

# HR 2611, Increasing Behavioral Health Treatment Act

Introduced by Rep. Grace Napolitano (D-CA) 04/20/2021

Amends the Social Security Act to:

- remove the IMD exclusion from the list of Medicaid services in Section 1905(a)
- add state Medicaid plan coverage and reporting requirements to Section 1902(a), to ensure increased access to outpatient and community-based behavioral health care and crisis stabilization services, and to improve data sharing and coordination between physical health, mental health and addiction treatment providers and first-responders.

Note: Paragraph (a) is the only paragraph of Section 1905 that would be amended by HR 2611, identified by the highlighted strike-outs in two places below. Several additional paragraphs from Section 1905 are included in this document because they are particularly relevant to NACBH members, including:

- 1905(a) – list of Medicaid covered services
- 1905(h) – inpatient psychiatric hospital services for individuals under age 21 (“Psych Under-21”)
- 1905(i) – Institutions for Mental Diseases (IMDs)
- 1905(r) – Early and Periodic Screening, Diagnostic, and Treatment services (EPSDT)

The additions to Section 1902(a) begin on page 6 of this document.

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## **Sec. 1905. For purposes of this title —**

**(a) The term “medical assistance” means payment of part or all of the cost of the following care and services or the care and services themselves . . .** [skipping past list of eligible beneficiaries]

- (1) inpatient hospital services (other than services in an institution for mental diseases);
- (2)
  - (A) outpatient hospital services,
  - (B) consistent with State law permitting such services, rural health clinic services (as defined in subsection (l)(1)) and any other ambulatory services which are offered by a rural health clinic (as defined in subsection (l)(1)) and which are otherwise included in the plan, and
  - (C) Federally-qualified health center services (as defined in subsection (l)(2)) and any other ambulatory services offered by a Federally-qualified health center and which are otherwise included in the plan;
- (3) other laboratory and X-ray services;
- (4)
  - (A) nursing facility services (other than services in an institution for mental diseases) for individuals 21 years of age or older;
  - (B) early and periodic screening, diagnostic, and treatment services (as defined in subsection (r)) for individuals who are eligible under the plan and are under the age of 21;
  - (C) family planning services and supplies furnished (directly or under arrangements with others) to individuals of child-bearing age (including minors who can be considered to be sexually active) who are eligible under the State plan and who desire such services and supplies; and

- (D) counseling and pharmacotherapy for cessation of tobacco use by pregnant women (as defined in subsection (bb));
- (5) (A) physicians' services furnished by a physician (as defined in section 1861(r)(1)), whether furnished in the office, the patient's home, a hospital, or a nursing facility, or elsewhere, and
  - (B) medical and surgical services furnished by a dentist (described in section 1861(r)(2)) to the extent such services may be performed under State law either by a doctor of medicine or by a doctor of dental surgery or dental medicine and would be described in clause (A) if furnished by a physician (as defined in section 1861(r)(1));
- (6) medical care, or any other type of remedial care recognized under State law, furnished by licensed practitioners within the scope of their practice as defined by State law;
- (7) home health care services;
- (8) private duty nursing services;
- (9) clinic services furnished by or under the direction of a physician, without regard to whether the clinic itself is administered by a physician, including such services furnished outside the clinic by clinic personnel to an eligible individual who does not reside in a permanent dwelling or does not have a fixed home or mailing address;
- (10) dental services;
- (11) physical therapy and related services;
- (12) prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select;
- (13) other diagnostic, screening, preventive, and rehabilitative services, including
  - (A) any clinical preventive services that are assigned a grade of A or B by the United States Preventive Services Task Force;
  - (B) with respect to an adult individual, approved vaccines recommended by the Advisory Committee on Immunization Practices (an advisory committee established by the Secretary, acting through the Director of the Centers for Disease Control and Prevention) and their administration; and
  - (C) any medical or remedial services (provided in a facility, a home, or other setting) recommended by a physician or other licensed practitioner of the healing arts within the scope of their practice under State law, for the maximum reduction of physical or mental disability and restoration of an individual to the best possible functional level;
- (14) inpatient hospital services and nursing facility services for individuals 65 years of age or over in an institution for mental diseases;
- (15) services in an intermediate care facility for the mentally retarded (other than in an institution for mental diseases) for individuals who are determined, in accordance with section 1902(a)(31), to be in need of such care;
- (16) (A) effective January 1, 1973, inpatient psychiatric hospital services for individuals under age 21, as defined in subsection (h); and

- (B) for individuals receiving services described in subparagraph (A), early and periodic screening, diagnostic and treatment services (as defined in subsection (r)) whether or not such screening, diagnostic and treatment services are furnished by the provider of the services described in such subparagraph;
- (17) services furnished by a nurse-midwife (as defined in section 1861(gg)) which the nurse-midwife is legally authorized to perform under State law (or the State regulatory mechanism provided by State law), whether or not the nurse-midwife is under the supervision of, or associated with, a physician or other health care provider, and without regard to whether or not the services are performed in the area of management of the care of mothers and babies throughout the maternity cycle;
- (18) hospice care (as defined in subsection (o));
- (19) case management services (as defined in section 1915(g)(2)) and TB-related services described in section 1902(z)(2)(F);
- (20) respiratory care services (as defined in section 1902(e)(9)(C));
- (21) services furnished by a certified pediatric nurse practitioner or certified family nurse practitioner (as defined by the Secretary) which the certified pediatric nurse practitioner or certified family nurse practitioner is legally authorized to perform under State law (or the State regulatory mechanism provided by State law), whether or not the certified pediatric nurse practitioner or certified family nurse practitioner is under the supervision of, or associated with, a physician or other health care provider;
- (22) home and community care (to the extent allowed and as defined in section 1929) for functionally disabled elderly individuals;
- (23) community supported living arrangements services (to the extent allowed and as defined in section 1930);
- (24) personal care services furnished to an individual who is not an inpatient or resident of a hospital, nursing facility, intermediate care facility for the mentally retarded, or institution for mental disease that are
- (A) authorized for the individual by a physician in accordance with a plan of treatment or (at the option of the State) otherwise authorized for the individual in accordance with a service plan approved by the State,
  - (B) provided by an individual who is qualified to provide such services and who is not a member of the individual's family, and
  - (C) furnished in a home or other location;
- (25) primary care case management services (as defined in subsection (t));
- (26) services furnished under a PACE program under section 1934 to PACE program eligible individuals enrolled under the program under such section;
- (27) subject to subsection (x), primary and secondary medical strategies and treatment and services for individuals who have Sickle Cell Disease;
- (28) freestanding birth center services (as defined in subsection (l)(3)(A)) and other ambulatory services that are offered by a freestanding birth center (as defined in subsection (l)(3)(B)) and that are otherwise included in the plan; and

(29) subject to paragraph (2) of subsection (ee), for the period beginning October 1, 2020, and ending September 30, 2025, medication-assisted treatment (as defined in paragraph (1) of such subsection); and

(30) any other medical care, and any other type of remedial care recognized under State law, specified by the Secretary

except as otherwise provided in paragraph (16), such term does not include —(A) any such payments with respect to care or services for any individual who is an inmate of a public institution (except as a patient in a medical institution); or (B) any such payments with respect to care or services for any individual who has not attained 65 years of age and who is a patient in an institution for mental diseases.

. . . . . [skipping paragraphs 1905 (b) through (g)]

**(h) (1) For purposes of paragraph (16) of subsection (a), the term “inpatient psychiatric hospital services for individuals under age 21” includes only —**

(A) inpatient services which are provided in an institution (or distinct part thereof) which is a psychiatric hospital as defined in section 1861(f) or in another inpatient setting that the Secretary has specified in regulations;

(B) inpatient services which, in the case of any individual

(i) involve active treatment which meets such standards as may be prescribed in regulations by the Secretary, and

(ii) a team, consisting of physicians and other personnel qualified to make determinations with respect to mental health conditions and the treatment thereof, has determined are necessary on an inpatient basis and can reasonably be expected to improve the condition, by reason of which such services are necessary, to the extent that eventually such services will no longer be necessary; and

(C) inpatient services which, in the case of any individual, are provided prior to

(i) the date such individual attains age 21, or

(ii) in the case of an individual who was receiving such services in the period immediately preceding the date on which he attained age 21, (I) the date such individual no longer requires such services or (II) if earlier, the date such individual attains age 22

. . . . .

**(i) The term “institution for mental diseases” means a hospital, nursing facility, or other institution of more than 16 beds, that is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care, and related services.**

. . . . . [skipping paragraphs 1905 (j) through (q)]

**(r) The term “early and periodic screening, diagnostic, and treatment services” means the following items and services:**

(1) Screening services —

- (A) which are provided —
    - (i) at intervals which meet reasonable standards of medical and dental practice, as determined by the State after consultation with recognized medical and dental organizations involved in child health care and, with respect to immunizations under subparagraph (B)(iii), in accordance with the schedule referred to in section 1928(c)(2)(B)(i) for pediatric vaccines, and
    - (ii) at such other intervals, indicated as medically necessary, to determine the existence of certain physical or mental illnesses or conditions; and
  - (B) which shall at a minimum include —
    - (i) a comprehensive health and developmental history (including assessment of both physical and mental health development),
    - (ii) a comprehensive unclothed physical exam,
    - (iii) appropriate immunizations (according to the schedule referred to in section 1928(c)(2)(B)(i) for pediatric vaccines) according to age and health history,
    - (iv) laboratory tests (including lead blood level assessment appropriate for age and risk factors), and
    - (v) health education (including anticipatory guidance).
- (2) Vision services —
- (A) which are provided —
    - (i) at intervals which meet reasonable standards of medical practice, as determined by the State after consultation with recognized medical organizations involved in child health care, and
    - (ii) at such other intervals, indicated as medically necessary, to determine the existence of a suspected illness or condition; and
  - (B) which shall at a minimum include diagnosis and treatment for defects in vision, including eyeglasses.
- (3) Dental services —
- (A) which are provided —
    - (i) at intervals which meet reasonable standards of dental practice, as determined by the State after consultation with recognized dental organizations involved in child health care, and
    - (ii) at such other intervals, indicated as medically necessary, to determine the existence of a suspected illness or condition; and
  - (B) which shall at a minimum include relief of pain and infections, restoration of teeth, and maintenance of dental health.

- (4) Hearing services —
  - (A) which are provided —
    - (i) at intervals which meet reasonable standards of medical practice, as determined by the State after consultation with recognized medical organizations involved in child health care, and
    - (ii) at such other intervals, indicated as medically necessary, to determine the existence of a suspected illness or condition; and
  - (B) which shall at a minimum include diagnosis and treatment for defects in hearing, including hearing aids.
- (5) Such other necessary health care, diagnostic services, treatment, and other measures described in section 1905(a) to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services, whether or not such services are covered under the State plan.

Nothing in this title shall be construed as limiting providers of early and periodic screening, diagnostic, and treatment services to providers who are qualified to provide all of the items and services described in the previous sentence or as preventing a provider that is qualified under the plan to furnish one or more (but not all) of such items or services from being qualified to provide such items and services as part of early and periodic screening, diagnostic, and treatment services. The Secretary shall, not later than July 1, 1990, and every 12 months thereafter, develop and set annual participation goals for each State for participation of individuals who are covered under the State plan under this title in early and periodic screening, diagnostic, and treatment services.

[not including the remainder of Section 1905, through paragraph (ff)]

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**New subparagraphs at 1902(a)(20):**

- (D) provide for a plan to achieve (and for the annual submission to the Secretary of actions taken by the State, and progress with respect to such actions, to achieve) —
  - (i) increased access to outpatient and community-based behavioral health care, with respect to individuals furnished services in an institution for mental diseases, especially for individuals transitioning from such an institution;
  - (ii) increased availability of services made available through crisis call centers, mobile crisis units, coordinated community crisis response that involves law enforcement and other first responders, observation or assessment centers, and on-going community-based services (such as intensive outpatient services, assertive community treatment, and services in integrated care settings such as the Certified Community Behavioral Health Clinic model) (such services referred to as crisis stabilization services) for individuals experiencing a serious mental illness (as such term is defined for purposes of title V of the Public Health Service Act), serious emotional disturbance, or substance use disorder crisis;
  - (iii) improved data sharing and coordination between physical health, mental health, and addiction treatment providers (including hospitals and community-based behavioral health facilities) and first responders to improve health outcomes for individuals furnished services in an institution for mental diseases, who are experiencing a serious mental illness (as so defined), serious emotional disturbance, or substance use disorder crisis;

(E) provide for the demonstration of —

(i) State policies to ensure individuals receiving medical assistance under the State plan who receive care in psychiatric hospitals and residential treatment settings are consistently screened for co-morbid physical health conditions and substance use disorders prior to or upon admission, and that participating facilities have the capacity to address co-morbid physical health conditions during stays in such psychiatric hospitals and residential treatment settings either through on-site medical services or external referrals and care coordination;

(ii) established strategies of the State for identifying and engaging individuals, particularly adolescents and young adults, experiencing a serious mental illness (as such term is defined for purposes of title V of the Public Health Service Act), serious emotional disturbance, or substance use disorder crisis; and

(iii) established utilization review policies of the State Medicaid agency or Medicaid managed care organizations, as applicable, to ensure individuals receiving medical assistance under the State plan receive treatment at clinically appropriate levels of care and services are generally delivered in the least restrictive environment; and

(F) reporting to the Secretary (in a form and manner specified by the Secretary) of, with respect to each year beginning on or after the date of the enactment of this subparagraph —

(i) in the aggregate and by facility type, costs and utilization for institutions 13 for mental diseases and inpatient psychiatric hospitals that are not such institutions; and

(ii) the number of individuals experiencing a serious mental illness (as such term is defined for purposes of title V of the Public Health Service Act), serious emotional disturbance, or substance use disorder crisis who received medical assistance under the State plan during the year;

(iii) the length of the stay of each such individual in an institution for mental disease; and

the type of outpatient treatment, including medication assisted treatment, each such individual received after being discharged from such institution;” [end new language]