

116TH CONGRESS
2D SESSION

S. 4524

To amend titles XIX and XXI of the Social Security Act to provide coverage of comprehensive tobacco cessation services under such titles, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 12, 2020

Mr. CARPER introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend titles XIX and XXI of the Social Security Act to provide coverage of comprehensive tobacco cessation services under such titles, and for other purposes.

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 “Quit Because of
5 COVID–19 Act”.

6 **SEC. 2. COVERAGE OF COMPREHENSIVE TOBACCO CES-**
7 **SATION SERVICES IN MEDICAID.**

8 (a) REQUIRING MEDICAID COVERAGE OF COUN-
9 SELING AND PHARMACOTHERAPY FOR CESSATION OF TO-

1 BACCO USE AND DEPENDENCE.—Section 1905 of the So-
 2 cial Security Act (42 U.S.C. 1396d) is amended—

3 (1) in subsection (a)(4)—

4 (A) by striking “and (D)” and inserting
 5 “(D)”; and

6 (B) by inserting before the semicolon at
 7 the end the following: “; and (E) counseling
 8 and pharmacotherapy for cessation of tobacco
 9 use and dependence by individuals who are eli-
 10 gible under the State plan (as defined in sub-
 11 section (gg)) during the period beginning on the
 12 first day of the emergency period described in
 13 section 1135(g)(1)(B) and ending on the last
 14 day of the 2-year period that begins with the
 15 day after the last day of such emergency pe-
 16 riod”; and

17 (2) by adding at the end the following new sub-
 18 section:

19 “(gg) COUNSELING AND PHARMACOTHERAPY FOR
 20 CESSATION OF TOBACCO USE AND DEPENDENCE.—

21 “(1) IN GENERAL.—For purposes of this title,
 22 the term ‘counseling and pharmacotherapy for ces-
 23 sation of tobacco use and dependence’ means diag-
 24 nostic, therapy, and counseling services and
 25 pharmacotherapy (including the coverage of pre-

1 scription and nonprescription tobacco cessation
 2 agents approved by the Food and Drug Administra-
 3 tion) for the cessation of tobacco use and depend-
 4 ence by individuals who use tobacco products or who
 5 are being treated for tobacco use and dependence
 6 that are furnished—

7 “(A) by or under the supervision of a phy-
 8 sician; or

9 “(B) by any other health care professional
 10 who—

11 “(i) is legally authorized to furnish
 12 such services under State law (or the State
 13 regulatory mechanism provided by State
 14 law) of the State in which the services are
 15 furnished; and

16 “(ii) is authorized to receive payment
 17 for other services under this title or is des-
 18 ignated by the Secretary for this purpose.

19 “(2) LIMITATION.—Such term is limited to—

20 “(A) services that are recommended—

21 “(i) in the guideline entitled, ‘Treat-
 22 ing Tobacco Use and Dependence: 2008
 23 Update: A Clinical Practice Guideline’ pub-
 24 lished by the Public Health Service in May

1 2008 (or any subsequent modification of
2 such guideline); or

3 “(ii) for the cessation of tobacco use
4 and dependence by the United States Pre-
5 ventive Services Task Force; or

6 “(B) any additional interventions approved
7 by the Food and Drug Administration as safe
8 and effective in the cessation of tobacco use and
9 dependence by individuals who use tobacco
10 products or who are being treated for tobacco
11 use and dependence.”.

12 (b) NO COST SHARING.—

13 (1) IN GENERAL.—Subsections (a)(2) and
14 (b)(2) of section 1916 of the Social Security Act (42
15 U.S.C. 1396o) are each amended—

16 (A) in subparagraph (F), by striking “or”
17 at the end;

18 (B) in subparagraph (G), by striking “;
19 and” and inserting “, or”; and

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

22 “(H) counseling and pharmacotherapy for
23 cessation of tobacco use and dependence (as de-
24 fined in section 1905(gg)) and covered out-
25 patient drugs (as defined in subsection (k)(2) of

section 1927 and including nonprescription drugs described in subsection (d)(2) of such section) that are prescribed for purposes of promoting, and when used to promote, tobacco cessation in accordance with a guideline, recommendation, or approval specified in section 1905(gg)(2) (as applicable) furnished during the period beginning on the first day of the emergency period described in section 1135(g)(1)(B) and ending on the last day of the 2-year period that begins with the day after the last day of such emergency period; and”.

(2) APPLICATION TO ALTERNATIVE COST SHARING.—Section 1916A(b)(3)(B) of the Social Security Act (42 U.S.C. 1396o–1(b)(3)(B)) is amended by adding at the end the following new clause:

“(xii) Counseling and pharmacotherapy for cessation of tobacco use and dependence (as defined in section 1905(gg)) and covered outpatient drugs (as defined in subsection (k)(2) of section 1927 and including nonprescription drugs described in subsection (d)(2) of such section) that are prescribed for purposes of promoting, and when used to promote, to-

1 bacco cessation in accordance with a guide-
 2 line, recommendation, or approval specified
 3 in section 1905(gg)(2) (as applicable) fur-
 4 nished during the period beginning on the
 5 first day of the emergency period described
 6 in section 1135(g)(1)(B) and ending on
 7 the last day of the 2-year period that be-
 8 gins with the day after the last day of such
 9 emergency period.”.

10 (c) EXCEPTION FROM OPTIONAL RESTRICTION
 11 UNDER MEDICAID PRESCRIPTION DRUG COVERAGE.—

12 Section 1927(d)(2)(F) of the Social Security Act (42
 13 U.S.C. 1396r–8(d)(2)(F)) is amended to read as follows:

14 “(F) Nonprescription drugs, except, in the
 15 case of pregnant women (and, during the period
 16 beginning on the first day of the emergency pe-
 17 riod described in section 1135(g)(1)(B) and
 18 ending on the last day of the 2-year period that
 19 begins with the day after the last day of such
 20 emergency period, other individuals who use to-
 21 bacco products or are being treated for tobacco
 22 use and dependence), when recommended in ac-
 23 cordance with the guideline specified in section
 24 1905(bb)(2)(A) (or in accordance with a guide-
 25 line, recommendation, or approval specified in

1 section 1905(gg)(2), if applicable), agents ap-
 2 proved by the Food and Drug Administration
 3 under the over-the-counter monograph process
 4 for purposes of promoting, and when used to
 5 promote, tobacco cessation.”.

6 (d) STATE MONITORING AND PROMOTING OF COM-
 7 PREHENSIVE TOBACCO CESSATION SERVICES UNDER
 8 MEDICAID.—Section 1902(a) of the Social Security Act
 9 (42 U.S.C. 1396a) is amended—

10 (1) in paragraph (85), by striking at the end
 11 “and”;

12 (2) in paragraph (86), by striking the period at
 13 the end and inserting “; and”; and

14 (3) by inserting after paragraph (86) the fol-
 15 lowing new paragraph:

16 “(87) during the period beginning on the first
 17 day of the emergency period described in section
 18 1135(g)(1)(B) and ending on the last day of the 2-
 19 year period that begins with the day after the last
 20 day of such emergency period, provide that the State
 21 will monitor and promote the use of comprehensive
 22 tobacco cessation services under the State plan (in-
 23 cluding by conducting an outreach campaign to in-
 24 crease awareness of the benefits of using such serv-
 25 ices) among—

1 “(A) individuals entitled to medical assist-
 2 ance under the State plan who use tobacco
 3 products; and

4 “(B) clinicians and others who provide
 5 services to individuals entitled to medical assist-
 6 ance under the State plan.”.

7 (e) FEDERAL REIMBURSEMENT FOR COVERAGE OF
 8 TOBACCO CESSATION SERVICES AND OUTREACH CAM-
 9 PAIGN.—

10 (1) COVERAGE OF TOBACCO CESSATION SERV-
 11 ICES.—Section 1905 of the Social Security Act (42
 12 U.S.C. 1396d), as amended by subsection (a), is
 13 amended—

14 (A) in subsection (b), by striking “and
 15 (ff)” and inserting “(ff), and (gg)(3)”; and

16 (B) in subsection (gg), as added by sub-
 17 section (a), by adding at the end the following
 18 new paragraph:

19 “(3) INCREASED FMAP.—Notwithstanding sub-
 20 section (b), the Federal medical assistance percent-
 21 age for a State, with respect to amounts expended
 22 by such State for medical assistance furnished dur-
 23 ing the emergency period described in section
 24 1135(g)(1)(B) for counseling and pharmacotherapy

1 for cessation of tobacco use and dependence by eligi-
 2 ble individuals, shall be equal to 100 percent.”.

3 (2) OUTREACH CAMPAIGN.—Section 1903(a) of
 4 the Social Security Act (42 U.S.C 1396b(a)) is
 5 amended—

6 (A) by striking the period at the end of
 7 paragraph (7) and inserting “; plus”; and

8 (B) by inserting after paragraph (7) the
 9 following new paragraph:

10 “(8) an amount equal to 100 percent of the
 11 sums expended in a quarter that occurs during the
 12 emergency period described in section 1135(g)(1)(B)
 13 which are attributable to the development, imple-
 14 mentation, and evaluation of the outreach campaign
 15 required under section 1902(a)(87).”.

16 (f) NO PRIOR AUTHORIZATION FOR TOBACCO CES-
 17 SATION DRUGS UNDER MEDICAID.—Section 1927(d) of
 18 the Social Security Act (42 U.S.C. 1396r–8(d)) is amend-
 19 ed—

20 (1) in paragraph (1)(A), by striking “A State”
 21 and inserting “Subject to paragraph (8), a State”;
 22 and

23 (2) by adding at the end the following new
 24 paragraph:

1 “(8) NO PRIOR AUTHORIZATION PROGRAMS FOR
2 TOBACCO CESSATION DRUGS.—During the period be-
3 ginning on the first day of the emergency period de-
4 scribed in section 1135(g)(1)(B) and ending on the
5 last day of the 2-year period after the last day of
6 such emergency period, a State plan may not re-
7 quire, as a condition of coverage or payment for a
8 covered outpatient drug that is an agent to promote
9 smoking cessation (including agents approved by the
10 Food and Drug Administration) or tobacco ces-
11 sation, the approval of such drug before its dis-
12 pensing.”.

13 (g) EXCLUSION OF ENHANCED PAYMENTS FROM
14 TERRITORIAL CAPS.—Notwithstanding any other provi-
15 sion of law, for purposes of section 1108 of the Social Se-
16 curity Act (42 U.S.C. 1308), with respect to any addi-
17 tional amount paid to a territory as a result of the applica-
18 tion of paragraph (8) of section 1903(a) or subsection
19 (gg)(3) of section 1905 of the Social Security Act (42
20 U.S.C. 1396b(a), 1396d)—

21 (1) the limitation on payments to territories
22 under subsections (f) and (g) of such section 1108
23 shall not apply to such additional amounts; and

24 (2) such additional amounts shall be dis-
25 regarded in applying such subsections.

1 **SEC. 3. COVERAGE OF COMPREHENSIVE TOBACCO CES-**
 2 **SATION SERVICES IN CHIP.**

3 (a) REQUIRING CHIP COVERAGE OF COUNSELING
 4 AND PHARMACOTHERAPY FOR CESSATION OF TOBACCO
 5 USE AND DEPENDENCE.—

6 (1) IN GENERAL.—Section 2103(c)(2) of the
 7 Social Security Act (42 U.S.C. 1397cc(c)(2)) is
 8 amended by adding at the end the following new
 9 subparagraph:

10 “(D) Counseling and pharmacotherapy for
 11 cessation of tobacco use and dependence by in-
 12 dividuals who are eligible under the State child
 13 health plan during the period beginning on the
 14 first day of the emergency period described in
 15 section 1135(g)(1)(B) and ending on the last
 16 day of the 2-year period that begins with the
 17 day after the last day of such emergency pe-
 18 riod.”.

19 (2) COUNSELING AND PHARMACOTHERAPY FOR
 20 CESSATION OF TOBACCO USE AND DEPENDENCE DE-
 21 FINED.—Section 2110(c) of the Social Security Act
 22 (42 U.S.C. 1397jj(c)) is amended by adding at the
 23 end the following new paragraph:

24 “(10) COUNSELING AND PHARMACOTHERAPY
 25 FOR CESSATION OF TOBACCO USE AND DEPEND-
 26 ENCE.—

“(A) IN GENERAL.—The term ‘counseling and pharmacotherapy for cessation of tobacco use and dependence’ means diagnostic, therapy, and counseling services and pharmacotherapy (including the coverage of prescription and non-prescription tobacco cessation agents approved by the Food and Drug Administration) for the cessation of tobacco use and dependence by individuals who use tobacco products or who are being treated for tobacco use and dependence that are furnished—

“(i) by or under the supervision of a physician; or

“(ii) by any other health care professional who—

“(I) is legally authorized to furnish such services under State law (or the State regulatory mechanism provided by State law) of the State in which the services are furnished; and

“(II) is authorized to receive payment for other services under this title or is designated by the Secretary for this purpose.

1 “(B) LIMITATION.—Such term is limited
2 to—

3 “(i) services that are recommended—

4 “(I) in the guideline entitled,
5 ‘Treating Tobacco Use and Depend-
6 ence: 2008 Update: A Clinical Prac-
7 tice Guideline’ published by the Public
8 Health Service in May 2008 (or any
9 subsequent modification of such
10 guideline); or

11 “(II) for the cessation of tobacco
12 use and dependence by the United
13 States Preventive Services Task
14 Force; or

15 “(ii) any additional interventions ap-
16 proved by the Food and Drug Administra-
17 tion as safe and effective in the cessation
18 of tobacco use and dependence by individ-
19 uals who use tobacco products or who are
20 being treated for tobacco use and depend-
21 ence.”.

22 (b) NO COST SHARING.—Section 2103(e) of the So-
23 cial Security Act (42 U.S.C. 1397cc(e)) is amended by
24 adding at the end the following new paragraph:

1 “(5) NO COST SHARING ON BENEFITS FOR
 2 COUNSELING AND PHARMACOTHERAPY FOR CES-
 3 SATION OF TOBACCO USE AND DEPENDENCE.—The
 4 State child health plan may not impose deductibles,
 5 coinsurance, or other cost sharing with respect to
 6 benefits for counseling and pharmacotherapy for ces-
 7 sation of tobacco use and dependence (as defined in
 8 section 2110(c)(10)) and prescription drugs that are
 9 covered under a State child health plan that are pre-
 10 scribed for purposes of promoting tobacco cessation
 11 in accordance with a guideline, recommendation, or
 12 approval specified in section 2110(c)(10)(B) fur-
 13 nished during the period beginning on the first day
 14 of the emergency period described in section
 15 1135(g)(1)(B) and ending on the last day of the 2-
 16 year period that begins with the day after the last
 17 day of such emergency period.”.

18 (c) EXCEPTION FROM OPTIONAL RESTRICTION
 19 UNDER CHIP PRESCRIPTION DRUG COVERAGE.—Section
 20 2103 of the Social Security Act (42 U.S.C. 1397cc) is
 21 amended by adding at the end the following new sub-
 22 section:

23 “(g) EXCEPTION FROM OPTIONAL RESTRICTION
 24 UNDER CHIP PRESCRIPTION DRUG COVERAGE.—The

1 State child health plan may exclude or otherwise restrict
 2 nonprescription drugs, except—

3 “(1) in the case of pregnant women, when rec-
 4 ommended in accordance with a guideline, rec-
 5 ommendation, or approval specified in section
 6 2110(c)(10)(B), agents approved by the Food and
 7 Drug Administration under the over-the-counter
 8 monograph process for purposes of promoting, and
 9 when used to promote, tobacco cessation; and

10 “(2) in the case of individuals who are eligible
 11 under the State child health plan, when rec-
 12 ommended in accordance with a guideline, rec-
 13 ommendation, or approval specified in section
 14 2110(c)(10)(B) referred to in section
 15 2110(c)(10)(B), agents approved by the Food and
 16 Drug Administration under the over-the-counter
 17 monograph process for purposes of promoting, and
 18 when used to promote, tobacco cessation during the
 19 period beginning on the first day of the emergency
 20 period described in section 1135(g)(1)(B) and end-
 21 ing on the last day of the 2-year period that begins
 22 on the day after the last day of such emergency pe-
 23 riod.”.

24 (d) STATE MONITORING AND PROMOTING OF COM-
 25 PREHENSIVE TOBACCO CESSATION SERVICES UNDER

1 CHIP.—Section 2102 of the Social Security Act (42
 2 U.S.C. 1397bb) is amended by adding at the end the fol-
 3 lowing new subsection:

4 “(d) STATE MONITORING AND PROMOTING OF COM-
 5 PREHENSIVE TOBACCO CESSATION SERVICES UNDER
 6 CHIP.—A State child health plan shall include a descrip-
 7 tion of the procedures to be used by the State during the
 8 period beginning on the first day of the emergency period
 9 described in section 1135(g)(1)(B) and ending on the last
 10 day of the 2-year period after the last day of such emer-
 11 gency period to monitor and promote the use of com-
 12 prehensive tobacco cessation services under the State plan
 13 (including conducting an outreach campaign to increase
 14 awareness of the benefits of using such services) among—

15 “(1) individuals entitled to child health assist-
 16 ance under the State child health plan who use to-
 17 bacco products; and

18 “(2) clinicians and others who provide services
 19 to individuals entitled to child health assistance
 20 under the State child health plan.”.

21 (e) FEDERAL REIMBURSEMENT FOR CHIP COV-
 22 ERAGE AND OUTREACH CAMPAIGN.—Section 2105(a) of
 23 the Social Security Act (42 U.S.C. 1397ee(a)) is amended
 24 by adding at the end the following new paragraph:

1 “(5) FEDERAL REIMBURSEMENT FOR CHIP
 2 COVERAGE OF COMPREHENSIVE TOBACCO CES-
 3 SATION SERVICES AND OUTREACH CAMPAIGN.—In
 4 addition to the payments made under paragraph (1)
 5 (and, in the case of a payment that may be made
 6 both under paragraph (1) and under this paragraph,
 7 instead of a payment under paragraph (1)), for the
 8 period beginning on the first day of the emergency
 9 period described in section 1135(g)(1)(B) and end-
 10 ing on the last day of the 2-year period that begins
 11 on the day after the last day of such emergency pe-
 12 riod, the Secretary shall pay—

13 “(A) an amount equal to 100 percent of
 14 the sums expended during each quarter which
 15 are attributable to the cost of furnishing coun-
 16 seling and pharmacotherapy for cessation of to-
 17 bacco use and dependence by individuals who
 18 are eligible under the State child health plan;
 19 plus

20 “(B) an amount equal to 100 percent of
 21 the sums expended during each quarter which
 22 are attributable to the development, implemen-
 23 tation, and evaluation of an outreach campaign
 24 to—

1 “(i) increase awareness of comprehen-
2 sive tobacco cessation services covered in
3 the State child health plan among—

4 “(I) individuals who are likely to
5 be eligible for medical assistance
6 under the State child health plan; and

7 “(II) clinicians and others who
8 provide services to individuals who are
9 likely to be eligible for medical assist-
10 ance under the State child health
11 plan; and

12 “(ii) increase awareness of the bene-
13 fits of using comprehensive tobacco ces-
14 sation services covered in the State child
15 health plan among—

16 “(I) individuals who are likely to
17 be eligible for medical assistance
18 under the State child health plan; and

19 “(II) clinicians and others who
20 provide services to individuals who are
21 likely to be eligible for medical assist-
22 ance under the State child health plan
23 about the benefits of using com-
24 prehensive tobacco cessation serv-
25 ices.”.

1 (f) NO PRIOR AUTHORIZATION FOR TOBACCO CES-
 2 SATION DRUGS UNDER CHIP.—Section 2103 of the So-
 3 cial Security Act (42 U.S.C. 1397cc), as amended by sub-
 4 section (c), is further amended—

5 (1) in subsection (c)(2)(A), by inserting “(in ac-
 6 cordance with subsection (h))” after “Coverage of
 7 prescription drugs”; and

8 (2) by adding at the end the following new sub-
 9 section:

10 “(h) NO PRIOR AUTHORIZATION PROGRAMS FOR TO-
 11 BACCO CESSATION DRUGS.—During the period beginning
 12 on the first day of the emergency period described in sec-
 13 tion 1135(g)(1)(B) and ending on the last day of the 2-
 14 year period that begins with the day after the last day
 15 of such emergency period, a State child health plan may
 16 not require, as a condition of coverage or payment for a
 17 prescription drug that is an agent to promote smoking ces-
 18 sation (including agents approved by the Food and Drug
 19 Administration) or tobacco cessation, the approval of such
 20 drug before its dispensing.”.

21 **SEC. 4. CONFORMING AMENDMENTS.**

22 Title XIX of the Social Security Act (42 U.S.C. 1396
 23 et seq.) is amended in each of sections 1905(a)(4)(D),
 24 1905(bb)(1), 1905(bb)(2)(B), 1916(a)(2)(B),
 25 1916(b)(2)(B), and 1916A(b)(3)(B)(iii) by striking “to-

1 bacco use” each place it appears and inserting “tobacco
2 use and dependence”.

3 **SEC. 5. RULE OF CONSTRUCTION.**

4 None of the amendments made by this Act shall be
5 construed to limit coverage of any counseling or
6 pharmacotherapy for individuals under 18 years of age.

○