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# THE BIPARTISAN SAFER COMMUNITIES ACT: MENTAL HEALTH WINS UNDERMINED FOR BLACK AND BROWN YOUTH

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## INTRODUCTION

Passed in June 2022, the Bipartisan Safer Communities Act (BSCA) came at a time in our country when legislation on both mental health and gun violence prevention was overdue.<sup>1</sup> While generally upheld as a major legislative victory that expands federal investments in mental health supports, the BSCA also includes a series of provisions that will disproportionately harm the mental health of young people who are Black, brown, disabled, low income, and LGBTQIA+.<sup>2</sup>

The BSCA makes significant and much-needed investments in young people's mental health. The law includes investments in school-based health such as provisions that direct the Centers for Medicare and Medicaid Services (CMS) to update guidance for claiming services provided in schools under Medicaid, establish a technical assistance center, and invest in youth-focused mental health funding streams and the mental health workforce.

However, the BSCA simultaneously bolsters carceral systems that harm young people. For example, the law invests in school-hardening measures that fuel the school-to-prison pipeline by expanding police presence in schools through leveraging new technologies and data-sharing techniques with school systems and social service agencies. School-hardening measures create hostile learning environments and lead to increased anxiety and mistrust for students.<sup>3,4</sup>

Two of the law's aims directly contradict each other. The school-hardening measures will exacerbate the youth mental health crisis that the act simultaneously attempts to address.

To truly invest in the mental health of young people, policymakers must center the needs and experiences of young people—especially those who are Black, brown, LGBTQIA+, low income, and disabled—and create a mental health system that achieves these young people's vision of healing and wellbeing.<sup>5</sup> It does not matter how many services schools and communities offer if they are not the services young people want and trust.<sup>6</sup> This includes healing-based approaches and culturally sensitive care. People most trusted by young people—whether based in community-based organizations, health facilities, or faith-based organizations—need the tools, supports, and funding to meet youth where they are.

Despite the shortcomings of the law, states and localities can and should take advantage of the mental health provisions, focusing on equity-centered implementation at the state and local level.

This brief provides an overview of the key mental health provisions in the act, gives a timeline of expected implementation, and offers recommendations for mental health policies that center equity. For a full analysis of the school-hardening and other justice-focused provisions of the act, read our sister brief *The Bipartisan Safer Communities Act: A Dangerous New Chapter in the War on Black Youth*.<sup>7</sup>

## THE STATE OF YOUTH MENTAL HEALTH



**The Challenge:** Young people are experiencing a mental health crisis.<sup>8</sup>

- In 2018, 25 percent of young people living in poverty reported experiencing serious psychological distress during the past year.<sup>9</sup>
- In 2020, during week 12 of the pandemic, around 65 percent of young people reported feeling down, depressed, or hopeless.<sup>10</sup>
- In July 2021, over 3 million young people reported they needed mental health counseling in the last week and did not receive it.<sup>11</sup>
- In July 2022, 73 percent of young adults reported experiencing some level of anxiety or depression.<sup>12</sup>



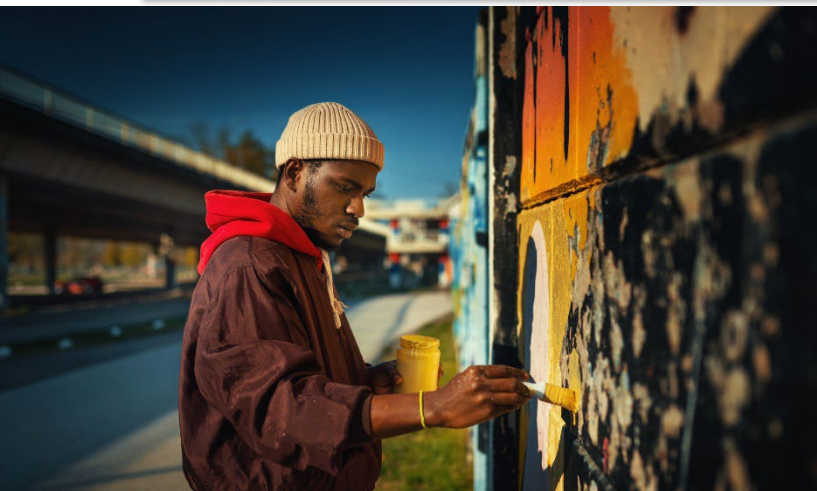
**The Causes:** Young people have clearly **named** the root causes of their mental health challenges as systemic. Equitably and effectively tackling the **youth mental health crisis** requires addressing the underlying structural factors—such as racism, poverty, and climate change—that harm young people’s mental health.

- Financial stress from the pandemic severely impacted young people’s mental health.<sup>13</sup>
- Policymakers must address systems and conditions of power – like generational poverty, intergenerational and cultural trauma, racism, sexism, transphobia, and ableism.<sup>14, 15</sup>
- In addition, policymakers must address the social determinants of health – like access to quality housing, education, jobs, and child care.<sup>16</sup>



**The Solutions:** Young people adopt a broad understanding of mental health and wellbeing wherein:

- Policymakers and mental health practitioners recognize that young people’s mental health outcomes will not improve unless the root causes of their challenges are equitably addressed.
- Clinical treatment is only one of many supports available to young people.<sup>17</sup>
- Art, music, nature, spirituality, and organizing are recognized as critical mental health supports.
- Practices outside of Western medicine are available to young people.



## HOW DOES THE BSCA SUPPORT YOUTH MENTAL HEALTH?

The BSCA primarily addresses youth mental health through strengthening school-based mental health, including by improving Medicaid coverage for services provided in schools. More than a third of U.S. children receive health insurance coverage through Medicaid.<sup>18</sup> Although Medicaid has gaps in what services are paid for and who is covered, the program plays a critical role in providing behavioral health coverage for many people with low incomes.<sup>19</sup> In addition to enhancing support for school-based mental health, the BSCA also strengthens telehealth and Medicaid's Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) benefit.

The BSCA further invests in young people's mental health by increasing discretionary grants for youth mental health and by investing in the youth mental health workforce.

### KEY POLICY TOOLS



**Guidance**



**Technical Assistance**



**Grants**



**Review of State Plans**



**Training**



**Appropriations**

The following sections provide an overview of the mental health provisions in the law. Division A in the law text lays out plans to restructure how mental health services are currently provided, and Division B provides appropriations, or funds, for various programs.

## FROM DIVISION A – TITLE I OF THE LAW

### *SCHOOL-BASED MENTAL HEALTH: ENHANCED SUPPORT*

School-based health is accessible and affordable. Young people are more likely to access care in a school-based setting than in other community-based settings.<sup>20</sup> The law recognizes this and names a number of areas where school-based entities, state Medicaid agencies, and local education agencies (LEAs) can expand and/or build mental health services.



**Guidance:** CMS must issue new **guidance** on how school-based entities, state Medicaid agencies, and LEAs can support school-based health for Medicaid and Children’s Health Insurance Program (CHIP) beneficiaries. The guidance must focus on:

- Ensuring states take advantage of Medicaid funding for school-based services through state plan amendments and waivers;
- Creating best practices around enrolling school-based providers, receiving payments for services, and building partnerships with community-based behavioral health providers;
- Expanding telehealth in school-based settings, including trainings for providers and patients and measuring health care quality;
- Learning from best practices in value-based, culturally responsive, and accessible care; and
- Supporting mental health service provisions, including prevention, in schools through EPSDT.



**Technical Assistance:** The Department of Education (ED) must partner with the Department of Health and Human Services (HHS) to create a **technical assistance center**. The center must help school-based entities, states, and LEAs provide care through Medicaid/CHIP by offering support on:

- Utilizing new funding opportunities;
- Obtaining Medicaid reimbursement for school-based services, including by reducing administrative burdens; and
- Building capacity to provide care under Medicaid.



**Planning Grants:** The BSCA appropriates \$50 million in **planning grants** to help states improve Medicaid/CHIP service delivery in school-based entities.

## DEPARTMENT OF EDUCATION FUNDING:

### *From Division B – Title II (Appropriations)*

Beyond enhancing school-based Medicaid, the BSCA further invests in school-based mental health by providing additional grant funding to ED:

- **\$1 billion** to the Safe and Healthy Students Program (through the Elementary and Secondary Education Act funding streams). This would fund grants that allow states and localities to decide the best strategies in their schools, which could include mental health resources, crisis intervention, mental health and substance use prevention, training for suicide prevention, and human trafficking. *Funds will be available until September 30, 2025.*
- **\$50 million** (through the Elementary and Secondary Education Act funding streams) to make out-of-school programs more accessible. *Funds will be available until September 30, 2023.*
- **\$500 million** for School-Based Mental Health Services grants to increase the number of mental health professions in school and reduce turnover. *Funds will be available until the end of September 30, 2026.*
- **\$500 million** to the Mental Health Services Professional Demonstration grants to build the workforce pipeline, supporting higher education institutions to partner with LEAs with higher needs. *Funds will be available until the end of September 30, 2026.*

### ***TELEHEALTH: ENHANCED SUPPORT***

Telehealth, which is cost-effective and can make mental health services more accessible, is often the preferred treatment modality for young people.<sup>21</sup>

- **Guidance and Technical Assistance:** CMS must provide **technical assistance** and **guidance** to states to increase access to all behavioral health telehealth services covered through Medicaid and CHIP. CMS is required to provide guidance and technical assistance by the end of 2023.

### ***EPSDT: ENHANCED SUPPORT***

EPSDT is a Medicaid benefit that provides comprehensive prevention and treatment services to people under the age of 21.<sup>22</sup> The EPSDT mandate requires a focus on prevention and early intervention, including treatment; yet in practice, the benefit was not implemented to its fullest extent.

- **Review State Implementation:** HHS must **review state implementation** of EPSDT services under Medicaid within two years of bill passage and then every five years thereafter.
- **Technical Assistance:** HHS must provide **technical assistance** to states to address identified gaps and deficiencies.
- **Guidance:** HHS must issue **guidance** on Medicaid coverage requirements, including for children whose mental health and substance use disorder needs don't rise to the level of a diagnosis.

In addition to the provisions noted, the BSCA invests in youth mental health through increasing discretionary grant funding. A summary of the appropriations included in the act can be found in Appendix A.

Physical and mental health screenings are required for children enrolled in Medicaid. Through screenings, providers can use data to provide appropriate care. However, without guardrails in place, school officials or law enforcement could use student information to profile them for threat assessments.<sup>23</sup>



## TIMELINE FOR IMPLEMENTATION:

KEY: **FEDERAL AGENCIES** | **STATE AGENCIES** | **SCHOOL-AFFILIATED ENTITIES** | **PROVIDERS** | **VENDORS**

### 2022—Q3 + Q4 (July-December): Planning period

- **ED** releases funds to states to address youth mental health, increasing credentialing and improving workforce pipelines.<sup>24</sup>
- **HHS** releases grants to **states** for emergency preparedness and crisis response.<sup>25</sup>
- Advocates from **state Medicaid agencies** and **schools** can provide **CMS** with feedback on what they want to see in the guidance.
- Advocates can provide feedback on what they would like the **CMS** technical assistance center to focus on.

### 2023 – Q1 - Q4: Implementation period

- By Q2 (April), **CMS** will release guidance to **state Medicaid agencies**, **LEAs**, and **school-based health centers** to improve health service delivery to students eligible for Medicaid and CHIP. **State Medicaid agencies** will have to come into compliance with new guidance. They should:
  - Think about how to expand and strengthen their programs and what changes they want to make, in anticipation of applying for **CMS** grant funding.
  - Consult with their **departments of education and LEAs**.
  - Invest in **provider** trainings, so providers know how to claim Medicaid reimbursement.
  - Make **vendors** (in the state claim system and electronic health record system) responsible for making their interfaces more friendly to **school-based providers** and providing templates that are easy for **school-based providers** to use.
- By Q4 (October), **CMS** will release guidance on how to improve telehealth services for Medicaid and CHIP recipients.
- **CMS** will launch a technical assistance center to prepare for disbursing grant funding.
- **State Medicaid agencies** will apply for planning grants to help them improve Medicaid/CHIP service delivery in school-based entities. **CMS** will provide technical assistance.

2024 – By Q2 (April), **CMS** must ensure the law is being enforced by looking at how states are complying with EPSDT requirements and providing technical assistance.



## HOW DOES THE BSCA HARM YOUNG PEOPLE'S MENTAL HEALTH?

The BSCA is harmful to mental health because it increases funding for threat assessments, surveillance, and greater police presence in schools; expands data sharing between law enforcement and mental health providers, risking youth privacy rights; and reinforces racial bias. In particular, the BSCA appropriates \$1.5 billion in new funding for the U.S. Department of Justice. These investments are in line with the Biden Administration's commitment to expanding federal investments into law enforcement and other carceral systems, which are detrimental to young people's livelihoods, including mental health.<sup>26</sup>

Collectively, the funding in BSCA supports school-hardening and other carceral approaches. These investments in school-hardening measures undermine young people's mental health. Increased police presence and criminalizing students will harm students, particularly Black and brown students, LGBTQIA+ students, and students with disabilities.<sup>27, 28, 29</sup> Furthermore, as Medicaid requires mental health screenings for enrolled children, without guardrails in place, school officials and/or law enforcement could use the data to profile students for threat assessments.<sup>30</sup>

For a more in-depth analysis of these harmful provisions, read our sister brief: **The Bipartisan Safer Communities Act: A Dangerous New Chapter in the War on Black Youth.**<sup>31</sup>



## RECOMMENDATIONS FOR CENTERING EQUITY

The BSCA offers around \$2.35 billion in investments in youth mental health and \$1.5 billion in new annual federal investments to significantly expand youth criminalization. This new funding runs the risk of deepening connections between carceral systems and mental health services and exacerbating the school pushout crisis.<sup>32</sup>

### CONGRESS MUST...

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- Pass additional mental health legislation rooted in equity such as the
  - **Counseling not Criminalization Act**<sup>33</sup>
    - This bill requires that funding is diverted from law enforcement to evidence-based, trauma-informed supports in schools.
  - **Health Equity and Accountability Act**<sup>34</sup>
    - This bill includes language that creates a blueprint for achieving health equity, from data collection, mental health, maternal and child health, to the social determinants of health (e.g., education, housing).

### FEDERAL AGENCY LEADERS MUST...

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- Issue guidance that prioritizes healing-centered, culturally relevant, linguistically concordant, and trauma-informed care.
- Encourage states and localities to ensure that providers are diverse in identity and credentials.
- Provide specific language around how grant recipients can take advantage of funds for prevention strategies.
- Disqualify law enforcement from grant eligibility.
- Issue guidance on anti-carceral approaches to school safety.

### STATE AND LOCALITY AGENCIES MUST...

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- Ensure that funding is not invested in the same mental health systems that have harmed and continue to harm young people of color.
- Invest funding toward new healing-centered systems and structures.
- Avoid investing in programs that criminalize young people, like school-hardening programs.

## COMMUNITY ADVOCATES CAN...

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- Urge agencies to ensure guidance includes services that are healing centered, culturally relevant, linguistically concordant, and trauma informed—and that providers are diverse in identity and credentials.<sup>35</sup>
- Impart stories of how different underserved populations—whether LGBTQIA+, disabled, immigrant, and/or foster youth—need supportive mental health solutions that keep their needs in mind.
- Ask agency leaders what funding opportunities are available for prevention and encourage them to provide specific language around how grant recipients can take advantage of funds.
- Tell the Biden Administration to encourage Medicaid funding for schools to support strategies rooted in prevention.

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## APPENDIX A: DIVISION B – TITLE II (APPROPRIATIONS)

### INCREASED DISCRETIONARY GRANTS FOR YOUTH MENTAL HEALTH

Through the Substance Abuse and Mental Health Services Administration (SAMHSA):

Grant	Amount	Purpose
<b>Community Mental Health Block Grant</b>	\$250 million	Supports comprehensive community mental health services. SAMHSA notes target populations as “adults with serious mental illnesses and children with serious emotional disturbances.” Funds can be used by states, Washington D.C., and U.S. territories.
<b>Project AWARE (Advancing Awareness and Resiliency in Education)</b>	\$240 million with \$28 million set-aside for trauma-informed care	Project AWARE increases mental health awareness among young people in schools; trains school personnel and other adults who work with young people to better identify and respond to mental health concerns; and refers students and families with mental health concerns to services.
<b>9-8-8: The Suicide Crisis Hotline</b>	\$150 million	The National Suicide Prevention Hotline provides crisis counseling and refers callers to crisis services. The law provides additional funds to support states for implementation.
<b>Mental Health Awareness Training (MHAT)</b>	\$120 million over 4 years	MHAT provides training to community members, first responders, and school officials on how to recognize mental health concerns (Mental Health First Aid).
<b>National Child Traumatic Stress Network (NCTSN)</b>	\$40 million over 4 years	SAMHSA’s National Child Traumatic Stress Network aims to improve treatment and services to young people and their families who have experienced trauma.
<b>Certified Behavioral Health Clinic (CCBHC) program</b>	\$15 million in funds already released	The CCBHC program will be expanded nationwide in up to 10 new states through demonstration grants. Grants will be provided for two years.

## INVESTMENTS IN WORKFORCE

Through the Health Resources and Services Administration (HRSA):

Grant	Amount	Purpose
Expanding behavioral health workforce	\$140 million	To expand mental health care access and expand the behavioral health workforce.
Pediatric Mental Health Care Access Program	\$80 million over four years	To help integrate mental health services into pediatric primary care through state and regional pediatric mental health care telehealth programs.
Primary Care Training and Enhancement Program	\$60 million over five years	To train primary care providers who serve children and youth, including vulnerable children and youth, in mental health services.

## ENDNOTES

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<sup>5</sup> A New Deal for Youth website, "Our Issues: Healing and Well-Being," <https://newdealforyouth.org/our-issues/#healing-and-wellbeing>.

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