

103D CONGRESS  
1ST SESSION

# S. 484

To amend title XIX of the Social Security Act to provide for coverage of alcoholism and drug dependency residential treatment services for pregnant women and certain family members under the medicaid program, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MARCH 3, 1993

Mr. DASCHLE (for himself, Mr. BRADLEY, Mr. KENNEDY, Mr. CHAFEE, Mr. MURKOWSKI, Mr. CONRAD, Mr. SIMON, Ms. KASSEBAUM, Mr. DECONCINI, and Mr. AKAKA) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend title XIX of the Social Security Act to provide for coverage of alcoholism and drug dependency residential treatment services for pregnant women and certain family members under the medicaid program, 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 This Act may be cited as the “Medicaid Substance  
5 Abuse Treatment Act of 1993”.

1 **SEC. 2. FINDINGS AND PURPOSE.**

2 (a) FINDINGS.—The Congress finds that—

3 (1) a woman’s ability to bear healthy children  
4 is threatened by the consequences of alcoholism and  
5 drug addiction;

6 (2) an estimated 375,000 infants each year are  
7 born drug-exposed, at least 5,000 infants are born  
8 each year with fetal alcohol syndrome, and another  
9 35,000 are born each year with fetal alcohol effect,  
10 a less severe version of fetal alcohol syndrome;

11 (3) drug use during pregnancy can result in low  
12 birthweight, physical deformities, mental retardation,  
13 learning disabilities, and heightened nervousness and  
14 irritability in newborns;

15 (4) fetal alcohol syndrome is the leading identi-  
16 fiable cause of mental retardation in the United  
17 States and the only cause that is 100 percent pre-  
18 ventable;

19 (5) drug-impaired individuals pose extraor-  
20 dinary societal costs in terms of medical, edu-  
21 cational, foster care, residential, and support serv-  
22 ices over the lifetimes of such individuals;

23 (6) women, in general, are underrepresented in  
24 drug and alcohol treatment programs;

25 (7) due to fears among service providers con-  
26 cerning the risks pregnancies pose, pregnant women

1 face more obstacles to substance abuse treatment  
2 than do other addicts and many substance abuse  
3 treatment programs, in fact, exclude pregnant  
4 women or women with children;

5 (8) alcohol and drug treatment is an important  
6 prevention strategy to prevent low birthweight,  
7 transmission of AIDS, and chronic physical, mental,  
8 and emotional disabilities associated with prenatal  
9 exposure to alcohol and other drugs;

10 (9) effective substance abuse treatment must  
11 address the special needs of pregnant women who  
12 are alcohol or drug dependent, including substance-  
13 abusing women who may often face such problems  
14 as domestic violence, incest and other sexual abuse,  
15 poor housing, poverty, unemployment, lack of edu-  
16 cation and job skills, lack of access to health care,  
17 emotional problems, chemical dependency in their  
18 family backgrounds, single parenthood, and the need  
19 to ensure child care for existing children while un-  
20 dergoing substance abuse treatment;

21 (10) nonhospital residential treatment is an im-  
22 portant component of comprehensive and effective  
23 substance abuse treatment for pregnant addicted  
24 women, many of whom need long-term, intensive ha-  
25 bilitation outside of their communities to recover

1 from their addiction and take care of themselves and  
2 their families; and

3 (11) a gap exists under the medicaid program  
4 for the financing of comprehensive residential care  
5 in the existing continuum of medicaid-covered alco-  
6 holism and drug abuse treatment services for low-in-  
7 come pregnant addicted women.

8 (b) PURPOSES.—The purposes of this Act are—

9 (1) to increase the ability of pregnant women  
10 who are substance abusers to participate in alcohol  
11 and drug treatment;

12 (2) to ensure the availability of comprehensive  
13 and effective treatment programs for pregnant  
14 women, thus promoting a woman's ability to bear  
15 healthy children;

16 (3) to ensure that nonhospital residential treat-  
17 ment is available to those low-income pregnant ad-  
18 dicted women who need long-term, intensive habili-  
19 tation to recover from their addiction;

20 (4) to create a new optional medicaid residen-  
21 tial treatment service for alcoholism and drug de-  
22 pendency treatment; and

23 (5) to define the core services that must be pro-  
24 vided by treatment providers to ensure that needed  
25 services will be available and appropriate.

1 **SEC. 3. MEDICAID COVERAGE OF ALCOHOLISM AND DRUG**  
2 **DEPENDENCY RESIDENTIAL TREATMENT**  
3 **SERVICES FOR PREGNANT WOMEN, CARE-**  
4 **TAKER PARENTS, AND THEIR CHILDREN.**

5 (a) COVERAGE OF ALCOHOLISM AND DRUG DEPEND-  
6 ENCY RESIDENTIAL TREATMENT SERVICES.—

7 (1) OPTIONAL COVERAGE.—Section 1905 of the  
8 Social Security Act (42 U.S.C. 1396d) is amended—

9 (A) in subsection (a)—

10 (i) by striking “and” at the end of  
11 paragraph (21);

12 (ii) in paragraph (24), by striking the  
13 period at the end and inserting a semi-  
14 colon;

15 (iii) by redesignating paragraphs (22),  
16 (23), and (24) as paragraphs (25), (22),  
17 and (23), respectively, and by transferring  
18 and inserting paragraph (25) after para-  
19 graph (23), as so redesignated; and

20 (iv) by inserting after paragraph (23)  
21 the following new paragraph:

22 “(24) alcoholism and drug dependency residen-  
23 tial treatment services (to the extent allowed and as  
24 defined in section 1931); and”; and

25 (B) in the sentence following paragraph  
26 (25), as so redesignated—

1 (i) in subdivision (A), by striking “or”  
2 at the end;

3 (ii) in subdivision (B), by inserting “,  
4 who is not receiving alcoholism and drug  
5 dependency residential treatment services,”  
6 after “65 years of age”; and

7 (iii) by inserting after subdivision (B)  
8 the following:

9 “(C) any such payments with respect to alcohol-  
10 ism and drug dependency residential treatment serv-  
11 ices under paragraph (24) for individuals not de-  
12 scribed in section 1931(d).”.

13 (2) ALCOHOLISM AND DRUG DEPENDENCY RES-  
14 IDENTIAL TREATMENT SERVICES DEFINED.—Title  
15 XIX of the Social Security Act (42 U.S.C. 1396 et  
16 seq.) is amended by adding at the end the following  
17 new section:

18 “ALCOHOLISM AND DRUG DEPENDENCY RESIDENTIAL  
19 TREATMENT SERVICES

20 “SEC. 1931. (a) ALCOHOLISM AND DRUG DEPEND-  
21 ENCY RESIDENTIAL TREATMENT SERVICES.—The term  
22 ‘alcoholism and drug dependency residential treatment  
23 services’ means all the required services described in sub-  
24 section (b) which are provided—

25 “(1) in a coordinated manner by a residential  
26 treatment facility that meets the requirements of

1 subsection (c) either directly or through arrange-  
2 ments with—

3 “(A) public and nonprofit private entities;

4 “(B) licensed practitioners or federally  
5 qualified health centers with respect to medical  
6 services; or

7 “(C) the Indian Health Service or a tribal  
8 or Indian organization that has entered into a  
9 contract with the Secretary under section 102  
10 of the Indian Self-Determination Act (25  
11 U.S.C. 450f) or section 502 of the Indian  
12 Health Care Improvement Act (25 U.S.C.  
13 1652) with respect to such services provided to  
14 women eligible to receive services in Indian  
15 Health Facilities; and

16 “(2) pursuant to a written individualized treat-  
17 ment plan prepared for each individual, which  
18 plan—

19 “(A) states specific objectives necessary to  
20 meet the individual’s needs;

21 “(B) describes the services to be provided  
22 to the individual to achieve those objectives;

23 “(C) is established in consultation with the  
24 individual;

1           “(D) is periodically reviewed and (as ap-  
2           propriate) revised by the staff of the facility in  
3           consultation with the individual;

4           “(E) reflects the preferences of the individ-  
5           ual; and

6           “(F) is established in a manner which pro-  
7           motes the active involvement of the individual  
8           in the development of the plan and its objec-  
9           tives.

10       “(b) REQUIRED SERVICES DEFINED.—

11           “(1) IN GENERAL.—The required services de-  
12       scribed in this subsection are as follows:

13           “(A) Counseling, addiction education, and  
14           treatment provided on an individual, group, and  
15           family basis and provided pursuant to individ-  
16           ualized treatment plans, including the oppor-  
17           tunity for involvement in Alcoholics Anonymous  
18           and Narcotics Anonymous.

19           “(B) Parenting skills training.

20           “(C) Education concerning prevention of  
21           HIV infection.

22           “(D) Assessment of each individual’s need  
23           for domestic violence counseling and sexual  
24           abuse counseling and provision of such counsel-  
25           ing where needed.

1           “(E) Room and board in a structured envi-  
2           ronment with on-site supervision 24 hours-a-  
3           day.

4           “(F) Therapeutic child care or counseling  
5           for children of individuals in treatment.

6           “(G) Assisting parents in obtaining access  
7           to—

8                   “(i) developmental services (to the ex-  
9                   tent available) for their preschool children;

10                   “(ii) public education for their school-  
11                   age children, including assistance in enroll-  
12                   ing them in school; and

13                   “(iii) public education for parents who  
14                   have not completed high school.

15           “(H) Facilitating access to prenatal and  
16           postpartum health care for women, to pediatric  
17           health care for infants and children, and to  
18           other health and social services where appro-  
19           priate and to the extent available, including  
20           services under title V, services and nutritional  
21           supplements provided under the special supple-  
22           mental food program for women, infants, and  
23           children (WIC) under section 17 of the Child  
24           Nutrition Act of 1966, services provided by fed-  
25           erally qualified health centers, outpatient pedi-

1           atric services, well-baby care, and early and  
2           periodic screening, diagnostic, and treatment  
3           services (as defined in section 1905(r)).

4           “(I) Ensuring supervision of children dur-  
5           ing times their mother is in therapy or engaged  
6           in other necessary health or rehabilitative ac-  
7           tivities, including facilitating access to child  
8           care services under title IV and title XX.

9           “(J) Planning for and counseling to assist  
10          reentry into society, including appropriate out-  
11          patient treatment and counseling after dis-  
12          charge (which may be provided by the same  
13          program, if available and appropriate) to assist  
14          in preventing relapses, assistance in obtaining  
15          suitable affordable housing and employment  
16          upon discharge, and referrals to appropriate  
17          educational, vocational, and other employment-  
18          related programs (to the extent available).

19          “(K) Continuing specialized training for  
20          staff in the special needs of residents and their  
21          children, designed to enable such staff to stay  
22          abreast of the latest and most effective treat-  
23          ment techniques.

24          “(2) REQUIREMENT FOR CERTAIN SERVICES.—  
25          Services under subparagraphs (A), (B), (C), and

1 (D), of paragraph (1) shall be provided in a cultural  
2 context that is appropriate to the individuals and in  
3 a manner that ensures that the individuals can com-  
4 municate effectively, either directly or through inter-  
5 preters, with persons providing services.

6 “(3) LIMITATIONS ON COVERAGE.—

7 “(A) IN GENERAL.—Subject to subpara-  
8 graph (B), services described in paragraph (1)  
9 shall be covered in the amount, duration, and  
10 scope therapeutically required for each eligible  
11 individual in need of such services.

12 “(B) RESTRICTIONS ON LIMITING COV-  
13 ERAGE.—A State plan shall not limit coverage  
14 of alcoholism and drug dependency residential  
15 treatment services for any period of less than  
16 12 months per individual, except in those in-  
17 stances where a finding is made that such serv-  
18 ices are no longer therapeutically necessary for  
19 an individual.

20 “(c) FACILITY REQUIREMENTS.—The requirements  
21 of this subsection with respect to a facility are as follows:

22 “(1) The agency designated by the chief execu-  
23 tive officer of the State to administer the State’s al-  
24 cohol and drug abuse prevention and treatment ac-  
25 tivities and programs has certified to the single

1 State agency under section 1902(a)(5) that the facil-  
2 ity—

3 “(A) is able to provide all the services de-  
4 scribed in subsection (b) either directly or  
5 through arrangements with—

6 “(i) public and nonprofit private enti-  
7 ties;

8 “(ii) licensed practitioners or federally  
9 qualified health centers with respect to  
10 medical services; or

11 “(iii) the Indian Health Service or  
12 with a tribal or Indian organization that  
13 has entered into a contract with the Sec-  
14 retary under section 102 of the Indian  
15 Self-Determination Act (25 U.S.C. 450f)  
16 or section 502 of the Indian Health Care  
17 Improvement Act (25 U.S.C. 1652) with  
18 respect to such services provided to women  
19 eligible to receive services in Indian Health  
20 Facilities; and

21 “(B) except for Indian Health Facilities,  
22 meets all applicable State licensure or certifi-  
23 cation requirements for a facility of that type.

24 “(2)(A) The facility or a distinct part of the fa-  
25 cility provides room and board, except that—

1           “(i) subject to subparagraph (B), the facil-  
2           ity shall have no more than 40 beds; and

3           “(ii) subject to subparagraph (C), the fa-  
4           cility shall not be licensed as a hospital.

5           “(B) The single State agency may waive the  
6           bed limit under subparagraph (A)(i) for one or more  
7           facilities subject to review by the Secretary. Waivers,  
8           where granted, must be made pursuant to standards  
9           and procedures set out in the State plan and must  
10          require the facility seeking a waiver to demonstrate  
11          that—

12                 “(i) the facility will be able to maintain a  
13                 therapeutic, family-like environment;

14                 “(ii) the facility can provide quality care in  
15                 the delivery of each of the services identified in  
16                 subsection (b);

17                 “(iii) the size of the facility will be appro-  
18                 priate to the surrounding community; and

19                 “(iv) the development of smaller facilities  
20                 is not feasible in that geographic area.

21           “(C) The Secretary may waive the requirement  
22           under subparagraph (A)(ii) that a facility not be a  
23           hospital, if the Secretary finds that such facility is  
24           located in an Indian Health Service area and that  
25           such facility is the only or one of the only facilities

1 available in such area to provide services under this  
2 section.

3 “(3) With respect to a facility providing the  
4 services described in subsection (b) to an individual  
5 eligible to receive services in Indian Health Facili-  
6 ties, such a facility demonstrates (as required by the  
7 Secretary) an ability to meet the special needs of In-  
8 dian and Native Alaskan women.

9 “(d) ELIGIBLE INDIVIDUALS.—

10 “(1) IN GENERAL.—A State plan shall limit  
11 coverage of alcoholism and drug dependency residen-  
12 tial treatment services under section 1905(a)(24) to  
13 the following individuals otherwise eligible for medi-  
14 cal assistance under this title:

15 “(A) Women during pregnancy, and until  
16 the end of the 12th month following the termi-  
17 nation of the pregnancy.

18 “(B) Children of a woman described in  
19 subparagraph (A).

20 “(C) At the option of a State, a caretaker  
21 parent or parents and children of such a  
22 parent.

23 “(2) INITIAL ASSESSMENT OF ELIGIBLE INDI-  
24 VIDUALS.—An initial assessment of eligible individ-  
25 uals specified in paragraph (1) seeking alcoholism

1 and drug dependency residential treatment services  
2 shall be performed by the agency designated by the  
3 chief executive officer of the State to administer the  
4 State's alcohol and drug abuse treatment activities  
5 (or its designee). Such assessment shall determine  
6 whether such individuals are in need of alcoholism or  
7 drug dependency treatment services and, if so, the  
8 treatment setting (such as inpatient hospital,  
9 nonhospital residential, or outpatient) that is most  
10 appropriate in meeting such individual's health and  
11 therapeutic needs and the needs of such individual's  
12 dependent children, if any.

13 “(e) OVERALL CAP ON MEDICAL ASSISTANCE AND  
14 ALLOCATION OF BEDS.—

15 “(1) TOTAL AMOUNT OF SERVICES AS MEDICAL  
16 ASSISTANCE.—

17 “(A) IN GENERAL.—The total amount of  
18 services provided under this section as medical  
19 assistance for which payment may be made  
20 available under section 1903 shall be limited to  
21 the total number of beds allowed to be allocated  
22 for such services in any given year as specified  
23 under subparagraph (B).

24 “(B) TOTAL NUMBER OF BEDS.—The total  
25 number of beds allowed to be allocated under

1 this subparagraph (subject to paragraph  
2 (2)(C)) for the furnishing of services under this  
3 section and for which Federal medical assist-  
4 ance may be made available under section 1903  
5 is for calendar year—

6 “(i) 1994, 1,080 beds;

7 “(ii) 1995, 2,000 beds;

8 “(iii) 1996, 3,500 beds;

9 “(iv) 1997, 5,000 beds;

10 “(v) 1998, 6,000 beds; and

11 “(vi) 1999 and for calendar years  
12 thereafter, a number of beds determined  
13 appropriate by the Secretary.

14 “(2) ALLOCATION OF BEDS.—

15 “(A) INITIAL ALLOCATION FORMULA.—For  
16 each calendar year, a State exercising the op-  
17 tion to provide the services described in this  
18 section shall be allocated from the total number  
19 of beds available under paragraph (1)(B)—

20 “(i) in calendar years 1994 and 1995,  
21 20 beds;

22 “(ii) in calendar years 1996, 1997,  
23 and 1998, 40 beds; and

24 “(iii) in calendar year 1999 and for  
25 each calendar year thereafter, a number of

1           beds determined based on a formula (as  
2           provided by the Secretary) distributing  
3           beds to States on the basis of the relative  
4           percentage of women of childbearing age in  
5           a State.

6           “(B) REALLOCATION OF BEDS.—The Sec-  
7           retary shall provide that in allocating the num-  
8           ber of beds made available to a State for the  
9           furnishing of services under this section that, to  
10          the extent not all States are exercising the op-  
11          tion of providing services under this section and  
12          there are beds available that have not been allo-  
13          cated in a year as provided in paragraph  
14          (1)(B), that such beds shall be reallocated  
15          among States which are furnishing services  
16          under this section based on a formula (as pro-  
17          vided by the Secretary) distributing beds to  
18          States on the basis of the relative percentage of  
19          women of childbearing age in a State.

20          “(C) INDIAN HEALTH SERVICE AREAS.—In  
21          addition to the beds allowed to be allocated  
22          under paragraph (1)(B) there shall be an addi-  
23          tional 20 beds allocated in any calendar year to  
24          States for each Indian Health Service area  
25          within the State to be utilized by Indian Health

1           Facilities within such an area and, to the extent  
2           such beds are not utilized by a State, the beds  
3           shall be reapportioned to Indian Health Service  
4           areas in other States.”.

5           (3) MAINTENANCE OF STATE FINANCIAL EF-  
6           FORT AND 100 PERCENT FEDERAL MATCHING FOR  
7           SERVICES FOR INDIAN AND NATIVE ALASKAN  
8           WOMEN IN INDIAN HEALTH SERVICES AREAS.—Sec-  
9           tion 1903 of the Social Security Act (42 U.S.C.  
10          1396b) is amended by adding at the end the follow-  
11          ing new subsections:

12          “(x) No payment shall be made to a State under this  
13          section in a State fiscal year for alcoholism and drug de-  
14          pendency residential treatment services (described in sec-  
15          tion 1931) unless the State provides assurances satisfac-  
16          tory to the Secretary that the State is maintaining State  
17          expenditures for such services at a level that is not less  
18          than the average annual level maintained by the State for  
19          such services for the 2-year period preceding such fiscal  
20          year.

21          “(y) Notwithstanding the preceding provisions of this  
22          section, the Federal medical assistance percentage for pur-  
23          poses of payment under this section for services described  
24          in section 1931 provided to individuals residing on or re-

1 ceiving services in an Indian Health Service area shall be  
2 100 percent.”.

3 (b) PAYMENT ON A COST-RELATED BASIS.—Section  
4 1902(a)(13) of the Social Security Act (42 U.S.C.  
5 1396a(a)(13)) is amended—

6 (1) by striking “and” at the end of subpara-  
7 graph (E);

8 (2) by adding “and” at the end of subpara-  
9 graph (F); and

10 (3) by adding at the end the following new sub-  
11 paragraph:

12 “(G) for payment for alcoholism and drug  
13 dependency residential treatment services which  
14 the State finds, and makes assurances satisfac-  
15 tory to the Secretary, are reasonable and ade-  
16 quate to meet the costs which must be incurred  
17 by efficiently and economically operated facili-  
18 ties in order to provide all the services listed in  
19 section 1931(b) in conformity with applicable  
20 Federal and State laws, regulations, and quality  
21 and safety standards and to assure that individ-  
22 uals eligible for such services have reasonable  
23 access to such services;”.

24 (c) CONFORMING AMENDMENTS.—

1           (1) CLARIFICATION OF OPTIONAL COVERAGE  
2           FOR SPECIFIED INDIVIDUALS.—Section 1902(a)(10)  
3           of the Social Security Act (42 U.S.C. 1396a(a)(10))  
4           is amended, in the matter following subparagraph  
5           (F)—

6                   (A) by striking “; and (XI)” and inserting  
7                   “, (XI)”;

8                   (B) by striking “, and (XI)” and inserting  
9                   “, and (XII)”;

10                   (C) by inserting before the semicolon at  
11                   the end the following: “, and (XIII) the making  
12                   available of alcoholism and drug dependency  
13                   residential treatment services to individuals de-  
14                   scribed in section 1931(d) shall not, by reason  
15                   of this paragraph, require the making of such  
16                   services available to other individuals”.

17           (2) CONTINUATION OF ELIGIBILITY FOR ALCO-  
18           HOLISM AND DRUG DEPENDENCY TREATMENT FOR  
19           PREGNANT WOMEN FOR 12 MONTHS FOLLOWING  
20           END OF PREGNANCY.—Section 1902 of the Social  
21           Security Act (42 U.S.C. 1396a) is amended in sub-  
22           section (e)(5) by striking “under the plan,” and all  
23           through the period at the end and inserting “under  
24           the plan—

1           “(A) as though she were pregnant, for all preg-  
2           nancy-related and postpartum medical assistance  
3           under the plan, through the end of the month in  
4           which the 60-day period (beginning on the last day  
5           of her pregnancy) ends; and

6           “(B) for alcoholism and drug dependency resi-  
7           dential treatment services under section 1931  
8           through the end of the 1-year period beginning on  
9           the last day of her pregnancy.”.

10           (3) REDESIGNATIONS.—Section 1902 of the So-  
11           cial Security Act (42 U.S.C. 1396a) is further  
12           amended—

13                   (A) in subsection (a)(10)(C)(iv), by strik-  
14                   ing “(21)” and inserting “(24)”; and

15                   (B) in subsection (j), by striking “(22)”  
16                   and inserting “(25)”.

17           (d) ANNUAL EDUCATION AND TRAINING IN INDIAN  
18           HEALTH SERVICE AREAS.—The Secretary of Health and  
19           Human Services in cooperation with the Indian Health  
20           Service shall conduct on at least an annual basis training  
21           and education in each of the 12 Indian Health Service  
22           areas for tribes, Indian organizations, residential treat-  
23           ment providers, and State health care workers regarding  
24           the availability and nature of residential treatment serv-

1 ices available in such areas under the provisions of this  
2 Act.

3 (e) EFFECTIVE DATE; TRANSITION.—(1) The  
4 amendments made by this section apply to alcoholism and  
5 drug dependency residential treatment services furnished  
6 on or after July 1, 1994, without regard to whether or  
7 not final regulations to carry out such amendments have  
8 been promulgated by such date.

9 (2) The Secretary of Health and Human Services  
10 shall not take any compliance, disallowance, penalty, or  
11 other regulatory action against a State under title XIX  
12 of the Social Security Act with regard to alcoholism and  
13 drug dependency residential treatment services (as defined  
14 in section 1931(a) of such Act) made available under such  
15 title on or after July 1, 1994, before the date the Sec-  
16 retary issues final regulations to carry out the amend-  
17 ments made by this section, if the services are provided  
18 under its plan in good faith compliance with such amend-  
19 ments.

○

S 484 IS—2