To amend title XIX of the Social Security Act to remove the Medicaid coverage exclusion for inmates in custody pending disposition of charges, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. Cassidy (for himself, Mr. Merkley, Mr. Markey, and Mr. Tillis) introduced the following bill; which was read twice and referred to the Committee on __________

A BILL

To amend title XIX of the Social Security Act to remove the Medicaid coverage exclusion for inmates in custody pending disposition of charges, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Due Process Continuity of Care Act”.

SEC. 2. REMOVAL OF INMATE LIMITATION ON BENEFITS UNDER MEDICAID.

(a) In general.—The subdivision (A) of section 1905(a) of the Social Security Act (42 U.S.C. 1396d(a))
following the last numbered paragraph of such section is amended by inserting "; or, at the option of the State, while in custody pending disposition of charges" after "patient in a medical institution".

(b) CONFORMING AMENDMENTS.—Section 5122 of division FF of the Consolidated Appropriations Act, 2023 (Public Law 117–328) is amended—

(1) in subsection (a), by striking "Medicaid" and all that follows through "Section 1902(a)(84)(A)" and inserting "MEDICAID.—Section 1902(a)(84)(A)"; and

(2) in subsection (c), by inserting "; except that if such date is later than the effective date described in section 2(c) of the Due Process Continuity of Care Act then the amendment made by subsection (a) shall take effect and apply to items and services furnished for periods beginning on or after the effective date described in such section” before the period.

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect on the 1st day of the 1st calendar quarter that begins on or after the date that is 60 days after the date of the enactment of this Act and shall apply to items and services furnished for periods beginning on or after such date.
SEC. 3. PLANNING GRANTS.

(a) IN GENERAL.—The Secretary shall award planning grants to States to support providing medical assistance under the State Medicaid program to individuals who are eligible for such assistance as a result of the amendment made by section 2(a). The grants shall be used to prepare an application that meets the requirements of subsection (b).

(b) APPLICATION REQUIREMENTS.—In order to be awarded a planning grant under this section, a State shall submit an application to the Secretary at such time and in such form and manner as the Secretary shall require, that includes the following information along with such additional information, provisions, and assurances, as the Secretary may require:

(1) A proposed process for carrying out each of the activities described in subsection (c) in the State.

(2) A review of State policies regarding the population of individuals who are eligible for medical assistance under the State Medicaid program as a result of the amendment made by section 2(a) with respect to whether such policies may create barriers to increasing the number of health care providers who can provide items and services for that population.
(3) The development of a plan, taking into account activities described in subsection (e)(2), that will ensure a sustainable number of Medicaid-enrolled providers under the State Medicaid program that can offer a full array of treatment and services to the patient population described in paragraph (2) as needed. Such plan shall include the following:

(A) Specific activities to increase the number of providers that will offer physical health treatment, as well as services related to behavioral health treatment, including substance use disorder treatment, recovery, or support services (including short-term detoxification services, outpatient substance use disorder services, and evidence-based peer recovery services).

(B) Milestones and timeliness for implementing activities set forth in the plan.

(C) Specific measurable targets for increasing the number of providers under the State Medicaid program who will treat the patient population described in paragraph (2).

(4) An assurance that the State consulted with relevant stakeholders, including the State agency responsible for administering the State Medicaid program, Medicaid managed care plans, health care
providers, law enforcement personnel, officials from jails, and Medicaid beneficiary advocates, with respect to the preparation and completion of the application and a description of such consultation.

(c) ACTIVITIES DESCRIBED.—For purposes of subsection (b)(1), the activities described in this subsection are the following:

(1) Activities that support the development of an initial assessment of the health treatment needs of patients who are in custody pending disposition of charges to determine the extent to which providers are needed (including the types of such providers and geographic area of need) to improve the number of providers that will treat patients in custody pending disposition of charges under the State Medicaid program, including the following:

(A) An estimate of the number of individuals enrolled under the State Medicaid program who are in custody pending disposition of charges.

(B) Information on the capacity of providers to provide treatment or services to such individuals enrolled under the State Medicaid program, including information on providers...
who provide such services and their participation under the State Medicaid program.

(C) Information on the health care services provided under programs other than the State Medicaid program in jails to individuals who are in custody pending disposition of charges.

(2) Activities that, taking into account the results of the assessment described in paragraph (1) with respect to the provision of treatment or services under the State Medicaid program, support the development of State infrastructure to recruit or contract with prospective health care providers, provide training and technical assistance to such providers, and secure a process for an electronic health record system for billing to reimburse for services provided by the correctional facility, outpatient providers, medical vendors, and contracted telehealth service providers to patients who are in custody pending disposition of charges that are compliant with applicable requirements and regulations for State Medicaid programs.

(3) Activities that ensure the quality of care for patients who are in custody pending disposition of charges, including formal reporting mechanisms for patient outcomes, and activities that promote par-
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ticipation in learning collaboratives among providers
treating this population.

(d) GEOGRAPHIC DIVERSITY.—The Secretary shall
select States for planning grants under this section in a
manner that ensures geographic diversity.

(e) FUNDING.—There are authorized to be appro-
priated $50,000,000 to carry out this section.

(f) DEFINITIONS.—In this section:

(1) MEDICAID PROGRAM.—The term “Medicaid
program” means, with respect to a State, the State
program under title XIX of the Social Security Act
(42 U.S.C. 1396 et seq.) including any waiver or
demonstration under such title or under section
1115 of such Act (42 U.S.C. 1315) relating to such
title.

(2) SECRETARY.—The term “Secretary” means
the Secretary of Health and Human Services.

(3) STATE.—The term “State” has the mean-
ing given that term for purposes of title XIX of the
Social Security Act (42 U.S.C. 1396 et seq.) in sec-
tion 1101(a)(1) of such Act (42 U.S.C. 1301(a)(1)).