and (13)”; and

11 (ii) by adding at the end the following  
 12 new paragraph:

13 “(13) ADJUSTING ALLOTMENTS TO ACCOUNT  
 14 FOR INCREASED FEDERAL PAYMENTS FOR COV-  
 15 ERAGE OF MENTAL HEALTH AND SUBSTANCE USE  
 16 SERVICES FOR ELIGIBLE INMATES.—If a State, com-  
 17 monwealth, or territory receives payment for a fiscal  
 18 year under subsection (a) of section 2105 for ex-  
 19 penditures that are subject to the enhanced FMAP  
 20 specified under subsection (c)(13) of such section,  
 21 the amount of the allotment determined for the  
 22 State, commonwealth, or territory under this sub-  
 23 section—

24 “(A) for such fiscal year shall be increased  
 25 by the projected expenditures for such year by

1 the State, commonwealth, or territory under the  
2 State child health plan (or a waiver of such  
3 plan) for mental health and substance use dis-  
4 order services furnished to eligible inmates (as  
5 defined in section 2110(b)(7)(B)(ii)(B)); and

6 “(B) once actual expenditures are available  
7 in the subsequent fiscal year, the fiscal year al-  
8 lotment that was adjusted by the amount de-  
9 scribed in subparagraph (A) shall be adjusted  
10 on the basis of the difference between—

11 “(i) such projected amount of expend-  
12 itures described in subparagraph (A) for  
13 such fiscal year described in such subpara-  
14 graph by the State, commonwealth, or ter-  
15 ritory; and

16 “(ii) the actual amount of expendi-  
17 tures for such fiscal year described in sub-  
18 paragraph (A) by the State, common-  
19 wealth, or territory under the State child  
20 health plan (or waiver of such plan) for  
21 mental health and substance use disorder  
22 services furnished to eligible inmates (as  
23 defined in section 2110(b)(7)(B)(ii)(B)).”.

24 (d) CONFORMING AMENDMENTS.—

1           (1) Section 1905(a) of the Social Security Act  
2           (42 U.S.C. 1396d(a)), as amended by subsection (a),  
3           is amended, in the matter following paragraph (31),  
4           by striking “set forth in the subdivision (B) fol-  
5           lowing paragraph (30) of the first sentence of this  
6           subsection” and inserting “set forth in the portion  
7           of the first sentence of this subsection that follows  
8           the last numbered paragraph of this subsection”.

9           (2) Section 5122(a)(1) of division FF of the  
10          Consolidated Appropriations Act, 2023 (Public Law  
11          117–328) is amended by striking “case manage-  
12          ment” and inserting “targeted case management  
13          services”.

14          (e) EFFECTIVE DATE.—

15           (1) IN GENERAL.—Except as provided in para-  
16           graph (2), the amendments made by this section  
17           shall apply with respect to medical assistance, child  
18           health assistance, and pregnancy-related assistance  
19           provided on or after January 1, 2023.

20           (2) EFFECTIVE DATE OF CONFORMING AMEND-  
21           MENT.—The amendment made by paragraph (2) of  
22           subsection (d) shall take effect as if included in the  
23           enactment of the Consolidated Appropriations Act,  
24           2023 (Public Law 117–328).

1 **SEC. 3. REPORT BY COMPTROLLER GENERAL.**

2 Not later than the date that is 5 years after the date  
3 of enactment of this Act, the Comptroller General of the  
4 United States shall submit to Congress a report con-  
5 taining available information regarding incarcerated indi-  
6 viduals that receive medical assistance or child health as-  
7 sistance under a State plan under title XIX or XXI of  
8 the Social Security Act (42 U.S.C. 1396 et seq., 1397aa  
9 et seq.) (as applicable) as a result of a State electing to  
10 provide coverage to eligible inmates pursuant to the  
11 amendments to such titles made by section 2. The infor-  
12 mation contained in the report may include information  
13 such as the following:

14 (1) The number of such incarcerated individ-  
15 uals.

16 (2) The access of such incarcerated individuals  
17 to health care services, including specialty care, and  
18 health care providers.

19 (3) The quality of health care services provided  
20 to incarcerated individuals.

21 (4) Any impact of coverage under such a State  
22 plan on recidivism.

23 (5) The percentage of such incarcerated individ-  
24 uals who, upon release, are—

25 (A) enrolled under such a State plan;

1           (B) connected to a provider in their com-  
2           munity of mental health, substance use dis-  
3           order, or primary care services; and

4           (C) receiving medication-assisted treatment  
5           for the treatment of a substance use disorder.

6           (6) Any other information the Comptroller Gen-  
7           eral determines necessary regarding the health of in-  
8           carcerated individuals.

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