

115TH CONGRESS
1ST SESSION

H. R. 1395

To amend title XIX of the Social Security Act to improve the Medicaid and CHIP Payment and Access Commission (MACPAC).

IN THE HOUSE OF REPRESENTATIVES

MARCH 7, 2017

Mr. BURGESS (for himself, Mr. COLLINS of New York, Mrs. BLACKBURN, and Mr. MULLIN) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend title XIX of the Social Security Act to improve the Medicaid and CHIP Payment and Access Commission (MACPAC).

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 “MACPAC Improve-
5 ment Act of 2017”.

6 **SEC. 2. IMPROVEMENT OF MACPAC.**

7 (a) DUTIES.—Section 1900(b) of the Social Security
8 Act (42 U.S.C. 1396(b)) is amended—

9 (1) in paragraph (1)—

1 (A) in the heading, by inserting “, PAY-
2 MENT, FINANCING, AND PROGRAM INTEGRITY”
3 after “ACCESS”;

4 (B) in subparagraph (A), by inserting “,
5 payment, financing, or program integrity” after
6 “affecting access to covered items and serv-
7 ices”;

8 (C) in subparagraph (B), by striking “ac-
9 cess”;

10 (D) in subparagraph (C), by striking “such
11 policies” and inserting the following: “policies
12 of such programs relating to financing and pro-
13 gram integrity, including—

14 “(i) the implications of such policies
15 with respect to changes in health care de-
16 livery in the United States; and

17 “(ii) with respect to the market for
18 health care items and services, the impact
19 of such policies on the cost and spending
20 growth under such programs;” and

21 (E) in subparagraph (D), by striking “con-
22 taining” and all that follows through the period
23 and inserting the following: “containing the re-
24 sults of such reviews and MACPAC’s rec-
25 ommendations concerning the policies of such

1 programs relating to access and payment, in-
2 cluding—

3 “(i) the implications of such policies
4 with respect to changes in health care de-
5 livery in the United States; and

6 “(ii) with respect to the market for
7 health care items and services, the impact
8 of such policies on access and payment
9 under such programs.”;

10 (2) in paragraph (2)—

11 (A) in subparagraph (A)—

12 (i) in clause (ii), by striking “and” at
13 the end;

14 (ii) in clause (iii), by striking the pe-
15 riod at the end and inserting “; and”; and

16 (iii) by adding at the end the fol-
17 lowing new clause:

18 “(iv) such payment policies that may
19 result in total payments (taking into ac-
20 count additional or supplemental payments
21 or payment adjustments) under this title
22 or title XXI that exceed the cost of pro-
23 viding items and services to Medicaid or
24 CHIP beneficiaries (as applicable) and
25 changes in such payment policies that

1 could improve efficiency without negatively
2 impacting access to care for such bene-
3 ficiaries.”; and

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

6 “(I) DATA.—National and State-specific
7 Medicaid and CHIP data.”;

8 (3) by amending paragraph (3) to read as fol-
9 lows:

10 “(3) ANNUAL POLICY RECOMMENDATIONS.—
11 Not less frequently than once a year, MACPAC shall
12 make recommendations regarding Federal statutes
13 that could be enacted or policies which the Secretary
14 or States could implement to achieve, with respect to
15 Medicaid and CHIP, the following goals:

16 “(A) FEDERAL AND STATE OUTLAYS.—Re-
17 ducing Federal and State outlays to make such
18 programs more sustainable.

19 “(B) FINANCING.—Improving the trans-
20 parency, integrity, and sustainability of financ-
21 ing.

22 “(C) STATE FLEXIBILITY AND EFFI-
23 CIENCY.—Improving State flexibility, predict-
24 ability, accountability, integrity, and efficiency
25 in oversight and administration.

1 “(D) PROGRAM INTEGRITY AND REDUCE
2 WASTE, FRAUD, AND ABUSE.—Enhancing pro-
3 gram integrity, reducing the amount and rate
4 of improper payments, improving internal ad-
5 ministrative and financial controls, and enhance-
6 ing efforts to curb waste, fraud, and abuse.

7 “(E) PRIORITIZING THE MOST VULNER-
8 ABLE.—Prioritizing benefits, care, and services
9 for the most vulnerable, low-income Medicaid
10 and CHIP beneficiaries, such as children and
11 pregnant women whose family income is at or
12 below the Federal poverty line, the elderly, and
13 individuals with disabilities.

14 “(F) EMPOWERING BENEFICIARIES.—Im-
15 proving the independence, self-direction, self-
16 sufficiency, and empowerment of beneficiaries.”;
17 (4) in paragraph (4)—

18 (A) in the heading, by striking “SYSTEM”
19 and inserting “SYSTEMS”;

20 (B) by striking “MACPAC shall create”
21 and inserting the following:

22 “(A) SYSTEM RELATED TO ACCESS.—
23 MACPAC shall create”; and

24 (C) by adding at the end the following new
25 subparagraph:

1 “(B) SYSTEM RELATED TO PROGRAM
2 GROWTH.—MACPAC shall create an early-
3 warning system to identify challenges with sus-
4 taining Federal and State funding for Medicaid
5 during the mid-term and long-term. MACPAC
6 shall include in the annual report required
7 under paragraph (1)(C) a description of such
8 challenges, including challenges posed by budg-
9 etary pressures which could lead to increased
10 Federal or State deficits, crowd out discre-
11 tionary Federal or State spending, or neces-
12 sitate increases in revenues, and proposed rec-
13 ommendations for addressing such challenges.”;
14 (5) in paragraph (5)—

15 (A) in the heading, by striking “AND REG-
16 ULATIONS” and inserting “, REGULATIONS, AND
17 GUIDANCE”;

18 (B) in subparagraph (B), by inserting “fi-
19 nancing,” after “quality,”; and

20 (C) by adding at the end the following new
21 subparagraph:

22 “(C) CMS GUIDANCE.—MACPAC shall re-
23 view guidance issued to States by the Centers
24 for Medicare & Medicaid Services with respect
25 to Medicaid or CHIP and shall, not later than

1 the date that is 90 days after the date of such
2 issuance, submit a report to the appropriate
3 committees of Congress and the Secretary on
4 the degree to which such guidance is projected
5 to change Federal or State outlays for Medicaid
6 or CHIP.”;

7 (6) in paragraph (7)—

8 (A) in the heading by inserting “AND
9 WORKING DOCUMENTS” after “REPORTS”;

10 (B) by striking “MACPAC shall transmit”
11 and inserting the following:

12 “(A) REPORTS.—MACPAC shall submit”;
13 and

14 (C) by adding at the end the following new
15 subparagraph:

16 “(B) WORKING DOCUMENTS.—MACPAC
17 shall make available to the appropriate commit-
18 tees of Congress copies of draft report chapters,
19 white papers, and other materials distributed
20 among members of MACPAC.”;

21 (7) in paragraph (8), by striking “of the House
22 of Representatives and the Committee on Finance of
23 the Senate” and inserting “, the Committee on Ap-
24 propriations, and the Committee on Oversight and
25 Government Reform of the House of Representatives

1 and the Committee on Finance, the Committee on
2 Homeland Security and Governmental Affairs, and
3 the Committee on Appropriations of the Senate”;

4 (8) in paragraph (10), by adding at the end the
5 following: “For each recommendation that MACPAC
6 determines would increase Federal or State outlays
7 for Medicaid or CHIP, MACPAC shall make a rec-
8 ommendation regarding changes in Federal or State
9 policy to offset such increased outlays.”; and

10 (9) by adding at the end the following new
11 paragraph:

12 “(15) ANNUAL REPORT.—Not later than three
13 months after the end of a fiscal year, MACPAC
14 shall prepare and make available on the MACPAC
15 website a report with respect to such fiscal year on
16 its activities that includes—

17 “(A) information related to MACPAC’s ex-
18 penses, contracts, accomplishments, and activi-
19 ties for such fiscal year; and

20 “(B) the status of MACPAC’s rec-
21 ommendations, including updates on Federal
22 statutes that have been enacted or policies
23 which the Secretary or States have implemented
24 to effect such recommendations.”.

1 (b) MEMBERSHIP.—Section 1900(c) of the Social Se-
2 curity Act (42 U.S.C. 1396(c)) is amended—

3 (1) by amending paragraph (2) to read as fol-
4 lows:

5 “(2) QUALIFICATIONS.—

6 “(A) IN GENERAL.—The membership of
7 MACPAC shall include the following:

8 “(i) At least three individuals rep-
9 resenting health care providers, such as
10 physicians, nurses, or dentists.

11 “(ii) At least two individuals rep-
12 resenting health plans that enroll Medicaid
13 or CHIP beneficiaries, including one or
14 more individuals representing a Medicaid
15 managed care plan.

16 “(iii) At least one individual who is an
17 actuary with expertise in health care.

18 “(iv) At least two individuals who are
19 or have been directors of Medicaid for a
20 State, including at least one individual who
21 is such a director at the time of appoint-
22 ment to MACPAC.

23 “(v) At least one individual who is or
24 has been a director of CHIP for a State.

1 “(vi) At least one individual with ex-
2 pertise in health care finance and health
3 economics.

4 “(vii) At least two individuals who are
5 representatives of Medicaid and CHIP
6 beneficiaries, such as children, pregnant
7 women, the elderly, and individuals with
8 disabilities.

9 “(viii) At least one individual with ex-
10 pertise in long-term services and supports,
11 such as in the financing or delivery of
12 long-term services and supports or man-
13 aged long-term care services, including
14 care delivered in nursing homes or home
15 and community-based settings.

16 “(B) INCLUSION.—The membership of
17 MACPAC shall include individuals with exper-
18 tise in—

19 “(i) Federal safety net health pro-
20 grams;

21 “(ii) developing, negotiating, or imple-
22 menting a Medicaid waiver based on expe-
23 rience working for a State;

24 “(iii) health care payment and financ-
25 ing reforms;

1 “(iv) integrated health care delivery
2 systems, coordinated care models, and
3 value-based contracting;

4 “(v) public health;

5 “(vi) program integrity and fraud pre-
6 vention;

7 “(vii) health information technology
8 and telehealth;

9 “(viii) prescription drug pricing or
10 payment; and

11 “(ix) operating a Medicaid program,
12 health plan, hospital, or health care deliv-
13 ery system.

14 “(C) DIVERSITY.—The membership of
15 MACPAC shall also provide representation from
16 a variety of different professions and geo-
17 graphic areas and provide for a balanced rep-
18 resentation among urban, suburban, and rural
19 areas.

20 “(D) BALANCE OF PERSPECTIVES.—The
21 Comptroller General of the United States shall
22 ensure members appointed for initial or subse-
23 quent terms to MACPAC reflect an appropriate
24 balance of political perspectives, including by
25 taking into account political party registration

1 and contributions made to political candidates
2 and parties.

3 “(E) MAJORITY NONPROVIDERS.—

4 “(i) IN GENERAL.—Individuals who
5 are directly involved in the provision, or
6 management of the delivery, of items and
7 services covered under Medicaid or CHIP
8 shall not constitute a majority of the mem-
9 bership of MACPAC.

10 “(ii) MEDICAID AND CHIP DIREC-
11 TORS.—For purposes of this subpara-
12 graph, Medicaid and CHIP directors shall
13 not be considered to be directly involved in
14 the provision, or management of the deliv-
15 ery, of items and services covered under
16 Medicaid or CHIP.

17 “(F) ETHICAL DISCLOSURE.—

18 “(i) IN GENERAL.—The Comptroller
19 General of the United States shall estab-
20 lish a system for the public disclosure of fi-
21 nancial, professional, political, advocacy, or
22 other activities of members of MACPAC
23 that may result in, or be perceived to re-
24 sult in, conflicts of interest relating to such
25 members’ service on MACPAC.

1 “(ii) TIMING OF DISCLOSURES.—The
2 Comptroller General shall require that
3 each member of MACPAC make—

4 “(I) the disclosure described in
5 clause (i) on an annual basis; and

6 “(II) in the case of a significant
7 change in any of the activities of the
8 member described in such clause, a
9 supplemental disclosure at the time of
10 such significant change.

11 “(iii) TREATMENT AS EMPLOYEES OF
12 CONGRESS.—Members of MACPAC shall
13 be treated as employees of Congress for
14 purposes of applying title I of the Ethics
15 in Government Act of 1978 (Public Law
16 95–521).”; and

17 (2) in paragraph (5), by adding at the end the
18 following: “Such designation shall be based on pre-
19 vious management experience. The Comptroller Gen-
20 eral may not exclude a member from consideration
21 for such designation based on the fact that such
22 member is an individual employed by a State or by
23 an entity that receives Medicaid or CHIP payments,
24 including a local government, a health plan that en-

1 rolls Medicaid or CHIP beneficiaries, or a health
2 care provider.”.

3 (c) CONFLICTS OF INTEREST.—Section 1900 of the
4 Social Security Act (42 U.S.C. 1396) is amended by add-
5 ing at the end the following new subsection:

6 “(g) CONFLICT OF INTEREST POLICY.—MACPAC
7 shall maintain and make available on the MACPAC
8 website a conflict of interest policy outlining requirements
9 for members and personnel of MACPAC. Such policy shall
10 include the following:

11 “(1) DISCLOSURE.—Requirements for initially
12 disclosing, and periodically updating, any substantial
13 political activity or significant financial interests
14 that might influence, or that might reasonably ap-
15 pear to influence, perspectives on issues that could
16 come before MACPAC.

17 “(2) LEGAL INVOLVEMENT.—With respect to
18 any matter under adjudication before a court, ad-
19 ministrative law judge, or other judicial entities:

20 “(A) A requirement of disclosure of any di-
21 rect or indirect involvement in any such matter
22 related to a Federal or State health care pro-
23 gram (as such terms are defined in sections
24 1128(h) and 1128B(f), respectively), including
25 filing an amicus brief.

1 “(B) A prohibition on direct or indirect in-
2 volvement in any such matter that involves the
3 Congress as a party, including filing an amicus
4 brief.

5 “(3) RECUSAL.—The criteria and circum-
6 stances under which a member of MACPAC shall
7 suspend participation in MACPAC or otherwise seek
8 recusal from MACPAC votes, including the process
9 by which MACPAC discloses recommendations for
10 such a recusal.”.

11 (d) APPLICATION.—

12 (1) DUTIES.—The amendments made by sub-
13 section (a) (other than the amendments made by
14 paragraph (5) of such subsection) shall apply with
15 respect to reports (and recommendations included in
16 reports) submitted on or after the date that is more
17 than one year after the date of the enactment of this
18 Act.

19 (2) GUIDANCE.—The amendments made by
20 subsection (a)(5) shall apply with respect to guid-
21 ance issued on or after the date of the enactment of
22 this Act.

23 (3) MEMBERSHIP.—

24 (A) APPOINTMENT OF NEW MEMBERS.—

25 The Comptroller General of the United States

1 shall apply the changes to the membership of
2 the Medicaid and CHIP Payment and Access
3 Commission required by amendments made by
4 subsection (b) as soon as is practicable, con-
5 sistent with subparagraph (B), and in no event
6 later than the date that is three years after the
7 date of the enactment of this Act.

8 (B) RETENTION OF CURRENT MEMBERS.—

9 An individual who is a member of the Medicaid
10 and CHIP Payment and Access Commission as
11 of the date of the enactment of this Act may
12 continue to serve until the end of the individ-
13 ual's term as of such date without regard to the
14 amendments made by subsection (b).

15 (4) CONFLICTS OF INTEREST.—The amend-
16 ment made by subsection (c) shall apply beginning
17 on the date that is 90 days after the date of the en-
18 actment of this Act.

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