Bipartisan Safer Communities Act

Section-By-Section

<u>Division A—Mental Health and Firearms Provisions</u>

Title I - Children and Family Mental Health Services

Sec. 11001. Expansion of Community Mental Health Services Demonstration Program.

• This provision expands the existing Medicaid certified community behavioral health clinic (CCBHC) demonstration program nationwide to increase access to community based behavioral health services. Up to 10 new states may opt into the demonstration every two years.

Sec.11002. Medicaid and Telehealth.

- This provision requires CMS to provide guidance to states on how they can increase access to health care, including mental health services, via telehealth under Medicaid and CHIP.
- Such guidance would, in part, outline strategies related to training and providing resources for providers and patients; include best practices for providing mental health and substance use disorder services via telehealth in schools; include recommendations for measuring telehealth care quality; and include best practices for conveying the availability of telehealth to Medicaid and CHIP enrollees.

Sec. 11003. Supporting Access to Health Care Services in Schools.

- This provision improves access to mental health care in schools by requiring CMS to provide states with critical tools and resources to implement, enhance, and expand school-based health programs under Medicaid.
- CMS would be required to issue guidance to state Medicaid programs outlining how states may receive Medicaid funding for health services provided in school settings. Such guidance would address, in part, best practices for enrolling school health care providers in Medicaid, facilitating payment and reimbursement, utilizing telehealth, and forming partnerships with community-based behavioral health providers.
- The provision would also establish a technical assistance center at CMS and authorizes \$50 million in planning grants to states to help them take advantage of the flexibilities and best practices identified in this Medicaid guidance.

 Medicaid is the third largest federal funding stream for school districts, providing much-needed funding to support school health services, including mental health services. However, key federal guidance on how schools can claim Medicaid funding has not been updated in nearly 20 years, making it extremely challenging for school districts, particularly small and rural high-poverty districts, to access this funding.

Sec. 11004. Review of State Implementation of Early and Periodic Screening, Diagnostic, and Treatment Services.

- This provision requires CMS to regularly review states' implementation of the Medicaid Early and Periodic Screening, Diagnostic and Treatment (EPSDT) benefit, which guarantees comprehensive health coverage for the nearly 40 million children enrolled in Medicaid today.
- Specifically, CMS must identify gaps and deficiencies with respect to state compliance, provide technical assistance to help address these gaps, and issue guidance outlining best practices for the benefit. The provision also requires the Government Accountability Office (GAO) to examine state implementation of EPSDT and CMS oversight efforts. These federal oversight efforts will support better access to mental health care, including preventive, early intervention, and treatment services, for children.

Sec. 11005. Pediatric Mental Health Care Access program reauthorization.

- Reauthorizes the Pediatric Mental Health Care Access (PMCHA) grant program for five years and expands teleconsults into emergency departments and schools.
- Administered by HRSA, the program supports state or regional networks
 of pediatric mental health care teams through teleconsultation, training,
 technical assistance, and care coordination for pediatric primary care
 providers to diagnose, treat, and refer children with mental health
 conditions.

Title II—Firearms

Sec. 12001. Juvenile Records

• Clarifies current law that a person is prohibited from purchasing a firearm if their juvenile record meets the existing criteria for a prohibited firearms purchaser under 18 U.S. 922(d). Improves current law so that mental health adjudication records for persons under 16 years old do not disqualify them from purchasing a firearm.

- For firearms purchasers under the age of 21, keeps current law requiring completion of NICS background investigation within three business days, but requires NICS to immediately check with appropriate state records repositories and local law enforcement solely for the purpose of determining whether the individual has a juvenile record that would disqualify them from purchasing firearms. Does not change current law with respect to individuals 21 and over.
- If NICS identifies no disqualifying or possibly disqualifying juvenile records, the firearms transfer would occur under current law. If NICS identifies a disqualifying juvenile record, the transfer would be denied under current law. If NICS identified a possibly disqualifying juvenile record, the FBI would be required to investigate that record immediately and to complete that investigation within three days under current law. If the FBI shows cause for needing more time to investigate the nature and substance of the possibly disqualifying juvenile record, they would be allowed no more than seven additional business days to complete the investigation. If the investigation is not completed within this total time of ten business days, the firearms transfer would be required to occur.
- There are no mandatory or de-facto waiting periods. All persons under 21 are allowed to purchase firearms and receive them immediately if they have no disqualifying or possibly disqualifying juvenile records.
- To prevent false denials and provide appropriate government oversight, requires an annual report to Congress on the progress made by NICS to audit and remove outdated, expired, and erroneous records. This provision applies to all records shared with NICS, not just juvenile records.
- All provisions of this section expire on September 30, 2032 except for the clarification in current law that juvenile conduct can prohibit a person from purchasing firearms and that juvenile mental health adjudications that occur before the age of 16 do not prohibit a person from purchasing firearms.

Sec. 12002. Defining engaged in the business

- Clarifies that an individual who repeatedly buys and sells firearms to predominantly earn a profit must register as a Federal Firearm Licensee ("FFL").
- Provides clarity to the firearms industry, but cracks down on criminals who intentionally seek to avoid licensing requirements.

• Maintains protections for hobbyists and gun enthusiasts to privately sell their firearms without having to register as an FFL.

Sec. 12003. Byrne JAG Grant Funding for States to Support Crisis Intervention Programs

- Creates a new purpose area in the Byrne JAG law enforcement formula grant program allowing states to use funding to implement crisis intervention court programs. These programs could include many different types of initiatives, including but not limited to mental health courts, drug courts, veterans courts, and assisted outpatient treatment courts.
- Under this provision, every state would receive funding based on an existing formula and also have flexibility to choose whichever crisis intervention programs would work best for them. There are no mandates, incentives, penalties, or set-asides.
- If a state chooses to use any of this funding to implement an extreme risk protection order program, it would be required to meet strict and expansive due process, evidentiary, and standard of proof requirements at all phases of the proceeding (pre-deprivation and post-deprivation).
- Due process protections against using funds for extreme risk protection order programs include:
 - o "(I) pre-deprivation and post-deprivation due process rights that prevent any violation or infringement of the Constitution of the United States, including but not limited to the Bill of Rights, and the substantive or procedural due process rights guaranteed under the Fifth and Fourteenth Amendments to the Constitution of the United States, as applied to the States, and as interpreted by State courts and United States courts (including the Supreme Court of the United States). Such programs must include, at the appropriate phase to prevent any violation of constitutional rights, at minimum, notice, the right to an in-person hearing, an unbiased adjudicator, the right to know opposing evidence, the right to present evidence, and the right to confront adverse witnesses;
 - o "(II) the right to be represented by counsel at no expense to the government;
 - o "(III) pre-deprivation and post-deprivation heightened evidentiary standards and proof which mean not less than the protections afforded to a similarly situated litigant in Federal court or promulgated by the State's evidentiary body, and sufficient to ensure the full protections of the Constitution of the United States, including but not limited to the Bill of Rights, and the substantive and procedural due process rights guaranteed under the Fifth and Fourteenth Amendments to the

Constitution of the United States, as applied to the States, and as interpreted by State courts and United States courts (including the Supreme Court of the United States). The heightened evidentiary standards and proof under such programs must, at all appropriate phases to prevent any violation of any constitutional right, at minimum, prevent reliance upon evidence that is unsworn or unaffirmed, irrelevant, based on inadmissible hearsay, unreliable, vague, speculative, and lacking a foundation; and

- o "(IV) penalties for abuse of the program.".
- Requires a mandatory report each year regarding the efficacy, nature, and due process protections associated with crisis intervention programs funded under this provision.

Sec. 12004. Stop Illegal Trafficking in Firearms Act

- The trafficking of firearms to violent criminals, gangs, and drug trafficking organizations presents a serious threat to public safety. Straw purchasers—individuals without a criminal record who purchase firearms for violent criminals, terrorists, drug dealers, or persons who are prohibited by law from receiving firearms—are the linchpin of most firearms trafficking operations, which are responsible for funneling illegal firearms into our cities and across our Southern border. There is no criminal statute specifically prohibiting straw purchasing or firearms trafficking. Instead, prosecutors rely primarily on "paperwork violations" that prohibit making false statements in connection with the purchase of a firearm.
- Establishes new, specific criminal offenses with significant penalties for straw purchasers and firearms traffickers (up to 15 years imprisonment), and enhanced penalties when straw-purchased firearms are used in connection with serious criminal activity like terrorism and drug trafficking (up to 25 years imprisonment).
- Enhances criminal tools to vigorously investigate and prosecute straw purchasers and gun traffickers, including those who act as "middlemen" on behalf of violent criminals or drug traffickers. Provides criminal investigators with additional wire-tap, forfeiture, racketeering charging, criminal fine, and money laundering authorities.
- Directs the U.S. Sentencing Commission to review and amend its guidelines to ensure that straw purchasers and gun traffickers are subject to tough penalties, particularly those who are affiliated with a gang, cartel, organized crime ring, or other such enterprise, while also considering factors that are sufficient to deter these crimes in the future.

- Prohibits Firearms or Ammunition Transfers to Drug Cartels to prevent another "Operation Fast and Furious" scandal.
- Criminalizes smuggling firearms *out* of the United States. Under current law, it is unlawful only for a person to smuggle firearms *into* the United States.
- Provides Federal Firearm Licensees ("FFLs") with access to the National Instant Criminal Background Check System ("NICS") to run background checks on prospective employees to ensure that they are not prohibited from possessing firearms under current law.
- Authorizes funding for an existing ATF Anti-Straw Purchasing Campaign to educate FFLs and others in the firearms industry to help combat straw purchasing.
- Authorizes funding to support coordination between federal and local law enforcement to prevent illegal trafficking of firearms.
- Clarifies that nothing in this provision shall be construed to establish a national gun registry.

Sec. 12005. Misdemeanor crime of domestic violence

- Updates the definition of "misdemeanor crime of domestic violence" to include individuals who have (or have had) a current or recent continuing serious relationship of a romantic or intimate nature with their victim. Current law applies only to spouses, persons with a child in common, persons cohabitating as spouses, and persons similarly situated to spouses.
- This provision would have no retroactive application and would only apply to current or recently ended relationships.
- Persons convicted of a misdemeanor crime of violence against a person with whom they have (or have had) a current or recent continuing serious relationship of a romantic or intimate nature would have their right to purchase and possess firearms automatically restored after 5 years elapsed from the end of their criminal sentence if they had committed no further crimes of violence. No paperwork or government approval would be required for restoration of rights and their records would be automatically purged from NICS.

Title III. Other Matters

Subtitle A—Extension of Moratorium (offset)

Moratorium on implementation of rule relating to eliminating the anti-kickback statute safe harbor protection for prescription drug rebates.

• This provision provides a one year delay of the Medicare Rebate Rule. CBO estimates this delay reduces federal spending by \$20.9 billion.

Subtitle B-Medicare Improvement Fund

Medicare Improvement Fund.

• This provision makes deposits into the Medicare Improvement Fund to preserve unused offset funds from the one-year delay of the Medicare Rebate Rule.

Subtitle C—Luke and Alex School Safety Act of 2022

The Luke and School Alex School Safety Act codifies schoolsafety.gov, an existing school safety website housed at the Department of Homeland Security. SchoolSafety.gov was created by the federal government to provide schools and districts with actionable recommendations to create a safe and supportive learning environment where students can thrive and grow. The website also includes information on over \$2 billion in grant funding opportunities and was established in 2019 by former Department of Education Secretary, Betsy DeVos.

Subtitle D—Amendment on ESEA Funding

Prohibits use of ESEA funds for the provision of dangerous weapons.

DIVISION B—Appropriations

Department of Justice Appropriations

- \$750 million (over 5 years) for crisis intervention programs under Byrne JAG
- \$300 million (over 5 years) for STOP School Violence school safety programs, including school resource officers and school hardening
- \$200 million (over 5 years) for NICS improvement and juvenile records
- \$250 million (over 5 years) for community violence intervention programs

• \$100 million for FBI salaries and expenses

Department of Health and Human Services Appropriations

Mental Health Training for Primary Care Providers.

 Appropriates \$60 million over five years for training in mental health for primary care clinicians who treat children and youth through HRSA's Primary Care Training and Enhancement Program.

Pediatric Mental Health Care Access (PMCHA) grant program.

• Appropriates \$80 million over four years in HRSA to support pediatric primary care providers to rapidly access mental health specialists' expertise in guiding the treatment of their patients.

Community Mental Health Services Block Grant.

• Appropriates \$250 million over four years for SAMHSA's Community Mental Health Block Grant program that provides states, DC, and territories with flexible funding to provide comprehensive community mental health services.

Mental Health Awareness Training Grant Program.

• Appropriates \$120 million over four years in SAMHSA to prepare and train community members and first responders on how to appropriately and safely respond to individuals with mental disorders.

Project AWARE.

- Appropriates \$240 million over four years for SAMHSA's Project AWARE that increases awareness of mental health issues among school-aged youth, provides training for school personnel and other adults who interact with school-aged youth to detect and respond to mental health issues, and connects school-aged youth who may have behavioral health issues and their families to needed services.
 - Provides a \$28 million set aside for grants to support trauma care in school settings.

National Child Traumatic Stress Network.

 Appropriates \$40 million over four years to SAMHSA's National Child Traumatic Stress Network grant to improve treatment and services for children, adolescents, and families who have experienced traumatic events.

Suicide Prevention (988).

• Appropriates \$150 million in one-time funding to support implementation of the 9-8-8 Suicide and Crisis Lifeline that provides

24/7, free, and confidential support to people in suicidal crisis or emotional distress.

Department of Education Appropriations

- \$1 Billion to increase funding for Safe and Healthy Students Programs
 - O Provides states with a one-time infusion of \$1B under Title IV-A, Sec 4108 of the Elementary and Secondary Education Act (ESEA) to keep students safe and healthy. State and locally-determined services include, but are not limited to, mental health resources, drug and violence prevention, mentoring, crisis intervention, and high-quality training for school personnel on suicide prevention and human trafficking. Funds available until March 1, 2023.
- \$50 Million to improve and expand academic enrichment and youth development
 - O Provides states with a one-time infusion of \$50 million under Title IV-B to improve and expand 21st Century Community Learning Center programs, which serve youth during non-school hours by providing academic enrichment and youth development opportunities. Recipients of these funds help students from lower-income households participate in after-school programming connecting them to community organizations such as the YMCA and Boys and Girls Clubs. Funds available until March 1, 2023.
- \$500 million to expand School-Based Mental Health Services
 - o The School-Based Mental Health Services Grants, established under the Trump Administration, program provides competitive grants to States to increase the number of and reduce the turnover of qualified mental health service providers who provide school-based mental health services to students in school districts with demonstrated need. Funds available until March 1, 2023.
- \$500 million to Increase School-Based Mental Health Professionals Pipeline
 - o Funding to expand the School-Based Mental Health Services Professional Demonstration Grant. The Mental Health Service Professional Demonstration Grant Program School, established under the Trump Administration, provides competitive grants to support innovative partnerships between institutions of higher education and school districts to prepare school-based mental health service providers for employment in high-need schools. Funds available until March 1, 2023.