

117TH CONGRESS  
1ST SESSION

# H. R. 1353

To amend title XIX of the Social Security Act to increase Federal support to State Medicaid programs during economic downturns, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 25, 2021

Mrs. LEE of Nevada (for herself, Mr. HORSFORD, Mr. VARGAS, Mr. GRIJALVA, Ms. TITUS, Ms. MOORE of Wisconsin, Ms. BARRAGÁN, Ms. WASSERMAN SCHULTZ, Ms. UNDERWOOD, Mr. CARSON, Mr. SAN NICOLAS, Ms. NORTON, Mr. COHEN, Ms. TLAIB, Mrs. HAYES, Mr. THOMPSON of Mississippi, Mr. EVANS, Mr. HASTINGS, Ms. DEAN, Mr. JONES, Mr. LARSON of Connecticut, Mr. GARCÍA of Illinois, Ms. CRAIG, Ms. SCHAKOWSKY, Mr. SMITH of Washington, Ms. CHU, Ms. MCCOLLUM, Mr. PETERS, Mr. DANNY K. DAVIS of Illinois, Mrs. WATSON COLEMAN, Ms. SHERRILL, Ms. DELBENE, Ms. SEWELL, Ms. WILD, Mr. SCHIFF, Ms. KUSTER, Ms. LOIS FRANKEL of Florida, Mr. RYAN, Mr. MEEKS, Ms. PORTER, Mrs. BEATTY, Mrs. DINGELL, Ms. SCHRIER, Mr. BERA, Ms. DELAURO, Mr. KILMER, Mr. SUOZZI, Mr. NEGUSE, and Mr. RUIZ) introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To amend title XIX of the Social Security Act to increase Federal support to State Medicaid programs during economic downturns, 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,*

1 **SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Coronavirus Medicaid  
3 Response Act”.

4 **SEC. 2. INCREASING FEDERAL SUPPORT TO STATE MED-**  
5 **ICAID PROGRAMS DURING ECONOMIC**  
6 **DOWNTURNS.**

7       (a) IN GENERAL.—Section 1905 of the Social Secu-  
8 rity Act (42 U.S.C. 1396d) is amended—

9           (1) in subsection (b), by striking “and (ff)” and  
10 inserting “(ff), and (hh)”;

11           (2) by adding at the end the following new sub-  
12 section:

13       “(hh) INCREASED FMAP DURING ECONOMIC  
14 DOWNTURNS.—

15           “(1) IN GENERAL.—If a fiscal quarter that be-  
16 gins on or after January 1, 2020, is an economic  
17 downturn quarter (as defined in paragraph (2)) with  
18 respect to a State, then the Federal medical assist-  
19 ance percentage determined for the State and quar-  
20 ter under subsection (b) shall be equal to the per-  
21 centage determined for the State and quarter under  
22 paragraph (3).

23       “(2) ECONOMIC DOWNTURN QUARTER.—

24           “(A) IN GENERAL.—

25           “(i) IN GENERAL.—In this subsection,  
26 the term ‘economic downturn quarter’

1 means, with respect to a State, a fiscal  
2 quarter during which the State's unem-  
3 ployment rate for the quarter exceeds the  
4 percentage determined for the State and  
5 quarter under clause (ii).

6 “(ii) THRESHOLD PERCENTAGE.—The  
7 percentage determined under this clause  
8 for a State and fiscal quarter is the per-  
9 centage equal to the lower of—

10 “(I) the State unemployment  
11 rate at the 20th percentile of the dis-  
12 tribution of the State's quarterly un-  
13 employment rates for the 60-quarter  
14 period preceding the quarter involved,  
15 increased by 1 percentage point; and

16 “(II) the State's average quar-  
17 terly unemployment rate for the 12-  
18 quarter period preceding the quarter  
19 involved, increased by 1 percentage  
20 point.

21 “(B) UNEMPLOYMENT DATA.—

22 “(i) IN GENERAL.—Except as pro-  
23 vided in clause (ii), for purposes of deter-  
24 mining unemployment rates for a State  
25 and a quarter under this paragraph, the

Secretary shall use data from the Local Area Unemployment Statistics from the Bureau of Labor Statistics.

“(ii) APPLICATION TO CERTAIN TERRITORIES.—In the case of the Virgin Islands, Guam, the Northern Mariana Islands, American Samoa, or any other jurisdiction for which suitable data from the Local Area Unemployment Statistics from the Bureau of Labor Statistics are unavailable, the Secretary shall use data from the U–3 unemployment measure of the Bureau of Labor Statistics to make any necessary determinations under subparagraph (A).

“(3) INCREASED FMAP DURING ECONOMIC DOWNTURN QUARTER.—

“(A) IN GENERAL.—During a fiscal quarter that is an economic downturn quarter with respect to a State, the Federal medical assistance percentage for the State and quarter determined under subsection (b) shall be equal to—

“(i) the Federal medical assistance percentage determined for the State and quarter under subsection (b) without re-

1           gard to this subsection (but including any  
2           increase to such percentage for such quar-  
3           ter made pursuant to section 6008(a) of  
4           the Families First Coronavirus Response  
5           Act); increased by

6           “(ii) the number of percentage points  
7           (rounded to the nearest tenth of a percent-  
8           age point) equal to the product of—

9           “(I) the number of percentage  
10          points (rounded to the nearest tenth  
11          of a percentage point) by which the  
12          unemployment rate for the State and  
13          quarter exceeds the percentage deter-  
14          mined for the State and quarter  
15          under paragraph (2)(A)(ii); and

16          “(II) 4.8.

17          “(B) RULES OF APPLICATION.—The fol-  
18          lowing rules shall apply with respect to the Fed-  
19          eral medical assistance percentage determined  
20          for a State and an economic downturn quarter  
21          under this subsection:

22          “(i) SCOPE OF APPLICATION.—Such  
23          Federal medical assistance percentage shall  
24          not apply for purposes of—

1 “(I) disproportionate share hos-  
2 pital payments described in section  
3 1923;

4 “(II) payments under part D of  
5 title IV; or

6 “(III) any payments under this  
7 title that are based on a Federal med-  
8 ical assistance percentage determined  
9 for a State under subsection (aa) (but  
10 only to the extent that such Federal  
11 medical assistance percentage is high-  
12 er than the economic recovery  
13 FMAP).

14 “(ii) LIMITATION.—In no case shall—

15 “(I) the Federal medical assist-  
16 ance percentage determined for a  
17 State and quarter pursuant to this  
18 subsection exceed 95 percent; or

19 “(II) any increase to the Federal  
20 medical assistance percentage deter-  
21 mined for a State and quarter pursu-  
22 ant to this subsection result in the ap-  
23 plication of a Federal medical assist-  
24 ance percentage that exceeds 95 per-  
25 cent.

1           “(iii) APPLICATION TO CHIP.—Not-  
2           withstanding the first sentence of section  
3           2105(b), the application of this subsection  
4           may result in the enhanced FMAP of a  
5           State for a fiscal year under such section  
6           exceeding 85 percent, but in no case may  
7           the application of this subsection before  
8           application of the second sentence of such  
9           section result in the enhanced FMAP of  
10          the State exceeding 95 percent.

11          “(4) ADVANCE PAYMENT; RETROSPECTIVE AD-  
12          JUSTMENT.—

13               “(A) IN GENERAL.—Prior to the beginning  
14               of each fiscal quarter that begins on or after  
15               July 1, 2020, the Secretary shall, with respect  
16               to each State—

17                       “(i) make an initial determination,  
18                       based on the projections made for the  
19                       State and quarter under subparagraph  
20                       (B), as to—

21                               “(I) whether the application of  
22                               this subsection is expected to result in  
23                               the application of a higher Federal  
24                               medical assistance percentage for the  
25                               State and quarter than the percentage

1 that would otherwise apply without re-  
2 gard to this subsection; and—

3 “(II) if the application of this  
4 subsection is expected to result in  
5 such a higher Federal medical assist-  
6 ance percentage for the State and  
7 quarter, what such higher percentage  
8 is expected to be; and

9 “(ii) if the Secretary determines under  
10 clause (i) that the application of this sub-  
11 section is expected to result in the applica-  
12 tion of a higher Federal medical assistance  
13 percentage for the State and quarter than  
14 the percentage that would otherwise apply  
15 without regard to this subsection—

16 “(I) apply such higher Federal  
17 medical assistance percentage of the  
18 State for purposes of making pay-  
19 ments to the State for amounts ex-  
20 pended during such quarter as med-  
21 ical assistance under the State plan;  
22 and

23 “(II) take into account such  
24 higher Federal medical assistance per-  
25 centage of the State for purposes of



1 calculating the enhanced FMAP for  
2 the State and quarter under section  
3 2105(b).

4 “(B) PROJECTION OF STATE UNEMPLOY-  
5 MENT RATES.—Prior to the beginning of each  
6 fiscal quarter that begins on or after July 1,  
7 2020, the Secretary, acting through the Chief  
8 Actuary of the Centers for Medicare & Medicaid  
9 Services, shall, using the most recently available  
10 data described in paragraph (2)(B), make pro-  
11 jections with respect to—

12 “(i) the unemployment rates for each  
13 State for such quarter;

14 “(ii) the threshold percentages de-  
15 scribed in paragraph (2)(A)(ii) for each  
16 State for such quarter; and

17 “(iii) the national unemployment rate  
18 for such quarter.

19 “(C) RETROSPECTIVE ADJUSTMENT.—As  
20 soon as practicable after final unemployment  
21 data becomes available for a fiscal quarter that  
22 begins on or after July 1, 2020, the Secretary  
23 shall, with respect to each State—

24 “(i) make a final determination with  
25 respect to the application of this subsection

1 for purposes of determining the Federal  
2 medical assistance percentage and en-  
3 hanced FMAP of the State for the quarter;  
4 and

5 “(ii) in accordance with section  
6 1903(d)(2) and section 2105(e), reduce or  
7 increase the amount payable to the State  
8 under section 1903(a) or section 2105 for  
9 a subsequent fiscal quarter to the extent of  
10 any overpayment or underpayment under  
11 either such section which the Secretary de-  
12 termines was made as a result of an incor-  
13 rect initial determination under subpara-  
14 graph (A)(i) with respect to the application  
15 of this subsection for purposes of deter-  
16 mining the Federal medical assistance per-  
17 centage and enhanced FMAP of the State  
18 for such prior fiscal quarter.

19 “(5) RETROSPECTIVE APPLICATION OF OVER-  
20 THE-LIMIT FMAP INCREASES.—

21 “(A) IN GENERAL.—If a State has excess  
22 percentage points with respect to an economic  
23 downturn quarter and an applicable FMAP (as  
24 determined under subparagraph (B)), the State  
25 may elect to apply such excess percentage

1 points to increase such applicable FMAP for  
2 one or more quarters during the look-back pe-  
3 riod for the State and economic downturn quar-  
4 ter in accordance with this paragraph.

5 “(B) EXCESS PERCENTAGE POINTS.—For  
6 purposes of this paragraph, the number of ex-  
7 cess percentage points for a State, economic  
8 downturn quarter, and an applicable FMAP  
9 shall be equal to the number of percentage  
10 points by which—

11 “(i) the applicable FMAP for the  
12 State and quarter (after application of  
13 paragraph (3) but without regard to sub-  
14 paragraph (B)(ii) of such paragraph); ex-  
15 ceeds

16 “(ii) 95 percent.

17 “(C) EFFECT OF APPLICATION OF EXCESS  
18 PERCENTAGE POINTS.—If a State elects to  
19 apply excess percentage points to an applicable  
20 FMAP to a quarter during a look-back period  
21 under this paragraph, the Secretary shall deter-  
22 mine the additional amount of payment under  
23 section 1903(a) to which the State would have  
24 been entitled for such quarter if the applicable  
25 FMAP (as so increased) had been in effect for

1 such quarter, and shall treat such additional  
2 amount as an underpayment for such quarter.

3 “(D) DISTRIBUTION OF EXCESS PERCENT-  
4 AGE POINTS.—A State that has excess percent-  
5 age points with respect to an economic down-  
6 turn quarter and applicable FMAP may elect to  
7 divide such points among more than 1 quarter  
8 during the look-back period for such State and  
9 quarter provided that no excess percentage  
10 point (or fraction of an excess percentage point)  
11 is applied to the applicable FMAP of more than  
12 1 quarter.

13 “(E) LIMITATIONS.—

14 “(i) NO INCREASES OVER 100 PER-  
15 CENT.—A State may not increase an appli-  
16 cable FMAP for any quarter during a look-  
17 back period under this paragraph if such  
18 increase would result in the applicable  
19 FMAP for such quarter exceeding 100 per-  
20 cent.

21 “(ii) SCOPE OF APPLICATION.—Any  
22 increase to an applicable FMAP of a State  
23 for a fiscal quarter under this paragraph—

24 “(I) shall only apply with respect  
25 to payments for amounts expended by

1 the State for medical assistance for  
2 services furnished during such quarter  
3 to which such applicable FMAP is ap-  
4 plicable; and

5 “(II) shall not apply with respect  
6 to payments described in paragraph  
7 (3)(B)(i).

8 “(F) DEFINITIONS.—In this paragraph:

9 “(i) APPLICABLE FMAP.—The term  
10 ‘applicable FMAP’ means, with respect to  
11 a State and fiscal quarter—

12 “(I) the Federal medical assist-  
13 ance percentage determined for the  
14 State and quarter under subsection  
15 (b);

16 “(II) the Federal medical assist-  
17 ance percentage applicable under sub-  
18 section (y);

19 “(III) the Federal medical assist-  
20 ance percentage applicable under sub-  
21 section (z)(2);

22 “(IV) the Federal medical assist-  
23 ance percentage determined for the  
24 State and quarter under subsection  
25 (ff); or

1                   “(V) the enhanced FMAP deter-  
2                   mined for the State and quarter  
3                   under section 2105(b).

4                   “(ii) LOOK-BACK PERIOD.—The term  
5                   ‘look-back period’ means, with respect to a  
6                   State and a fiscal quarter that is an eco-  
7                   nomic downturn quarter for the State, the  
8                   period of 4 fiscal quarters that ends with  
9                   the fourth quarter which precedes the most  
10                  recent fiscal quarters that was not an eco-  
11                  nomic downturn quarter for the State.

12                  “(6) REQUIREMENT FOR ALL STATES.—This  
13                  subsection shall not apply to a State with respect to  
14                  a fiscal quarter, if—

15                  “(A) eligibility standards, methodologies,  
16                  or procedures under the State plan or a waiver  
17                  of such plan are more restrictive during such  
18                  quarter than the eligibility standards, meth-  
19                  odologies, or procedures, respectively, under  
20                  such plan (or waiver) as in effect on the last  
21                  day of the most recent fiscal quarter that was  
22                  not an economic downturn quarter for the  
23                  State;

24                  “(B) the amount of any premium imposed  
25                  by the State pursuant to section 1916 or 1916A

during such quarter, with respect to an individual enrolled under such plan (or waiver), exceeds the amount of such premium as of the date described in subparagraph (A); or

“(C) the State fails to provide that an individual who is enrolled for benefits under such plan (or waiver) as of the date described in subparagraph (A) or enrolls for benefits under such plan (or waiver) during the period beginning with such date and ending with the day before the first day of the next quarter that is not an economic downturn quarter for the State shall be treated as eligible for such benefits for not less than 12 months after such date or (if later) the date that such individual so enrolls unless the individual requests a voluntary termination of eligibility or the individual ceases to be a resident of the State.”.

(b) EXCLUSION OF ECONOMIC DOWNTURN FMAP INCREASES FROM TERRITORIAL CAPS; SPECIAL RULE FOR CHIP ALLOTMENTS.—

(1) EXCLUSION FROM TERRITORIAL CAPS.—

Section 1108 of the Social Security Act (42 U.S.C. 1308) is amended—

1 (A) in subsection (f), in the matter pre-  
 2 ceding paragraph (1), by striking “subsection  
 3 (g) and section 1935(e)(1)(B)” and inserting  
 4 “subsections (g) and (h) and section  
 5 1935(e)(1)(B)”; and

6 (B) by adding at the end the following:

7 “(h) EXCLUSION FROM CAPS OF AMOUNTS ATTRIB-  
 8 UTABLE TO ECONOMIC DOWNTURN FMAP.—Any pay-  
 9 ment made to a territory for a fiscal year in which the  
 10 Federal medical assistance percentage for the territory is  
 11 determined under section 1905(hh) shall not be taken into  
 12 account for purposes of applying payment limits under  
 13 subsections (f) and (g) to the extent that such payment  
 14 exceeds the amount of the payment that would have been  
 15 made to the territory for the year if the Federal medical  
 16 assistance percentage for the territory had been deter-  
 17 mined without regard to such section.”.

18 (2) CHIP ALLOTMENTS.—Section 2104(m) of  
 19 the Social Security Act (42 U.S.C. 1397dd(m)) is  
 20 amended—

21 (A) in paragraph (2)(B), in the matter  
 22 preceding clause (i), by striking “paragraphs  
 23 (5) and (7)” and inserting “paragraphs (5),  
 24 (7), and (12)”; and



1 (B) by adding at the end the following new  
2 paragraph:

3 “(12) SPECIAL RULE FOR ADJUSTING ALLOT-  
4 MENTS DURING FISCAL YEARS WITH ECONOMIC  
5 DOWNTURN QUARTERS.—

6 “(A) IN GENERAL.—If a fiscal quarter oc-  
7 ccurring during fiscal year 2020 or any suc-  
8 ceeding fiscal year is determined to be an eco-  
9 nomic downturn quarter with respect to a State  
10 (as determined under section 1905(hh)) then,  
11 as soon as practicable after such determination,  
12 the Secretary shall increase the allotment for  
13 the State and fiscal year in accordance with  
14 subparagraph (B).

15 “(B) AMOUNT OF INCREASE.—

16 “(i) IN GENERAL.—The amount of an  
17 increase to the allotment of a State de-  
18 scribed in subparagraph (A) for a fiscal  
19 year shall be equal to the amount by which  
20 Federal payments made to the State for  
21 the preceding fiscal year under this title  
22 would have been increased (without regard  
23 to whether such payments would exceed  
24 the amount of the State’s allotment for  
25 such preceding fiscal year) if the enhanced

1 FMAP determined for the State for such  
2 preceding fiscal year had been increased to  
3 the same extent that the State's enhanced  
4 FMAP for the fiscal year involved is ex-  
5 pected to be increased as a result of the  
6 application of section 1905(hh) relative to  
7 the enhanced FMAP that would apply to  
8 the State for the fiscal year involved with-  
9 out the application of such section.

10 “(ii) INCLUSION OF PROJECTED IN-  
11 CREASES.—In increasing the allotment of a  
12 State for a fiscal year under this para-  
13 graph, the Secretary may base the calcula-  
14 tion of such increase on projections made  
15 by the Secretary with respect to—

16 “(I) the number of fiscal quar-  
17 ters during such fiscal year that will  
18 be economic downturn quarters; and

19 “(II) the effect that the applica-  
20 tion of section 1905(hh) is expected to  
21 have on the enhanced FMAP of the  
22 State for such fiscal year.

23 “(C) DISREGARD OF INCREASED PAY-  
24 MENTS FOR PURPOSES OF FUTURE ALLOT-  
25 MENTS.—Any Federal payment made to a State

1           under this title for a fiscal year in which the  
2           Federal medical assistance percentage for the  
3           State is determined under section 1905(hh)  
4           shall be disregarded when determining the allot-  
5           ment of the State for any subsequent year, in-  
6           cluding for purposes of applying this paragraph,  
7           to the extent that such payment exceeds the  
8           amount of the payment that would have been  
9           made to the State for the year if the Federal  
10          medical assistance percentage for the State and  
11          year had been determined without regard to  
12          such section.”.

13          (c) CONFORMING AMENDMENTS.—Section 1905(cc)  
14 of the Social Security Act (42 U.S.C. 1396d(cc)) is  
15 amended—

16           (1) by striking “and section 6008 of the Fami-  
17          lies First Coronavirus Response Act” and inserting  
18          “, section 6008 of the Families First Coronavirus  
19          Response Act, and subsection (hh) of this section”;  
20          and

21           (2) by inserting “, and, in applying such treat-  
22          ments to an increase in the Federal medical assist-  
23          ance percentage of a State under subsection (hh)  
24          with respect to a fiscal quarter that is an economic  
25          downturn quarter for the State, the reference to

1       ‘December 31, 2009’ shall be deemed to be a ref-  
2       erence to ‘March 11, 2020’, or, if later, the last day  
3       of the most recent fiscal quarter that was not an  
4       economic downturn quarter for the State’’ before the  
5       period.

○