

111TH CONGRESS  
1ST SESSION

# S. 1217

To amend title XIX of the Social Security Act to improve and protect rehabilitative services and case management services provided under Medicaid to improve the health and welfare of the Nation's most vulnerable seniors and children.

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## IN THE SENATE OF THE UNITED STATES

JUNE 9, 2009

Ms. STABENOW (for herself, Mrs. LINCOLN, and Mr. BEGICH) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend title XIX of the Social Security Act to improve and protect rehabilitative services and case management services provided under Medicaid to improve the health and welfare of the Nation's most vulnerable seniors and children.

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; TABLE OF CONTENTS.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Medicaid Services Restoration Act of 2009”.

6       (b) TABLE OF CONTENTS.—The table of contents of  
7       this Act is as follows:

Sec. 1. Short title; table of contents.

#### TITLE I—REHABILITATIVE SERVICES PROTECTIONS

- Sec. 101. Inclusion of therapeutic foster care as medical assistance.  
 Sec. 102. Reasonable and efficient payment methodologies for rehabilitative services.  
 Sec. 103. Inclusion of attainment and retention of functional status in rehabilitative services.  
 Sec. 104. Clarification of coverage of EPSDT services for children receiving inpatient psychiatric hospital services.  
 Sec. 105. Third party liability clarification relating to diagnostic, screening, preventive, and rehabilitative services.  
 Sec. 106. Effective date.

#### TITLE II—CASE MANAGEMENT AND TARGETED CASE MANAGEMENT PROTECTIONS

- Sec. 201. Third party liability clarification relating to case management and targeted case management.  
 Sec. 202. Reasonable and efficient payment methodologies for case management services.  
 Sec. 203. Protecting health and safety.  
 Sec. 204. Codification of Olmstead standard; protecting children.  
 Sec. 205. Assuring appropriate case management.  
 Sec. 206. Effective date.

## 1           **TITLE I—REHABILITATIVE** 2           **SERVICES PROTECTIONS**

### 3   **SEC. 101. INCLUSION OF THERAPEUTIC FOSTER CARE AS** 4           **MEDICAL ASSISTANCE.**

5           Section 1905 of the Social Security Act (42 U.S.C.  
 6   1396d) is amended—

7           (1) in subsection (a)—

8                   (A) in paragraph (27), by striking “and”  
 9           at the end;

10                  (B) by redesignating paragraph (28) as  
 11           paragraph (29); and

12                  (C) by inserting after paragraph (27) the  
 13           following new paragraph:

1           “(28) therapeutic foster care services described  
2           in subsection (y); and”; and

3           (2) by adding at the end the following new sub-  
4           section:

5           “(y)(1) For purposes of subsection (a)(28), thera-  
6           peutic foster care services described in this subsection are  
7           services provided for children who have not attained age  
8           21, and, as a result of mental illness, other emotional or  
9           behavioral disorders, medically fragile conditions, or devel-  
10          opmental disabilities need the level of care normally pro-  
11          vided in an institution (including a psychiatric residential  
12          treatment facility) or nursing facility but who can be cared  
13          for in a community placement, through therapeutic foster  
14          care programs that—

15               “(A) are licensed by the State and accredited  
16               by the Joint Commission on Accreditation of  
17               Healthcare Organizations, the Commission on Ac-  
18               creditation of Rehabilitation Facilities, or the Coun-  
19               cil on Accreditation;

20               “(B) provide structured daily activities, includ-  
21               ing the development, improvement, monitoring, and  
22               reinforcing of age-appropriate social, communication  
23               and behavioral skills, crisis intervention and crisis  
24               support services, medication monitoring, counseling,

1 and case management, and may furnish other inten-  
 2 sive community services; and

3 “(C) provide foster care parents with special-  
 4 ized training and consultation in the management of  
 5 children with mental illness, other emotional or be-  
 6 havioral disorders, medically fragile conditions, or  
 7 developmental disabilities, and specific additional  
 8 training on the needs of each child provided such  
 9 services.

10 “(2) In making coverage determinations under para-  
 11 graph (1), a State may employ medical necessity criteria  
 12 that are similar to the medical necessity criteria applied  
 13 to coverage determinations for other services and supports  
 14 under this title.”.

15 **SEC. 102. REASONABLE AND EFFICIENT PAYMENT METH-**  
 16 **ODOLOGIES FOR REHABILITATIVE SERVICES.**

17 Section 1905(a)(13) of the Social Security Act (42  
 18 U.S.C. 1396d(a)(13)), as amended by section 103, is  
 19 amended by inserting “(and which reimbursement for, in  
 20 the case of rehabilitative services, may be made through  
 21 the establishment of reasonable and efficient payment  
 22 methodologies, including fee-for-service payments, case  
 23 rates, daily rates, or other forms of capitated payment”  
 24 after “status”.

1 **SEC. 103. INCLUSION OF ATTAINMENT AND RETENTION OF**  
 2 **FUNCTIONAL STATUS IN REHABILITATIVE**  
 3 **SERVICES.**

4 Section 1905(a)(13) of the Social Security Act (42  
 5 U.S.C. 1396d(a)(13)) is amended by striking “and res-  
 6 toration of an individual to the best possible functional  
 7 level” and inserting “, restoration of an individual to the  
 8 best possible functional level, or attainment or retention  
 9 of the individual’s best possible functional status”.

10 **SEC. 104. CLARIFICATION OF COVERAGE OF EPSDT SERV-**  
 11 **ICES FOR CHILDREN RECEIVING INPATIENT**  
 12 **PSYCHIATRIC HOSPITAL SERVICES.**

13 Section 1905(h)(1) of the Social Security Act (42  
 14 U.S.C. 1396d(h)(1)) is amended—

15 (1) in subparagraph (B), by striking “and” at  
 16 the end;

17 (2) in subparagraph (C), by adding “and” after  
 18 the semicolon; and

19 (3) by inserting after subparagraph (C), the fol-  
 20 lowing new subparagraph:

21 “(D) services described in subsection (r) which  
 22 are provided on an inpatient or outpatient basis to  
 23 an individual receiving inpatient services described in  
 24 subparagraph (A), (B), or (C).”.

1 **SEC. 105. THIRD PARTY LIABILITY CLARIFICATION RELAT-**  
2 **ING TO DIAGNOSTIC, SCREENING, PREVEN-**  
3 **TIVE, AND REHABILITATIVE SERVICES.**

4 Section 1903(c) of the Social Security Act (42 U.S.C.  
5 1396b(c)) is amended—

6 (1) by inserting “(1)” after “(c)”; and

7 (2) by adding at the end the following new  
8 paragraph:

9 “(2) Nothing in this title shall be construed as pro-  
10 hibiting or restricting, or authorizing the Secretary to pro-  
11 hibit or restrict, payment under subsection (a) for medical  
12 assistance for services provided under section 1905(a)(13)  
13 to eligible individuals furnished by qualified providers  
14 under non-medical programs, provided, however, a State  
15 or local agency administering such plan shall comply with  
16 section 1902(a)(25).”.

17 **SEC. 106. EFFECTIVE DATE.**

18 The amendments made by this title shall take effect  
19 as if enacted on July 1, 2008.

1 **TITLE II—CASE MANAGEMENT**  
 2 **AND TARGETED CASE MAN-**  
 3 **AGEMENT PROTECTIONS**

4 **SEC. 201. THIRD PARTY LIABILITY CLARIFICATION RELAT-**  
 5 **ING TO CASE MANAGEMENT AND TARGETED**  
 6 **CASE MANAGEMENT.**

7 Section 1903(c) of the Social Security Act (42 U.S.C.  
 8 1396b(c)), as amended by section 105, is amended by add-  
 9 ing at the end the following new paragraph:

10 “(3) Nothing in this title shall be construed as pro-  
 11 hibiting or restricting, or authorizing the Secretary to pro-  
 12 hibit or restrict payment under subsection (a) for medical  
 13 assistance for services provided under section 1915(g) to  
 14 eligible individuals furnished by qualified providers under  
 15 non-medical programs, provided, however, a State or local  
 16 agency administering such plan shall comply with section  
 17 1902(a)(25).”.

18 **SEC. 202. REASONABLE AND EFFICIENT PAYMENT METH-**  
 19 **ODOLOGIES FOR CASE MANAGEMENT SERV-**  
 20 **ICES.**

21 Section 1915(g)(4) of the Social Security Act (42  
 22 U.S.C. 1396n(g)(4)) is amended by adding at the end the  
 23 following new subparagraph:

24 “(C) Reimbursement for case management and tar-  
 25 geted case management services may be made through the

1 establishment of reasonable and efficient payment meth-  
 2 odologies including fee-for-service payments, case rates,  
 3 daily rates, or other forms of capitated payment.”.

4 **SEC. 203. PROTECTING HEALTH AND SAFETY.**

5       Section 1915(c)(4) of the Social Security Act (42  
 6 U.S.C. 1396n(c)(4)) is amended by adding after the sec-  
 7 ond sentence the following new sentence: “For the purpose  
 8 of developing and monitoring the implementation of the  
 9 written plan of care required under paragraph (1), and  
 10 to assure the health and welfare of individuals, the State  
 11 may require case management services for each bene-  
 12 ficiary and may limit the case managers available with re-  
 13 spect to case management services for eligible individuals  
 14 in order to ensure that the case managers for such individ-  
 15 uals are capable of ensuring that such individuals receive  
 16 needed services.”.

17 **SEC. 204. CODIFICATION OF OLMSTEAD STANDARD; PRO-**  
 18 **TECTING CHILDREN.**

19       Section 1915(g)(2)(A) of the Social Security Act (42  
 20 U.S.C. 1396n(g)(2)(A)) is amended—

21           (1) in clause (i), by striking “services which  
 22 will” and all that follows through the period and in-  
 23 serting “services furnished to assist individuals, eli-  
 24 gible under the State plan who reside in a commu-  
 25 nity setting or are transitioning to a community set-



1       ting, in gaining access to needed medical, social,  
 2       educational, and other services. Such services may  
 3       be offered by staff of non-medical programs or those  
 4       who contract with non-medical programs, so long as  
 5       such individuals are qualified providers under the  
 6       State plan under this title and the case management  
 7       services are distinct from the direct services of the  
 8       non-medical program.”;

9               (2) by redesignating clause (ii) as clause (iii);  
 10       and

11              (3) by inserting after clause (i) (as amended by  
 12       paragraph (1)), the following new clause:

13              “(ii) For purposes of providing case manage-  
 14       ment services, individuals (other than individuals  
 15       who have attained age 22 but not attained age 65  
 16       and are patients in an institution for mental dis-  
 17       eases or individuals who are inmates of public insti-  
 18       tutions) may be considered to be transitioning to a  
 19       community setting for up to the last 180 days of an  
 20       institutional stay.”.

21       **SEC. 205. ASSURING APPROPRIATE CASE MANAGEMENT.**

22       Section 1915(g)(4) of the Social Security Act (42  
 23       U.S.C. 1396n(g)(4)), as amended by section 202, is  
 24       amended by adding at the end the following:

1       “(D) Nothing in this subsection shall be construed  
2 as prohibiting a State from providing case management  
3 or targeted case management services, as defined in sub-  
4 paragraphs (A) and (B), respectively, of paragraph (2),  
5 through multiple case managers to any individual who  
6 qualifies for medical assistance under the State plan, or  
7 to specific classes of individuals, or to individuals who re-  
8 side in specified areas, selected by the State pursuant to  
9 this subsection.”.

10 **SEC. 206. EFFECTIVE DATE.**

11       The amendments made by this title shall take effect  
12 as if enacted on December 4, 2007.

