

114TH CONGRESS
2D SESSION

H. R. 5902

To amend title XIX of the Social Security Act to provide a temporary higher Federal medical assistance percentage for Federal expenditures under the Medicaid program that are associated with the cost of compliance with certain Federal regulations with respect to services furnished in certain intermediate care facilities or home and community-based services furnished to individuals with intellectual and developmental disabilities.

IN THE HOUSE OF REPRESENTATIVES

JULY 14, 2016

Mr. TONKO (for himself, Mr. STIVERS, Mr. LANGEVIN, and Mr. HARPER) 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 provide a temporary higher Federal medical assistance percentage for Federal expenditures under the Medicaid program that are associated with the cost of compliance with certain Federal regulations with respect to services furnished in certain intermediate care facilities or home and community-based services furnished to individuals with intellectual and developmental disabilities.

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 “Disability Community
3 Act of 2016”.

4 **SEC. 2. HIGHER FMAP FOR CERTAIN MEDICAID EXPENDI-**
5 **TURES ASSOCIATED WITH CERTAIN REGULA-**
6 **TION COMPLIANCE.**

7 (a) IN GENERAL.—Section 1903(a)(5) of the Social
8 Security Act (42 U.S.C. 1396b(a)(5)) is amended—

9 (1) by striking “an amount equal to” and in-
10 serting “(A) an amount equal to”;

11 (2) by striking “supplies;” and inserting “sup-
12 plies; and”; and

13 (3) by adding at the end the following:

14 “(B) an amount equal to 90 percent of the sum
15 of the amounts expended during a quarter in 2017,
16 2018, or 2019, for items and services furnished in
17 an intermediate care facility for the mentally re-
18 tarded or for home and community-based services
19 furnished to individuals with intellectual and devel-
20 opmental disabilities, as the Secretary determines
21 are attributable to compliance with any of the regu-
22 lations specified in—

23 “(i) part 591 of title 29, Code of Federal
24 Regulations;

25 “(ii) part 552 of title 29, Code of Federal
26 Regulations; or

1 “(iii) part 430, 431, 435, 436, 440, 441,
2 or 447 of title 42, Code of Federal Regula-
3 tions;”.

4 (b) CONFORMING TERMINOLOGY FOR INTERMEDIATE
5 CARE FACILITIES.—Title XIX of the Social Security Act
6 (42 U.S.C. 1396 et seq.) is amended—

7 (1) by striking “intermediate care facility for
8 the mentally retarded” each time such term appears
9 (including in headings) and inserting “intermediate
10 care facility for individuals with intellectual and de-
11 velopmental disabilities”;

12 (2) by striking “intermediate care facilities for
13 the mentally retarded” each time such term appears
14 (including in headings) and inserting “intermediate
15 care facilities for individuals with intellectual and
16 developmental disabilities”;

17 (3) by striking “State mental retardation or de-
18 velopmental disability authority” each time such
19 term appears and inserting “State intellectual or de-
20 velopmental disability authority”;

21 (4) in section 1905(d)—

22 (A) in the matter before paragraph (1), by
23 striking “thereof) for the mentally retarded or
24 persons” and inserting “thereof) for individuals

1 with intellectual or developmental disabilities
2 or”;

3 (B) in paragraph (1), by striking “men-
4 tally retarded individuals” and inserting “indi-
5 viduals with intellectual or developmental dis-
6 abilities”; and

7 (C) in paragraph (2), by striking “the
8 mentally retarded individual” and inserting
9 “the individual with an intellectual or develop-
10 mental disability”;

11 (5) in section 1915(c)(7)(C), by striking “men-
12 tal retardation” and inserting “intellectual or devel-
13 opmental disabilities”;

14 (6) in section 1919(b)—

15 (A) in paragraph (3)—

16 (i) in subparagraph (E), by striking
17 “mentally retarded” and inserting “has in-
18 tellectual or developmental disabilities”;

19 and

20 (ii) in subparagraph (F)—

21 (I) in the heading, by striking
22 “AND MENTALLY RETARDED INDIVID-
23 UALS” and inserting “INDIVIDUALS
24 AND INDIVIDUALS WITH INTELLEC-

1 TUAL OR DEVELOPMENTAL DISABIL-
2 ITIES”; and

3 (II) in clause (ii)—

4 (aa) by striking “is mentally
5 retarded” and inserting “has an
6 intellectual or developmental dis-
7 ability”; and

8 (bb) by striking “for mental
9 retardation” and inserting “for
10 intellectual or developmental dis-
11 abilities”;

12 (B) in paragraph (4)—

13 (i) in subparagraph (A)(vii), by strik-
14 ing “mentally ill and mentally retarded
15 residents” and inserting “residents who
16 are mentally ill or who have intellectual or
17 developmental disabilities”; and

18 (ii) in subparagraph (C)(ii)(IV), by
19 striking “the mentally retarded” and in-
20 sserting “individuals with intellectual or de-
21 velopmental disabilities”; and

22 (7) in section 1919(e)—

23 (A) in paragraph (7)—

24 (i) in subparagraph (A)(i), by striking
25 “mentally ill and mentally retarded individ-

1 uals” and inserting “individuals who are
2 mentally ill or who have intellectual or de-
3 velopmental disabilities”;

4 (ii) in subparagraph (B)—

5 (I) by striking “mental retarda-
6 tion” each place such term appears
7 and inserting “intellectual or develop-
8 mental disability”;

9 (II) in clause (ii)—

10 (aa) in the heading, by
11 striking “MENTALLY RETARDED
12 RESIDENTS” and inserting “RESI-
13 DENTS WITH INTELLECTUAL OR
14 DEVELOPMENTAL DISABILITIES”;
15 and

16 (bb) in the matter preceding
17 subclause (I), by striking “is
18 mentally retarded” and inserting
19 “has an intellectual or develop-
20 mental disability”; and

21 (III) in clause (iii), by striking
22 “mentally ill or mentally retarded
23 resident” and inserting “resident who
24 is mentally ill or who has an intellec-
25 tual or developmental disability”;

1 (iii) in subparagraph (C), by striking
2 “mental retardation” each place such term
3 appears and inserting “intellectual or de-
4 velopmental disability”;

5 (iv) in subparagraph (E)—

6 (I) by striking “are mentally re-
7 tarded or” and inserting “have intel-
8 lectual or developmental disabilities or
9 are”; and

10 (II) by striking “mental retarda-
11 tion” and inserting “intellectual or de-
12 velopmental disability”; and

13 (v) in subparagraph (G)(ii)—

14 (I) by striking “be ‘mentally re-
15 tarded’ ” and inserting “have ‘an in-
16 tellectual or developmental dis-
17 ability’ ”; and

18 (II) by striking “is mentally re-
19 tarded or a person with” and insert-
20 ing “has an intellectual or develop-
21 mental disability or”.

1 **SEC. 3. ELECTRONIC VISIT VERIFICATION SYSTEM RE-**
2 **QUIRED FOR PERSONAL CARE SERVICES AND**
3 **HOME HEALTH CARE SERVICES UNDER MED-**
4 **ICAID.**

5 (a) IN GENERAL.—Section 1903 of the Social Secu-
6 rity Act (42 U.S.C. 1396b) is amended by inserting after
7 subsection (k) the following new subsection:

8 “(l)(1) Subject to paragraphs (3) and (4), with re-
9 spect to any amount expended for personal care services
10 or home health care services requiring an in-home visit
11 by a provider that are provided under a State plan under
12 this title (or under a waiver of the plan) and furnished
13 in a calendar quarter beginning on or after January 1,
14 2019 (or, in the case of home health care services, on or
15 after January 1, 2023), unless a State requires the use
16 of an electronic visit verification system for such services
17 furnished in such quarter under the plan or such waiver,
18 the Federal medical assistance percentage shall be re-
19 duced—

20 “(A) in the case of personal care serv-
21 ices—

22 “(i) for calendar quarters in 2019 and
23 2020, by .25 percentage points;

24 “(ii) for calendar quarters in 2021, by
25 .5 percentage points;

1 “(iii) for calendar quarters in 2022,
2 by .75 percentage points; and

3 “(iv) for calendar quarters in 2023
4 and each year thereafter, by 1 percentage
5 point; and

6 “(B) in the case of home health care serv-
7 ices—

8 “(i) for calendar quarters in 2023 and
9 2024, by .25 percentage points;

10 “(ii) for calendar quarters in 2025, by
11 .5 percentage points;

12 “(iii) for calendar quarters in 2026,
13 by .75 percentage points; and

14 “(iv) for calendar quarters in 2027
15 and each year thereafter, by 1 percentage
16 point.

17 “(2) Subject to paragraphs (3) and (4), in im-
18 plementing the requirement for the use of an elec-
19 tronic visit verification system under paragraph (1),
20 a State shall—

21 “(A) consult with agencies and entities
22 that provide personal care services, home health
23 care services, or both under the State plan (or
24 under a waiver of the plan) to ensure that such
25 system—

1 “(i) is minimally burdensome;

2 “(ii) takes into account existing best
3 practices and electronic visit verification
4 systems in use in the State; and

5 “(iii) is conducted in accordance with
6 the requirements of HIPAA privacy and
7 security law (as defined in section 3009 of
8 the Public Health Service Act);

9 “(B) take into account a stakeholder proc-
10 ess that includes input from beneficiaries, fam-
11 ily caregivers, personal care or home health care
12 services workers, and other stakeholders, as de-
13 termined by the State in accordance with guid-
14 ance from the Secretary; and

15 “(C) ensure that individuals who furnish
16 personal care services, home health care serv-
17 ices, or both under the State plan (or under a
18 waiver of the plan) are provided the opportunity
19 for training on the use of such system.

20 “(3) Paragraphs (1) and (2) shall not apply in
21 the case of a State that, as of the date of the enact-
22 ment of this subsection, requires the use of any sys-
23 tem for the electronic verification of visits conducted
24 as part of both personal care services and home
25 health care services.

1 “(4)(A) In the case of a State described in sub-
2 paragraph (B), the reduction under paragraph (1)
3 shall not apply—

4 “(i) in the case of personal care services,
5 for calendar quarters in 2019; and

6 “(ii) in the case of home health care serv-
7 ices, for calendar quarters in 2023.

8 “(B) For purposes of subparagraph (A), a
9 State described in this subparagraph is a State that
10 demonstrates to the Secretary that the State—

11 “(i) has made a good faith effort to comply
12 with the requirements of paragraphs (1) and
13 (2) (including by taking steps to adopt the tech-
14 nology used for an electronic visit verification
15 system); or

16 “(ii) in implementing such a system, has
17 encountered unavoidable system delays.

18 “(5) In this subsection:

19 “(A) The term ‘electronic visit verification
20 system’ means, with respect to personal care
21 services or home health care services, a system
22 under which visits conducted as part of such
23 services are electronically verified with respect
24 to—

25 “(i) the type of service performed;

1 “(ii) the individual receiving the serv-
2 ice;

3 “(iii) the date of the service;

4 “(iv) the location of service delivery;

5 “(v) the individual providing the serv-
6 ice; and

7 “(vi) the time the service begins and
8 ends.

9 “(B) The term ‘home health care services’
10 means services described in section 1905(a)(7)
11 provided under a State plan under this title (or
12 under a waiver of the plan).

13 “(C) The term ‘personal care services’
14 means personal care services provided under a
15 State plan under this title (or under a waiver
16 of the plan), including services provided under
17 section 1905(a)(24), 1915(c), 1915(i), 1915(j),
18 or 1915(k) or under a wavier under section
19 1115.

20 “(6)(A) In the case in which a State requires
21 personal care service and home health care service
22 providers to utilize an electronic visit verification
23 system operated by the State or a contractor on be-
24 half of the State, the Secretary shall pay to the
25 State, for each quarter, an amount equal to 90 per

1 centum of so much of the sums expended during
2 such quarter as are attributable to the design, devel-
3 opment, or installation of such system, and 75 per
4 centum of so much of the sums for the operation
5 and maintenance of such system.

6 “(B) Subparagraph (A) shall not apply in the
7 case in which a State requires personal care service
8 and home health care service providers to utilize an
9 electronic visit verification system that is not oper-
10 ated by the State or a contractor on behalf of the
11 State.”.

12 (b) COLLECTION AND DISSEMINATION OF BEST
13 PRACTICES.—Not later than January 1, 2018, the Sec-
14 retary of Health and Human Services shall, with respect
15 to electronic visit verification systems (as defined in sub-
16 section (l)(5) of section 1903 of the Social Security Act
17 (42 U.S.C. 1396b), as inserted by subsection (a)), collect
18 and disseminate best practices to State Medicaid Directors
19 with respect to—

20 (1) training individuals who furnish personal
21 care services, home health care services, or both
22 under the State plan under title XIX of such Act (or
23 under a waiver of the plan) on such systems and the
24 operation of such systems and the prevention of
25 fraud with respect to the provision of personal care

1 services or home health care services (as defined in
2 such subsection (1)(5)); and

3 (2) the provision of notice and educational ma-
4 terials to family caregivers and beneficiaries with re-
5 spect to the use of such electronic visit verification
6 systems and other means to prevent such fraud.

7 (c) RULES OF CONSTRUCTION.—

8 (1) NO EMPLOYER-EMPLOYEE RELATIONSHIP
9 ESTABLISHED.—Nothing in the amendment made by
10 this section may be construed as establishing an em-
11 ployer-employee relationship between the agency or
12 entity that provides for personal care services or
13 home health care services and the individuals who,
14 under a contract with such an agency or entity, fur-
15 nish such services for purposes of part 552 of title
16 29, Code of Federal Regulations (or any successor
17 regulations).

18 (2) NO PARTICULAR OR UNIFORM ELECTRONIC
19 VISIT VERIFICATION SYSTEM REQUIRED.—Nothing
20 in the amendment made by this section shall be con-
21 strued to require the use of a particular or uniform
22 electronic visit verification system (as defined in sub-
23 section (1)(5) of section 1903 of the Social Security
24 Act, as inserted by subsection (a)) by all agencies or
25 entities that provide personal care services or home

1 health care under a State plan under title XIX of
2 the Social Security Act (or under a waiver of the
3 plan) (42 U.S.C. 1396 et seq.).

4 (3) NO LIMITS ON PROVISION OF CARE.—Nothing
5 in the amendment made by this section may be
6 construed to limit, with respect to personal care
7 services or home health care services provided under
8 a State plan under title XIX of the Social Security
9 Act (or under a waiver of the plan) (42 U.S.C. 1396
10 et seq.), provider selection, constrain beneficiaries'
11 selection of a caregiver, or impede the manner in
12 which care is delivered.

13 (4) NO PROHIBITION ON STATE QUALITY MEAS-
14 URES REQUIREMENTS.—Nothing in the amendment
15 made by this section shall be construed as prohib-
16 iting a State, in implementing an electronic visit
17 verification system (as defined in subsection (1)(5) of
18 section 1903 of the Social Security Act, as inserted
19 by subsection (a)), from establishing requirements
20 related to quality measures for such system.

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