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

DECEMBER 3, 2020

Mr. CASEY (for himself, Mr. BOOKER, Mr. VAN HOLLEN, Mr. BLUMENTHAL, Mr. MENENDEZ, Ms. SMITH, Ms. DUCKWORTH, Ms. WARREN, Ms. STABENOW, Mr. BROWN, Mrs. SHAHEEN, Mr. MERKLEY, Mr. PETERS, Mrs. GILLIBRAND, Mr. REED, Mr. MARKEY, Ms. BALDWIN, Ms. KLOBUCHAR, and Mr. SANDERS) 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 Representatives of the United States of America in Congress assembled,

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “COVID HCBS Relief Act of 2020”.

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SEC. 2. ADDITIONAL SUPPORT FOR MEDICAID HOME AND
COMMUNITY-BASED SERVICES DURING THE
COVID–19 EMERGENCY PERIOD.

(a) INCREASED FMAP.—

(1) IN GENERAL.—Notwithstanding section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)), in the case of an HCBS program State, the Federal medical assistance percentage determined for the State under section 1905(b) of such Act and, if applicable, increased under subsection (y), (z), or (aa) of section 1905 of such Act (42 U.S.C. 1396d), section 1915(k) of such Act (42 U.S.C. 1396n(k)), or section 6008(a) of the Families First Coronavirus Response Act (Public Law 116–127), shall be increased by 10 percentage points with respect to expenditures of the State under the State Medicaid program for home and community-based services that are provided during the HCBS program improvement period. In no case may the application of the previous sentence result in the Federal medical assistance percentage determined for a State being more than 95 percent.

(2) DEFINITIONS.—In this section:

(A) HCBS PROGRAM IMPROVEMENT PERIOD.—The term “HCBS program improve-
ment period’ means, with respect to a State, the period—

(i) beginning on October 1, 2020; and

(ii) ending on September 30, 2022.

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

(C) HOME AND COMMUNITY-BASED SERVICES.—The term “home and community-based services” means home health care services authorized under paragraph (7) of section 1905(a) of the Social Security Act (42 U.S.C. 1396d(a)), behavioral health services authorized under paragraph (13) of such section, personal care services authorized under paragraph (24) of such section, PACE services authorized under paragraph (26) of such section, services authorized under subsections (b), (c), (i), (j), and (k) of section 1915 of such Act (42 U.S.C. 1396n), such services authorized under a waiver under section 1115 of such Act (42 U.S.C.
1315), and such other services specified by the Secretary.

(b) CONDITION.—The condition described in this subsection, with respect to a State, is that the State submits an application to the Secretary, at such time and in such manner as specified by the Secretary, that includes, in addition to such other information as the Secretary shall require—

(1) a description of which activities described in subsection (d) that a State plans to implement and a description of how it plans to implement such activities;

(2) assurances that the Federal funds attributable to the increase under subsection (a) will be used—

(A) to implement the activities described in subsection (d); and

(B) to supplement, and not supplant, the level of State funds expended for home and community-based services for eligible individuals through programs in effect as of the date of the enactment of this section; and

(3) assurances that the State will conduct adequate oversight and ensure the validity of such data as may be required by the Secretary.
(c) Approval of Application.—Not later than 90 days after the date of submission of an application of a State under subsection (b), the Secretary shall certify if the application is complete. Upon certification that an application of a State is complete, the application shall be deemed to be approved for purposes of this section.

(d) Activities to Improve the Delivery of HCBS.—

(1) In General.—A State shall work with community partners, such as Area Agencies on Aging, Centers for Independent Living, non-profit home and community-based services providers, and other entities providing home and community-based services, to implement—

(A) the purposes described in paragraph (2) during the COVID–19 public health emergency period; and

(B) the purposes described in paragraph (3) after the end of such emergency period.

(2) Focused Areas of HCBS Improvement.—The purposes described in this paragraph, with respect to a State, are the following:

(A) To increase rates for home health agencies and agencies that employ direct support professionals (including independent pro-
providers in a self-directed or consumer-directed
model) to provide home and community-based
services under the State Medicaid program,
provided that any agency or individual that re-
ceives payment under such an increased rate in-
creases the compensation it pays its home
health workers or direct support professionals.

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

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

(D) To provide home and community-
based services to eligible individuals who are on
waiting lists for programs approved under sec-
tions 1115 or 1915 of the Social Security Act
(42 U.S.C. 1315, 1396n).

(E) To expand home and community-based
services to facilitate reducing the census of
nursing facilities, intermediate care facilities,
psychiatric facilities, and other institutional or
congregate settings so that safety measures can
be effectively implemented within these settings.
(F) To purchase emergency supplies and equipment, which may include items not typically covered under the Medicaid program, such as personal protective equipment, necessary to enhance access to services and to protect the health and well-being of home health workers and direct support professionals.

(G) To pay for the travel of home health workers and direct support professionals to conduct home and community-based services.

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

(I) To support family care providers of eligible individuals with needed supplies and equipment, which may include items not typically covered under the Medicaid program, such as personal protective equipment, and pay.

(J) To pay for training for home health workers and direct support professionals that is specific to the COVID–19 public health emergency.

(K) To pay for assistive technologies, staffing, and other costs incurred during the COVID–19 public health emergency period in order to facilitate community integration and
ensures an individual’s person-centered service plan continues to be fully implemented.

(L) To prepare information and public health and educational materials in accessible formats (including formats accessible to people with low literacy or intellectual disabilities) about prevention, treatment, recovery, and other aspects of COVID–19 for eligible individuals, their families, and the general community served by agencies described in subparagraph (A).

(M) To pay for interpreters to assist in providing home and community-based services to eligible individuals and to inform the general public about COVID–19.

(N) To allow day services providers to provide home and community-based services.

(O) To pay for other expenses deemed appropriate by the Secretary to enhance, expand, or strengthen Home and Community-Based Services, including retainer payments, and expenses which meet the criteria of the home and community-based settings rule published on January 16, 2014.
(3) Permissible Uses after the Emergency Period.—The purpose described in this paragraph, with respect to a State, is to assist eligible individuals who had to relocate to a nursing facility or institutional setting from their homes during the COVID–19 public health emergency period in—

(A) moving back to their homes (including by paying for moving costs, first month’s rent, and other one-time expenses and start-up costs);

(B) resuming home and community-based services;

(C) receiving mental health services and necessary rehabilitative service to regain skills lost while relocated during the public health emergency period; and

(D) while funds attributable to the increased FMAP under this section remain available, continuing home and community-based services for eligible individuals who were served from a waiting list for such services during the public health emergency period.

(e) Reporting Requirements.—
(1) State reporting requirements.—Not later than December 31, 2023, any State with respect to which an application is approved by the Secretary pursuant to subsection (c) shall submit a report to the Secretary that contains the following information:

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

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

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

(2) HHS evaluation.—

(A) In general.—The Secretary shall evaluate the implementation and outcomes of this section in the aggregate using an external evaluator with experience evaluating home and community-based services, disability programs, and older adult programs.

(B) Evaluation criteria.—For purposes of subparagraph (A), the external evaluator shall—
(i) document and evaluate changes in access, availability, and quality of home and community-based services in each HCBS program State;

(ii) document and evaluate aggregate changes in access, availability, and quality of home and community-based services across all such States; and

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

(I) the impact of this section on increasing funding for home and community-based services;

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

(III) promising practices identified by activities conducted pursuant to subsection (d) that increase access to, availability of, and quality of home and community-based services.

(C) DISSEMINATION OF EVALUATION FINDINGS.—The Secretary shall—
(i) disseminate the findings from the evaluations conducted under this paragraph to—

(I) all State Medicaid directors; and

(II) the Committee on Energy and Commerce of the House of Representatives, the Committee on Finance of the Senate, and the Special Committee on Aging of the Senate; and

(ii) make all evaluation findings publicly available in an accessible electronic format and any other accessible format determined appropriate by the Secretary.

(D) OVERSIGHT.—Each State with respect to which an application is approved by the Secretary pursuant to subsection (c) shall ensure adequate oversight of the expenditure of Federal funds pursuant to such increase in accordance with the Medicaid regulations, including section 1115 and 1915 waiver regulations and special terms and conditions for any relevant waiver or grant program.
(3) NON-APPLICATION OF THE PAPERWORK REDUCTION ACT.—Chapter 35 of title 44, United States Code (commonly referred to as the “Paperwork Reduction Act of 1995”), shall not apply to the provisions of this subsection.

(f) ADDITIONAL DEFINITIONS.—In this section:

(1) COVID–19 PUBLIC HEALTH EMERGENCY PERIOD.—The term “COVID–19 public health emergency period” means the portion of the emergency period described in paragraph (1)(B) of section 1135(g) of the Social Security Act (42 U.S.C. 1320b–5(g)) beginning on or after the date of the enactment of this Act.

(2) ELIGIBLE INDIVIDUAL.—The term “eligible individual” means an individual who is eligible for or enrolled for medical assistance under a State Medicaid program.

(3) MEDICAID PROGRAM.—The term “Medicaid program” means, with respect to a State, the State program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) (including any waiver or demonstration under such title or under section 1115 of such Act (42 U.S.C. 1315) relating to such title).
(4) **SECRETARY.**—The term “Secretary” means the Secretary of Health and Human Services.

(5) **STATE.**—The term “State” has the meaning given such term for purposes of title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).