

112TH CONGRESS
2D SESSION

S. 3289

To expand the Medicaid home and community-based services waiver to include young individuals who are in need of services that would otherwise be required to be provided through a psychiatric residential treatment facility, and to change references in Federal law to mental retardation to references to an intellectual disability.

IN THE SENATE OF THE UNITED STATES

JUNE 13, 2012

Mr. KERRY (for himself and Mr. GRASSLEY) introduced the following bill;
which was read twice and referred to the Committee on Finance

A BILL

To expand the Medicaid home and community-based services waiver to include young individuals who are in need of services that would otherwise be required to be provided through a psychiatric residential treatment facility, and to change references in Federal law to mental retardation to references to an intellectual disability.

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 “Children’s Mental
5 Health Accessibility Act of 2012”.

1 **SEC. 2. EXPANDING THE MEDICAID HOME AND COMMU-**
 2 **NITY-BASED SERVICES WAIVER TO INCLUDE**
 3 **YOUTH IN NEED OF SERVICES PROVIDED IN**
 4 **A PSYCHIATRIC RESIDENTIAL TREATMENT**
 5 **FACILITY.**

6 (a) IN GENERAL.—Section 1915(c) of the Social Se-
 7 curity Act (42 U.S.C. 1396n(c)) is amended—

8 (1) in paragraph (1)—

9 (A) by striking “a hospital or a nursing fa-
 10 cility or intermediate care facility for the men-
 11 tally retarded” and inserting “a hospital, a
 12 nursing facility, an intermediate care facility for
 13 the intellectually disabled, or a psychiatric resi-
 14 dential treatment facility,”; and

15 (B) by striking “a hospital, nursing facil-
 16 ity, or intermediate care facility for the men-
 17 tally retarded” and inserting “a hospital, nurs-
 18 ing facility, intermediate care facility for the in-
 19 tellectually disabled, or psychiatric residential
 20 treatment facility”;

21 (2) in paragraph (2)(B), by striking “or serv-
 22 ices in an intermediate care facility for the mentally
 23 retarded” each place it appears and inserting “serv-
 24 ices in an intermediate care facility for the intellec-
 25 tually disabled, or services in a psychiatric residen-
 26 tial treatment facility”;

1 (3) in paragraph (2)(C)—

2 (A) by striking “or intermediate care facil-
 3 ity for the mentally retarded” and inserting
 4 “intermediate care facility for the intellectually
 5 disabled, or psychiatric residential treatment fa-
 6 cility”; and

7 (B) by striking “or services in an inter-
 8 mediate care facility for the mentally retarded”
 9 and inserting “services in an intermediate care
 10 facility for the intellectually disabled, or services
 11 in a psychiatric residential treatment facility”;

12 (4) in paragraph (7)(A), by striking “or inter-
 13 mediate care facilities for the mentally retarded,”
 14 and inserting “intermediate care facilities for the in-
 15 tellectually disabled, or psychiatric residential treat-
 16 ment facilities,”; and

17 (5) by adding at the end the following new
 18 paragraph:

19 “(11) For purposes of this subsection, the term ‘psy-
 20 chiatric residential treatment facility’ means a facility
 21 other than a hospital that is certified as meeting the re-
 22 quirements specified in regulations promulgated for such
 23 facilities under section 1905(h)(1) and that provides psy-
 24 chiatric services in an inpatient setting to individuals

1 under age 21 for which medical assistance is available
 2 under a State plan under this title.”.

3 (b) WAIVER LIMITATION.—Section 1915(c) of such
 4 Act, as amended by subsection (a), is further amended—

5 (1) in paragraph (2)—

6 (A) in subparagraph (D), by striking “;
 7 and” and inserting a semicolon;

8 (B) in subparagraph (E), by striking the
 9 period at the end and inserting a semicolon;
 10 and

11 (C) by adding at the end the following new
 12 subparagraphs:

13 “(F) under the waiver, the total number of
 14 Medicaid inpatient bed days at psychiatric residen-
 15 tial treatment facilities during each fiscal year with-
 16 in the waiver period will not exceed the total number
 17 of Medicaid inpatient bed days at such facilities for
 18 the previous fiscal year as increased by the esti-
 19 mated percentage increase (if any) in the population
 20 of individuals under age 21 residing in the State
 21 over the preceding 12-month period; and

22 “(G) the State will provide to the Secretary an-
 23 nually, subject to such requirements as the Sec-
 24 retary determines appropriate, relevant information
 25 and evidence as to the manner in which the State

1 will satisfy the requirements described in subpara-
 2 graph (F).”; and

3 (2) by adding at the end the following new
 4 paragraph:

5 “(12) For purposes of paragraph (2)(F), an indi-
 6 vidual who is under age 21 and is an inpatient in a bed
 7 in a psychiatric residential treatment facility for a single
 8 day shall be counted as one inpatient bed day.”.

9 **SEC. 3. APPLICATION OF ROSA’S LAW FOR INDIVIDUALS**
 10 **WITH INTELLECTUAL DISABILITIES.**

11 (a) REFERENCES IN THE SOCIAL SECURITY ACT.—

12 (1) IN GENERAL.—With the exception of sec-
 13 tion 1930(b) of the Social Security Act (42 U.S.C.
 14 1396u(b)), such Act, as amended by section 2, is
 15 further amended—

16 (A) by striking, wherever it appears,
 17 “State mental retardation or developmental dis-
 18 ability authority” and inserting “State intellec-
 19 tual disability or developmental disability au-
 20 thority”;

21 (B) by striking, wherever it appears,
 22 “mental retardation” and inserting “intellectual
 23 disabilities”; and

1 (C) by striking, wherever it appears, “men-
2 tally retarded” and inserting “intellectually dis-
3 abled”.

4 (2) CONFORMING AMENDMENT.—

5 (A) IN GENERAL.—Section 1902(e)(14)(F)
6 of such Act, as added by section 2002(a) of
7 Public Law 111–148, is amended by striking
8 “mentally retarded” and inserting “intellectu-
9 ally disabled”.

10 (B) EFFECTIVE DATE.—The amendment
11 made under subparagraph (A) shall take effect
12 on January 2, 2014.

13 (b) REFERENCES.—

14 (1) IN GENERAL.—For purposes of each provi-
15 sion amended by this Act, issuing or amending regu-
16 lations to carry out a provision amended by this Act,
17 or issuing any publication or other official commu-
18 nication in regards to any provision of the Social Se-
19 curity Act—

20 (A) a reference to an intellectual disability
21 shall mean a condition previously referred to as
22 mental retardation, or a variation of such term,
23 and shall have the same meaning with respect
24 to programs, or qualifications for such pro-
25 grams, for individuals with such a condition;

1 (B) a reference to an individual who is in-
2 tellectually disabled shall mean an individual
3 who was previously referred to as an individual
4 who is mentally retarded, an individual with
5 mental retardation, or variations of such terms;

6 (C) a reference to an intermediate care fa-
7 cility for the intellectually disabled shall mean
8 a facility that was previously referred to as an
9 intermediate care facility for the mentally re-
10 tarded; and

11 (D) a reference to a State intellectual dis-
12 ability or developmental disability authority
13 shall mean an entity that was previously re-
14 ferred to as a State mental retardation or de-
15 velopmental disability authority.

16 (2) REGULATIONS.—For purposes of amending
17 regulations to carry out this Act, a Federal agency
18 shall ensure that the regulations clearly state—

19 (A) that an intellectual disability was for-
20 merly termed mental retardation;

21 (B) that individuals with intellectual dis-
22 abilities were formerly termed individuals who
23 are mentally retarded;

24 (C) that an intermediate care facility for
25 the intellectually disabled was formerly termed

1 an intermediate care facility for the mentally
2 retarded; and

3 (D) that a State intellectual disability or
4 developmental disability authority was formerly
5 termed a State mental retardation or develop-
6 mental disability authority.

7 (c) RULE OF CONSTRUCTION.—This Act shall be con-
8 strued to make amendments to provisions of Federal law
9 to substitute the term “intellectual disability” for “mental
10 retardation” or any variation of such term without any
11 intent to—

12 (1) change the coverage, eligibility, rights, re-
13 sponsibilities, or definitions referred to in the
14 amended provisions; or

15 (2) compel States to change terminology in
16 State laws for individuals covered by a provision
17 amended by this Act.

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