

**SENATE CONCURRENT
RESOLUTION No. 57**

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 10, 2020

Sponsored by:

Senator SHIRLEY K. TURNER

District 15 (Hunterdon and Mercer)

SYNOPSIS

Requests President and Congress take action to permit federal Medicaid funding for certain substance use disorder programs.

CURRENT VERSION OF TEXT

As introduced.



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1 **A CONCURRENT RESOLUTION** respectfully requesting the President
2 and Congress of the United States take action to permit federal
3 Medicaid funding for certain substance use disorder programs.
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5 **WHEREAS**, The Medicaid program is a federally supported health
6 benefits program established in 1965 as Title XIX of the Social
7 Security Act; and
8 **WHEREAS**, The federal government provides the authority and broad
9 requirements under which each state creates and administers an
10 individual Medicaid program which best meets the needs of that
11 particular state. The federal and state government share the
12 financing of Medicaid benefits through formulas established by the
13 federal government; and
14 **WHEREAS**, In certain instances, the federal government prohibits
15 certain benefits or services from being reimbursed by the federal
16 Medicaid program and thus, if these benefits or services are
17 provided by a state, the associated costs are entirely borne by that
18 state; and
19 **WHEREAS**, Since the inception of Medicaid in 1965, the federal law
20 has excluded financing for most care delivered in Institutions for
21 Mental Diseases (IMD), commonly referred to as the IMD
22 exclusion, which prohibits payments for the majority of Medicaid
23 individuals, between the ages of 21 and 64, who are patients in an
24 IMD; and
25 **WHEREAS**, Specifically, the law defines an IMD as a “hospital,
26 nursing facility, or other institution of more than 16 beds” that, by
27 its overall character, is a facility established and maintained
28 primarily for the care and treatment of individuals with mental
29 diseases; and
30 **WHEREAS**, The purpose of the IMD exclusion was to ensure that
31 states, rather than the federal government, would be primarily
32 responsible for funding inpatient psychiatric services; and
33 **WHEREAS**, Certain in-patient and out-patient rehabilitation and
34 treatment programs for individuals afflicted with a substance use
35 disorder are classified as IMDs because substance use disorder is
36 recognized as a mental disease and is included as such in the
37 International Classification of Diseases; and
38 **WHEREAS**, The federal Medicaid program has taken certain steps to
39 permit states to be reimbursed for services provided to individuals
40 who are afflicted with substance use disorder and receiving
41 treatment in an IMD. For example, the federal Medicaid program
42 adopted rules in July 2016 which allow certain Medicaid clients to
43 receive certain substance use disorder treatment services in an IMD
44 for up to 15 inpatient days; and
45 **WHEREAS**, The federal Medicaid program has also permitted states to
46 apply for a waiver from the traditional Medicaid program
47 requesting permission to expand services available for substance
48 use disorder treatment and rehabilitation. In October 2017, the

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1 federal government approved New Jersey's requested expansion of
2 reimbursable substance use disorder services in its waiver
3 submission, the NJ FamilyCare 1115 Comprehensive
4 Demonstration Application for Renewal; and

5 **WHEREAS**, The waiver review process can be quite lengthy and, once
6 approved, waivers are limited in duration. While the process
7 requires a level of bureaucratic oversight that is important, it can
8 result in the continued delay of needed substance use disorder
9 rehabilitation and treatment programs for individuals who are
10 desperately in need of such programs and who will continue to
11 suffer and even die from their substance use disorders; and

12 **WHEREAS**, The President and Congress of the United States should
13 take action to ensure that individuals with substance use disorders
14 can access the needed in-patient and out-patient rehabilitation and
15 treatment programs to assist these individuals in recovery from
16 substance use disorder; and

17 **WHEREAS**, The actions the President and Congress of the United
18 States could take include, but are not limited to: repealing the IMD
19 exclusion; excluding substance use disorder from the definition of
20 mental disease for the purposes of determining if a treatment
21 facility is an IMD; and increasing the bed limit of the IMDs; now,
22 therefore,

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24 **BE IT RESOLVED** by the Senate of the State of New Jersey (the
25 General Assembly concurring):

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27 1. The President and Congress of the United States are
28 respectfully requested to take actions amending the provisions in
29 the Medicaid program which prohibit federal reimbursement for
30 certain in-patient and out-patient rehabilitation and treatment
31 programs for individuals who are afflicted with substance use
32 disorder.

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34 2. Copies of this resolution, as filed with the Secretary of State,
35 shall be transmitted by the Clerk of the General Assembly or the
36 Secretary of the Senate to the President and the Vice-President of
37 the United States, the Majority and Minority Leaders of the United
38 States Senate, the Speaker and Minority Leader of the United States
39 House of Representatives, every member of Congress elected from
40 this State, and the Secretary of the United States Department of
41 Health and Human Services.

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STATEMENT

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46 This concurrent resolution respectfully requests the President and
47 Congress of the United States to take action amending the
48 provisions in the Medicaid program which prohibit federal

1 reimbursement for certain in-patient and out-patient rehabilitation
2 and treatment programs for individuals who are afflicted with
3 substance use disorder.

4 Since the inception of the Medicaid program in 1965,
5 prohibitions have existed on the federal funding of services which
6 are provided in an Institution for Mental Diseases (IMD), referred
7 to as the IMD exclusion. As substance use disorder is classified as
8 a mental disease, certain programs that provide in-patient and out-
9 patient rehabilitation and treatment services for individuals who are
10 afflicted with substance use disorder are not eligible for federal
11 Medicaid reimbursement.

12 The federal Medicaid program has taken certain steps to permit
13 states to be reimbursed for services provided to individuals who are
14 afflicted with substance use disorder and receiving treatment in an
15 IMD, such as permitting states to apply for a waiver from the
16 traditional Medicaid program requesting permission to expand
17 services available for substance use disorder treatment and
18 rehabilitation. However, the waiver review process can be quite
19 lengthy and, once approved, waivers are limited in duration.

20 The President and Congress of the United States could take
21 certain actions to ameliorate these problems by modifying certain
22 Medicaid provisions. Examples of these potential actions include,
23 repealing the IMD exclusion, excluding substance use disorder from
24 the definition of mental disease for the purposes of determining if a
25 treatment facility is an IMD, and increasing the bed limit of the
26 IMDs.