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# The Bipartisan Safer Communities Act: Where Things Stand on the Medicaid and CHIP Provisions

*by Anne Dwyer*

On June 25, 2022, President Biden signed into law the Bipartisan Safer Communities Act (P.L. 117-159).[1] The Bipartisan Safer Communities Act included a number of provisions related to Medicaid and the Children's Health Insurance Program (CHIP) including expanding the Certified Community Behavioral Health Clinic Medicaid demonstration program as well as mandated guidance, technical assistance, and other resources and requirements related to telehealth, school-based Medicaid services, and Medicaid's Early and Periodic Screening, Diagnostic and Treatment benefit.[2]

With Medicaid (alongside CHIP) covering more than half of all children and serving as the single largest payer of behavioral health services in the US, timely and meaningful implementation of the Bipartisan Safer Communities Act provisions remains important to advancing access to mental health care for children and individuals covered by Medicaid and CHIP.[3] This is especially important given the ongoing youth mental health crisis and increasing rates of depression and anxiety among children.[4] Now over a year into implementation, this issue brief provides background on the Medicaid and CHIP provisions of the Bipartisan Safer Communities Act and an update of where things stand including where more action is still forthcoming.

## Provisions Covered in this Brief: Background and Status

- Certified Community Behavioral Health Center Medicaid Demonstration Program
- Medicaid and CHIP Telehealth Guidance
- Medicaid and School-Based Services: Guidance, Technical Assistance Center, and Grants to States
- EPSDT: State Implementation Review and Oversight Requirements

**Medicaid and CHIP cover more than half of all children in the U.S.**

# Certified Community Behavioral Health Center Medicaid Demonstration Program

## Background:

The Certified Community Behavioral Health Clinic (CCBHC) Medicaid demonstration was created in 2014 under the Protecting Access to Medicare Act.[5] The demonstration program provided select states with enhanced federal Medicaid matching funds (equivalent to a state's CHIP enhanced federal medical assistance percentage) for CCBHC services provided to individuals covered by Medicaid. As part of the demonstration, states are also required to establish prospective payment systems for Medicaid services delivered at CCBHCs and to ensure the clinics meet federal standards such as providing 24-hour crisis services and routine outpatient care, ensuring that services for children and youth are family-centered, youth-guided, and developmentally appropriate, and serving anyone who requests care for mental health or substance use, regardless of their ability to pay.[6] Nearly a quarter of CCBHC clients were children or adolescents (ranging from 8 percent to 27 percent depending on the state), according to a 2021 report by the U.S. Department of Health and Human Services (HHS) examining the original eight demonstration states.[7]

Initially limited to 8 states (and subsequently expanded to 10 states), the Bipartisan Safer Communities Act opened participation in the CCBHC Medicaid demonstration to all interested states under a phased-in approach under which 10 new states will be allowed to participate in the four-year demonstration program every two years starting in 2024. The Bipartisan Safer Communities Act also provided $40 million to the Secretary of HHS for purposes of carrying out the demonstration, including awarding planning grants and providing technical assistance to states. Under the demonstration, each new demonstration state must establish a prospective payment system for Medicaid reimbursable CCBHC services with the state receiving enhanced federal Medicaid funding for such services under their demonstration period lasting four years. According to the Congressional Budget Office, this national expansion is expected to provide over $8.5 billion in new federal Medicaid support over the next decade.[8]

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In order to participate in the expanded demonstration program, interested states are required to apply for a planning grant intended to support states in developing and certifying their CCBHCs and preparing an application to participate in the four-year Medicaid demonstration.[9] At the end of the planning grant period, these states must submit applications to participate in the demonstration, including a description of the populations served through CCBHCs and the extent of service needs.

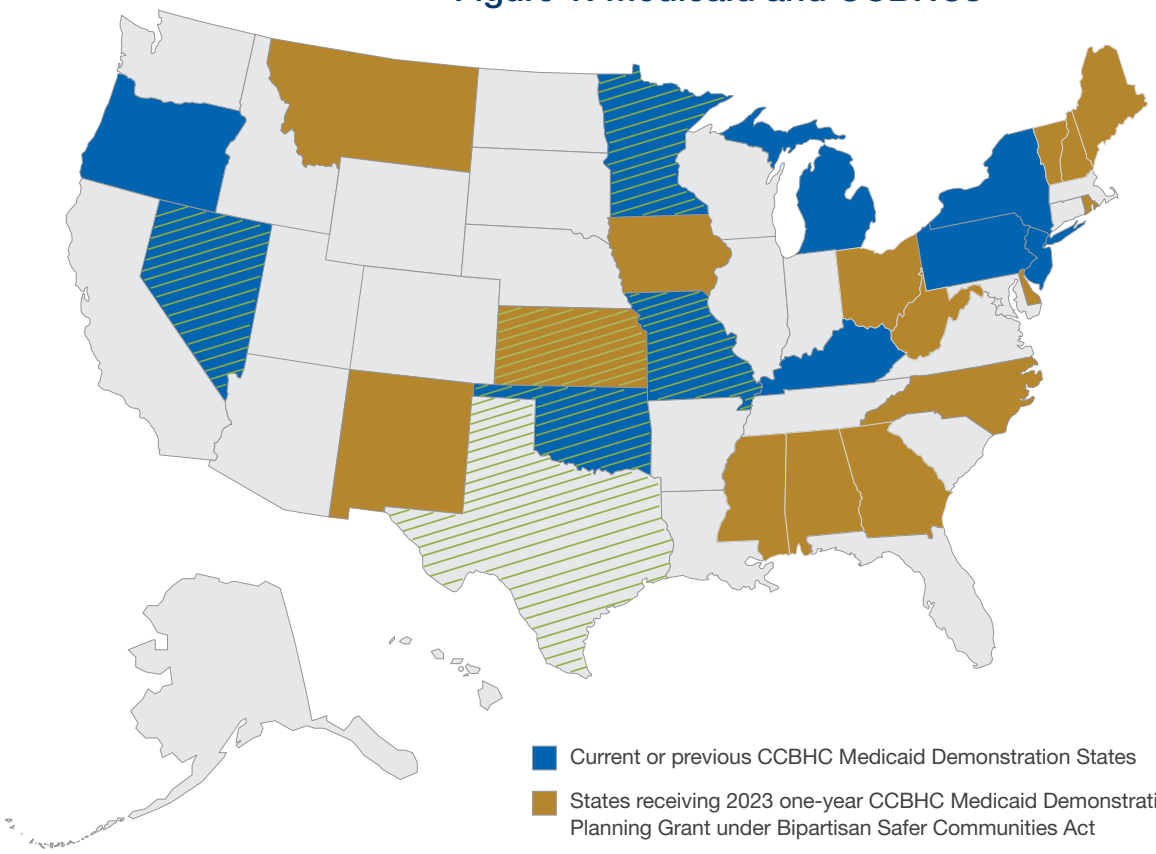
## Status: In progress

In March 2023, HHS announced that it awarded 15 states each with $1 million, one-year CCBHC planning grants in support of state efforts to join the Medicaid-funded CCBHC demonstration program. Awardees included: Alabama, Delaware, Georgia, Iowa, Kansas, Maine, Mississippi, Montana, North Carolina, New Hampshire, New Mexico, Ohio, Rhode Island, Vermont, and West Virginia.[10] Up to 10 of the 15 states that received planning grants will be eligible to participate in the CCBHC demonstration program and receive enhanced federal Medicaid funding starting in 2024 when the first cohort of 10 states will be selected. For the demonstration period starting in 2024, current planning grant awardees must submit a proposal to participate in the CCBHC demonstration program no later than March 20, 2024.

Up to ten states will then be selected to participate in the CCBHC demonstration starting on July 1, 2024 and receive enhanced federal Medicaid matching dollars for the four-year period. The Centers for Medicare & Medicaid Services (CMS) has also noted that another round of planning grants is expected to be made available to 15 additional states in fiscal year 2024, for a second cohort of up to 10 states to join the demonstration in 2025.

Notably, separate from the demonstration program, state Medicaid programs may seek CMS-approval for payment methods for CCBHCs via a State Plan Amendment or 1115 waiver while continuing to receive their regular federal Medicaid match. The Substance Abuse and Mental Health Services Administration (SAMHSA), which helps lead the Medicaid demonstration program and issues separate expansion grants directly to CCBHCs to enhance or expand capacity, tracks CCBHCs across the country. According to SAMHSA, six states have CMS-approved payment methods for CCBHCs via SPAs or 1115 waivers including Kansas, Minnesota, Missouri, Nevada, Oklahoma, and Texas.[11]

## Figure 1. Medicaid and CCBHCs




Source: U.S. Department of Health & Human Services, Substance Abuse and Mental Health Services Administration, "Certified Community Behavioral Health Clinics (CCBHCs)," accessed August 2023, https://www.samhsa.gov/certified-community-behavioral-health-clinics.

# Medicaid and CHIP Telehealth Guidance

## Background:

States generally have broad flexibility to cover Medicaid and CHIP services delivered via telehealth. During the COVID-19 public health emergency, many states expanded Medicaid telehealth policies especially as it relates to behavioral and mental health. A Kaiser Family Foundation survey of state Medicaid programs found such services remain a top category with high telehealth utilization among Medicaid enrollees in state fiscal year 2022.[12] The survey findings also noted that many states reported permanently adopting some or all of their COVID public health emergency-era Medicaid telehealth policy expansions for behavioral health but that some states also reported limiting or adding guardrails to their policies. A July 2023 report out of the HHS Office of Assistant Secretary for Planning and Evaluation (ASPE) also found that telehealth delivery for behavioral health services continues to remain popular even as individuals return to in-person care for other types of services and noting the need for research into best practices.[13]

The Bipartisan Safer Communities Act included a provision requiring HHS to provide technical assistance and issue guidance to states on improving access to telehealth for services covered under Medicaid and CHIP including: best practices from states that have used Medicaid waivers or other authorities to expand access to telehealth including during the COVID public health emergency; strategies to promote the delivery of accessible and culturally competent care via telehealth including addressing the needs of racial and ethnic minorities and individuals of different age groups such as children and young adults; best practices to support the delivery of covered services under Medicaid and CHIP via telehealth in schools, including specifically for the provision of mental health and substance use disorder services; and strategies for evaluating how the delivery of health services via telehealth affects quality, outcomes, and cost under Medicaid and CHIP.

## Status: Forthcoming

In 2020, CMS released the "State Medicaid & CHIP Telehealth Toolkit: Policy Considerations for States Expanding Use of Telehealth, COVID-19 Version" and a supplement in 2021.[14] In May 2023 HHS issued a Fact Sheet on telehealth flexibilities and unwinding of the public health emergency linking to the resources and encouraging states "to continue to cover Medicaid and CHIP services delivered via telehealth."[15] However, the Secretary has yet to release guidance specific to the requirement under the Bipartisan Safer Communities Act, which requires the telehealth guidance to be issued not later than 18 months after enactment (i.e., December 2023). According to a Medicaid and CHIP Mental Health and Substance Use Disorder Action Plan released by CMS in July 2023, the Administration plans to issue additional guidance for states on the use of telehealth to provide services covered by Medicaid and CHIP by "the end of 2023," noting that states use of telehealth to provide services covered by Medicaid and CHIP have been shown to be particularly effective for improving access to mental health and substance use disorder treatment.[16]

# Medicaid and School-Based Services: Guidance, Technical Assistance Center, and Grants to States

## Background:

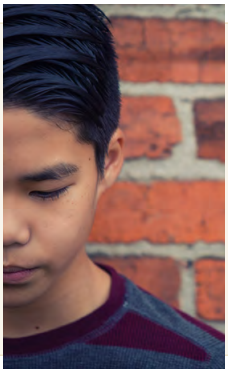
States and school districts can leverage Medicaid to provide health services and support mental health care for students through a variety of mechanisms, including via school-based health centers, partnering with community providers and through services provided via school-employed providers. When it comes to school-based services provided by providers employed by school districts, the federal government opened up a new avenue for support when it reversed what is commonly known as the "free care rule" in 2014. The free care rule reversal allowed states to receive federal Medicaid reimbursement for Medicaid coverable health services provided by school employees, including mental health services, for all students enrolled in Medicaid.[17] Previous guidance limited reimbursement to services included in a student's Individualized Education Plan (IEP) or Individualized Family Service Plan under the Individuals with Disabilities Education Act. However, nearly a decade after the free care rule reversal, fewer than half of the states have taken up the option to allow school districts to bill for health services provided to students enrolled in Medicaid outside of their IEPs.[18] At the same time, the need for mental health services has steadily increased; according to data from the Centers for Disease Control and Prevention, more than four in 10 students felt persistently sad or hopeless in 2021.[19]

The Bipartisan Safer Communities Act included a number of provisions related to Medicaid and school-based services. This includes guidance to state Medicaid agencies, local educational agencies and school-based entities to support the delivery of services to students covered by Medicaid and CHIP in school-based settings including updating school Medicaid claiming guides. The Act also required the Secretary of HHS, in consultation with the Secretary of Education, to establish a technical assistance center to assist state Medicaid agencies, local education agencies, and school-based entities on school Medicaid-related matters including resources for small and rural school districts. Finally, the Bipartisan Safer Communities Act authorized $50 million for the Secretary to award grants to states for purposes of implementing, enhancing, or expanding access through school-based entities under Medicaid and CHIP.

## Status: Mixed (in progress and forthcoming)

In August of 2022, shortly after passage of the Bipartisan Safer Communities Act, CMS released guidance via an informational bulletin on school-based services in Medicaid including information on funding, documentation and expanding services in school-based settings.[20] The informational bulletin noted that the school setting provides a unique opportunity to enroll eligible children in Medicaid and CHIP, furnish Medicaid-covered services, including behavioral health services to children, and help children covered by Medicaid access the services they need. As a follow up to the 2022 informational bulletin, in May 2023, CMS released an updated Medicaid school claiming guide entitled, "Delivering Services in School-Based Settings: A Comprehensive Guide to Medicaid Services and Administrative Claiming" alongside informational bulletin introducing the guide."[21] As the first comprehensive update in two decades, the updated guide clarifies and consolidates policies put forth in 1997 technical assistance and 2003 administrative claiming guides while highlighting new flexibilities for billing and payment methodologies, best practices for enrolling providers, and other claiming-related topics for Medicaid and CHIP services delivered in school-based settings.

Following the release of the updated Medicaid school-based services claiming guide, in June 2023, CMS announced the launch of the Medicaid and School Based Services Technical Assistance Center (TAC), in coordination with the Department of Education, to assist in implementing the flexibilities and requirements of the Medicaid school-based services claiming guide and further enhancing or expanding school-based service programs.[22]



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* Data from the Centers for Disease Control and Prevention.

The Medicaid Technical Assistance Center has a landing page on Medicaid.gov including some initial technical assistance materials such as sample State Plan Amendments, links to CMS policy papers and resources, and a CMS school-based services inbox address and has started to offer a series of webinars to support school-based services.[23] However, as noted in CMS's announcement of the TAC, additional updates and resources are still forthcoming including more in-depth guidance on various aspects of school-Medicaid billing. The Secretary must also still award the $50 million in grants to states made available under the Bipartisan Safer Communities Act to implement, enhance, or expand access through school-based entities under Medicaid and CHIP which have yet to be issued.

## EPSDT: State Implementation Review and Oversight Requirements

### Background:

Under Medicaid's Early and Periodic Screening, Diagnostic and Treatment (EPSDT) benefit, states are required to provide comprehensive services and furnish all coverable, appropriate and medically necessary services need to correct and ameliorate health conditions, including behavioral health conditions, if the service could be covered under the state plan.[24] In addition, states are also required to inform eligible individuals under the age of 21 of the availability of EPSDT services.

Yet, children across the country continue to face long-standing unmet mental health needs. According to the Medicaid and CHIP Payment and Access Commission, only about half of all non-institutionalized youth enrolled in Medicaid or CHIP who experienced a major depressive episode received mental health treatment in 2018.[25] In addition, even though the COVID pandemic exacerbated mental health challenges among children, youth, and their families,[26] the rate of mental health services for children covered by Medicaid and CHIP generally declined throughout the public health emergency and remained below pre-pandemic levels as of July 31, 2022 with approximately 25 percent fewer mental health services per 1,000 children under age 19 according to preliminary data from CMS.[27] Unfortunately, monitoring the provision of EPSDT services to determine whether the requirements of the Medicaid statute are being met has been challenging due to data accuracy and collection issues, low state compliance rates, and lack of reporting enforcement.[28]

The Bipartisan Safer Communities Act included a number of provisions related to state implementation of EPSDT services and oversight. Most notably, by June 2024 and every five years thereafter, the Secretary of HHS is required to review state implementation of the EPSDT benefit, identify gaps and deficiencies with respect to state compliance, provide technical assistance to states to address such gaps and deficiencies, and issue guidance to states on the Medicaid coverage requirement for EPSDT services including best practices for ensuring children have access to comprehensive health care services. In addition, within six months of completing the state review activities, the Secretary is required to submit a report to Congress on the findings of the reviews including a description of actions taken by the Secretary or states as a result of the reviews and any additional actions the Secretary plans to take or that states are required to take as a result of the activities. Finally, the Bipartisan Safer Communities Act also requires the Government Accountability Office to conduct a study and issue a report by June 2025 on state implementation of the EPSDT benefit with a focus on oversight of Medicaid managed care plans and EPSDT, including potential recommendations to improve compliance and state oversight of managed care organizations as well as CMS oversight of state Medicaid programs.

### Status: Mixed (in progress and forthcoming)

In August 2022, alongside the informational bulletin on Medicaid school-based services, CMS also issued an informational bulletin on "Leveraging Medicaid, CHIP, and Other Federal Programs in the Delivery of Behavioral Health Services for Children and Youth."[29] The bulletin reiterates the requirement to provide all medically necessary care under EPSDT including prevention, screening, assessment and treatment for behavioral health conditions. It also provides a

bulleted list of existing EPSDT coverage obligations including that determinations of medical necessity must be made on a case-by-case basis and hard, fixed, or arbitrary limits on coverage for services are not permitted. The bulletin also provides states and stakeholders with guidance and examples on ways Medicaid and CHIP can be employed in the provision of mental health and substance use disorder services to children and youth focusing on four main areas: improving prevention, early identification and engagement in treatment; increasing access to treatment across the continuum of care; expanding provider capacity; and increasing integration of behavioral health and primary care. Finally, the bulletin provides a list of existing Medicaid and CHIP behavioral health-related guidance documents issued over the years.

According to the Medicaid and CHIP Mental Health and Substance Use Disorder Action Plan released in July 2023, the Centers for Medicaid and CHIP Services is "actively engaged" with states on EPSDT compliance including as it relates to medically necessary mental health care.[30] However, the Action Plan is silent on the status of the Bipartisan Safer Community Act mandated state reviews or details of any additional forthcoming guidance, instead simply noting that the Act requires CMS to review states' compliance with the Medicaid EPSDT benefit, provide technical assistance to states, issue guidance on best practices, and provide a report to Congress on its findings "by June of 2024." The Government Accountability Office has also yet to issue its report on implementation of the EPSDT benefit including Medicaid managed care. The report is due to Congress by June 2025 under the Act and may provide particularly important insights with over 80 percent of children covered by Medicaid enrolled in comprehensive managed care.[31]

# Conclusion

The Bipartisan Safer Communities Act included new federal resources and requirements related to the provision of mental health services for children and individuals covered by Medicaid and CHIP including expanding the CCBHC Medicaid demonstration program and including new requirements related to services delivered via telehealth, school-based services, and EPSDT services. While some of these initiatives are underway, others are still forthcoming with additional action required. Given the ongoing youth mental health crisis, timely and meaningful implementation of these provisions will remain important in furthering access to mental health care for children and individuals covered by Medicaid and CHIP.


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# Endnotes

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