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Bipartisan Safer Communities Act (P.L. 117-159): Section-by-Section Summary

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SUMMARY

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Bipartisan Safer Communities Act (P.L. 117-159): Section-by-Section Summary

On June 25, 2022, the Bipartisan Safer Communities Act (BSCA, P.L. 117-159) was signed into law. The BSCA was enacted in the aftermath of mass shootings in Uvalde, TX, and Buffalo, NY. The law includes provisions related to mental health, firearms, education, and Medicaid and Medicare. It also includes appropriations for related programs operated by the Departments of Justice (DOJ), Education (ED), and Health and Human Services (HHS). This report describes each of the provisions in the BSCA, along with the appropriations provided in Division B of the BSCA.

Division A—Mental Health and Firearms Provisions

Title I—Children and Family Mental Health Services

Title I provisions are aimed primarily at enhancing access to mental health services, particularly for youth. Section 11001 amends the Protecting Access to Medicare Act of 2014 to extend the length of the Certified Community Behavioral Health Clinic (CCBHC) demonstration period for the 10 states currently participating in the CCBHC demonstration program and expands the demonstration program to additional states. Section 11002 requires the HHS Secretary to provide technical assistance and issue guidance to states on improving access to Medicaid and CHIP telehealth services. Section 11003 directs the HHS Secretary to issue updated school-based services (SBS) guidance and to establish a Technical Assistance Center to support the delivery of Medicaid-covered school-based services. Section 11004 requires the HHS Secretary to review state implementation of Medicaid Early Periodic, Screening, Diagnostic, and Treatment (EPSDT) requirements; identify state EPSDT compliance concerns; provide technical assistance to states; and issue state guidance on EPSDT Medicaid coverage. Section 11005 adds new requirements to the Health Resources and Services Administration's (HRSA) pediatric mental health care access program and codifies other authorities.

Title II—Firearms

Title II provisions primarily expand firearm purchasing requirements to young adults. Section 12001 amends the Gun Control Act of 1968 (GCA) to prohibit the transfer of firearms to persons who have potentially disqualifying records as a juvenile. The provision expands National Instant Criminal Background Check System (NICS) background check procedures to persons 18 to 21 years of age for disqualifying juvenile records and allows authorities up to 10 business days to make eligibility determinations. Section 12002 requires individuals who buy and resell firearms repeatedly for profit to be licensed federally as gun dealers. Section 12003 allows DOJ Edward Byrne Memorial Justice Assistance Grant (JAG) funds to be used for state "crisis intervention court proceedings and related programs or initiatives." Section 12004 amends the GCA to more explicitly prohibit *straw purchases* and illegal gun trafficking and strengthens other existing gun trafficking and criminal provisions. (Straw purchases are the unlawful purchase of a firearm by one person for another.) Section 12005 amends the GCA definition of "misdemeanor crime of domestic violence" to include dating partners, spouses, former spouses, and cohabitants. It also further defines a "dating relationship."

Title III—Other Matters

Title III amends existing programs to reduce the overall budgetary cost of the BSCA and includes provisions related to federal resources for school safety. Section 13101 bars the HHS Secretary from implementing, administering, or enforcing the final Medicare anti-kickback rebate rule prior to 2027. Section 13201 changes the amount available in the Medicare Improvement Fund. Sections 13302-13304 require the Secretary of Homeland Security to establish a Federal Clearinghouse on School Safety Evidence-Based Practices. Section 13402 prohibits using Elementary and Secondary Education Act funds to provide anyone with a dangerous weapon.

Division B—Appropriations

Division B of the BSCA appropriates funding to existing grant programs and other activities by the DOJ, ED, and HHS. Most of the programs funded in Division B of the BSCA support mental health services, crisis response, school-based mental health, and suicide prevention—including training law enforcement, educators, and health care providers on mental health and substance use disorders.

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Introduction

On June 25, 2022, the Bipartisan Safer Communities Act (BSCA, P.L. 117-159) was signed into law. The law includes provisions related to mental health, firearms, education, and Medicaid and Medicare (primarily related to mental health service delivery). It also includes appropriations for related programs operated by the Departments of Justice (DOJ), Education (ED), and Health and Human Services (HHS). The BSCA was enacted in the aftermath of mass shootings in Buffalo, NY and Uvalde, TX.[1] The mass shooting in Uvalde—in which a high school student with unmet mental health needs legally purchased several firearms used in the shooting—spotlighted issues related to safeguards on firearm purchases and access to behavioral health services.[2]

Broadly, the BSCA amends background check procedures for firearm purchases, promotes youth mental health initiatives, and enhances school-based mental health efforts, among other things. Division A of the BSCA includes provisions primarily aimed at (1) expanding firearm purchasing requirements to young adults and (2) enhancing access to mental health services, including school-based mental health services and other youth programming. Division B of the BSCA appropriates funding to existing grant programs and other activities of DOJ, ED, and HHS. Most of the programs funded in Division B of the BSCA support mental health services, crisis response, school-based mental health, and suicide prevention, including training law enforcement, educators, and health care providers on mental health and substance use disorders.

This report describes each of the provisions in the BSCA, providing brief, relevant background information on each provision and describing changes made by the provision. **Table 2** and **Table 3** provide information on the appropriations included in Division B of the BSCA. This report provides information on the BSCA as enacted; it does not include amendments to the law or subsequent changes to affected programs or provisions.

Table 1 lists the CRS authors of each section of the report. Congressional clients may direct questions on BSCA provisions or the affected federal programs in each provision to the corresponding CRS analyst.

Table 1. List of BSCA Provisions and Corresponding CRS Points of Contact

Section Number	Section Title	CRS Point of Contact
11001	Expansion of Community Mental Health Services Demonstration Program	Alison Mitchell Specialist in Health Care Financing
11002	Medicaid and Telehealth	Katherine M. Kehres Analyst in Health Care Financing
11003	Supporting Access to Health Care Services in Schools	Evelyne P. Baumrucker Specialist in Health Care Financing

[1] Niels Lesniewski, "House Clears Bipartisan Gun Violence Reduction Measure," *CQ News*, June 24, 2022.

[2] Bernard Condon, "Texas School Shooter Left Trail of Ominous Warning Signs," *AP News*, July 19, 2022, https://apnews.com/article/uvalde-school-shooting-warning-signs-f18a8d365aa5edf0d3754df721144cf1. While most people with mental health conditions do not pose a significant threat of violence, some research suggests that a small segment of individuals with serious mental illness may be slightly more prone to violence than those without a mental health condition (though acts of violence in this population remain uncommon). See, for example, Tori DeAngelis, "Mental Illness and Violence: Debunking Myths, Addressing Realities," *Monitor on Psychology*, vol. 52, no. 3, (April/May 2021), p. 31, and Richard Van Dorn, Jan Volavka, and Norman Johnson, "Mental Disorder and Violence: Is There a Relationship Beyond Substance Use?," *Social Psychiatry and Psychiatric Epidemiology*, vol. 47, no. 3 (2012), pp. 487-503. Of note, data suggest that people with serious mental illness are more likely to be victims of violent crime than perpetrators. See H. Khalifeh, S. Johnson, L. M. Howard, et al., "Violent and Non-Violent Crime Against Adults with Severe Mental Illness," *The British Journal of Psychiatry*, vol. 206 (2015), pp. 275-282.

Section Number	Section Title	CRS Point of Contact
11004	Review of State Implementation of Early And Periodic Screening, Diagnostic, and Treatment Services	Evelyne P. Baumrucker Specialist in Health Care Financing
11005	Pediatric Mental Health Care Access Grants	Elayne J. Heisler Specialist in Health Services
12001	Juvenile Records	William J. Krouse Specialist in Domestic Security and Crime Policy
12002	Defining "Engaged in the Business"	William J. Krouse Specialist in Domestic Security and Crime Policy
12003	Use of Byrne Grants for Implementation of State Crisis Intervention Programs	Nathan James Analyst in Crime Policy
12004	Stop Illegal Trafficking in Firearms Act	William J. Krouse Specialist in Domestic Security and Crime Policy
12005	Misdemeanor Crime Of Domestic Violence	William J. Krouse Specialist in Domestic Security and Crime Policy Emily J. Hanson Analyst in Social Policy
13101	Extension of Moratorium on Implementation of Rule Relating to Eliminating the Anti-Kickback Statute Safe Harbor Protection for Prescription Drug Rebates	Suzanne M. Kirchhoff Analyst in Health Care Financing
13201	Medicare Improvement Fund	Jim Hahn Specialist in Health Care Financing
13302	Federal Clearinghouse on School Safety Evidence-Based Practices	Kyrie E. Dragoo Analyst in Education Policy
13303	Notification of Clearinghouse	Kyrie E. Dragoo Analyst in Education Policy
13304	Grant Program Review	Kyrie E. Dragoo Analyst in Education Policy Rebecca R. Skinner Specialist in Education Policy
13401	Amendment on ESEA funding	Kyrie E. Dragoo Analyst in Education Policy Rebecca R. Skinner Specialist in Education Policy
21001-21002	General Provisions—This Title [Title I]	Nathan James Analyst in Crime Policy
22001-22002	General Provisions—This Title [Title II]	Jessica Tollestrup Specialist in Social Policy Karen E. Lynch Specialist in Social Policy
23001-23005	General Provisions—This Division [Division B]	Jessica Tollestrup Specialist in Social Policy Karen E. Lynch Specialist in Social Policy

Source: CRS.

Bipartisan Safer Communities Act Provisions

Section 1: Joseph Woodrow Hatchett United States Courthouse and Federal Building

Section 1 designates a U.S. courthouse and federal building in Tallahassee, FL, as the "Joseph Woodrow Hatchett United States Courthouse and Federal Building."

Section 2: Lynn C. Woolsey Post Office Building

Section 2 designates a postal service facility in Petaluma, CA, as the "Lynn C. Woolsey Post Office Building."

Section 3: Short Title; Table of Contents

Section 3 notes that the act may be cited as the "Bipartisan Safer Communities Act" and provides a table of contents for provisions in the law.

Division A—Mental Health and Firearms Provisions

Title I—Children and Family Mental Health Services

Section 11001: Expansion of Community Mental Health Services Demonstration Program

Background

Section 223 of the Protecting Access to Medicare Act of 2014 (PAMA, P.L. 113-93) authorized a demonstration program to improve community-based behavioral health services through establishing certified community behavioral health clinics (CCBHCs).[3] CCBHCs are facilities operated by nonprofit, governmental, or tribal entities that offer a comprehensive range of behavioral health services, including risk assessment, outpatient mental health and substance use treatment, case management, psychiatric rehabilitation services, peer and family supports, 24-hour crisis management, and primary care medical services, among others. To be certified, CCBHCs must provide these specified services and maintain partnerships with other health and social service providers.

In 2015, 24 states received planning grants for the CCBHC demonstration program. In 2016, eight states were selected to participate in the initial demonstration program.[4] For the states

[3] Of note, FY2020 appropriations (P.L. 116-94) authorized a CCBHC expansion grant program and provided $200 million to fund this part of the program. Grants awarded under the expansion grant program provided up to $2 million to facilities that met the certification criteria to increase access and improve the quality of their behavioral health services. Grantees in the CCBHC expansion grant program relied on annual discretionary grants for funding. Only CCBHCs in the demonstration program receive the enhanced Medicaid FMAP rate. The American Rescue Plan Act of 2021 also appropriated $420 million for the CCBHC expansion grants.

[4] Seven of the initial eight states continue to participate in the Certified Community Behavioral Health Clinics Demonstration Program. Pennsylvania officially withdrew from the demonstration effective June 30, 2019. (See HHS Office of the Assistant Secretary for Planning and Evaluation, *Certified Community Behavioral Health Clinics*

chosen to participate in the CCBHC demonstration program in 2016, the end of the demonstration period had been extended by various laws, and before the BSCA, the demonstration program was authorized through September 30, 2023. Two states were added to the demonstration program in 2020 for a period of two years beginning when the states implemented the program.

For CCBHC services provided to Medicaid enrollees, states in the demonstration receive the enhanced federal medical assistance percentage (E-FMAP; i.e., the federal reimbursement rate used for the State Children's Health Insurance Program) during the applicable demonstration period.[5] In addition, the CCBHCs in these states receive enhanced Medicaid payment rates through a prospective payment system methodology for the services provided to Medicaid enrollees.

The HHS Secretary is required to submit annual reports to Congress about the CCBHC demonstration program. In addition, the HHS Secretary is required to submit recommendations to Congress about whether the CCBHC demonstration program should be continued, expanded, modified, or terminated. Prior to enactment of the BSCA, the recommendations to Congress were due by December 31, 2021.

Provision

Section 11001 amends PAMA Section 223[6] to extend the length of the demonstration period for the states currently participating in the CCBHC demonstration program. The provision also expands the CCBHC demonstration program to additional states.

For the states chosen to participate in the CCBHC demonstration program in 2016, the end of the demonstration period was extended by two years, from September 30, 2023, to September 30, 2025. For the two states added to the CCBHC demonstration program in 2020, the length of the demonstration period was extended by four years, from a period of two years to six years from the date the state implemented the program.

The provision provides additional planning grants for states not already selected for the demonstration program. These planning grants are to be used to develop proposals to participate in the CCBHC demonstration program for a period of four years. Beginning July 1, 2024, and every two years after, up to 10 additional states may be selected to participate in the CCBHC demonstration program.

The provision allows states no longer participating in the CCBHC demonstration program to receive federal Medicaid funding for the prospective payment system (PPS) payment rate provided to CCBHCs.[7]

The provision clarifies that the annual reports about the CCBHC demonstration program submitted by the HHS Secretary should continue annually through the year in which the last demonstration ends. Additionally, the due date for the HHS Secretary's recommendations regarding whether the demonstration programs under this section should be continued, expanded, modified, or terminated is extended from December 31, 2021, to December 31, 2025. The provision adds that these recommendations should include data collected after 2019, where feasible. The provision adds a requirement for the HHS Secretary to submit a final evaluation of

Demonstration Program: Report to Congress, 2020, December 23, 2021.)

[5] For the Medicaid expansion population, the expansion population federal medical assistance percentage (FMAP) rate, which is 90%, applies.

[6] 42 U.S.C. 1396a note.

[7] See footnote 4.

the CCBHC demonstration programs not later than 24 months after the demonstration program ends.

The provision appropriates $40 million for FY2023 (to remain available until expended) for (1) awarding the new planning grants, (2) providing technical assistance to states applying for the planning grants, and (3) carrying out demonstration programs.

Section 11002: Medicaid and Telehealth

Background

Medicaid, authorized in Social Security Act (SSA) Title XIX, is a federal-state program that jointly finances primary and acute medical and behavioral health services, as well as long-term services and supports (LTSS) to low-income populations, including eligible children, pregnant women, adults, individuals with disabilities, and people aged 65 and older.[8] Participation in Medicaid is voluntary for states; all states, the District of Columbia, and U.S. territories choose to participate.

Medicaid is jointly financed by states and the federal government. States must follow broad federal rules governing eligibility, benefits, and other program design criteria to receive federal matching funds, but they have flexibility to design their own versions of Medicaid within the federal statute's basic framework. This flexibility results in variability across state Medicaid programs.

The State Children's Health Insurance Program (CHIP) is a means-tested program that provides health coverage to targeted low-income children and pregnant women in families that have annual incomes above Medicaid eligibility levels but have no health insurance. CHIP is jointly financed by the federal government and the states, and the states are responsible for administering CHIP.

Federal Medicaid and CHIP statutes do not recognize telehealth as a distinct service category. However, the Centers for Medicare & Medicaid Services (CMS) defines Medicaid and CHIP telehealth as "the use of telecommunications and information technology to provide access to health assessment, diagnosis, intervention, consultation, supervision and information across distance." CMS provides states with broad flexibility to define which (if any) telehealth services to provide through Medicaid and CHIP (e.g., primary care, behavioral health, LTSS), allowable modalities (e.g., live video, audio only), where services can be provided, which provider types are authorized to provide the service (subject to federal and state law), and the populations served, among other criteria. States that limit telehealth geographically, or to specific providers, must ensure that Medicaid enrollees in areas without telehealth coverage have face-to-face provider access.[9] In general, states must reimburse Medicaid providers for a telehealth service at the same

[8] For more information, see CRS Report R43357, *Medicaid: An Overview*.

[9] While Social Security Act (SSA) Section 1902(a)(30)(A) requires states to "assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area," certain provider types (e.g., behavioral health, dental) historically have low participation rates in Medicaid and CHIP. CMS has encouraged states to consider telehealth flexibilities as a way to increase access to care, among other strategies. For more information, see CMS, *State Medicaid & CHIP Telehealth Toolkit Policy Considerations for States Expanding Use of Telehealth, COVID-19 Version*, available at https://www.medicaid.gov/medicaid/benefits/downloads/medicaid-chip-telehealth-toolkit.pdf.

rate as an in-person service, unless they have CMS approval to pay a different rate or with a unique reimbursement methodology.[10]

During the COVID-19 public health emergency (PHE), CMS released a series of subregulatory guidance (e.g., frequently asked questions, fact sheets, tool kits) to facilitate increased state reliance on telehealth as a service delivery tool in Medicaid and CHIP. These materials identify existing state flexibilities to augment telehealth and provide guidance to help states identify and address state-level barriers to the adoption of new telehealth delivery options. For changes requiring CMS approval, CMS provided templates and checklists to expedite state requests for time-limited flexibilities through legal authorities such as disaster relief state plan amendments (SPAs) and emergency-related Sections 1115, 1915(c) Appendix K, and 1135 waivers.[11]

The CMS COVID-19 templates and checklists for the disaster relief SPA and waivers identify an effective date retroactive to March 1, 2020 (or as otherwise approved by CMS); the flexibilities generally sunset in conjunction with the end of the PHE (as declared by the HHS Secretary), but states have the option to end them earlier. After the COVID-19 PHE, as specified, states may seek CMS approval to continue any otherwise temporary telehealth policies adopted during the pandemic via new SPAs and Section(s) 1115 or 1915(c) waivers.

Provision

Section 11002 requires the HHS Secretary to provide technical assistance and issue guidance to states on improving access to Medicaid and CHIP telehealth services no later than December 25, 2023. The CMS guidance must address a number of areas, including

- the use of existing Medicaid and CHIP program flexibilities to expand access to covered services via telehealth;
- service billing best practices to allow for the creation of consistent data sets;
- strategies to integrate telehealth services into value-based care models;[12]
- best practices from states that expanded access to telehealth during the COVID-19 PHE, as specified;
- strategies to promote the delivery of accessible and culturally competent health care via telehealth, specifically addressing the needs of (1) individuals with disabilities, (2) medically underserved urban and rural communities, (3) racial and ethnic minorities such as American Indians and Alaska Natives, (4) individuals with limited English proficiency, and (5) individuals of different age groups;
- strategies to train and provide resources in multiple languages to providers and patients on how to use telehealth, including interpreter services;
- integration of existing video platforms that enable multiperson video calls;

[10] CMS approval may be obtained through a state plan amendment (SPA) or other Medicaid authority such as a Section 1115 waiver. For more information, see CRS In Focus IF11664, *Medicaid Telehealth Policies in Response to COVID-19*.

[11] For more information, see CRS In Focus IF11664, *Medicaid Telehealth Policies in Response to COVID-19*.

[12] Value-based care models or arrangements are health care payment and delivery models designed to reward health care professionals for the quality of health care provided, rather than the quantity of services rendered. Additional information is available at https://www.medicaid.gov/resources-for-states/innovation-accelerator-program/functional-areas/value-based-payment-financial-simulations/index.html.

- best practices for the delivery of Medicaid- and/or CHIP-covered services via telehealth in schools, including mental health and substance use disorder services;
- evaluation strategies to measure the effects of Medicaid and CHIP telehealth service delivery on health care quality, outcomes, and costs; and
- enrollee information-sharing best practices related to the availability of telehealth services, including the types of services offered via telehealth, allowable modalities, and where services can be provided, among other criteria.

Section 11003: Supporting Access to Health Care Services in Schools

Background

As mentioned above, Medicaid is a federal-state program that provides primary and acute medical and behavioral health services, as well as long-term services and supports, to low-income populations, including children, pregnant women, adults, individuals with disabilities, and people aged 65 and older.[13] Participation in Medicaid is voluntary for states; all states, the District of Columbia, and U.S. territories choose to participate. Medicaid is jointly financed by states and the federal government. States must follow federal rules to receive federal matching funds, but states have the flexibility to design their own versions of Medicaid within the federal statute's framework. This flexibility results in variability across state Medicaid programs.

Federal law does not define "school-based services" (SBS) as a category of Medicaid services, nor does it define schools as a category of Medicaid providers. Rather, SBSs are Medicaid-coverable services provided to Medicaid-enrolled children and adolescents in school settings by qualified Medicaid providers who are enrolled in the Medicaid program. Like services furnished elsewhere, Medicaid-covered services provided in schools must meet applicable statutory and regulatory requirements.

Three main types of Medicaid-covered services and activities occur in schools: (1) health and related services listed in a student's individualized education plan (IEP), individualized family service plan (IFSP), or individual service plans per Section 504 of the Rehabilitation Act of 1973 as required under the Individuals with Disabilities Education Act (IDEA);[14] (2) preventive, primary, and acute care services; and (3) Medicaid administrative activities. Specifically, Medicaid is the primary payer to ED for certain specialized health care and related services (e.g., transportation; interpretation; speech, physical, and occupational therapies; psychological and other counseling services) that states are required to provide to Medicaid-enrolled students with disabilities under the IDEA.

School health programs may provide a broad range of primary care and preventive services to the student population at large in a school. When relevant supervision, licensure, and other requirements are met, schools may bill Medicaid for these services. Schools may also partner with a "sponsoring agency," such as a community health center or hospital system, to form a school-based health center (SBHC) to furnish primary, acute, and preventive care services to the

[13] For more information, see CRS Report R43357, *Medicaid: An Overview*.

[14] For more information on IEPs, see CRS Report R41833, *The Individuals with Disabilities Education Act (IDEA), Part B: Key Statutory and Regulatory Provisions*. For more information on IFSPs, see CRS Report R43631, *The Individuals with Disabilities Education Act (IDEA), Part C: Early Intervention for Infants and Toddlers with Disabilities*.

student body at large and bill Medicaid for the services provided to Medicaid-enrolled students.[15] States may also enter agreements with public authorities that maintain administrative control of public elementary or secondary schools in a political subdivision of the state (e.g., city, county, or school district)[16] to participate in Medicaid administrative activities such as outreach, referral, and translation services, and to reimburse them for those activities. Unlike with Medicaid direct services, school districts are not required to have a Medicaid provider agreement to receive payment for Medicaid administration.[17]

Provision

Section 11003 directs the HHS Secretary, in consultation with the Secretary of Education, to issue updated SBS guidance and to establish a Technical Assistance Center for states, local educational agencies (LEAs), and school-based entities to support the delivery of Medicaid-covered SBS to Medicaid and CHIP enrollees not later than June 25, 2023.

The updated SBS guidance must

- include updates to the May 2003 Medicaid School-Based Administrative Claiming Guide, the 1997 Medicaid and Schools Technical Assistance Guide, and other existing SBS guidance in effect at the time of enactment and provide clarification on allowable Medicaid reimbursement of SBSs;
- provide strategies to reduce administrative burdens on LEAs and support compliance with federal billing, payment, and recordkeeping requirements;
- report on approved payment methods and best practices to increase the availability of Medicaid SBSs (including best practices for using telehealth, providing trauma-informed culturally competent care, and coordinating with managed care entities, among other areas); and
- provide examples of SBS Medicaid providers and best practices for the enrollment of these providers under Medicaid.

The Technical Assistance Center is intended to support state Medicaid agencies, LEAs, and school-based entities seeking to expand their capacity for providing Medicaid SBS; to identify ways to reduce administrative burdens; and to support state educational agencies (SEAs), LEAs, and school-based entities in obtaining federal reimbursement for Medicaid SBSs. The Technical Assistance Center must also ensure coordination between HHS and ED for the provision of and payment for Medicaid SBSs, and provide guidance regarding the use of various funding sources. The HHS Secretary must ensure that resources are designed to support small and rural schools seeking to expand federal reimbursement for Medicaid SBSs. Finally, the Technical Assistance Center is required to report biennially to the HHS Secretary on the work of the center, including identifying areas where the most assistance was requested.

The provision appropriates $8 million—not otherwise appropriated for FY2022—to carry out this provision. Such funds will remain available until expended. In addition, the provision authorizes to be appropriated $50 million for the HHS Secretary to award grants to states for FY2022. The

[15] In SBHC arrangements, the sponsoring agency typically serves as the enrolled Medicaid provider.

[16] Examples include State Education Agencies (SEAs); Education Services Agencies (ESAs); Local Education Agencies (LEAs), including charter schools that are LEAs; and public boards of education or other public authorities within a state that maintain administrative control of public elementary or secondary schools in a city, county, township, school district, or other political subdivision of the state.

[17] The scope of allowable school-based administrative activities is described in 2003 CMS policy guidance, the *Medicaid School-Based Administrative Claiming Guide*.

grants are to be used to implement, enhance, or expand the provision of assistance through school-based entities under Medicaid or CHIP. Such grant funds may not be used to provide medical assistance, child health assistance, or other health services. Of note, Division B of the BSCA appropriates a total of $50 million for carrying out the activities specified in Section 11003 (see **Table 3**).

Section 11004: Review of State Implementation of Early and Periodic Screening, Diagnostic, and Treatment Services

Background

The Early and Periodic, Screening, Diagnostic, and Treatment (EPSDT) program is a required benefit for nearly all children (under age 21) who are enrolled in Medicaid. It covers health screenings and services, including assessments of children's physical and mental health development; laboratory tests (including lead blood level assessment); appropriate immunizations; health education; and vision, dental, and hearing services.[18] The screenings and services must be provided at regular intervals that meet "reasonable" medical or dental practice standards.[19] States are required to provide all federally allowable, medically necessary treatment to correct problems identified through screenings, even if the specific treatment needed is not otherwise covered under a given state's Medicaid plan.[20]

Any prior authorization process or service limitations that states choose to impose on EPSDT treatment services must be based on the medical necessity determination for each child, not on numerical caps (e.g., limitations on the number of allowable visits per year).[21] EPSDT also includes a Medicaid administration component. Each state must (1) inform all Medicaid-eligible children under age 21 of the availability of EPSDT (referred to as EPSDT "outreach"); (2) arrange (directly or through referrals) for corrective treatment for conditions disclosed through EPSDT screenings; and (3) report to CMS on demographic information and counts of enrollees who received EPSDT screenings, who were referred to and/or received corrective treatment, and who received dental services.[22]

Provision

Section 11004 requires the HHS Secretary, no later than June 25, 2024, and every five years thereafter, to

- review state implementation of Medicaid EPSDT requirements (including with respect to the provision of these requirements by Medicaid managed care organizations, prepaid inpatient health plans, prepaid ambulatory health plans, and primary care case managers; hereafter referred to as Medicaid MCOs);
- identify state EPSDT compliance concerns;

[18] SSA Sections 1905(r), 1902(a)(43), and 1905(a)(4)(B). EPSDT is not a mandatory benefit for the medically needy, although states that choose to extend EPSDT to their medically needy population must make the benefit available to all Medicaid-eligible individuals under age 21.

[19] SSA Section 1905(r).

[20] See footnote 13 and footnote 15.

[21] CMS, *EPSDT – A Guide for States*, June 2014, p. 10.

[22] SSA Section 1902(a)(43).

- provide technical assistance to states to address any such EPSDT compliance concerns; and
- issue state guidance on EPSDT Medicaid coverage that identifies best practices for ensuring that children have access to comprehensive health care services, including for children without a mental health or substance use disorder diagnosis.

The HHS Secretary is required to submit a report to the Senate Committee on Finance and the House Committee on Energy and Commerce no later than six months after each date on which the Secretary completes the activities described above. The report must detail the most recent EPSDT implementation review activities, including findings, actions taken by the HHS Secretary or by states as a result of such review, and any additional actions the HHS Secretary plans to carry out or that states must carry out as a result of such review.

The provision also requires the Comptroller General (head of the U.S. Government Accountability Office [GAO]) to conduct a study evaluating state oversight of Medicaid MCOs regarding EPSDT implementation. As a part of this study, the Comptroller General must provide recommendations to improve state EPSDT implementation compliance, state oversight of Medicaid MCOs, and CMS oversight of state Medicaid programs. The Comptroller General is required to submit a report to Congress no later than June 25, 2025, that includes the recommendations listed above, as well as recommendations for legislation and administrative action, as appropriate.

The provision appropriates $5 million for each of FY2023 and FY2024, and $1 million for each fiscal year thereafter to the HHS Secretary to carry out this EPSDT implementation review. Such funds shall be appropriated out of any funds in the Treasury not otherwise appropriated and remain available until expended.

Section 11005: Pediatric Mental Health Care Access Grants

Background

In 2016, the 21st Century Cures Act (P.L. 114-255) added a new Public Health Service Act (PHSA) Section 330M, which created the Pediatric Mental Health Care Access (PMHCA) program within HHS's Health Resources and Services Administration (HRSA) Maternal and Child Health Bureau. The program provides grants or cooperative agreements to states to promote behavioral health integration into pediatric primary care using telehealth.[23] The program funds 21 statewide or regional programs that provide teleconsultation, training, and technical assistance to pediatric primary care providers to diagnose, treat, and refer children with behavioral health conditions. The initial program authorization of appropriations was $9 million for the period FY2018-FY2020. The program received appropriations of $10 million for each of FY2018 through FY2021. In 2021, the American Rescue Plan Act of 2021 (ARPA, P.L. 117-2) appropriated an additional $80 million to the HHS Secretary, to remain available until expended, to carry out the PMHCA grant program. As a result, HRSA launched the ARPA Pediatric Mental Health Care Access—New Area Expansion grant as an expansion of the PMHCA program.[24]

[23] U.S. Department of Health and Human Services (HHS), Health Resources and Services Administration (HRSA), *PMHCA*, https://mchb.hrsa.gov/training/projects.asp?program=34.

[24] HHS, "HHS Announces $14.2 Million from American Rescue Plan to Expand Pediatric Mental Health Care Access," press release, May 20, 2021, https://www.hhs.gov/about/news/2021/05/20/hhs-announces-142-million-american-

Provision

Section 11005 amends PHSA Section 330M by adding new requirements to the program, codifying certain authorities, and making several technical edits. Specifically, the BSCA provision requires pediatric mental health care telehealth access programs to provide consultative support, training, and technical assistance to emergency departments, state and local educational agencies, and K-12 schools. The provision also requires PMHCA programs receiving an award to provide information about available community mental health services to primary care providers and adds "developmental-behavioral pediatricians" as referable providers. The provision allows the HHS Secretary to provide technical assistance to award recipients. It also codifies cooperative agreements as allowable awards and makes several technical edits to the authorization.

The BSCA provision amends the authorization of appropriations for the PMHCA program to $31 million for each of FY2023-FY2027.

Of note, Division B of the BSCA appropriates a total of $80 million for the Pediatric Mental Health Care Access grant program (see **Table 3**).

Title II—Firearms

Section 12001: Juvenile Records

Background

The Gun Control Act of 1968 (GCA, P.L. 90-618)[25] requires all firearms importers, manufacturers, and dealers to be federally licensed. The GCA prohibits these federal firearms licensees (FFLs) from transferring

- a long gun (i.e., shoulder-fired rifle or shotgun) or ammunition to anyone under 18 years of age, or
- a handgun or ammunition suitable for a handgun to anyone under 21 years of age.[26]

The GCA also prohibits anyone from transferring a handgun to a juvenile (anyone under 18 years of age) and prohibits a juvenile from possessing a handgun. The GCA, however, provides exceptions to these prohibitions that allow for the temporary handgun transfer to, and possession by, juveniles (1) in the course of employment in ranching or farming, or for target practice or hunting, all with the written consent of the parents or guardians and in accordance with federal and state laws; (2) for self- or household-defense; or (3) in other specified situations.[27]

Additionally, the GCA sets forth nine categories of persons prohibited from shipping, transporting, receiving, or possessing firearms or ammunition: (1) convicted felons, (2) fugitives from justice, (3) unlawful drug users, (4) mentally incompetent individuals deemed to be a danger to themselves or others, (5) unlawfully present aliens, (6) persons discharged from the U.S.

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rescue-plan-expand-pediatric-mental-health-care-access.html; and HRSA, *American Rescue Plan Act – Pediatric Mental Health Care Access – New Area Expansion*, HRSA-2-121, https://www.hrsa.gov/grants/find-funding/hrsa-22-121.

[25] 18 U.S.C. §§921-934.

[26] 18 U.S.C. §922(b)(1).

[27] 18 U.S.C. §922(x).

military under dishonorable conditions, (7) persons who have renounced their U.S. citizenship, (8) persons subject to domestic violence protection orders, and (9) domestic violence misdemeanants.[28] Under a parallel provision, it is also unlawful for anyone under any circumstances to sell or otherwise dispose of a firearm or ammunition to any prohibited persons, if the transferor (seller) has reasonable cause to believe that the transferee (buyer) is a person prohibited from receiving those items.[29] Violations are punishable by up to 10 years' imprisonment.[30] Under another provision, persons under felony indictment are prohibited from receiving, but not possessing, firearms or ammunition.[31] Violations are punishable by up to five years' imprisonment.[32]

Pursuant to the Brady Handgun Violence Prevention Act, 1993 (Brady Act, P.L. 103-159), the Federal Bureau of Investigation (FBI) activated the National Instant Criminal Background Checks System (NICS) in November 1998.[33] The FBI-operated NICS queries federal, state, tribal, territorial, and local criminal history and other public records for information that could indicate that an unlicensed, prospective customer (transferee) is prohibited from acquiring a firearm under the GCA. In response to an FFL-initiated background check, the NICS is to respond to an FFL with a NICS Transaction Number (NTN) and one of four outcomes:

- *proceed* with transfer or permit/license issuance, indicating a prohibiting record was not found;
- *denied*, indicating a prohibiting record was found;
- *delayed*, indicating that the system produced information suggesting there could be a prohibiting record, such as criminal charges without a final disposition; or
- *canceled for insufficient information provided*.[34]

In the case of a *proceed* response, the transferee is cleared to receive the firearm, and the background check record is purged from NICS within 24 hours. *Denied* requests are kept in perpetuity. In the case of a *delayed* transaction, after the passage of three business days, FFLs may proceed with the transaction at their discretion if they have not received a final eligibility determination from the NICS.[35] C*anceled* background checks result in a terminated transaction.

Provision

Section 12001 of the BSCA amends the GCA to

- prohibit the transfer of firearms or ammunition to persons who have previously incurred potentially disqualifying records as a juvenile;[36]

[28] 18 U.S.C. §§922(g)(1) through (9).

[29] 18 U.S.C. §§922(d)(1) through (9).

[30] 18 U.S.C. §924(a)(2).

[31] 18 U.S.C. §922(n).

[32] 18 U.S.C. §924(a)(1)(D).

[33] P.L. 103-159, November 30, 1993, 107 Stat. 1536, 1541, Section 103.

[34] 18 U.S.C. §922(t).

[35] In the 117th Congress, the House passed the Enhanced Background Checks Act of 2021 (H.R. 1446), a bill that would lengthen the amount of time firearms transaction could be delayed under the GCA NICS provisions. For further information, see CRS In Focus IF11781, *Firearm Background Checks Under H.R. 8 and H.R. 1446*.

[36] 18 U.S.C. §922(d), as amended by Section 12001 of the BSCA.

- expand NICS background check procedures to screen persons 18 to 21 years of age for disqualifying juvenile justice or mental health records;[37] and
- allow authorities to take up to 10 business days, if necessary, to make such determinations.[38]

Section 12001 will necessitate upgrades to NICS to implement these measures. Records of potentially disqualifying juvenile justice court adjudications and mental health determinations fall principally within the domain of state and tribal law and are held by state and tribal authorities. Section 12001 amends the Brady Act and requires the Attorney General to upgrade NICS with the capacity to contact immediately three possible sources of disqualifying juvenile records under 18 U.S.C. §922(d) for persons under 21 years of age in the jurisdiction where they reside. Those sources include pertinent

- state, tribal, or territorial repositories of criminal history record and/or juvenile justice information;
- state, tribal, or territorial custodians of mental health adjudication records; and
- local law enforcement agencies.

The requirement that NICS contact these authorities expires in 10 years, on September 30, 2032. Prior to enactment of the BSCA, such records were not routinely queried as part of a federal firearms background check.[39]

Section 12002: Defining "Engaged in the Business"

Background

As noted above, the GCA (P.L. 90-618)[40] requires all persons "engaged in the business" of importing, manufacturing, and selling firearms to be licensed as federal firearms licensees, or FFLs.[41] To deter unlawful interstate firearms commerce, or gun trafficking, the GCA generally prohibits anyone who is not an FFL from delivering a firearm to someone in another state, or acquiring a firearm from an out-of-state source.[42] Violations are punishable by up to five years' imprisonment.[43] Interstate transfers among unlicensed persons may be facilitated through an FFL in the state where the transferee resides. The GCA further requires FFLs to maintain records on all commercial firearms transactions. As described above, the GCA also requires FFLs to initiate a background check through NICS on any prospective unlicensed customer who seeks to acquire a firearm from them through a sale, trade, or redemption of firearms exchanged for collateral.[44]

Intrastate, private transfers between unlicensed persons "not engaged in the business" of dealing in firearms "to predominantly earn a profit" are not covered by the recordkeeping or the background check provisions of the GCA. However, such transfers and other matters such as possession, registration, and the issuance of licenses to firearms owners may be covered by state

[37] 18 U.S.C. §922(t), as amended by Section 12001 of the BSCA.

[38] Ibid.

[39] For further information, see CRS In Focus IF12154, *Gun Control: Juvenile Record Checks for 18- to 21-Year-Olds*.

[40] 18 U.S.C. §§921-934.

[41] 18 U.S.C. §923.

[42] 18 U.S.C. §§922(a)(3) and (5), respectively.

[43] 18 U.S.C. §924(a)(1)(D).

[44] 18 U.S.C. §922(t).

laws or local ordinances. Intrastate private firearm transfers have been referred to as the *gun show loophole*, leading some gun control advocates to call for comprehensive or universal background checks.[45] It has been estimated that about one-in-five firearm transfers are private transfers.[46]

Provision

Section 12002 amends definitions in the GCA that underlie the requirement that persons buying and selling firearms as a business at the wholesale or retail level must be federally licensed as FFLs. Specifically, it amends the definition of "engaged in the business," striking the phrase "with the principal objective of livelihood and profit" and replacing it with "to predominantly earn a profit."[47] Section 12002 defines this latter term as well, excepting firearms transfers made to improve or liquidate a personal firearms collection from this licensure requirement.[48]

These measures require persons who buy and resell firearms repetitively for profit to be licensed federally as gun dealers. In so doing, this measure could make some, but not all, intrastate, private firearm transfers subject to GCA recordkeeping and background check requirements, if those transfers are made by profit-oriented, repetitive firearms buyers and sellers. Arguably, such transfers were not covered under previous law if the firearms transfers in question were not also made as a "principal objective" of one's "livelihood."[49]

Section 12003: Use of Byrne Grants for Implementation of State Crisis Intervention Programs

Background

The Edward Byrne Memorial Justice Assistance Grant (JAG) program was first authorized by the Violence Against Women and Department of Justice Reauthorization Act of 2005 (P.L. 109-162). Through JAG, DOJ provides funding to state, local, and tribal governments for state and local initiatives, technical assistance, training, personnel, equipment, supplies, contractual support, and criminal justice information systems in one or more of eight program purpose areas: (1) law enforcement programs; (2) prosecution and court programs; (3) prevention and education programs; (4) corrections and community corrections programs; (5) drug treatment and enforcement programs; (6) planning, evaluation, and technology improvement programs; (7) crime victim and witness programs (other than victim compensation); and (8) mental health programs and related law enforcement and corrections programs, including behavioral programs and crisis intervention teams.

JAG funds are allocated to each state, the District of Columbia, and the U.S. territories using a statutorily defined formula.[50] In short, each state's allocation is based on its population and the

[45] In the 117th Congress, the House passed the Bipartisan Background Checks Act of 2021 (H.R. 8), a bill that would make nearly all intrastate, private-party firearms transactions subject to the GCA recordkeeping and background check requirements. This bill has not been acted on in the Senate. See CRS In Focus IF11781, *Firearm Background Checks Under H.R. 8 and H.R. 1446*.

[46] Matthew Miller, Lisa Hepburn, and Deborah Azrael, "Firearm Acquisition Without Background Checks," *Annals of Internal Medicine*, 2017, p. 233.

[47] 18 U.S.C. §921(a)(21)(C).

[48] 18 U.S.C. §921(a)(22).

[49] For further information, see CRS In Focus IF12197, *Firearms Dealers "Engaged in the Business."*

[50] See 34 U.S.C. §10516.

number of reported violent crimes (i.e., murders, rapes, robberies, and aggravated assaults) in the state.[51] Specifically, half of a state's allocation is based on its respective share of the U.S. population, and the other half is based on its respective share of the average number of violent crimes reported to the FBI for the three most recent years for which data are available. After each state's allocation is determined, 40% of it is directly awarded to units of local government in the state (this does not occur in the District of Columbia or the territories). Awards to units of local government are based on the jurisdiction's proportion of the three-year average number of violent crimes committed in its respective state. Only local governments whose allocation is $10,000 or more are eligible to receive a direct award from DOJ. The balance of funds not awarded directly to units of local government is administered by the state and must be distributed to the state police department or to units of local government that were not eligible to receive a direct award from DOJ. The other 60% of the allocation is retained by the state, and the state can use the funding for its own purposes.

Provision

Section 12003 amends the authorization for JAG, adding a new ninth program purpose area that allows funds to be used for state "crisis intervention court proceedings and related programs or initiatives," which can include drug, mental health, and veteran treatment courts, as well as extreme risk protection order programs. For the latter, the act established standards that include

- due process rights, including, at a minimum, the right to an in-person hearing, the right to an unbiased adjudicator, the right to know opposing evidence, the right to present evidence, and the right to confront adverse witnesses;
- the right to be represented by counsel;
- evidentiary standards that, at a minimum, are equal to those of a similarly situated litigant in federal or state court, including procedures to prevent admission of evidence that is unsworn, irrelevant, based on hearsay, unreliable, vague, speculative, and lacking a foundation; and
- penalties for abuse of the programs.

Of note, Division B of the BSCA also appropriates a total of $750 million for states to help them implement "crisis intervention court proceedings and related programs or initiatives" (see **Table 2**).

Section 12004: Stop Illegal Trafficking in Firearms Act

Background

Under the GCA, Congress authorized a decentralized system of recordkeeping that allows the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) to trace a firearms chain of commerce from manufacturer or importer to dealer, and to the first retail purchaser of record.[52] As part of a firearms transaction, both the federal firearm licensee (FFL) and prospective purchaser must truthfully fill out and sign an ATF Firearms Transaction Record (Form 4473). The FFL must verify the purchaser's name, date of birth, and other information by examining government-

[51] For more information on the specifics of how JAG funds are allocated between state and local governments, see CRS In Focus IF10691, *The Edward Byrne Memorial Justice Assistance Grant (JAG) Program*.

[52] 18 U.S.C. §926.

issued identification (e.g., driver's license). The purchaser attests on Form 4473 that he or she is not a prohibited person and is the actual transferee/buyer. The completed and signed ATF Form 4473 serves as the authorization for the FFL to initiate a firearms eligibility check through NICS. In the case of a system *proceed* response, the FFL may complete the transfer.[53] In the case of a system *delayed* response, the FFL may proceed with the transfer at their discretion after three business days have elapsed if they have not received a final NICS eligibility determination.

NICS denials may indicate that a transferee is engaged in what is referred to colloquially as *lying and trying*. Such attempts to acquire a firearm are sometimes subject to prosecution under one of the two provisions described below, under which persons are also prosecuted for straw purchases. *Straw purchases* are the unlawful purchase of a firearm by one person for another, and are referred to colloquially as *lying and buying for the other guy*.[54] Under the GCA, it remains unlawful for

- a purchaser to make any false statement to an FFL with respect to any fact material to the lawfulness of a prospective firearms transfer under 18 U.S.C. §922(a)(6), punishable by up to 10 years' imprisonment, and
- any person knowingly to make any false statement with respect to the records that FFLs are required to maintain under 18 U.S.C. §924(a)(1)(A), punishable by up to five years' imprisonment.

Notably, straw purchases are not easily detected, because their illegality becomes apparent only when the straw purchaser's true intent is revealed by a subsequent transfer to the actual buyer (third party). The actual recipient of the firearm may be a prohibited person, who would not pass a background check.

Provision

Subsection 12004(a) of the BSCA amends the GCA to more explicitly prohibit straw purchases and illegal gun trafficking. Section 12004 expands federal law enforcement investigative authorities. More specifically, Section 12004 amends the GCA by adding a new provision (18 U.S.C. §932) prohibiting any person from knowingly purchasing, or conspiring to purchase, any firearm for, on behalf of, or at the request or demand of any other persons, if the purchaser knows or has reasonable cause to believe that the actual buyer

- is a person prohibited from being transferred a firearm under 18 U.S.C. §922(d);
- plans to use, carry, possess, or sell (dispose of) the firearm(s) in furtherance of a felony, federal crime of terrorism, or drug trafficking crime; or
- plans to sell or otherwise dispose of the firearm(s) to a person who would meet any of the conditions described above.

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[53] See the background information provided in "Section 12001: Juvenile Records."

[54] On ATF Form 4473, a firearm transferee attests that he or she is the "actual buyer." On this form, ATF provides the following guidance:

> For the purposes of this form, a person is the actual transferee/buyer if he/she is purchasing the firearm for him/herself of otherwise acquiring the firearm for him/herself.... A person is also the actual transferee/buyer if he/she is legitimately purchasing the firearm as a bona fide gift for a third party. A gift is not bona fide if another person offered or gave the person completing this form money, service(s), or item(s) of value to acquire the firearm for him/her, or if the other person is prohibited by law from receiving or possessing the firearm.

This form can be downloaded from the ATF website at https://www.atf.gov/firearms/docs/4473-part-1-firearms-transaction-record-over-counter-atf-form-53009/download. See "Question 21.a." on p. 4.

Violations of this new Section 932 are punishable by up to 15 years' imprisonment. Violations made knowingly or having reasonable cause to believe that any firearm involved will be used to commit a felony, federal crime of terrorism, or drug trafficking crime are punishable by up to 25 years' imprisonment.

Subsection 12004(a) also amends the GCA with a new *gun trafficking* provision (18 U.S.C. §933) prohibiting any person from shipping, transporting, causing to be shipped or transported, or otherwise disposing of any firearm to another person, with the knowledge or reasonable cause to believe that the transferee's use, carrying, or possession would constitute a felony. It would also prohibit the receipt of such firearm, if the transferee knows or has reasonable cause to believe that receiving such firearm would constitute a felony. Attempts and conspiracies to violate these provisions are proscribed as well. Violations are punishable by up to 15 years' imprisonment.

In addition, subsection 12004(a) amends the GCA with a follow-on provision (18 U.S.C. §934) making any person convicted under either of the two new prior provisions subject to civil forfeiture and fines. Convicted persons could forfeit any property constituting, or derived from, any proceeds obtained, directly or indirectly, from straw purchasing or gun trafficking, as well as any property used, or intended to be used, in the commission of such crimes. Persons convicted of such crimes could also be fined twice the gross profits or other proceeds of such offenses. In addition, Section 12004 amends federal electronic surveillance, racketeering, and money laundering provisions, making violations of 18 U.S.C. §§932 and 933 predicate offenses.[55]

In regard to such crimes, subsection 12004(a) directs the U.S. Sentencing Commission to review sentencing guidelines to reflect Congress's intent that straw purchasers without significant criminal histories receive sentences sufficient to deter participation in such activities and reflect the defendant's role and culpability, as well as any coercion, domestic violence survivor history, or other mitigating factors. It directs that others convicted of any offense under 18 U.S.C. §§932 or 933 who are affiliated with a criminal gang, cartel, organized crime ring, or similar enterprise should be subject to higher penalties than an otherwise unaffiliated individual.[56]

In addition, subsections 12004(b) through (j) include nine other provisions that are either directly or tangentially related to gun trafficking:

- Subsection 12004(b) amends an existing GCA provision (18 U.S.C. §922(d)) that prohibits anyone from disposing of a firearm to a prohibited person, to include anyone who intends to sell or otherwise dispose of a firearm or ammunition in furtherance of a felony, a federal crime of terrorism, or a drug trafficking offense (as such terms are defined in 18 U.S.C. §932(a)), or anyone who intends to sell or otherwise dispose of a firearm or ammunition to any prohibited person.
- Subsection 12004(c) amends a GCA penalty provision (18 U.S.C. §924(a)), increasing the penalty for violations of either 18 U.S.C. §§922(d) or (g) from up to 10 to up to 15 years' imprisonment for anyone who knowingly transfers a firearms or ammunition to a prohibited person, or for any prohibited person who knowingly possesses such items.[57]
- Subsection 12004(d) amends an existing GCA provision (18 U.S.C. §924(d)) to make firearms and ammunition regulated under the 1934 National Firearms Act

[55] 18 U.S.C. §§2516(1)(n), 1961(1)(B), and 1956(c)(7)(D), respectively.

[56] For further information, see CRS In Focus IF12190, *Gun Control: Straw Purchase and Gun Trafficking Provisions*.

[57] 18 U.S.C. §924(a)(8).

(NFA; P.L. 73-474) that are involved in violations of 18 U.S.C. §§932 or 933 subject to an NFA federal seizure and forfeiture provision.[58]

- Subsection 12004(e) amends an existing GCA provision (18 U.S.C. §924(h)) to make it unlawful to receive a firearm or ammunition knowing, or having reasonable cause to believe, that those items will be used to commit a felony, federal crime of terrorism, or drug trafficking crime. Previously, this GCA provision spoke only to the transfer of such items and not to their receipt.
- Subsection 12004(f) amends another existing GCA provision (18 U.S.C. §924(k)) to make it unlawful to smuggle or knowingly take out of the United States a firearm or ammunition with an intent to engage in or promote conduct that is unlawful under the Controlled Substances Import and Export Act (P.L. 91-513, as amended),[59] or that constitutes a felony, a federal crime of terrorism, or a drug trafficking crime. Previously, this GCA provision involved only smuggling or knowingly bringing such items into the United States. Under either of these GCA subsections (§924(h) or §924(k)), the potential penalty is increased from 10 to 15 years' imprisonment.
- Subsection 12004(g) prohibits DOJ, and any law enforcement agency under its coordination, from facilitating the transfer of an operable firearm or ammunition to any known agent of a drug cartel, unless U.S. personnel are in a position to monitor or control those items continuously at all times.[60]
- Subsection 12004(h) amends the 1993 Brady Act to direct the Attorney General to give FFLs access to NICS for the purposes of voluntarily running firearms-related background checks on current or prospective employees.[61]
- Subsection 12004(i) authorizes annual appropriations of $1 million for FY2023 - FY2027 for ATF to continue an existing anti-straw purchasing public awareness campaign.
- Subsection 12004(j) amends the Homeland Security Act of 2002 to authorize the Department of Homeland Security to reimburse local law enforcement agencies for salary and administrative costs for assisting Homeland Security Investigations in efforts to prevent illegal trafficking under the Border Enforcement Security Task Force (BEST) program.[62]

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[58] The applicable NFA provision is 26 U.S.C. §5845(a).

[59] 21 U.S.C. 951 et seq.

[60] This BSCA provision in Section 12004 is similar to one that Congress has included in the DOJ annual appropriation for every fiscal year from FY2012 through FY2022. For its most current enacted iteration, see Division B, Title II, Section 215 of the DOJ general provisions in the Consolidated Appropriations Act, 2022 (P.L. 117-103, March 15, 2022, 136 Stat. 49, 133). This provision prohibits an investigative tactic commonly known as *gun walking*. As part of a flawed investigation known as "Operation Fast and Furious," the DOJ Office of the Inspector General found that ATF special agents did not act in a timely manner to arrest, or at least confront, suspected *straw purchasers* and interdict the firearms they had purchased in multiple transactions from federally licensed gun dealers, when the agents arguably had a reasonable suspicion or probable cause to believe that the straw purchasers were illegally trafficking firearms to known associates of Mexican drug trafficking organizations. See U.S. Department of Justice, Office of the Inspector General, *A Review of ATF's Operation Fast and Furious and Related Matters*, September 19, 2012, pp. 419-471.

[61] P.L. 103-159; November 30, 1993, 107 Stat. 1536, 1541, Section 103.

[62] 6 U.S.C. §240(d)(2).

Section 12005: Misdemeanor Crime of Domestic Violence

Background

Under the GCA, there are nine categories of persons prohibited from receiving and possessing firearms or ammunition (see the "Section 12001: Juvenile Records" section of this report).[63] Under a parallel provision, it is also unlawful, under any circumstances, for an individual to sell or otherwise dispose of a firearm or ammunition to any prohibited persons if the transferor (seller) has reasonable cause to believe that the transferee (buyer) is a person prohibited from receiving those items.[64] In 1994, Congress amended the GCA to prohibit individuals subject to domestic violence protection orders (DVPOs) related to harassing, stalking, or threatening an intimate partner, or child of such intimate partner, from receiving or possessing firearms or ammunition.[65] In 1996, Congress further amended the GCA to prohibit persons convicted of a misdemeanor crime of domestic violence (MCDVs) from receiving or possessing a firearm. Ineligible domestic violence misdemeanants include any current or former spouse, parent, or guardian of the victim; a person with whom the victim shares a child in common; a person who is cohabiting with, or has cohabited with, the victim as a spouse, parent, or guardian; or a person similarly situated to a spouse, parent, or guardian of the victim.[66] The omission of dating partners in firearm purchase prohibitions related to DVPOs and MCDVs has been referred to as the *boyfriend loophole*.

Provision

Section 12005 amends the GCA definition of "misdemeanor crime of domestic violence" to include any "person who has a current or recent former dating relationship with the victim," in addition to spouses, former spouses, and cohabitants.[67] Correspondingly, the BSCA also amends the GCA to define a "dating relationship" to mean

> (A) a relationship between individuals who have or have recently had a continuing serious relationship of a romantic or intimate nature.
>
> (B) Whether a relationship constitutes a dating relationship under subparagraph (A) shall be determined based on consideration of—
>
> > (i) the length of the relationship;
> >
> > (ii) the nature of the relationship; and
> >
> > (iii) the frequency and type of interaction between the individuals involved in the relationship.[68]

[63] 18 U.S.C. §§922(g)(1) through (9).

[64] 18 U.S.C. §§922(d)(1) through (9).

[65] Violent Crime Control and Law Enforcement Act of 1994, P.L. 103-322, September 13, 1994, 108 Stat. 1796, 2014; Title XI, Subtitle D, Section 110401; codified at 18 U.S.C. §§922(d)(8) and (g)(8).

[66] Omnibus Consolidated Appropriations Act, 1997, P.L. 104-208, September 30, 1996, 110 Stat. 3009, 3009-371; Title VI, Section 658; codified at 18 U.S.C. §§922(d)(9) and (g)(9).

[67] 18 U.S.C. §921(a)(33)(A).

[68] 18 U.S.C. § 921(a)(37). In terms of what constitutes a "dating relationship," subparagraph (B) of this definition is similar to that of "a dating partner" under 18 U.S.C. §2266(a)(10).

Section 12005 sets several limitations on the dating partner MCDV prohibition.[69] First, it is prospective and going forward it affects only MCDVs. Misdemeanor convictions prior to enactment are not to be considered prohibitive. Second, the dating partner prohibition is time-limited for offenders who do not have more than one MCDV involving a dating relationship and are not otherwise prohibited under the GCA. Firearms eligibility for those offenders is to be restored in five years from either the judgment of conviction or the completion of the person's custodial or supervisory sentence, whichever date comes later. Third, the provision allows disabilities relief (firearms eligibility restoration) to anyone who had their misdemeanor conviction expunged, set aside, or pardoned, or otherwise had their civil rights restored, unless the terms of such relief expressly provide otherwise. Fourth, it requires that NICS-accessible records be updated to reflect any firearms eligibility restoration for any dating partner domestic violence misdemeanant.[70]

Section 12005 precludes firearms eligibility restoration for offenders who have subsequently been convicted under any federal, state, tribal, or local law for an offense related to

- the use or attempted use of physical force,
- the threatened use of a deadly weapon, or
- any other disqualifying offense under the GCA.

Section 12005 also includes a provision stating that it does not extend the possibility of firearms eligibility restoration to any person who is or would be prohibited under prior law (i.e., spouses, former spouses, and cohabitants). The intent of this provision is to reduce firearms-related intimate partner violence (homicide and injury) by addressing the boyfriend loophole.[71]

Title III—Other Matters

Subtitle A—Extension of Moratorium

Section 13101: Extension of Moratorium on Implementation of Rule Relating to Eliminating the Anti-Kickback Statute Safe Harbor Protection for Prescription Drug Rebates

Background

The federal anti-kickback statute, with certain statutory exceptions, makes it a felony for a person to knowingly and willfully offer, pay, solicit, or receive anything of value in return for a referral

[69] 18 U.S.C. §921(a)(33)(C).

[70] In these respects, the BSCA amendment stands in contrast to the Lautenberg amendment, which was retrospective, is not time-limited, and does not speak to any restoration of firearms privileges to the extent that such relief might have been available under state, tribal, or local law. See 18 U.S.C. §§922(d)(9) and (g)(9).

[71] Notably, the House-passed Violence Against Women Act (VAWA) Reauthorization Act of 2021 (H.R. 1620) would have expanded the MCDV and domestic violence protective order (DVPO) prohibitions to include dating partners or former dating partners and persons similarly situated to a spouse, and would have made persons convicted of a "misdemeanor crime of stalking" a 10th category of prohibited persons under the GCA. Although the VAWA reauthorization was enacted as part of the Consolidated Appropriations Act, 2022 (P.L. 117-103), it did not include the House-passed MCDV, DVPO, or stalking prohibitions. For further information, see CRS In Focus IF12210, *Firearms Eligibility: Domestic Violence and Dating Partners*, and CRS In Focus IF11784, *Firearms Eligibility: Stalking- and Domestic Violence-Related Provisions in H.R. 1620*.

or to induce generation of business reimbursable under a federal health care program. In addition, the HHS Office of Inspector General (OIG) has promulgated regulations that contain several *safe harbors* to prevent common business arrangements from being considered kickbacks. On November 30, 2020, the HHS OIG published a final rule that would alter an anti-kickback regulatory safe harbor to restrict the use of manufacturer drug rebates to Medicare Part D plans.[72] Implementation of the rule was delayed until 2026 as part of the Infrastructure Investment and Jobs Act (P.L. 117-158).

Provision

Section 13101 amends Section 90006 of Division I of the Infrastructure Investment and Jobs Act[73] by striking "January 1, 2026" and inserting "January 1, 2027." This amendment bars the Secretary from implementing, administering, or enforcing the final anti-kickback rebate rule prior to 2027.[74]

The rebate rule was forecasted to increase Medicare Part D spending. According to the Congressional Budget Office (CBO), the delay in implementation included in the BSCA provision is estimated to save $20.9 billion from FY2022 to FY2027.[75]

Subtitle B—Medicare Improvement Fund

Section 13201: Medicare Improvement Fund

Background

The Medicare Improvements for Patient and Providers Act (P.L. 110-275) added Social Security Act (SSA) Section 1898, which authorized the HHS Secretary to establish the Medicare Improvement Fund (MIF). The amounts in the MIF are available to the HHS Secretary "to make improvements under the original Medicare fee-for-service program under parts A and B … including adjustments to payments for items and services furnished by providers of services and suppliers under such original Medicare fee-for-service program." Many subsequent laws have modified the amount in the fund, but to date none of the monies have been expended. These amendments changed the amounts in the MIF available for the HHS Secretary's use from one time period to another. For example, the Consolidated Appropriations Act, 2022 (P.L. 117-103), modified Section 1898 to make $5 billion available during and after FY2021.

[72] Department of Health and Human Services, "85 FR 76666 - Fraud and Abuse; Removal of Safe Harbor Protection for Rebates Involving Prescription Pharmaceuticals and Creation of New Safe Harbor Protection for Certain Point-of-Sale Reductions in Price on Prescription Pharmaceuticals and Certain Pharmacy Benefit Manager Service Fees," 85 *Federal Register* 76666.

[73] 42 U.S.C. § 1320a–7b note.

[74] Note that under the Inflation Reduction Act of 2022 (P.L. 117-169), enacted on August 16, 2022, the HHS Secretary is prohibited from enforcing the rebate rule prior to 2032.

[75] Congressional Budget Office, *Estimated Budgetary Effects of S. 2938, Bipartisan Safer Communities Act*, Cost Estimate, June 22, 2022, Table 2, https://www.cbo.gov/publication/58238.

Provision

Section 13201 changes the amount available in the fund for services furnished "during and after fiscal year 2021, $5,000,000" to "during and after fiscal year 2022, $7,500,000,000."

Subtitle C—Luke and Alex School Safety Act of 2022

Background

Debates over how to implement coordinated homeland security policy, in the wake of the terrorist attacks of September 11, 2001, led to the passage of the Homeland Security Act of 2002 (P.L. 107-296), the establishment of the Department of Homeland Security (DHS), and a shift from a homeland security legislative focus on counterterrorism activities to a broader and more complex network of interrelated issues.[76] The Cybersecurity and Infrastructure Security Agency Act of 2018 (P.L. 115-278) amended the Homeland Security Act of 2002 to include cybersecurity and infrastructure security in a new Title XXII.[77] Title XXII of the Homeland Security Act of 2002 did not include school safety requirements.

In addition, the Federal Commission on School Safety—established by then-President Trump in the wake of the mass shooting at Marjory Stoneman Douglas High School in Parkland, FL, in February 2018—recommended in its final report that the federal government create a clearinghouse for federal resources on school safety that provides information on school safety strategies and evidence-based practices.[78] The federal clearinghouse, SchoolSafety.gov, launched on February 10, 2020.

Section 13301: Short Title

Provision

Section 13301 cites this portion of the BSCA as the "Luke and Alex School Safety Act of 2022." The act is named after Luke Hoyer and Alex Schachter—two students killed in the school shooting at Marjory Stoneman Douglas High School in Parkland, FL. This section amends Title XXII of the Homeland Security Act of 2002.

Section 13302: Federal Clearinghouse on School Safety Evidence-Based Practices

Provision

Section 13302 of the BSCA—the Luke and Alex School Safety Act of 2022—requires the DHS Secretary to establish within DHS a Federal Clearinghouse on School Safety Evidence-Based Practices (hereinafter referred to as the Clearinghouse for purposes of Subtitle C of the BCSA), in coordination with the Secretary of Education, the Attorney General, and the HHS Secretary. The Clearinghouse is tasked with identifying and publishing online evidence-based practices and recommendations on school safety for state and local educational agencies (SEAs and LEAs,

[76] See CRS Report R45701, *Selected Homeland Security Issues in the 116th Congress*.

[77] 6 U.S.C. §651 et seq.

[78] Federal Commission on School Safety, *Final Report of the Federal Commission on School Safety Presented to the President of the United States*, ED, DOJ, DHS, and HHS, Washington, DC, December 18, 2018, https://www2.ed.gov/documents/school-safety/school-safety-report.pdf.

respectively), institutions of higher education (IHEs), state and local law enforcement agencies, health professionals, and the general public through SchoolSafety.gov (or any successor website). The DHS Secretary must consult with the Secretary of ED and appropriate organizations to ensure that practices published by the Clearinghouse are aligned with evidence-based practices that support a positive and safe learning environment for all students.

The Luke and Alex School Safety Act of 2022 also outlines additional requirements for the evidence-based practices and recommendations published by the Clearinghouse. The act provides a series of criteria for the Clearinghouse's identification of evidence-based practices and recommendations, including

- the evidence or research rationale supporting the Clearinghouse's determination to include a practice or recommendation;
- information on existing federal programs that may support the implementation of each evidence-based practice or recommendation; and
- developmentally appropriate options for implementing each practice or recommendation in a variety of educational settings with children of varying ages and levels of physical, social, sensory, and emotional development.

In addition, the Clearinghouse should present the best practice recommendations of past commissions and other organizations that meet the Clearinghouse's criteria, in consultation with any personnel detailed to the Clearinghouse by the ED Secretary, HHS Secretary, or the Attorney General, and relevant governmental, private, and nongovernmental organizations.

The DHS Secretary may produce and publish materials to assist and train personnel from SEAs, LEAs, and law enforcement agencies on the implementation of the Clearinghouse's evidence-based practices and recommendations. The DHS Secretary is required to conduct continuous improvement activities, including

- collecting data analytics, user feedback, and evaluations;
- coordinating with the heads of other relevant federal agencies to regularly assess and identify whether any Clearinghouse evidence-based practices and recommendations lack implementation resources from existing federal programs; and
- establishing an external advisory board to (1) provide feedback on the implementation of the Clearinghouse's evidence-based practices and recommendations, and (2) propose additional recommendations for evidence-based practices to be included in the Clearinghouse.

Finally, the provision requires the Clearinghouse to produce materials in accessible formats to help students' parents and legal guardians identify Clearinghouse evidence-based practices and recommendations that are relevant to them.

Section 13303: Notification of Clearinghouse

Provision

Section 13303 requires the Attorney General and the Secretaries of ED, DHS, and HHS to "provide written notification of the publication of the Federal Clearinghouse on School Safety Evidence-based Practices" to state departments of justice, education, homeland security, and public health, and other relevant partners and advisors. For example, the Secretary of ED must

notify SEAs and LEAs, and the DHS Secretary must notify every state homeland security advisor, in addition to every state's department of homeland security and other DHS partners.

Section 13304: Grant Program Review

Provision

The Clearinghouse is tasked with identifying federal and state school safety grant programs and resources. Section 13304 requires the Clearinghouse (or the external advisory board),[79] within a year of the BSCA's enactment, to review existing federal grant programs and identify any that may be used to implement the Clearinghouse's practices and recommendations. The provision also requires the Clearinghouse to identify, and periodically report to the appropriate committees of Congress, evidence-based practices or recommendations for which no supporting federal grant program exists. In addition, to the extent practicable, for each state, the clearinghouse must also identify state agencies responsible for school safety, along with any state grant programs and other resources that could implement the Clearinghouse's evidence-based practices and recommendations.

Section 13305: Rules of Construction

Provision

Section 13305 of the BSCA provides two rules of construction regarding its effect on other laws. It states that the Luke and Alex School Safety Act of 2022 should not be construed to create, satisfy, or waive any requirements under federal civil rights laws.[80] It also states that the Luke and Alex School Safety Act of 2022 does not change the existing prohibition on any federal exercise of direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system, over any accrediting agency or association, or over the selection or content of library resources, textbooks, or other instructional materials by any educational institution or school system.[81]

Subtitle D—Amendment on ESEA Funding

Section 13401: Amendment on ESEA Funding

Background

The Elementary and Secondary Education Act (ESEA) is the primary source of federal aid for elementary and secondary education in the United States—particularly the Title I-A program, which authorizes federal aid for the education of disadvantaged students.[82] Besides grants and

[79] Refers to the external advisory board established in BSCA §13302 under 2220D of the Homeland Security Act of 2002.

[80] The civil rights laws listed in the Rules of Construction are Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. §12131 et seq.); the Rehabilitation Act of 1973 (29 U.S.C. §701 et seq.); Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.); Title IX of the Education Amendments of 1972 (20 U.S.C. §1681 et seq.); and the Age Discrimination Act of 1975 (42 U.S.C. §6101 et seq.).

[81] Section 103(b) of the Department of Education Organization Act (20 U.S.C. 3403(b)).

[82] Title I-A of the ESEA is found at 20 U.S.C. §6301 et seq. For more information, see CRS Report R45977, *The Elementary and Secondary Education Act (ESEA), as Amended by the Every Student Succeeds Act (ESSA): A Primer*.

contracts to SEAs, LEAs, and schools for a variety of educational purposes, the act includes a wide range of prohibitions and requirements that apply to entities receiving ESEA funds. For example, Section 8526 of the ESEA prohibits using ESEA funds for certain materials, programs, and purposes, including, but not limited to, the use of ESEA funds to "promote or encourage sexual activity." The ESEA also includes the Gun-Free Schools Act (GFSA),[83] which requires states to adopt certain policies as a condition of receiving federal funding under the ESEA.[84] Among other provisions, the GFSA requires states receiving funds under the ESEA to have in effect a law requiring LEAs to expel from school for a period of not less than one year any student who is determined to have brought a firearm to school, or to have possessed a firearm at school.[85]

Provision

Section 13402 of the BSCA amends Section 8526 of the ESEA, adding a new prohibition on the use of ESEA funds. Specifically, the provision prohibits using ESEA funds to provide any person with a dangerous weapon or to provide training in the use of a dangerous weapon.[86]

[83] ESEA, §8561; 20 U.S.C. 7961.

[84] For more information, see CRS Report R46872, *Federal Support for School Safety and Security*.

[85] For more information on the Gun-Free Schools Act, see "Gun-Free School Zones Act of 1990 and Gun-Free Schools Act of 1994" in CRS Report R46872, *Federal Support for School Safety and Security*.

[86] The term *dangerous weapon* used in this section of the BSCA has the meaning given to the term in 18 U.S.C. §930(g)(2), which states, "The term 'dangerous weapon' means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2½ inches in length."

Division B—Appropriations

Title I

Table 2. Department of Justice Appropriations

Dollars in Millions

BSCA Heading	Program/Activity	Amount	Program Description and Enabling Authorization
DEPARTMENT OF JUSTICE			
Federal Bureau of Investigations			
Salaries and Expenses		$100 available until expended	**Description:** Funding is for additional resources to aid the FBI with entering records into the National Instant Criminal Background Check System. **Authorization:** Title I of Division B of the BSCA.
State and Local Law Enforcement Activities			
Office of Justice Programs			
State and Local Law Enforcement Assistance		$1,400 available until expended, including: $280 for FY2022 $280 for FY2023 $280 for FY2024 $280 for FY2025 $280 for FY2026	

BSCA Heading	Program/Activity	Amount	Program Description and Enabling Authorization
	Edward Byrne Memorial Justice Assistance Grant program CFDA # 16.738	($750) ($150 for FY2022) ($150 for FY2023) ($150 for FY2024) ($150 for FY2025) ($150 for FY2026)	**Description:** The BSCA amends the authorized uses for the Edward Byrne Memorial Justice Assistance Program (JAG) to include crisis intervention programs. These funds may be used for state crisis intervention court proceedings and related programs or initiatives including drug, mental health, veteran treatment courts, and extreme risk protection order programs. The amount made available each year shall be allocated according to a modified JAG formula that is based upon the prior fiscal year's JAG allocation and then adjusted relative to the difference between the given fiscal year funding from this program and the previous fiscal year's JAG program funding. **Authorization:** Omnibus Crime Control and Safe Streets Act of 1968 §500 et seq. (34 U.S.C 10151-10158).
	Bureau of Justice Assistance CFDA # 16.839	($200) ($40 for FY2022) ($40 for FY2023) ($40 for FY2024) ($40 for FY2025) ($40 for FY2026)	**Description:** The Bureau of Justice Assistance (BJA) can use funds to make grants to states, local governments, or Indian tribes for training personnel and students in preventing violence, developing anonymous reporting systems, operating threat assessment teams, providing specialized training for school personnel, or other measures as determined by the BJA Director. **Authorization:** STOP School Violence Act §501 et seq. (34 U.S.C 10551-10556).
	Upgrades to Criminal and Mental Health Records CFDA # 16.554 & 16.813	($200) ($40 for FY2022) ($40 for FY2023) ($40 for FY2024) ($40 for FY2025) ($40 for FY2026)	**Description:** Funding is for grants to upgrade criminal and mental health records for the National Instant Criminal Background Check System. These grants may alternatively assist states in providing disqualifying juvenile records or funding state court and criminal record systems. These grants shall help to expand instant background checks for persons under 21. **Authorization:** Omnibus Crime Control and Safe Streets Act of 1968 §302 (34 U.S.C. 10132(c)(19)).

BSCA Heading	Program/Activity	Amount	Program Description and Enabling Authorization
	Community Violence Intervention and Prevention Initiative CFDA # 16.045	($250) ($50 for FY2022) ($50 for FY2023) ($50 for FY2024) ($50 for FY2025) ($50 for FY2026)	**Description:** Funding is to support community violence intervention programs. Grants are used to plan, develop, and implement localized approaches toward reducing violence. **Authorization:** Title I of Division B of the Bipartisan Safer Communities Act (P.L. 117-159).
Community Oriented Policing Services			
Community Oriented Policing Services Programs	Community Oriented Policing Services Programs CFDA # 16.710	$100 available until expended, including: $20 for FY2022 $20 for FY2023 $20 for FY2024 $20 for FY2025 $20 for FY2026	**Description:** The Community Oriented Policing Services Program (COPS) is authorized to make grants for school security for the coordination with local law enforcement, training for local law enforcement to prevent student violence, placement of deterrent measures, technology to alert law enforcement, or other measures as determined by the COPS director. **Authorization:** STOP School Violence Act §501 et seq. (34 U.S.C. 10551-10556).

Source: CRS analysis of BSCA Division B.

Notes: BSCA = Bipartisan Safer Communities Act; CFDA = Catalogue of Federal Domestic Assistance; FBI = Federal Bureau of Investigation; U.S.C. = *U.S. Code*.

General Provisions—This Title [Title I]

Sections 21001 and 21002 contain general provisions related to transfer authorities and reporting requirements similar to those typically included for DOJ programs and activities in the annual Commerce, Justice, Science, and Related Agencies (CJS) Appropriations Act.

Section 21001 prohibits the transfer of funds provided by Title I of the BSCA under the authority provided to DOJ in Section 205 of the FY2022 CJS Appropriations Act or any successor provisions in a subsequently enacted appropriations act.

Section 21002 requires DOJ to submit a detailed spend plan for FY2022 and FY2023 funds made available by Title I of Division B of the BSCA to the House and Senate Appropriations Committee within 45 days after the date of enactment. DOJ is required to submit a spend plan to the House and Senate Appropriations Committees for the FY2024, FY2025, and FY2026 funding made available by Title I of Division B of the BSCA as a part of DOJ's annual budget submission for each respective fiscal year. The spend plans are required to provide "specific and detailed description of the intended administration, review processes, allowable purposes, eligibility requirements, and priority areas or weightings" for the grant programs funded by Title I of the BSCA.[87]

[87] BSCA §21002(b).

Table 3. Department of Health and Human Services and Department of Education Appropriations

Dollars in Millions

BSCA Heading	Program/Activity	Amount	Program Description and Enabling Authorization
DEPARTMENT OF HEALTH AND HUMAN SERVICES			
Substance Abuse and Mental Health Services Administration			
Health Surveillance and Program Support		$800 available until September 30, 2025, including: $312.5 available until December 31, 2022 for FY2022 $162.5 available until September 30, 2023 for FY2023 $162.5 available until September 30, 2024 for FY2024 $162.5 available until September 30, 2025 for FY2025	
	Community Mental Health Services Block Grant CFDA # 93.958	($250)[a]	**Description:** The Community Mental Health Services Block Grant supports community mental health services. SAMHSA distributes funds to states and the District of Columbia by a formula specified in statute. States have flexibility in the use of block grant funds within the framework of the state plan and federal requirements. **Authorization:** PHSA §1911 et seq. (42 U.S.C 300x et seq.).
	National Child Traumatic Stress Initiative CFDA # 93.243	($40)[a]	**Description:** The National Child Traumatic Stress Initiative (NCTSI) supports the development and promotion of behavioral health services for children exposed to traumatic events, mostly through information and trainings provided by a network of centers. **Authorization:** PHSA §582 (42 U.S.C. 290hh-1).

BSCA Heading	Program/Activity	Amount	Program Description and Enabling Authorization
	Project AWARE CFDA # 93.243	($240)[a,b]	**Description:** Project AWARE consists of competitive grants that (1) support training teachers and school personnel on mental health awareness and (2) connect youth with behavioral health issues to needed services. Project AWARE State grants support activities that identify children and youth in need of mental health services, increase access to mental health treatment, and promote mental health literacy among teachers and school personnel. The ReCAST program within Project AWARE consists of competitive grants for communities that have recently faced civil unrest or trauma. **Authorization:** PHSA §520A (42 U.S.C. 290bb-32).
	Mental Health Awareness Training CFDA # 93.243	($120)[a]	**Description:** Originally part of Project AWARE, Mental Health Awareness Training provides training to school staff on how to recognize mental illness, provide initial help, and connect students to care. SAMHSA partners with the National Council for Mental Wellbeing to administer these grants. **Authorization:** PHSA §520J (42 U.S.C. 290bb-41).
	National Suicide Prevention Lifeline CFDA # 93.243	($150)[a]	**Description:** The 988 Suicide & Crisis Lifeline is a national hotline providing crisis counseling and services for individuals experiencing suicidal thoughts or other mental distress. In conjunction with states and private entities, SAMHSA provides funding to support Lifeline operations. On July 16, 2022, the National Suicide Prevention Lifeline transitioned from a 10-digit phone number to a new three-digit hotline. Funding is intended to increase call center capacity in anticipation of higher call volumes from the new three-digit number rollout. **Authorization:** PHSA §520E-3 (42 U.S.C. 290bb-36c).
Office of the Secretary			
Public Health and Social Services Emergency Fund		$190 available until September 30, 2026, including: $82 available until December 31, 2022 for FY2022 $32 available until September 30, 2023 for FY2023 $32 available until September 30, 2024 for FY2024 $32 available until September 30, 2025 for FY2025 $12 available until September 30, 2026 for FY2026	

BSCA Heading	Program/Activity	Amount	Program Description and Enabling Authorization
	Primary Care Training and Enhancement CFDA # 93.884	($60)[c]	**Description:** Funds are used to support mental and behavioral health care training for pediatricians and other primary care clinicians through grants to hospitals, medical schools, physician assistant training programs, or other nonprofit entities. These funds can be used to plan, develop, or operate an accredited training program, including programs for those who plan to teach other clinicians; to provide need-based financial assistance to medical personnel in training; or to develop innovative models for providing care. **Authorization:** PHSA §747 (42 U.S.C. 293k).
	Pediatric Mental Health Care Access CFDA # 93.110	($80)[c]	**Description:** Through the PMHCA grant program, HRSA awards grants to states, political subdivisions, and tribal organizations to promote behavioral health integration into primary care using telehealth by supporting the development or improvement of statewide or regional telehealth networks. Program funds may also be used to provide technical assistance to emergency departments, state educational agencies (SEAs), local educational agencies (LEAs), tribal education agencies, and primary/secondary schools. **Authorization:** PHSA §330M (42 U.S.C. 254c-19).
	Supporting Access to Health Care Services in Schools	($50)[c]	**Description:** The provision appropriates $50 million for the HHS Secretary to award grants to states for FY2022. The grants are to be used to implement, enhance, or expand the provision of assistance through school-based entities under Medicaid or the State Children's Health Insurance Program (CHIP). Such grant funds may not be used to provide medical assistance, child health assistance, or other health services. **Authorization:** BSCA §11003 (U.S.C. 1396a).

BSCA Heading	Program/Activity	Amount	Program Description and Enabling Authorization
		DEPARTMENT OF EDUCATION	
School Improvement Programs		$1,050 available through September 30, 2025	
	21st Century Community Learning Centers CFDA # 84.487	($50) available through September 30, 2023	**Description:** Funding supports activities outside of school hours that offer learning opportunities for schoolchildren. Grants are made to SEAs based on a formula; SEAs then provide funds to local entities in competitive sub-grants. **Authorization:** ESEA §4201 et seq. (20 U.S.C. 7171-7175).
	Student Support and Academic Enrichment Grants[d] CFDA # 84.424	($1,000)	**Description:** Grants are made to SEAs based on formula. The BSCA requires SEAs to award competitive grants to high-need LEAs "as determined by the state." LEAs must use these funds for programs and activities that coordinate with community-based services and programs, promote parent involvement, and foster safe, healthy, supportive, and drug-free environments that support student academic achievement. Examples include drug prevention activities, school-based mental health programs, child sexual abuse awareness programs, designing plans to reduce exclusionary discipline practices, behavioral interventions, and mentoring and school counseling. **Authorization:** ESEA §4108 (20 U.S.C. 7118).
School Safety and Citizenship Education		$1,000 available through December 31, 2026, including: $200 available until March 31, 2023 for FY2022 $200 available until December 31, 2023 for FY2023 $200 available until December 31, 2024 for FY2024 $200 available until December 31, 2025 for FY2025 $200 available until December 31, 2026 for FY2026	
	School Based Mental Health Services Grants CFDA # 84.184H	($500) ($100 for FY2022) ($100 for FY2023) ($100 for FY2024) ($100 for FY2025) ($100 for FY2026)	**Description:** This program provides competitive grants to SEAs. Funds may be used to increase the number of mental health professionals (e.g., counselors, social workers, psychologists) who provide school-based mental health services to students in LEAs with a demonstrated need. **Authorization:** ESEA §4631 (20 U.S.C. §7281).

BSCA Heading	Program/Activity	Amount	Program Description and Enabling Authorization
	Mental Health Services Professional Demonstration Grants CFDA # 84.184X	($500) ($100 for FY2022) ($100 for FY2023) ($100 for FY2024) ($100 for FY2025) ($100 for FY2026)	**Description:** Grants support partnerships that train school-based mental health service providers to serve in schools and LEAs. **Authorization:** ESEA §4631 (20 U.S.C §7281).

Source: CRS analysis of BSCA Division B.

Notes: BSCA = Bipartisan Safer Communities Act; CFDA = Catalogue of Federal Domestic Assistance; ESEA = Elementary and Secondary Education Act; HHS = U.S. Department of Health and Human Services; HRSA = Health Resources and Services Administration; LEA = Local Educational Agency; PHSA = Public Health Service Act; PMHCA = Pediatric Mental Health Care Access; SAMHSA = Substance Abuse and Mental Health Services Administration; SEA = State Educational Agency; U.S.C. = *United States Code*.

a. The BSCA provides that this amount is to be divided "in equal amounts for each of fiscal years 2022 through 2025, unless stated otherwise."

b. "[O]f which no less than $28,000,000 shall be for activities described in section 7134 of P.L. 115-271." Section 7134 of the SUPPORT for Patients and Communities Act (P.L. 115-271) authorizes the HHS Secretary, in coordination with SAMHSA, to award grants to SEAs and LEAs to increase student access to evidence-based trauma support services and mental health care. The provision authorized to be appropriated $50 million for each of FY2019 through FY2023, but this authorization never received explicit funding prior to the BSCA. For more information, see CRS Report R45423, *Public Health and Other Related Provisions in P.L 115-271, the SUPPORT for Patients and Communities Act*.

c. The BSCA provides that this amount is to be divided "in equal amounts for each of fiscal years 2022 through 2026, unless stated otherwise."

d. For more information, see CRS In Focus IF10910, *Student Support and Academic Enrichment (SSAE) Grants*.

General Provisions—This Title [Title II]

Sections 22001-22003

Sections 22001-22003 contain general provisions related to transfer authorities and reporting requirements that are often included with discretionary supplemental appropriations for programs and activities associated with the annual Departments of Labor, Health and Human Services, and Education, and Related Agencies (LHHS) Appropriations Act.

Section 22001 prohibits the transfer of funds provided by Title II of Division B of the BSCA under specified authorities provided to HHS and ED in the FY2022 LHHS Appropriations Act (Sections 205 and 302 of Division H of P.L. 117-103, respectively). (Within each department, these authorities allow up to a 1% transfer, subject to certain limitations, between appropriations provided in the FY2022 LHHS Act.) Further, Section 22001 also prohibits the transfer of funds pursuant to Section 241(a) of the PHSA. (Section 241(a), often referred to as the PHS Evaluation Set-Aside or PHS Evaluation Tap, allows the Secretary of HHS to redistribute a portion of eligible PHS agency appropriations across HHS for program evaluation purposes.[88])

Section 22002 requires HHS and ED to provide detailed spend plans to the House and Senate Appropriations Committees of the anticipated uses of funds made available by Title II of Division B of the BSCA not later than 30 days after the date of enactment. These spend plans are to be updated every 60 days, and the appropriations committees are to be briefed on obligations quarterly, until all funds are expended. The spend plans are to include estimated personnel and administrative costs, and be accompanied by a listing of each contract obligation that exceeds $5 million not previously reported.

Section 22003 requires that HHS and ED provide biweekly obligation reports to the House and Senate Appropriations Committees of funds made available by Title II of the BSCA not later than 60 days after enactment. These reports are to include anticipated uses of the funds and be updated biweekly until all funds are expended.

Title III

General Provisions—This Division [Division B]

Sections 23001-23003 contain general provisions related to the duration and purposes of funds that are often included with discretionary supplemental appropriations. They provide that funds in Division B of the BSCA are in addition to amounts otherwise appropriated for that fiscal year (§23001); no funds are available for obligation beyond that fiscal year unless expressly provided in Division B (§23002); and that unless otherwise provided, funds in Division B are available under the same authorities and conditions applicable to their appropriations accounts for FY2022 (§23003).

Sections 23004 and 23005 specify requirements for the budgetary treatment of funds in the BSCA. Section 23004 provides that each amount provided by Division B of the BSCA is

[88] Annual LHHS Appropriations Acts typically amend the percentage of funds available for redistribution and require HHS to report to the appropriations committees on planned transfers under this authority. For further information, see the report section "Public Health Service Evaluation Tap" in CRS Report R47029, *Labor, Health and Human Services, and Education: FY2022 Appropriations*.

designated as an emergency requirement pursuant to Section 4001(a)(1) and Section 4001(b) of the FY2022 budget resolution (S.Con.Res. 14). This effectively exempts these funds from applicable budget enforcement under the budget resolution.[89] Section 23005 provides that the budgetary effects of the provisions in Divisions A and B of the BSCA shall not be entered on either the Statutory PAYGO scorecard or the Senate PAYGO scorecard.[90] This effectively exempts these funds from any budget enforcement that would have otherwise been applicable pursuant to those mechanisms.[91] This section also provides that the budgetary effects of Division B shall be considered discretionary appropriations for the purposes of applicable budget enforcement.[92]

[89] For further information, see CRS Report R46893, *S.Con.Res. 14: The Budget Resolution for FY2022*.

[90] For further information, see CBO, *The Statutory Pay-As-You Go Act and the Role of the Congress*, August 2020, https://www.cbo.gov/system/files/2020-08/56506-S-PAYGO.pdf.

[91] Ibid.

[92] For further information, see the notes to Table 3 in CBO Cost Estimate for S. 2938, June 22, 2022, https://www.cbo.gov/system/files/2022-06/S2938.pdf

Appendix. Abbreviations Used in This Report

Abbreviation	Definition
ARPA	American Rescue Plan Act of 2021
ATF	Bureau of Alcohol, Tobacco, and Firearms
BEST	Border Enforcement Security Enforcement Task Force
BSCA	Bipartisan Safer Communities Act
CBO	Congressional Budget Office
CCBHC	Certified Community Behavioral Health Clinic
CFDA	Catalogue of Federal Domestic Assistance
CHIP	The State Children's Health Insurance Program
CMS	Centers for Medicare & Medicaid Services
COVID-19	Coronavirus Disease 2019
DHS	U.S. Department of Homeland Security
DOJ	U.S. Department of Justice
DVPOs	Domestic Violence Protection Orders
ED	U.S. Department of Education
E-FMAP	Enhanced Federal Medical Assistance Percentage
EPSDT	Early, Periodic, Screening, Diagnostic, and Treatment
ESA	Education Service Agency
ESEA	Elementary and Secondary Education Act
FBI	Federal Bureau of Investigations
FFL	Federal Firearm Licensee
GAO	Government Accountability Office
GCA	Gun Control Act of 1968
GFSA	Gun-Free Schools Act
HHS	U.S. Department of Health and Human Services
HRSA	Health Resources and Services Administration
IDEA	Individuals with Disabilities Education Act
IEP	Individual Education Plan
IFSP	Individual Family Service Plan
IHEs	Institutions of Higher Education
JAG	Edward Byrne Memorial Justice Assistance Grant program
LEA	Local Educational Agency
LHHS	Departments of Labor, Health and Human Services, and Education, and Related Agencies
LTSS	Long Term Services and Supports
MCDVs	Misdemeanor Crimes of Domestic Violence
MCO	Managed Care Organization

Abbreviation	Definition
MIF	Medicare Improvement Fund
NCTSI	National Child Traumatic Stress Initiative
NICS	National Instant Criminal Background Checks System
NTN	National Transaction Number
OIG	Office of Inspector General
PAMA	Protecting Access to Medicare Act of 2014
PAYGO	Pay-As-You Go
PHE	Public Health Emergency
PHS	Public Health Service
PHSA	Public Health Service Act
PMHCA	Pediatric Mental Health Care Access program
PPS	Prospective Payment System
SAMHSA	Substance Abuse and Mental Health Services Administration
SBHC	School-Based Health Center
SBS	School-Based Health Services
SEA	State Educational Agency
SPA	State Plan Amendment
SSA	Social Security Act
U.S.C.	*United States Code*
VAWA	Violence Against Women Act

Source: CRS.

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