118TH CONGRESS
2D SESSION
H. R. ______

To amend the Social Security Act and the Public Health Service Act to permanently authorize certified community behavioral health clinics, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Ms. Matsui introduced the following bill; which was referred to the Committee on ________________

A BILL

To amend the Social Security Act and the Public Health Service Act to permanently authorize certified community behavioral health clinics, 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,

3 SECTION 1. SHORT TITLE.

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Ensuring Excellence in Mental Health Act”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

   Sec. 1. Short title.
TITLE I—ENSURING PERMANENCY FOR CERTIFIED COMMUNITY BEHAVIORAL HEALTH CLINICS IN THE MEDICAID PROGRAM

Sec. 101. Establishing a Medicaid Prospective Payment System for Certified Community Behavioral Health Clinics.

TITLE II—COVERAGE OF CERTIFIED COMMUNITY BEHAVIORAL HEALTH CLINIC SERVICES UNDER THE MEDICARE PROGRAM

Sec. 201. Coverage of certified community behavioral health clinic services under the Medicare program.

TITLE III—COMMUNITY BEHAVIORAL HEALTH CLINIC GRANTS

Sec. 301. Operating grants for community behavioral health clinics.

TITLE I—ENSURING PERMANENCY FOR CERTIFIED COMMUNITY BEHAVIORAL HEALTH CLINICS IN THE MEDICAID PROGRAM

SEC. 101. ESTABLISHING A MEDICAID PROSPECTIVE PAYMENT SYSTEM FOR CERTIFIED COMMUNITY BEHAVIORAL HEALTH CLINICS.

Section 1902 of the Social Security Act (42 U.S.C. 1396a) is amended by adding at the end the following new subsection:

“(uu) PAYMENT FOR SERVICES PROVIDED BY CERTIFIED COMMUNITY BEHAVIORAL HEALTH CLINICS.—

“(1) IN GENERAL.—Beginning with fiscal year 2024, with respect to services furnished on or after January 1, 2024, and each succeeding fiscal year, a State may provide under the State plan under this title (or under a waiver of such plan) for payment for services described in section 1905(a)(31) fur-
nished by a certified community behavioral health clinic (in this subsection referred to as a ‘clinic’) in accordance with the provisions of this subsection.

“(2) PAYMENT FOR SERVICES IN INITIAL YEAR AND EVERY THIRD YEAR.—Subject to paragraphs (4), (5), and (6), for services furnished by a clinic in the first fiscal year for which a State elects to provide for payment for services described in section 1905(a)(31) in accordance with the payment option under paragraph (1), and every third fiscal year thereafter in which the State makes such an election, the State shall provide for payment for such services in an amount (calculated on the basis of daily visits or unduplicated monthly visits, at the State’s election) that is equal to 100 percent of the average costs of the clinic of furnishing any of the services described in paragraph (31) of section 1905(a) during the 2 fiscal years preceding the fiscal year involved which are reasonable and related to the costs of furnishing such services; provided that, in the absence of complete actual cost data representing the provision of the full covered benefit in such preceding fiscal years, certified community behavioral health clinics may, at the State’s discretion, use estimated or projected data relating to specific
services for which they lack cost experience. The
per-unit rate derived from such cost data shall be
adjusted to take into account any increase or de-
crease in the scope of such services furnished by the
clinic in the fiscal year involved.

“(3) Payment for Services in Succeeding
Fiscal Years.—Subject to paragraphs (4), (5), and
(6), for services described in section 1905(a)(31)
furnished by a clinic for which a State elects to pro-
vide for payment for such services in accordance
with the payment option under paragraph (1) and
that are furnished in a fiscal year that is not de-
scribed in paragraph (2), the State plan shall pro-
vide for payment for such services in an amount
(calculated on the basis of daily visits or
unduplicated monthly visits, at the State’s election)
that is equal to the amount calculated under this
subsection for such services and clinic for the pre-
ceding year—

“(A) increased by the percentage increase
in the inflationary factor described in section
1834(aa)(2)(C); and

“(B) adjusted to take into account any in-
crease or decrease in the scope of such services
furnished by the clinic during the fiscal year involved.

“(4) Establishment of Initial Year Payment for New Clinics.—In any case in which an entity first qualifies as a certified community behavioral health clinic after the first fiscal year in which a State elects to provide for payment for services described in section 1905(a)(31) in accordance with the payment option under paragraph (1), the State plan shall provide for payment for such services in the first 2 years in which the clinic so qualifies in an amount (calculated on the basis of daily visits or unduplicated monthly visits, at the State’s election) that is equal to the rates established under this subsection for other such clinics located in the same or adjacent area with a similar case load, or in the absence of any such clinic, based on the average per-unit rate for other certified community behavioral health clinics in the State; provided, however, that effective, at latest, as of the 3rd year in which the clinic furnishes such services, the State establishes a unique payment rate for the clinic based on the methodology described in paragraph (2), using allowable costs from the clinic’s first 2 fiscal years of operation as the basis for establishing such rates;
and provided, additionally, that in any year following the establishment of an initial rate under this paragraph, the State plan or waiver provides for the payment amount to be calculated in accordance with paragraph (2) or (3) (as applicable).

“(5) ADMINISTRATION IN THE CASE OF MANAGED CARE.—

“(A) IN GENERAL.—In the case of services furnished by a certified community behavioral health clinic pursuant to a contract between the clinic and a managed care entity (as defined in section 1932(a)(1)(B)), the State plan or a waiver of such plan shall provide for 1 of the following:

“(i) Payment to the clinic by the State of a supplemental payment equal to the amount (if any) by which the amount determined under paragraph (2), (3), or (4) (as applicable) exceeds the amount of payments under the contract, with such supplemental payment being made pursuant to a payment schedule agreed to by the State and the certified community behavioral health clinic, but in no case less frequently than every 3 months.
“(ii) Delegation by the State to the managed care entity of the obligation to pay the clinic at least the rate determined under paragraph (2), (3), or (4) (as applicable); provided, however, that the State shall use reconciliation and oversight processes to ensure that each clinic is paid at least the amounts required under such paragraphs.

“(6) ALTERNATIVE PAYMENT METHODOLOGIES.—Notwithstanding any other provision of this subsection, the State plan or a waiver of such plan may provide for payment in any year to a certified community behavioral health clinic for services described in paragraph (31) of section 1905(a) in an amount which is determined under an alternative payment methodology that —

“(A) is agreed to by the State and the clinic; and

“(B) results in payment to the clinic of an amount which is not less than the amount otherwise required to be paid to the clinic under this subsection.”.
TITLE II—COVERAGE OF CERTIFIED COMMUNITY BEHAVIORAL HEALTH CLINIC SERVICES UNDER THE MEDICARE PROGRAM

SEC. 201. COVERAGE OF CERTIFIED COMMUNITY BEHAVIORAL HEALTH CLINIC SERVICES UNDER THE MEDICARE PROGRAM.

(a) Coverage.—Section 1861(s)(2) of the Social Security Act (42 U.S.C. 1395x(s)(2)) is amended—

(1) in subparagraph (II), by striking “and” at the end;

(2) in subparagraph (JJ), by inserting “and” at the end; and

(3) by adding at the end the following new subparagraph:

“(KK) certified community behavioral health clinic services (as defined in subsection (aa)(8)) furnished on or after January 1, 2024.”.

(b) Definitions.—Section 1861(aa) of the Social Security Act (42 U.S.C. 1395x) is amended—

(1) in the heading, by striking “and Federally Qualified Health Center Services” and inserting “, Federally Qualified Health Center Services, and Cer-
certified Community Behavioral Health Clinic Services’; and
(2) by adding at the end the following new paragraph:
“(8) The terms ‘certified community behavioral health clinic services’ and ‘certified community behavioral health clinic’ have the meaning given those terms in paragraphs (1) and (2), respectively, of section 1905(jj).”.

(e) PAYMENT.—
(1) IN GENERAL.—Section 1833(a)(1) of the Social Security Act (42 U.S.C. 1395l(a)(1)) is amended—
(A) by striking “and (HH)” and inserting “(HH)”; and
(B) by inserting before the semicolon at the end the following: “, and (II) with respect to certified community behavioral health clinic services for which payment is made under section 1834(aa), the amounts paid shall be equal to 80 percent of the lesser of the actual charge or the amount determined under such section”.
(2) DEVELOPMENT AND IMPLEMENTATION OF PROSPECTIVE PAYMENT SYSTEM.—Section 1834 of the Social Security Act (42 U.S.C. 1395m) is
amended by adding at the end the following new subsection:

“(aa) DEVELOPMENT AND IMPLEMENTATION OF PROSPECTIVE PAYMENT SYSTEM FOR CERTIFIED COMMUNITY BEHAVIORAL HEALTH CLINICS.—

“(1) DEVELOPMENT.—The Secretary shall develop a prospective payment system for payment to certified community behavioral health clinics (as defined in section 1861(aa)(8)) for the furnishing of certified community behavioral health clinic services (as defined in such section) under this title. Such system shall be established to take into account the type, intensity, and duration of services furnished by certified community behavioral health clinics. Such system may include adjustments, including geographic adjustments, as determined appropriate by the Secretary.

“(2) IMPLEMENTATION.—

“(A) IN GENERAL.—The Secretary shall provide, for cost reporting periods beginning on or after January 1, 2024, for payments of prospective payment rates for certified community behavioral health clinic services furnished by certified community behavioral health clinics under this title in accordance with the prospect-
tive payment system developed by the Secretary under paragraph (1).

“(B) INITIAL PAYMENTS.—The Secretary shall implement such prospective payment system to reflect the national average allowable service costs of such clinics on the basis of the most current audited cost report data for two fiscal years available to the Secretary; provided that, in the absence of complete actual cost data representing the provision of the full covered benefit during the relevant fiscal years, certified community behavioral health clinics may, at the Secretary’s discretion, use estimated or projected data relating to specific services. Initial payments shall be established without the application of a per visit limit or productivity screen and shall be based on national average costs per unit of service, updated as appropriate by the inflationary adjustment described in subparagraph (C).

“(C) PAYMENTS IN SUBSEQUENT YEARS.—Payment rates in years after the year of implementation of such system shall be the payment rates in the previous year increased—
“(i) in the first year after implementation of such system, by the percentage increase in the MEI (as defined in section 1842(i)(3)) for the year involved; and

“(ii) in subsequent years, by the percentage increase in a market basket of certified community behavioral health clinic services, designed by the Secretary, or if such an index is not available, by the percentage increase in the MEI (as defined in section 1842(i)(3)) for the year involved.

“(3) UNIT OF PAYMENT.—In establishing a prospective payment amount under the system under this subsection, the Secretary shall consider an appropriate unit of service and a general system design that provides for continued access to quality services.

“(4) PERIODIC REEVALUATION OF RATES.—At the Secretary’s discretion, the Secretary shall, from time to time, adjust the amounts that would otherwise be applicable under subparagraph (2) by a percentage determined appropriate by the Secretary to reflect such factors as changes in the intensity of services furnished within a unit of service, the average cost of providing care per unit of service, and
other factors that the Secretary considers to be relevant. Such adjustment shall be made before the update under clause (i) or (ii) of paragraph (2)(C)(i) has been applied for the year.”.

(d) Waiver of Application of Deductible.—Section 1833(b)(4) of the Social Security Act (42 U.S.C. 1395l(b)(4)) is amended by inserting “or certified community behavioral health clinic services” before the comma at the end.

(e) PRRB Review of Cost Reports.—Section 1878(j) of the Social Security Act (42 U.S.C. 1395oo(j)) is amended by striking “and a Federally qualified health center” and inserting “, a Federally qualified health center, and a certified community behavioral health clinic”.

(f) Safe Harbor for Waiver of Coinsurance.—Section 1128B(b)(3)(D) of the Social Security Act (42 U.S.C. 1320a–7b(b)(3)(D)) is amended by inserting “or a certified community behavioral health clinic” after “Federally qualified health care center”.

(g) Effective Date.—The amendments made by this section shall apply with respect to services furnished on or after January 1, 2024.
TITLE III—COMMUNITY BEHAVIORAL HEALTH CLINIC GRANTS

SEC. 301. OPERATING GRANTS FOR COMMUNITY BEHAVIORAL HEALTH CLINICS.

Part D of title III of the Public Health Service Act (42 U.S.C. 254b et seq.) is amended by adding at the end the following:

“Subpart XIII—Community Behavioral Health Clinics

SEC. 340J. DEFINITIONS.

“In this subpart:

“(1) Certified community behavioral health clinic.—The term ‘certified community behavioral health clinic’ has the meaning given the term in section 1905(jj)(2) of the Social Security Act.

“(2) Certified community behavioral health services.—The term ‘certified community behavioral health services’ has the meaning given the term in section 1905(jj)(1) of the Social Security Act.
"SEC. 340J–1. COMMUNITY BEHAVIORAL HEALTH CLINIC CERTIFICATION.

“(a) IN GENERAL.—Not later than 180 days after the date of enactment of the Ensuring Excellence in Mental Health Act, the Secretary, after public notice and opportunity for comment, shall publish in the Federal Register criteria for a clinic to be certified as a community behavioral health clinic for purposes of section 1905(jj)(2)(D)(ii) of the Social Security Act.

“(b) REQUIREMENTS.—The criteria published under subsection (a) shall include criteria with respect to the following:

“(1) STAFFING.—Staffing requirements, including criteria that staff have diverse disciplinary backgrounds, have necessary State-required license and accreditation, and are culturally and linguistically trained to serve the needs of the patient populations of the community behavioral health clinic.

“(2) AVAILABILITY AND ACCESSIBILITY OF SERVICES.—Availability and accessibility of services, including crisis management services that are available and accessible 24 hours a day, the use of a sliding scale for payment, and no rejection for services or limiting of services on the basis of a patient’s ability to pay or a place of residence.
“(3) CARE COORDINATION.—Care coordination, including requirements to coordinate care across settings and providers to ensure seamless transitions for patients across the full spectrum of health services including acute, chronic, and behavioral health needs. Care coordination requirements shall include partnerships or formal contracts with the following:

“(A) Federally-qualified health centers (as defined in section 1905(l) of the Social Security Act) and, as applicable, rural health clinics (as so defined), to provide Federally-qualified health center services (as so defined) and, as applicable, rural health clinic services (as so defined), to the extent such services are not provided directly through the community behavioral health clinic.

“(B) Inpatient psychiatric facilities and substance use detoxification, post-detoxification step-down services, and residential programs.

“(C) Other community or regional services, supports, and providers, including schools, child welfare agencies, juvenile and criminal justice agencies and facilities, Indian Health Service youth regional treatment centers, State-licensed and nationally accredited child placing agencies
for therapeutic foster care service, and other social and human services.

“(D) Medical centers, outpatient clinics, and drop-in centers of the Department of Veterans Affairs and other facilities of the Department (as defined in section 1701 of title 38, United States Code).

“(E) Inpatient acute care hospitals and hospital outpatient clinics.

“(4) SCOPE OF SERVICES.—Provision (in a manner reflecting person-centered care) of the full array of certified community behavioral health services which, if not available directly through the community behavioral health clinic, are provided or referred through formal relationships with other providers.

“(5) QUALITY AND OTHER REPORTING.—Requirements relating to development by the community behavioral health clinic of an effective procedure for compiling and reporting to the Secretary such statistics and other information as the Secretary may require relating to—

“(A) the costs of its operations;

“(B) the patterns of use of its services, including the reporting of encounter data, clinical
outcomes data, quality data, and such other data as the Secretary may require;

“(C) the availability, accessibility, and acceptability of its services; and

“(D) such other matters relating to operations of the applicant as the Secretary may require.

“(6) ORGANIZATIONAL AUTHORITY.—Requirements that a community behavioral health clinic be—

“(A) a nonprofit entity;

“(B) part of a local government behavioral health authority;

“(C) operated under the authority of the Indian Health Service;

“(D) operated by an Indian Tribe or Tribal organization pursuant to a contract, grant, cooperative agreement, or compact with the Indian Health Service pursuant to the Indian Self-Determination and Education Assistance Act; or

“(E) operated by an urban Indian organization pursuant to a grant or contract with the Indian Health Service under title V of the Indian Health Care Improvement Act.
“SEC. 340J–2. OPERATING GRANTS FOR COMMUNITY BEHAVIORAL HEALTH CLINICS.

“(a) IN GENERAL.—The Secretary shall establish a grant program under which the Secretary shall award grants to eligible community behavioral health clinics to provide (in a manner reflecting person-centered care) the full array of certified community behavioral health services.

“(b) ELIGIBILITY.—To be eligible to receive a grant under subsection (a), a community behavioral health clinic shall be—

“(1) a certified community behavioral health clinic; or

“(2) a community behavioral health clinic that indicates in the grant application that the clinic will use the grant funds to meet the criteria described in section 340J–1(a).

“(c) USE OF FUNDS.—A community behavioral health clinic that receives a grant under subsection (a)—

“(1) shall use the grant funds—

“(A) to provide the services described in subsection (a); and

“(B) in the case of a community behavioral health clinic described in subsection (b)(2), to meet the criteria described in section 340J–1(a); and
“(2) may use the grant funds—

“(A) to carry out other activities that—

“(i) reduce costs associated with the provision of certified community behavioral health services;

“(ii) improve access to, and availability of, certified community behavioral health services provided to individuals served by the community behavioral health clinic;

“(iii) enhance the quality and coordination of certified community behavioral health services; or

“(iv) improve the health status of communities; and

“(B) to pay for—

“(i) the costs of acquiring and leasing buildings and equipment (including the costs of amortizing the principal of, and paying interest on, loans);

“(ii) costs relating to the purchase or lease of equipment, including data and information systems and behavioral health information technology to facilitate data reporting and other purposes;
“(iii) the costs of in-service staff training and other operational or infrastructure costs identified by the Secretary; and

“(iv) costs associated with expanding and modernizing existing buildings or constructing new buildings (including the costs of amortizing the principal of, and paying the interest on, loans), if such costs are specifically allowed for in the grant opportunity published by the Secretary.

“(d) TERM.—Grants awarded under subsection (a) shall be for a period of not more than 5 years.

“(e) CONDITION ON RECEIPT OF FUNDS.—The Secretary shall not make a grant to an applicant under subsection (a) unless the applicant provides assurances to the Secretary that within 120 days of receiving grant funding for the operation of the clinic, the applicant will submit for approval by the Secretary an implementation plan that describes how the applicant will—

“(1) provide the services described in subsection (a); and

“(2) in the case of a community behavioral health clinic described in subsection (b)(2), meet the criteria described in section 340J–1(a).
“(f) AMOUNT OF GRANT.—

“(1) IN GENERAL.—Subject to paragraph (2), the amount of a grant made in any fiscal year to a community behavioral health clinic under subsection (a) shall be determined by the Secretary based on information provided by the community behavioral health clinic, but may not exceed an amount equal to the difference obtained by subtracting—

“(A) the sum obtained by adding—

“(i) the total State, local, and other operational funding provided to the clinic for such fiscal year; and

“(ii) the fees, premiums, and third-party reimbursements that the clinic reasonably expects to receive for its operations in such fiscal year; from

“(B) the costs of operating the clinic to meet the purposes and requirements of the grant program under this section during such fiscal year.

“(2) REQUIREMENT.—

“(A) IN GENERAL.—In determining the costs described in paragraph (1)(B), the Secretary may estimate the anticipated costs of the grant recipient in—
“(i) providing the services described in subsection (a), including the anticipated costs of providing any individual certified community behavioral health service that the applicant entity does not have cost experience providing at the time of submitting an application for such grant; and

“(ii) if applicable, meeting the criteria described in section 340J–1(a).

“(B) ANTICIPATED COSTS.—The Secretary shall base the estimate of anticipated costs under subparagraph (A) on an estimate of anticipated costs provided by the applicable community behavioral health clinic.

“(3) PAYMENTS.—The Secretary may—

“(A) award grants under subsection (a)—

“(i) in advance or through reimbursement; and

“(ii) in installments;

“(B) make adjustments to account for overpayments or underpayments.

“(g) USE OF ACCREDITATION.—

“(1) IN GENERAL.—In selecting grant recipients under this section, the Secretary may take into
account whether an applicant community behavioral health clinic is accredited under section 340J–5(a).

“(2) COMPLIANCE.—In determining whether a community behavioral health clinic receiving a grant under this section is providing the services described in subsection (a) and, if applicable, meeting the criteria described in section 340J–1(a), the Secretary may take into account whether the community behavioral health clinic is accredited under section 340J–5(a).

“(h) AUTHORIZATION OF APPROPRIATIONS.—

“(1) IN GENERAL.—There is authorized to be appropriated to carry out this section, $552,500,000 for each of fiscal years 2024 through 2028.

“(2) MAINTENANCE OF FUNDING.—The amount made available under paragraph (1) shall supplement (and not supplant) any other Federal funding made available for community behavioral health clinics.

“SEC. 340J–3. TECHNICAL ASSISTANCE.

“(a) IN GENERAL.—Not later than 180 days after the date of enactment of the Ensuring Excellence in Mental Health Act, the Secretary shall establish programs through which the Secretary shall provide (either through the Department of Health and Human Services or by
grant or contract) technical assistance and other assistance to any of the following:

“(1) Entities that receive a grant under section 340J–2.

“(2) Entities participating in a Medicaid demonstration program under section 223(d) of the Protecting Access to Medicare Act.

“(3) Certified community behavioral health clinics (as defined in sections 1861(aa)(8) and 1905(jj)(2) of the Social Security Act), furnishing services under title XVIII or title XIX of such Act.

“(4) Health or social service provider organizations pursuing or considering certified community behavioral health clinic status or partnering with certified community behavioral health clinics.

“(5) Other stakeholders, for the purpose of facilitating successful implementation of the certified community behavioral health clinic model.

“(b) INCLUSIONS.—Assistance provided by the Secretary under subsection (a) may include technical and nonfinancial assistance, including—

“(1) fiscal and program management assistance;

“(2) operational and administrative support; and
“(3) the provision of information to the entities about the variety of resources available under this part and how those resources can be best used to meet the health and behavioral health needs of the communities served by the entities.

“(e) Authorization of Appropriations.—There is authorized to be appropriated to carry out this section $6,000,000 for each of fiscal years 2024 through 2028.

“SEC. 340J–4. DATA INFRASTRUCTURE FOR COMMUNITY BEHAVIORAL HEALTH CLINIC REPORTING.

“(a) In General.—Not later than 180 days after the date of enactment of the Ensuring Excellence in Mental Health Act, the Secretary shall establish a system under which the Secretary shall collect and analyze data on community behavioral health clinics.

“(b) Scope of Data Collection.—The system established under subsection (a) shall be used by the Secretary to collect and analyze data from—

“(1) entities that receive a grant under section 340J–2; and

“(2) organizations that provide services, or have applied to provide services, under title XVIII of the Social Security Act, as described in section 1861(aa)(8) of such Act, or under a State Medicaid
program in accordance with section 1905(jj) of such Act.

“(c) Authorization of Appropriations.—There is authorized to be appropriated to carry out this section $51,000,000 for each of fiscal years 2024 through 2028.

“SEC. 340J-5. COMMUNITY BEHAVIORAL HEALTH CLINIC ACCREDITATION.

“(a) Accreditation Standards.—A community behavioral health clinic may be accredited if the entity—

“(1) meets the standards of an approved accreditation body; and

“(2) authorizes the accreditation body to submit to the Secretary (or such agency as the Secretary may designate) such records or other information as the Secretary may require.

“(b) Approval of Accreditation Bodies.—

“(1) In General.—The Secretary may approve a private nonprofit organization to be an accreditation body for the accreditation of community behavioral health clinics under subsection (a) if—

“(A) using inspectors qualified to evaluate quality of care in a behavioral health service setting, the accreditation body agrees to inspect the clinic with such frequency as is determined by the Secretary;
“(B) the standards applied by the body in determining whether or not to accredit a clinic correspond to the criteria described in section 340J–1(a), and are not less restrictive than such criteria;

“(C) there is adequate provision for assuring that the standards of the accreditation body continue to be met by the clinic;

“(D) in the case of any clinic previously accredited by the body which has had its accreditation denied, suspended, withdrawn, or revoked or which has had any other action taken against it by the accrediting body, the accrediting body agrees to submit to the Secretary the name of such clinic within 30 days of the action taken; and

“(E) if the accreditation body has its approval withdrawn by the Secretary, the body agrees to notify each clinic accredited by the body of the withdrawal within 10 days of the withdrawal.”.