

116TH CONGRESS
2D SESSION

H. R. 3935

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 22, 2020

Received; read twice and referred to the Committee on Finance

AN ACT

To amend title XIX of the Social Security Act to provide for the continuing requirement of Medicaid coverage of nonemergency transportation to medically necessary services.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Protecting Patients
3 Transportation to Care Act”.

4 **SEC. 2. MEDICAID COVERAGE OF CERTAIN MEDICAL**
5 **TRANSPORTATION.**

6 (a) CONTINUING REQUIREMENT OF MEDICAID COV-
7 ERAGE OF NECESSARY TRANSPORTATION.—

8 (1) REQUIREMENT.—Section 1902(a)(4) of the
9 Social Security Act (42 U.S.C. 1396a(a)(4)) is
10 amended—

11 (A) by striking “and including provision
12 for utilization” and inserting “including provi-
13 sion for utilization”; and

14 (B) by inserting after “supervision of ad-
15 ministration of the plan” the following: “, and,
16 subject to section 1903(i), including a specifica-
17 tion that the single State agency described in
18 paragraph (5) will ensure necessary transpor-
19 tation for beneficiaries under the State plan to
20 and from providers and a description of the
21 methods that such agency will use to ensure
22 such transportation”.

23 (2) APPLICATION WITH RESPECT TO BENCH-
24 MARK BENEFIT PACKAGES AND BENCHMARK EQUIV-
25 ALENT COVERAGE.—Section 1937(a)(1) of the Social

1 Security Act (42 U.S.C. 1396u–7(a)(1)) is amend-
2 ed—

3 (A) in subparagraph (A), by striking “sub-
4 section (E)” and inserting “subparagraphs (E)
5 and (F)”; and

6 (B) by adding at the end the following new
7 subparagraph:

8 “(F) NECESSARY TRANSPORTATION.—Not-
9 withstanding the preceding provisions of this
10 paragraph, a State may not provide medical as-
11 sistance through the enrollment of an individual
12 with benchmark coverage or benchmark equiva-
13 lent coverage described in subparagraph (A)(i)
14 unless, subject to section 1903(i)(9) and in ac-
15 cordance with section 1902(a)(4), the bench-
16 mark benefit package or benchmark equivalent
17 coverage (or the State)—

18 “(i) ensures necessary transportation
19 for individuals enrolled under such package
20 or coverage to and from providers; and

21 “(ii) provides a description of the
22 methods that will be used to ensure such
23 transportation.”.

24 (3) LIMITATION ON FEDERAL FINANCIAL PAR-
25 TICIPATION.—Section 1903(i) of the Social Security

1 Act (42 U.S.C. 1396b(i)) is amended by inserting
2 after paragraph (8) the following new paragraph:

3 “(9) with respect to any amount expended for
4 non-emergency transportation authorized under sec-
5 tion 1902(a)(4), unless the State plan provides for
6 the methods and procedures required under section
7 1902(a)(30)(A); or”.

8 (4) EFFECTIVE DATE.—The amendments made
9 by this subsection shall take effect on the date of the
10 enactment of this Act and shall apply to transpor-
11 tation furnished on or after such date.

12 (b) MEDICAID PROGRAM INTEGRITY MEASURES RE-
13 LATED TO COVERAGE OF NONEMERGENCY MEDICAL
14 TRANSPORTATION.—

15 (1) GAO STUDY.—Not later than two years
16 after the date of the enactment of this Act, the
17 Comptroller General of the United States shall con-
18 duct a study, and submit to Congress, a report on
19 coverage under the Medicaid program under title
20 XIX of the Social Security Act of nonemergency
21 transportation to medically necessary services. Such
22 study shall take into account the 2009 report of the
23 Office of the Inspector General of the Department of
24 Health and Human Services, titled “Fraud and
25 Abuse Safeguards for Medicaid Nonemergency Med-

1 ical Transportation” (OEI-06-07-003200). Such
2 report shall include the following:

3 (A) An examination of the 50 States and
4 the District of Columbia to identify safeguards
5 to prevent and detect fraud and abuse with re-
6 spect to coverage under the Medicaid program
7 of nonemergency transportation to medically
8 necessary services.

9 (B) An examination of transportation bro-
10 kers to identify the range of safeguards against
11 such fraud and abuse to prevent improper pay-
12 ments for such transportation.

13 (C) Identification of the numbers, types,
14 and outcomes of instances of fraud and abuse,
15 with respect to coverage under the Medicaid
16 program of such transportation, that State
17 Medicaid Fraud Control Units have investigated
18 in recent years.

19 (D) Identification of commonalities or
20 trends in program integrity, with respect to
21 such coverage, to inform risk management
22 strategies of States and the Centers for Medi-
23 care & Medicaid Services.

24 (2) STAKEHOLDER WORKING GROUP.—

1 (A) IN GENERAL.—Not later than one year
2 after the date of the enactment of this Act, the
3 Secretary of Health and Human Services,
4 through the Centers for Medicare & Medicaid
5 Services, shall convene a series of meetings to
6 obtain input from appropriate stakeholders to
7 facilitate discussion and shared learning about
8 the leading practices for improving Medicaid
9 program integrity, with respect to coverage of
10 nonemergency transportation to medically nec-
11 essary services.

12 (B) TOPICS.—The meetings convened
13 under subparagraph (A) shall—

14 (i) focus on ongoing challenges to
15 Medicaid program integrity as well as lead-
16 ing practices to address such challenges;
17 and

18 (ii) address specific challenges raised
19 by stakeholders involved in coverage under
20 the Medicaid program of nonemergency
21 transportation to medically necessary serv-
22 ices, including unique considerations for
23 specific groups of Medicaid beneficiaries
24 meriting particular attention, such as
25 American Indians and tribal land issues or

1 accommodations for individuals with dis-
2 abilities.

3 (C) STAKEHOLDERS.—Stakeholders de-
4 scribed in subparagraph (A) shall include indi-
5 viduals from State Medicaid programs, brokers
6 for nonemergency transportation to medically
7 necessary services that meet the criteria de-
8 scribed in section 1902(a)(70)(B) of the Social
9 Security Act (42 U.S.C. 1396a(a)(70)(B)), pro-
10 viders (including transportation network compa-
11 nies), Medicaid patient advocates, and such
12 other individuals specified by the Secretary.

13 (3) GUIDANCE REVIEW.—Not later than 18
14 months after the date of the enactment of this Act,
15 the Secretary of Health and Human Services,
16 through the Centers for Medicare & Medicaid Serv-
17 ices, shall assess guidance issued to States by the
18 Centers for Medicare & Medicaid Services relating to
19 Federal requirements for nonemergency transpor-
20 tation to medically necessary services under the
21 Medicaid program under title XIX of the Social Se-
22 curity Act and update such guidance as necessary to
23 ensure States have appropriate and current guidance
24 in designing and administering coverage under the

1 Medicaid program of nonemergency transportation
2 to medically necessary services.

3 (4) NEMT TRANSPORTATION PROVIDER AND
4 DRIVER REQUIREMENTS.—

5 (A) STATE PLAN REQUIREMENT.—Section
6 1902(a) of the Social Security Act (42 U.S.C.
7 1396a(a)) is amended—

8 (i) by striking “and” at the end of
9 paragraph (85);

10 (ii) by striking the period at the end
11 of paragraph (86) and inserting “; and”;
12 and

13 (iii) by inserting after paragraph (86)
14 the following new paragraph:

15 “(87) provide for a mechanism, which may in-
16 clude attestation, that ensures that, with respect to
17 any provider (including a transportation network
18 company) or individual driver of nonemergency
19 transportation to medically necessary services receiv-
20 ing payments under such plan (but excluding any
21 public transit authority), at a minimum—

22 “(A) each such provider and individual
23 driver is not excluded from participation in any
24 Federal health care program (as defined in sec-
25 tion 1128B(f)) and is not listed on the exclu-

1 sion list of the Inspector General of the Depart-
2 ment of Health and Human Services;

3 “(B) each such individual driver has a
4 valid driver’s license;

5 “(C) each such provider has in place a
6 process to address any violation of a State drug
7 law; and

8 “(D) each such provider has in place a
9 process to disclose to the State Medicaid pro-
10 gram the driving history, including any traffic
11 violations, of each such individual driver em-
12 ployed by such provider, including any traffic
13 violations.”.

14 (B) EFFECTIVE DATE.—

15 (i) IN GENERAL.—Except as provided
16 in clause (ii), the amendments made by
17 subparagraph (A) shall take effect on the
18 date of the enactment of this Act and shall
19 apply to services furnished on or after the
20 date that is one year after the date of the
21 enactment of this Act.

22 (ii) EXCEPTION IF STATE LEGISLA-
23 TION REQUIRED.—In the case of a State
24 plan for medical assistance under title XIX
25 of the Social Security Act which the Sec-

1 retary of Health and Human Services de-
2 termines requires State legislation (other
3 than legislation appropriating funds) in
4 order for the plan to meet the additional
5 requirement imposed by the amendments
6 made by subparagraph (A), the State plan
7 shall not be regarded as failing to comply
8 with the requirements of such title solely
9 on the basis of its failure to meet this ad-
10 ditional requirement before the first day of
11 the first calendar quarter beginning after
12 the close of the first regular session of the
13 State legislature that begins after the date
14 of the enactment of this Act. For purposes
15 of the previous sentence, in the case of a
16 State that has a 2-year legislative session,
17 each year of such session shall be deemed
18 to be a separate regular session of the
19 State legislature.

20 (5) ANALYSIS OF T-MSIS DATA.—Not later
21 than one year after the date of the enactment of this
22 Act, the Secretary of Health and Human Services,
23 through the Centers for Medicare & Medicaid Serv-
24 ices, shall analyze, and submit to Congress a report
25 on, the nation-wide data set under the Transformed

Attest: **CHERYL L. JOHNSON,**
Clerk.