

Union Calendar No. 411

116TH CONGRESS
2^D SESSION

H. R. 3935

[Report No. 116–511]

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.

IN THE HOUSE OF REPRESENTATIVES

JULY 24, 2019

Mr. CARTER of Georgia (for himself, Mr. CÁRDENAS, Mr. GRAVES of Georgia, and Mr. BISHOP of Georgia) introduced the following bill; which was referred to the Committee on Energy and Commerce

SEPTEMBER 17, 2020

Additional sponsors: Mr. LUETKEMEYER, Ms. KUSTER of New Hampshire, Mr. RUSH, Mr. NEGUSE, Mrs. RODGERS of Washington, Mr. KILMER, Mr. GRIFFITH, and Mr. SOTO

SEPTEMBER 17, 2020

Reported with an amendment; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on July 24, 2019]

A BILL

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,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Protecting Patients*
 5 *Transportation to Care Act”.*

6 **SEC. 2. MEDICAID COVERAGE OF CERTAIN MEDICAL TRANS-**
 7 **PORTATION.**

8 *(a) CONTINUING REQUIREMENT OF MEDICAID COV-*
 9 *ERAGE OF NECESSARY TRANSPORTATION.—*

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

13 *(A) by striking “and including provision*
 14 *for utilization” and inserting “including provi-*
 15 *sion for utilization”; and*

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

1 (2) *APPLICATION WITH RESPECT TO BENCHMARK*
 2 *BENEFIT PACKAGES AND BENCHMARK EQUIVALENT*
 3 *COVERAGE.*—Section 1937(a)(1) of the Social Secu-
 4 *rity Act (42 U.S.C. 1396u–7(a)(1)) is amended—*

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

8 *(B) by adding at the end the following new*
 9 *subparagraph:*

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

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

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

1 (3) *LIMITATION ON FEDERAL FINANCIAL PAR-*
 2 *TICIPATION.*—Section 1903(i) of the Social Security
 3 Act (42 U.S.C. 1396b(i)) is amended by inserting
 4 after paragraph (8) the following new paragraph:

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

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

14 (b) *MEDICAID PROGRAM INTEGRITY MEASURES RE-*
 15 *LATED TO COVERAGE OF NONEMERGENCY MEDICAL TRANS-*
 16 *PORTATION.*—

17 (1) *GAO STUDY.*—Not later than two years after
 18 the date of the enactment of this Act, the Comptroller
 19 General of the United States shall conduct a study,
 20 and submit to Congress, a report on coverage under
 21 the Medicaid program under title XIX of the Social
 22 Security Act of nonemergency transportation to medi-
 23 cally necessary services. Such study shall take into ac-
 24 count the 2009 report of the Office of the Inspector
 25 General of the Department of Health and Human

1 *Services, titled “Fraud and Abuse Safeguards for*
2 *Medicaid Nonemergency Medical Transportation”*
3 *(OEI–06–07–003200). Such report shall include the*
4 *following:*

5 *(A) An examination of the 50 States and*
6 *the District of Columbia to identify safeguards to*
7 *prevent and detect fraud and abuse with respect*
8 *to coverage under the Medicaid program of non-*
9 *emergency transportation to medically necessary*
10 *services.*

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

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

21 *(D) Identification of commonalities or*
22 *trends in program integrity, with respect to such*
23 *coverage, to inform risk management strategies*
24 *of States and the Centers for Medicare & Med-*
25 *icaid Services.*

1 (2) *STAKEHOLDER WORKING GROUP.*—

2 (A) *IN GENERAL.*—Not later than one year
3 after the date of the enactment of this Act, the
4 Secretary of Health and Human Services,
5 through the Centers for Medicare & Medicaid
6 Services, shall convene a series of meetings to ob-
7 tain input from appropriate stakeholders to fa-
8 cilitate discussion and shared learning about the
9 leading practices for improving Medicaid pro-
10 gram integrity, with respect to coverage of non-
11 emergency transportation to medically necessary
12 services.

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

15 (i) *focus on ongoing challenges to Med-*
16 icaid program integrity as well as leading
17 practices to address such challenges; 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 described*
8 *in section 1902(a)(70)(B) of the Social Security*
9 *Act (42 U.S.C. 1396a(a)(70)(B)), providers (in-*
10 *cluding transportation network companies),*
11 *Medicaid patient advocates, and such other indi-*
12 *viduals specified by the Secretary.*

13 (3) *GUIDANCE REVIEW.—Not later than 18*
14 *months after the date of the enactment of this Act, the*
15 *Secretary of Health and Human Services, through the*
16 *Centers for Medicare & Medicaid Services, shall assess*
17 *guidance issued to States by the Centers for Medicare*
18 *& Medicaid Services relating to Federal requirements*
19 *for nonemergency transportation to medically nec-*
20 *essary services under the Medicaid program under*
21 *title XIX of the Social Security Act and update such*
22 *guidance as necessary to ensure States have appro-*
23 *priate and current guidance in designing and admin-*
24 *istering coverage under the Medicaid program of non-*

1 *emergency transportation to medically necessary serv-*
 2 *ices.*

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 of*
 11 *paragraph (86) and inserting “; and”; and*

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

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

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

1 *list of the Inspector General of the Department*
2 *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 program*
10 *the driving history, including any traffic viola-*
11 *tions, of each such individual driver employed by*
12 *such provider, including any traffic violations.”.*

13 *(B) EFFECTIVE DATE.—*

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

21 *(ii) EXCEPTION IF STATE LEGISLATION*
22 *REQUIRED.—In the case of a State plan for*
23 *medical assistance under title XIX of the*
24 *Social Security Act which the Secretary of*
25 *Health and Human Services determines re-*

1 quires State legislation (other than legisla-
2 tion appropriating funds) in order for the
3 plan to meet the additional requirement im-
4 posed by the amendments made by subpara-
5 graph (A), the State plan shall not be re-
6 garded as failing to comply with the re-
7 quirements of such title solely on the basis
8 of its failure to meet this additional re-
9 quirement before the first day of the first
10 calendar quarter beginning after the close of
11 the first regular session of the State legisla-
12 ture that begins after the date of the enact-
13 ment of this Act. For purposes of the pre-
14 vious sentence, in the case of a State that
15 has a 2-year legislative session, each year of
16 such session shall be deemed to be a separate
17 regular session of the State legislature.

18 (5) ANALYSIS OF T-MSIS DATA.—Not later than
19 one year after the date of the enactment of this Act,
20 the Secretary of Health and Human Services, through
21 the Centers for Medicare & Medicaid Services, shall
22 analyze, and submit to Congress a report on, the na-
23 tion-wide data set under the Transformed Medicaid
24 Statistical Information System to identify rec-
25 ommendations relating to coverage under the Med-

- 1 *icaid program under title XIX of the Social Security*
- 2 *Act of nonemergency transportation to medically nec-*
- 3 *essary services.*

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