

105TH CONGRESS
1ST SESSION

S. 147

To amend title XIX of the Social Security Act to provide for coverage of alcoholism and drug dependency residential treatment services for pregnant women and certain family members under the Medicaid program, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 21, 1997

Mr. DASCHLE (for himself, Mr. CHAFEE, Mr. KENNEDY, Mr. JOHNSON, and Mr. REID) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend title XIX of the Social Security Act to provide for coverage of alcoholism and drug dependency residential treatment services for pregnant women and certain family members under the Medicaid program, 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 “Medicaid Substance
5 Abuse Treatment Act of 1997”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—The Congress finds that—

1 (1) a woman's ability to bear healthy children
2 is threatened by the consequences of alcoholism and
3 drug addiction and particularly by the use of alcohol
4 and drugs during pregnancy;

5 (2) hundreds of thousands of infants each year
6 are born drug-exposed, approximately 12,000 infants
7 are born each year with fetal alcohol syndrome, and
8 thousands more are born each year with fetal alcohol
9 effects, a less severe version of fetal alcohol syn-
10 drome;

11 (3) drug use during pregnancy can result in low
12 birthweight, physical deformities, mental retardation,
13 learning disabilities, and heightened nervousness and
14 irritability in newborns;

15 (4) fetal alcohol syndrome is the leading identi-
16 fiable cause of mental retardation in the United
17 States and the only cause that is 100 percent pre-
18 ventable;

19 (5) drug-impaired individuals pose extraor-
20 dinary societal costs in terms of medical, edu-
21 cational, foster care, residential, and support serv-
22 ices over the lifetimes of such individuals;

23 (6) women, in general, are underrepresented in
24 drug and alcohol treatment programs;

1 (7) due to fears among service providers con-
2 cerning the risks pregnancies pose, pregnant women
3 face more obstacles to substance abuse treatment
4 than do other addicts and many substance abuse
5 treatment programs, in fact, exclude pregnant
6 women or women with children;

7 (8) residential alcohol and drug treatment is an
8 important prevention strategy to prevent low
9 birthweight, transmission of AIDS, and chronic
10 physical, mental, and emotional disabilities associ-
11 ated with prenatal exposure to alcohol and other
12 drugs;

13 (9) effective substance abuse treatment must
14 address the special needs of pregnant women who
15 are alcohol or drug dependent, including substance-
16 abusing women who may often face such problems
17 as domestic violence, incest and other sexual abuse,
18 poor housing, poverty, unemployment, lack of edu-
19 cation and job skills, lack of access to health care,
20 emotional problems, chemical dependency in their
21 family backgrounds, single parenthood, and the need
22 to ensure child care for existing children while un-
23 dergoing substance abuse treatment;

24 (10) nonhospital residential treatment is an im-
25 portant component of comprehensive and effective

1 substance abuse treatment for pregnant addicted
2 women, many of whom need long-term, intensive ha-
3 bilitation outside of their communities to recover
4 from their addiction and take care of themselves and
5 their families; and

6 (11) a gap exists under the medicaid program
7 for the financing of comprehensive residential care
8 in the existing continuum of covered alcoholism and
9 drug abuse treatment services for pregnant medicaid
10 beneficiaries.

11 (b) PURPOSES.—The purposes of this Act are—

12 (1) to increase the ability of pregnant women
13 who are substance abusers to participate in alcohol
14 and drug treatment;

15 (2) to ensure the availability of comprehensive
16 and effective treatment programs for pregnant
17 women, thus promoting a woman's ability to bear
18 healthy children;

19 (3) to ensure that nonhospital residential treat-
20 ment is available to those low-income pregnant ad-
21 dicted women who need long-term, intensive habili-
22 tation to recover from their addiction;

23 (4) to create a new optional medicaid residen-
24 tial treatment service for alcoholism and drug de-
25 pendency treatment; and

1 (5) to define the core services that must be pro-
2 vided by treatment providers to ensure that needed
3 services will be available and appropriate.

4 **SEC. 3. MEDICAID COVERAGE OF ALCOHOLISM AND DRUG**
5 **DEPENDENCY RESIDENTIAL TREATMENT**
6 **SERVICES FOR PREGNANT WOMEN, CARE-**
7 **TAKER PARENTS, AND THEIR CHILDREN.**

8 (a) COVERAGE OF ALCOHOLISM AND DRUG DEPEND-
9 ENCY RESIDENTIAL TREATMENT SERVICES.—

10 (1) OPTIONAL COVERAGE.—Section 1905 of the
11 Social Security Act (42 U.S.C. 1396d) is amended—

12 (A) in subsection (a)—

13 (i) in paragraph (24), by striking
14 “and” at the end;

15 (ii) by redesignating paragraph (25)
16 as paragraph (26); and

17 (iii) by inserting after paragraph (24)
18 the following new paragraph:

19 “(25) alcoholism and drug dependency residen-
20 tial treatment services (to the extent allowed and as
21 defined in section 1931); and”; and

22 (B) in the sentence following paragraph
23 (26), as so redesignated—

24 (i) in subparagraph (A), by striking
25 “or” at the end;

1 (ii) in subparagraph (B), by striking
2 the period and inserting “; or”; and

3 (iii) by inserting after subdivision (B)
4 the following:

5 “(C) any such payments with respect to alcohol-
6 ism and drug dependency residential treatment serv-
7 ices under paragraph (25) for individuals not de-
8 scribed in section 1932(d).”.

9 (2) ALCOHOLISM AND DRUG DEPENDENCY RES-
10 IDENTIAL TREATMENT SERVICES DEFINED.—Title
11 XIX of the Social Security Act (42 U.S.C. 1396 et
12 seq.) is amended—

13 (A) by redesignating section 1932 as sec-
14 tion 1933; and

15 (B) by inserting after section 1931, the
16 following:

17 “ALCOHOLISM AND DRUG DEPENDENCY RESIDENTIAL
18 TREATMENT SERVICES

19 “SEC. 1932. (a) ALCOHOLISM AND DRUG DEPEND-
20 ENCY RESIDENTIAL TREATMENT SERVICES.—The term
21 ‘alcoholism and drug dependency residential treatment
22 services’ means all the required services described in sub-
23 section (b) which are provided—

24 “(1) in a coordinated manner by a residential
25 treatment facility that meets the requirements of

1 subsection (c) either directly or through arrange-
2 ments with—

3 “(A) public and nonprofit private entities;

4 “(B) licensed practitioners or federally
5 qualified health centers with respect to medical
6 services; or

7 “(C) the Indian Health Service or a tribal
8 or Indian organization that has entered into a
9 contract with the Secretary under section 102
10 of the Indian Self-Determination Act (25
11 U.S.C. 450f) or section 502 of the Indian
12 Health Care Improvement Act (25 U.S.C.
13 1652) with respect to such services provided to
14 women eligible to receive services in Indian
15 Health Facilities; and

16 “(2) pursuant to a written individualized treat-
17 ment plan prepared for each individual, which
18 plan—

19 “(A) states specific objectives necessary to
20 meet the individual’s needs;

21 “(B) describes the services to be provided
22 to the individual to achieve those objectives;

23 “(C) is established in consultation with the
24 individual;

1 “(D) is periodically reviewed and (as ap-
2 propriate) revised by the staff of the facility in
3 consultation with the individual;

4 “(E) reflects the preferences of the individ-
5 ual; and

6 “(F) is established in a manner which pro-
7 motes the active involvement of the individual
8 in the development of the plan and its objec-
9 tives.

10 “(b) REQUIRED SERVICES DEFINED.—

11 “(1) IN GENERAL.—The required services de-
12 scribed in this subsection are as follows:

13 “(A) Counseling, addiction education, and
14 treatment provided on an individual, group, and
15 family basis and provided pursuant to individ-
16 ualized treatment plans, including the oppor-
17 tunity for involvement in Alcoholics Anonymous
18 and Narcotics Anonymous.

19 “(B) Parenting skills training.

20 “(C) Education concerning prevention of
21 HIV infection.

22 “(D) Assessment of each individual’s need
23 for domestic violence counseling and sexual
24 abuse counseling and provision of such counsel-
25 ing where needed.

1 “(E) Room and board in a structured envi-
2 ronment with on-site supervision 24 hours-a-
3 day.

4 “(F) Therapeutic child care or counseling
5 for children of individuals in treatment.

6 “(G) Assisting parents in obtaining access
7 to—

8 “(i) developmental services (to the ex-
9 tent available) for their preschool children;

10 “(ii) public education for their school-
11 age children, including assistance in enroll-
12 ing them in school; and

13 “(iii) public education for parents who
14 have not completed high school.

15 “(H) Facilitating access to prenatal and
16 postpartum health care for women, to pediatric
17 health care for infants and children, and to
18 other health and social services where appro-
19 priate and to the extent available, including
20 services under title V, services and nutritional
21 supplements provided under the special supple-
22 mental food program for women, infants, and
23 children (WIC) under section 17 of the Child

1 Nutrition Act of 1966, services provided by fed-
2 erally qualified health centers, outpatient pedi-
3 atric services, well-baby care, and early and
4 periodic screening, diagnostic, and treatment
5 services (as defined in section 1905(r)).

6 “(I) Ensuring supervision of children dur-
7 ing times their mother is in therapy or engaged
8 in other necessary health or rehabilitative ac-
9 tivities, including facilitating access to child
10 care services under title IV and title XX.

11 “(J) Planning for and counseling to assist
12 reentry into society, including appropriate out-
13 patient treatment and counseling after dis-
14 charge (which may be provided by the same
15 program, if available and appropriate) to assist
16 in preventing relapses, assistance in obtaining
17 suitable affordable housing and employment
18 upon discharge, and referrals to appropriate
19 educational, vocational, and other employment-
20 related programs (to the extent available).

21 “(K) Continuing specialized training for
22 staff in the special needs of residents and their
23 children, designed to enable such staff to stay
24 abreast of the latest and most effective treat-
25 ment techniques.

1 “(2) REQUIREMENT FOR CERTAIN SERVICES.—
2 Services under subparagraphs (A), (B), (C), and
3 (D), of paragraph (1) shall be provided in a cultural
4 context that is appropriate to the individuals and in
5 a manner that ensures that the individuals can com-
6 municate effectively, either directly or through inter-
7 preters, with persons providing services.

8 “(3) LIMITATIONS ON COVERAGE.—

9 “(A) IN GENERAL.—Subject to subpara-
10 graph (B), services described in paragraph (1)
11 shall be covered in the amount, duration, and
12 scope therapeutically required for each eligible
13 individual in need of such services.

14 “(B) RESTRICTIONS ON LIMITING COV-
15 ERAGE.—A State plan shall not limit coverage
16 of alcoholism and drug dependency residential
17 treatment services for any period of less than
18 12 months per individual, except in those in-
19 stances where a finding is made that such serv-
20 ices are no longer therapeutically necessary for
21 an individual.

22 “(c) FACILITY REQUIREMENTS.—The requirements
23 of this subsection with respect to a facility are as follows:

1 “(1) The agency designated by the chief execu-
2 tive officer of the State to administer the State’s al-
3 cohol and drug abuse prevention and treatment ac-
4 tivities and programs has certified to the single
5 State agency under section 1902(a)(5) that the facil-
6 ity—

7 “(A) is able to provide all the services de-
8 scribed in subsection (b) either directly or
9 through arrangements with—

10 “(i) public and nonprofit private enti-
11 ties;

12 “(ii) licensed practitioners or federally
13 qualified health centers with respect to
14 medical services; or

15 “(iii) the Indian Health Service or
16 with a tribal or Indian organization that
17 has entered into a contract with the Sec-
18 retary under section 102 of the Indian
19 Self-Determination Act (25 U.S.C. 450f)
20 or section 502 of the Indian Health Care
21 Improvement Act (25 U.S.C. 1652) with
22 respect to such services provided to women
23 eligible to receive services in Indian Health
24 Facilities; and

1 “(B) except for Indian Health Facilities,
2 meets all applicable State licensure or certifi-
3 cation requirements for a facility of that type.

4 “(2)(A) The facility or a distinct part of the fa-
5 cility provides room and board, except that—

6 “(i) subject to subparagraph (B), the facil-
7 ity shall have no more than 40 beds; and

8 “(ii) subject to subparagraph (C), the fa-
9 cility shall not be licensed as a hospital.

10 “(B) The single State agency may waive the
11 bed limit under subparagraph (A)(i) for one or more
12 facilities subject to review by the Secretary. Waivers,
13 where granted, must be made pursuant to standards
14 and procedures set out in the State plan and must
15 require the facility seeking a waiver to demonstrate
16 that—

17 “(i) the facility will be able to maintain a
18 therapeutic, family-like environment;

19 “(ii) the facility can provide quality care in
20 the delivery of each of the services identified in
21 subsection (b);

22 “(iii) the size of the facility will be appro-
23 priate to the surrounding community; and

24 “(iv) the development of smaller facilities
25 is not feasible in that geographic area.

1 “(C) The Secretary may waive the requirement
2 under subparagraph (A)(ii) that a facility not be a
3 hospital, if the Secretary finds that such facility is
4 located in an Indian Health Service area and that
5 such facility is the only or one of the only facilities
6 available in such area to provide services under this
7 section.

8 “(3) With respect to a facility providing the
9 services described in subsection (b) to an individual
10 eligible to receive services in Indian Health Facili-
11 ties, such a facility demonstrates (as required by the
12 Secretary) an ability to meet the special needs of In-
13 dian and Native Alaskan women.

14 “(d) ELIGIBLE INDIVIDUALS.—

15 “(1) IN GENERAL.—A State plan shall limit
16 coverage of alcoholism and drug dependency residen-
17 tial treatment services under section 1905(a)(24) to
18 the following individuals otherwise eligible for medi-
19 cal assistance under this title:

20 “(A) Women during pregnancy, and until
21 the end of the 12th month following the termi-
22 nation of the pregnancy.

23 “(B) Children of a woman described in
24 subparagraph (A).

1 “(C) At the option of a State, a caretaker
2 parent or parents and children of such a
3 parent.

4 “(2) INITIAL ASSESSMENT OF ELIGIBLE INDI-
5 VIDUALS.—An initial assessment of eligible individ-
6 uals specified in paragraph (1) seeking alcoholism
7 and drug dependency residential treatment services
8 shall be performed by the agency designated by the
9 chief executive officer of the State to administer the
10 State’s alcohol and drug abuse treatment activities
11 (or its designee). Such assessment shall determine
12 whether such individuals are in need of alcoholism or
13 drug dependency treatment services and, if so, the
14 treatment setting (such as inpatient hospital, non-
15 hospital residential, or outpatient) that is most ap-
16 propriate in meeting such individual’s health and
17 therapeutic needs and the needs of such individual’s
18 dependent children, if any.

19 “(e) OVERALL CAP ON MEDICAL ASSISTANCE AND
20 ALLOCATION OF BEDS.—

21 “(1) TOTAL AMOUNT OF SERVICES AS MEDICAL
22 ASSISTANCE.—

23 “(A) IN GENERAL.—The total amount of
24 services provided under this section as medical
25 assistance for which payment may be made

1 available under section 1903 shall be limited to
 2 the total number of beds allowed to be allocated
 3 for such services in any given year as specified
 4 under subparagraph (B).

5 “(B) TOTAL NUMBER OF BEDS.—The total
 6 number of beds allowed to be allocated under
 7 this subparagraph (subject to paragraph
 8 (2)(C)) for the furnishing of services under this
 9 section and for which Federal medical assist-
 10 ance may be made available under section 1903
 11 is for calendar year—

12 “(i) 1998, 1,080 beds;

13 “(ii) 1998, 2,000 beds;

14 “(iii) 2000, 3,500 beds;

15 “(iv) 2001, 5,000 beds;

16 “(v) 2002, 6,000 beds; and

17 “(vi) 2003 and for calendar years
 18 thereafter, a number of beds determined
 19 appropriate by the Secretary.

20 “(2) ALLOCATION OF BEDS.—

21 “(A) INITIAL ALLOCATION FORMULA.—For
 22 each calendar year, a State exercising the op-
 23 tion to provide the services described in this
 24 section shall be allocated from the total number
 25 of beds available under paragraph (1)(B)—

1 “(i) in calendar years 1998 and 1999,
2 20 beds;

3 “(ii) in calendar years 2000, 2001,
4 and 2002, 40 beds; and

5 “(iii) in calendar year 2003 and for
6 each calendar year thereafter, a number of
7 beds determined based on a formula (as
8 provided by the Secretary) distributing
9 beds to States on the basis of the relative
10 percentage of women of childbearing age in
11 a State.

12 “(B) REALLOCATION OF BEDS.—The Sec-
13 retary shall provide that in allocating the num-
14 ber of beds made available to a State for the
15 furnishing of services under this section that, to
16 the extent not all States are exercising the op-
17 tion of providing services under this section and
18 there are beds available that have not been allo-
19 cated in a year as provided in paragraph
20 (1)(B), that such beds shall be reallocated
21 among States which are furnishing services
22 under this section based on a formula (as pro-
23 vided by the Secretary) distributing beds to
24 States on the basis of the relative percentage of
25 women of childbearing age in a State.

1 “(C) INDIAN HEALTH SERVICE AREAS.—In
2 addition to the beds allowed to be allocated
3 under paragraph (1)(B) there shall be an addi-
4 tional 20 beds allocated in any calendar year to
5 States for each Indian Health Service area
6 within the State to be utilized by Indian Health
7 Facilities within such an area and, to the extent
8 such beds are not utilized by a State, the beds
9 shall be reapportioned to Indian Health Service
10 areas in other States.”.

11 (3) MAINTENANCE OF STATE FINANCIAL EF-
12 FORT AND 100 PERCENT FEDERAL MATCHING FOR
13 SERVICES FOR INDIAN AND NATIVE ALASKAN
14 WOMEN IN INDIAN HEALTH SERVICES AREAS.—Sec-
15 tion 1903 of the Social Security Act (42 U.S.C.
16 1396b) is amended by adding at the end the follow-
17 ing new subsections:

18 “(x) No payment shall be made to a State under this
19 section in a State fiscal year for alcoholism and drug de-
20 pendency residential treatment services (described in sec-
21 tion 1932) unless the State provides assurances satisfac-
22 tory to the Secretary that the State is maintaining State
23 expenditures for such services at a level that is not less
24 than the average annual level maintained by the State for

1 such services for the 2-year period preceding such fiscal
2 year.

3 “(y) Notwithstanding the preceding provisions of this
4 section, the Federal medical assistance percentage for pur-
5 poses of payment under this section for services described
6 in section 1932 provided to individuals residing on or re-
7 ceiving services in an Indian Health Service area shall be
8 100 percent.”.

9 (b) PAYMENT ON A COST-RELATED BASIS.—Section
10 1902(a)(13) of the Social Security Act (42 U.S.C.
11 1396a(a)(13)) is amended—

12 (1) by striking “and” at the end of subpara-
13 graph (E);

14 (2) by adding “and” at the end of subpara-
15 graph (F); and

16 (3) by adding at the end the following new sub-
17 paragraph:

18 “(G) for payment for alcoholism and drug
19 dependency residential treatment services which
20 the State finds, and makes assurances satisfac-
21 tory to the Secretary, are reasonable and ade-
22 quate to meet the costs which must be incurred
23 by efficiently and economically operated facili-
24 ties in order to provide all the services listed in
25 section 1932(b) in conformity with applicable

1 Federal and State laws, regulations, and quality
2 and safety standards and to assure that individ-
3 uals eligible for such services have reasonable
4 access to such services;”.

5 (e) CONFORMING AMENDMENTS.—

6 (1) CLARIFICATION OF OPTIONAL COVERAGE
7 FOR SPECIFIED INDIVIDUALS.—Section 1902(a)(10)
8 of the Social Security Act (42 U.S.C. 1396a(a)(10))
9 is amended, in the matter following subparagraph
10 (F)—

11 (A) by striking “; and (XIII)” and insert-
12 ing “, (XIII)”; and

13 (B) by inserting before the semicolon at
14 the end the following: “, and (XIII) the making
15 available of alcoholism and drug dependency
16 residential treatment services to individuals de-
17 scribed in section 1932(d) shall not, by reason
18 of this paragraph, require the making of such
19 services available to other individuals”.

20 (2) CONTINUATION OF ELIGIBILITY FOR ALCO-
21 HOLISM AND DRUG DEPENDENCY TREATMENT FOR
22 PREGNANT WOMEN FOR 12 MONTHS FOLLOWING
23 END OF PREGNANCY.—Section 1902 of the Social
24 Security Act (42 U.S.C. 1396a) is amended in sub-
25 section (e)(5) by striking “under the plan,” and all

1 through the period at the end and inserting “under
2 the plan—

3 “(A) as though she were pregnant, for all preg-
4 nancy-related and postpartum medical assistance
5 under the plan, through the end of the month in
6 which the 60-day period (beginning on the last day
7 of her pregnancy) ends; and

8 “(B) for alcoholism and drug dependency resi-
9 dential treatment services under section 1932
10 through the end of the 1-year period beginning on
11 the last day of her pregnancy.”.

12 (3) REDESIGNATIONS.—Section 1902 of the So-
13 cial Security Act (42 U.S.C. 1396a) is further
14 amended in subsection (a)(10)(C)(iv), by striking
15 “(24)” and inserting “(25)”.

16 (d) ANNUAL EDUCATION AND TRAINING IN INDIAN
17 HEALTH SERVICE AREAS.—The Secretary of Health and
18 Human Services in cooperation with the Indian Health
19 Service shall conduct on at least an annual basis training
20 and education in each of the 12 Indian Health Service
21 areas for tribes, Indian organizations, residential treat-
22 ment providers, and State health care workers regarding
23 the availability and nature of residential treatment serv-
24 ices available in such areas under the provisions of this
25 Act.

1 (e) EFFECTIVE DATE; TRANSITION.—(1) The
2 amendments made by this section apply to alcoholism and
3 drug dependency residential treatment services furnished
4 on or after January 1, 1998, without regard to whether
5 or not final regulations to carry out such amendments
6 have been promulgated by such date.

7 (2) The Secretary of Health and Human Services
8 shall not take any compliance, disallowance, penalty, or
9 other regulatory action against a State under title XIX
10 of the Social Security Act with regard to alcoholism and
11 drug dependency residential treatment services (as defined
12 in section 1932(a) of such Act) made available under such
13 title on or after January 1, 1998, before the date the Sec-
14 retary issues final regulations to carry out the amend-
15 ments made by this section, if the services are provided
16 under its plan in good faith compliance with such amend-
17 ments.

○