

112TH CONGRESS
1ST SESSION

H. R. 2013

To empower States with programmatic flexibility and financial predictability to improve their Medicaid programs and State Children's Health Insurance Programs by ensuring better health care for low-income pregnant women, children, and families, and for elderly individuals and disabled individuals in need of long-term care services and supports, whose income and resources are insufficient to meet the costs of necessary medical services.

IN THE HOUSE OF REPRESENTATIVES

MAY 26, 2011

Mr. NUNES introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means, Education and the Workforce, House Administration, Natural Resources, the Judiciary, Rules, and Appropriations, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To empower States with programmatic flexibility and financial predictability to improve their Medicaid programs and State Children's Health Insurance Programs by ensuring better health care for low-income pregnant women, children, and families, and for elderly individuals and disabled individuals in need of long-term care services and supports, whose income and resources are insufficient to meet the costs of necessary medical services.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 (a) SHORT TITLE.—This Act may be cited as the
 5 “Medicaid Improvement and State Empowerment Act”.

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

Sec. 1. Short title.

Sec. 2. Sustainable Medicaid and CHIP programs that meet the needs of each
 State.

“PART B—TAXPAYER-PROVIDED PASS-THROUGH FUNDING OF HEALTH
 CARE GRANTS TO STATES FOR PREGNANT WOMEN, LOW-INCOME CHIL-
 DREN, AND LOW-INCOME FAMILIES AND FOR LONG-TERM CARE SERVICES
 AND SUPPORTS FOR LOW-INCOME ELDERLY OR DISABLED INDIVIDUALS

“Sec. 1950. Purposes; application.

“Sec. 1951. State plans.

“Sec. 1952. Grants to States.

“Sec. 1953. Use of grants.

“Sec. 1954. Administrative provisions.

“Sec. 1955. Penalties.

“Sec. 1956. Appeal of adverse decision.

“Sec. 1957. Annual Reports.

“Sec. 1958. Definitions.

Sec. 3. Medical malpractice reform State incentive fund.

Sec. 4. Repeals.

Sec. 5. Development of new formula for Federal financial participation for
 State child support and welfare programs to replace the
 FMAP.

8 **SEC. 2. SUSTAINABLE MEDICAID AND CHIP PROGRAMS**
 9 **THAT MEET THE NEEDS OF EACH STATE.**

10 (a) IN GENERAL.—Title XIX of the Social Security
 11 Act (42 U.S.C. 1396 et seq.) is amended—

12 (1) by inserting after section 1900, the fol-
 13 lowing:

1 “PART A—FMAP-BASED ACUTE CARE STATE HEALTH
2 PROGRAMS FOR THE ELDERLY AND DISABLED”;

3 and

4 (2) by adding at the end the following:

5 “PART B—TAXPAYER-PROVIDED PASS-THROUGH FUND-
6 ING OF HEALTH CARE GRANTS TO STATES FOR
7 PREGNANT WOMEN, LOW-INCOME CHILDREN, AND
8 LOW-INCOME FAMILIES AND FOR LONG-TERM CARE
9 SERVICES AND SUPPORTS FOR LOW-INCOME EL-
10 DERLY OR DISABLED INDIVIDUALS

11 “PURPOSES; APPLICATION

12 “SEC. 1950. (a) IN GENERAL.—The purposes of this
13 part are to empower States with programmatic flexibility
14 and financial predictability in designing and operating
15 State programs to—

16 “(1) provide medical assistance for pregnant
17 women, low-income children, and low-income families
18 with children whose income and resources are insuf-
19 ficient to meet the costs of necessary medical serv-
20 ices and rehabilitation and other services to help
21 such women, children, and families attain or retain
22 capability for independence or self-care; and

23 “(2) provide long-term care services and sup-
24 ports for low-income elderly or disabled individuals
25 whose income and resources are insufficient to meet

1 the costs of such services and supports and rehabili-
2 tation and other services to help such individuals at-
3 tain or retain capability for independence or self-
4 care.

5 “(b) APPLICATION.—

6 “(1) IN GENERAL.—Except as provided in para-
7 graph (2) and section 1951(a)(1)(B)(iv), with re-
8 spect to a State, on and after January 1, 2013:

9 “(A) Medical assistance for pregnant
10 women, low-income children, or low-income fam-
11 ilies with children shall be provided only in ac-
12 cordance with the provisions of this part and
13 the provisions of title XI applicable to the provi-
14 sion of such assistance.

15 “(B) Long-term care services and supports
16 for low-income elderly or disabled individuals
17 (including dual eligible individuals) shall only be
18 provided in accordance with the provisions of
19 this part and the provisions of title XI applica-
20 ble to the provision of such services and sup-
21 ports.

22 “(C) The provisions of part A of this title
23 shall no longer apply to a State program estab-
24 lished under this title to provide medical assist-
25 ance for pregnant women, low-income children,

1 or low-income families with children or to pro-
2 vide long-term care services and supports to
3 low-income elderly or disabled individuals and
4 the provisions of any drug rebate agreement
5 that is in effect under section 1927 on that
6 date that relate to the provision of medical as-
7 sistance for covered outpatient drugs for such
8 women, children, or families or to the provision
9 of long-term care services and supports for low-
10 income elderly or disabled individuals are termi-
11 nated as of such effective date.

12 “(D) A targeted low-income child or a par-
13 ent of such a child who would be eligible for
14 child health assistance or health benefits cov-
15 erage under a State child health plan under
16 title XXI on June 30, 2012, shall no longer re-
17 ceive such assistance or benefits under title
18 XXI and shall be eligible for medical assistance
19 under a State program funded under this part
20 only to the extent the child or parent satisfies
21 the eligibility criteria established by the State in
22 its State plan under section 1951. Federal
23 funds appropriated for making payments under
24 title XXI or for administering title XXI that

1 are unobligated on January 1, 2013, are re-
2 scinded on that date.

3 “(E) No payment shall be made under sec-
4 tion 1903(a) to a State with respect to any dis-
5 proportionate share payment adjustment made
6 under section 1923 on or after January 1,
7 2013.

8 “(F) In the case of a State conducting a
9 waiver under section 1115 or other authority to
10 provide medical assistance for pregnant women,
11 low-income children, or low-income families with
12 children under a State program established
13 under this title or to provide long-term care
14 services and supports for low-income elderly or
15 disabled individuals that is in effect on such
16 date, the State may elect to terminate the waiv-
17 er as of January 1, 2013, or may submit a re-
18 quest to continue to provide medical assistance
19 or long-term care services and supports for
20 such individuals in accordance with the terms of
21 the waiver. The Secretary shall approve a re-
22 quest of a State with such a waiver to extend
23 the waiver for additional periods so long as the
24 total amount of Federal funds paid to the State
25 to conduct the waiver does not exceed the

1 amount of Federal funds that would be paid to
2 the State under this part if the waiver were not
3 conducted and medical assistance or long-term
4 care services and supports are provided under
5 the waiver consistent with the requirements of
6 this part.

7 “(2) HOLD HARMLESS PROVISIONS.—

8 “(A) ACUTE CARE FOR LOW-INCOME EL-
9 DERLY AND DISABLED.—

10 “(i) IN GENERAL.—The provisions of
11 part A shall apply to State expenditures
12 attributable to the provision of medical as-
13 sistance for acute care for low-income el-
14 derly or disabled individuals (including
15 dual eligible individuals) on and after Jan-
16 uary 1, 2013.

17 “(ii) RULE OF CONSTRUCTION.—
18 Clause (i) shall not be construed as affect-
19 ing—

20 “(I) the termination under para-
21 graph (1)(E) of payments under sec-
22 tion 1903(a) for disproportionate
23 share hospital adjustment payments
24 under section 1923; or

1 “(II) State flexibility to provide
2 dual eligible individuals with medical
3 assistance for acute care through en-
4 rollment in a managed care entity
5 under the amendment made by section
6 2(b) of the Medicaid Improvement
7 and State Empowerment Act.

8 “(B) COMMONWEALTHS AND TERRI-
9 TORIES.—This part shall not apply to the Com-
10 monwealth of Puerto Rico, the United States
11 Virgin Islands, Guam, the Commonwealth of
12 the Northern Mariana Islands, and American
13 Samoa. Any program to provide medical assist-
14 ance established under this title by any such
15 commonwealth or territory shall be operated in
16 accordance with the provisions of part A of this
17 title and subsections (f) and (g) of section
18 1108.

19 “(C) VACCINES FOR CHILDREN PRO-
20 GRAM.—The program for the distribution of pe-
21 diatric vaccines established under section 1928
22 shall continue to be operated in accordance with
23 the provisions of that section.

24 “(c) BUDGET AUTHORITY.—This part constitutes
25 budget authority in advance of appropriations Acts and

1 represents the obligation of the Federal Government to
2 provide for the payment to States of amounts provided
3 under section 1952.

4 “(d) NONENTITLEMENT.—This part shall not be in-
5 terpreted to entitle any individual or family to medical as-
6 sistance under any State program funded under this part
7 or to entitle any provider or entity to payment for the pro-
8 vision of items or services under any State program fund-
9 ed under this part.

10 “STATE PLANS

11 “SEC. 1951. (a) IN GENERAL.—In order to receive
12 a grant under section 1952 for a year and for the purpose
13 of ensuring transparency with respect to the expenditure
14 of Federal revenues, a State shall submit to the Secretary
15 a plan that includes the following:

16 “(1) OUTLINE OF MEDICAL ASSISTANCE PRO-
17 GRAM.—

18 “(A) GENERAL PROVISIONS.—A written
19 document that outlines how the State intends to
20 conduct a program, designed to serve all polit-
21 ical subdivisions in the State (not necessarily in
22 a uniform manner), that provides—

23 “(i) medical assistance to pregnant
24 women, low-income children, and low-in-
25 come families with children whose income
26 and resources are insufficient to meet the

1 costs of necessary medical services, and re-
2 habilitation and other services to help such
3 women, children, and families attain or re-
4 tain capability for independence or self-
5 care; and

6 “(ii) long-term care services and sup-
7 ports for low-income elderly or disabled in-
8 dividuals whose income and resources are
9 insufficient to meet the costs of such serv-
10 ices and supports and rehabilitation and
11 other services to help such individuals at-
12 tain or retain capability for independence
13 or self-care.

14 “(B) SPECIAL PROVISIONS.—

15 “(i) The document shall set forth ob-
16 jective criteria for—

17 “(I) the determination of eligi-
18 bility for medical assistance and for
19 long-term care services and supports
20 (which may be based on standards re-
21 lating to income, family composition,
22 patient population, health status, or
23 age); and

24 “(II) fair and equitable treat-
25 ment of recipients and providers, in-

1 including an explanation of how the
2 State will provide opportunities for re-
3 cipients and providers who have been
4 adversely affected to be heard in a
5 State administrative or appeal pro-
6 cess.

7 “(ii) The document shall include a de-
8 scription of—

9 “(I) the benefits to be provided,
10 which, in the case of medical assist-
11 ance, shall at a minimum be of the
12 types listed in paragraph (1) of sec-
13 tion 8904(a) of title 5, United States
14 Code; and

15 “(II) the amount (if any) of pre-
16 miums, deductibles, coinsurance, or
17 other cost sharing imposed.

18 “(iii) The document shall include a
19 description of how medical assistance and
20 long-term care services and supports will
21 be provided under the State plan, such as
22 through contracts with health maintenance
23 organizations, managed care organizations,
24 or regional preferred provider organization
25 care networks, the establishment of cash-

1 for-counseling programs, family health care
2 scholarships, or health savings accounts,
3 the provision of consumer-driven health
4 vouchers, or any other health coverage ben-
5 efit delivery design determined by the
6 State as appropriate for achieving the pur-
7 pose of this part.

8 “(iv) The document shall indicate how
9 the State shall satisfy the requirements of
10 sections 1902(a)(46) (relating to
11 verification of declarations of citizenship,
12 nationality, or satisfactory immigration
13 status).

14 “(2) CERTIFICATION OF THE ADMINISTRATION
15 OF THE PROGRAM.—A certification by the Governor
16 of the State specifying which State agency or agen-
17 cies will administer and supervise the State plan
18 under this part, which shall include assurances that
19 local governments and private sector organizations—

20 “(A) have been consulted regarding the
21 plan and design of the provision of medical as-
22 sistance and long-term care services and sup-
23 ports in the State so that such assistance and
24 services and supports are provided in a manner
25 appropriate to local populations; and

1 “(B) have had at least 45 days to submit
2 comments on such plan and design.

3 “(3) CERTIFICATION THAT THE STATE WILL
4 PROVIDE MEDICAL ASSISTANCE TO CHILDREN IN
5 FOSTER CARE AND ADOPTION ASSISTANCE PRO-
6 GRAM.—A certification by the Governor of the State
7 that the State will take such actions as are nec-
8 essary to ensure that children receiving assistance
9 under part E of title IV are eligible for medical as-
10 sistance under the State plan under this part.

11 “(4) CERTIFICATION THAT THE STATE WILL
12 PROVIDE INDIANS WITH EQUITABLE ACCESS TO AS-
13 SISTANCE.—A certification by the Governor of the
14 State that the State will provide each member of an
15 Indian tribe who is domiciled in the State with equi-
16 table access to medical assistance and to long-term
17 care services and supports under the State plan
18 under this part.

19 “(5) CERTIFICATION OF STANDARDS AND PRO-
20 CEDURES TO ENSURE AGAINST PROGRAM FRAUD,
21 WASTE, AND ABUSE.—A certification by the Gov-
22 ernor of the State that the State has established and
23 is enforcing standards and procedures to ensure
24 against program fraud, waste, and abuse, including
25 standards and procedures concerning nepotism, con-

1 submitted a plan under section 1951 shall be enti-
2 tled to receive from the Secretary for each 12-month
3 period, a grant in an amount equal to the State
4 health grant determined for the State for the period
5 under subsection (b).

6 “(2) TERMINATION OF OLD MEDICAID AND
7 CHIP FUNDING.—No payment shall be made by the
8 Secretary to any State under part A of this title or
9 under title XXI for State expenditures attributable
10 to providing on or after January 1, 2013—

11 “(A) medical assistance (as defined in sec-
12 tion 1905(a)), child health assistance (as de-
13 fined in section 2110(a)), or health benefits
14 coverage for pregnant women, low-income chil-
15 dren, or low-income families with children; or

16 “(B) long-term care services and supports
17 for elderly or disabled individuals.

18 “(b) TAXPAYER-PROVIDED PASS-THROUGH FUND-
19 ING OF HEALTH GRANTS TO STATES.—

20 “(1) APPROPRIATION.—For the purpose of
21 making health grants to States under this part,
22 there is appropriated, out of any money in the
23 Treasury not otherwise appropriated—

1 “(A) for the 12-month period beginning
2 January 1, 2013, an amount equal to the prod-
3 uct of—

4 “(i) the base appropriation amount
5 determined under paragraph (3); and

6 “(ii) the appropriation increase factor
7 determined under paragraph (4) for the
8 period; and

9 “(B) for each 12-month period thereafter,
10 an amount equal to the amount appropriated
11 under this paragraph for the preceding 12-
12 month period, increased by the appropriation
13 increase factor determined under paragraph (4)
14 for the period.

15 “(2) AMOUNT OF GRANTS.—

16 “(A) BASED ON POVERTY POPULATION.—
17 For each 12-month period beginning on and
18 after January 1, 2013, the Secretary shall pay
19 each State an amount equal to the product of—

20 “(i) the amount appropriated under
21 paragraph (1) for the period; and

22 “(ii) the ratio of the number of indi-
23 viduals residing in the State whose income
24 does not exceed 100 percent of the poverty
25 line applicable to a family of the size in-

1 volved to the number of such individuals in
2 all States that have submitted a plan
3 under section 1951 for the period (based
4 on data for the most recent 12-month pe-
5 riod for which data is available).

6 “(B) PRO RATA ADJUSTMENTS.—The Sec-
7 retary shall make pro rata increases or reduc-
8 tions in the amounts determined for States
9 under subparagraph (A) for a period as nec-
10 essary to ensure that the total amount appro-
11 priated for the period is allotted among all
12 States and that the total amount of all health
13 grants for States determined for a period does
14 not exceed the amount appropriated for the pe-
15 riod.

16 “(3) BASE APPROPRIATION AMOUNT.—The base
17 appropriation amount determined under this para-
18 graph is the product of—

19 “(A) \$165,000,000,000;

20 “(B) the appropriation increase factor de-
21 termined under paragraph (4) with respect to
22 the 12-month period beginning on January 1,
23 2011; and

24 “(C) the appropriation increase factor de-
25 termined under paragraph (4) with respect to

1 the 12-month period beginning on January 1,
2 2012.

3 “(4) APPROPRIATION INCREASE FACTOR.—The
4 appropriation increase factor determined under this
5 paragraph for a 12-month period is equal to the sum
6 of 1 plus the sum of following:

7 “(A) CPI-U GROWTH FACTOR.—The per-
8 centage increase, if any, in the consumer price
9 index for all urban consumers (all items; United
10 States city average) published by the Bureau of
11 Labor Statistics, or the successor index thereto,
12 for the fiscal year ending on September 30 of
13 the preceding 12-month period.

14 “(B) POPULATION GROWTH FACTOR.—The
15 percentage increase (if any) in the population of
16 the United States for the fiscal year ending on
17 September 30 of the preceding 12-month pe-
18 riod, as determined by the Secretary based on
19 the most recent published estimates of the Bu-
20 reau of the Census.

21 “(c) AVAILABILITY.—A health grant paid to a State
22 under this section for a period shall remain available until
23 expended.

24 “(d) REPORTS TO CONGRESS.—Not later than Janu-
25 ary 1 of 2018, and of every 5 years thereafter, the Comp-

1 troller General of the United States shall submit a report
2 to Congress that includes an analysis of changes among
3 the States in the population of individuals described in
4 each clause of subsection (b)(2)(A) and such recommenda-
5 tions for legislative changes to the health grant distribu-
6 tion formula applied under subsection (b)(2) as the Comp-
7 troller General determines appropriate to achieve the pur-
8 pose of this part and ensure a fair distribution of the Fed-
9 eral funds appropriated to carry out this part among the
10 States.

11 “USE OF GRANTS

12 “SEC. 1953. (a) GENERAL RULE.—A State to which
13 a grant is made under section 1952 may use the grant
14 in any manner that is reasonably demonstrated to accom-
15 plish the purpose of this part.

16 “(b) LIMITATION ON USE OF GRANT FOR ADMINIS-
17 TRATIVE PURPOSES.—

18 “(1) LIMITATION.—A State to which a grant is
19 made under section 1952 shall not expend more
20 than 5 percent of the grant for administrative pur-
21 poses.

22 “(2) EXCEPTION.—Paragraph (1) shall not
23 apply to the use of a grant for expenditures related
24 to preventing or eliminating waste, fraud, or abuse,
25 and expenditures for information technology and

1 computerization needed for tracking or monitoring
2 required by or under this part.

3 “ADMINISTRATIVE PROVISIONS

4 “SEC. 1954. (a) PAYMENTS TO STATES.—

5 “(1) QUARTERLY PAYMENTS.—The Secretary
6 shall pay each health grant payable to a State under
7 section 1952 in quarterly installments, subject to
8 this section.

9 “(2) COMPUTATION AND CERTIFICATION OF
10 PAYMENTS TO STATES.—

11 “(A) COMPUTATION.—The Secretary shall
12 estimate the amount to be paid to each State
13 for each quarter under this part, with such esti-
14 mate to be based on a report filed by the State
15 containing an estimate by the State of the total
16 sum to be expended by the State in the quarter
17 under the State program funded under this
18 part and such other information as the Sec-
19 retary may find necessary.

20 “(B) CERTIFICATION.—The Secretary of
21 Health and Human Services shall certify to the
22 Secretary of the Treasury the amount estimated
23 under subparagraph (A) with respect to a
24 State, reduced or increased to the extent of any
25 overpayment or underpayment which the Sec-
26 retary of Health and Human Services deter-

1 mines was made under this part to the State
2 for any prior quarter and with respect to which
3 adjustment has not been made under this para-
4 graph.

5 “(3) PAYMENT METHOD.—Upon receipt of a
6 certification under paragraph (2)(B) with respect to
7 a State, the Secretary of the Treasury shall, through
8 the Fiscal Service of the Department of the Treas-
9 ury and before audit or settlement by the General
10 Accounting Office, pay to the State, at the time or
11 times fixed by the Secretary of Health and Human
12 Services, the amount so certified.

13 “(b) NO WAIVER AUTHORITY.—Except as provided
14 in section 1950(b)(1)(F), the Secretary may not waive any
15 provision of this part under section 1115 or any other au-
16 thority.

17 “(c) LIMITATION ON FEDERAL AUTHORITY.—No of-
18 ficer or employee of the Federal Government may regulate
19 the conduct of States under this part or enforce any provi-
20 sion of this part, except to the extent expressly provided
21 in this part.

22 “PENALTIES

23 “SEC. 1955. (a) IN GENERAL.—Subject to this sec-
24 tion:

1 “(1) USE OF GRANT IN VIOLATION OF THIS
2 PART.—

3 “(A) GENERAL PENALTY.—If an audit
4 conducted under chapter 75 of title 31, United
5 States Code, finds that an amount paid to a
6 State under section 1952 for a period has been
7 used in violation of this part, the Secretary
8 shall reduce the grant payable to the State
9 under that section for the immediately suc-
10 ceeding period by the amount so used.

11 “(B) ENHANCED PENALTY FOR INTEN-
12 TIONAL VIOLATIONS.—If the State does not
13 prove to the satisfaction of the Secretary that
14 the State did not intend to use the amount in
15 violation of this part, the Secretary shall fur-
16 ther reduce the grant payable to the State
17 under section 1952 for the immediately suc-
18 ceeding period by an amount equal to 5 percent
19 of the State health grant determined for that
20 period.

21 “(2) FAILURE TO SUBMIT REQUIRED RE-
22 PORT.—If the Secretary determines that a State has
23 not, within 45 days after the end of a period for
24 which a grant is made under section 1952, sub-
25 mitted the report required by section 1957 for the

1 period, the Secretary shall reduce the grant payable
2 to the State under section 1952 for the immediately
3 succeeding period by an amount equal to 5 percent
4 of the State health grant determined for that period.

5 “(b) REASONABLE CAUSE EXCEPTION.—The Sec-
6 retary may not impose a penalty on a State under sub-
7 section (a) with respect to a requirement if the Secretary
8 determines that the State has reasonable cause for failing
9 to comply with the requirement.

10 “(c) CORRECTIVE COMPLIANCE PLAN.—

11 “(1) IN GENERAL.—

12 “(A) NOTIFICATION OF VIOLATION.—Be-
13 fore imposing a penalty against a State under
14 subsection (a) with respect to a violation of this
15 part, the Secretary shall notify the State of the
16 violation and allow the State the opportunity to
17 enter into a corrective compliance plan in ac-
18 cordance with this subsection which outlines
19 how the State will correct or discontinue, as ap-
20 propriate, the violation and how the State will
21 insure continuing compliance with this part.

22 “(B) 60-DAY PERIOD TO PROPOSE A COR-
23 RECTIVE COMPLIANCE PLAN.—During the 60-
24 day period that begins on the date the State re-
25 ceives a notice provided under subparagraph

1 (A) with respect to a violation, the State may
2 submit to the Federal Government a corrective
3 compliance plan to correct or discontinue, as
4 appropriate, the violation.

5 “(C) CONSULTATION ABOUT MODIFICA-
6 TIONS.—During the 60-day period that begins
7 with the date the Secretary receives a corrective
8 compliance plan submitted by a State in accord-
9 ance with subparagraph (B), the Secretary may
10 consult with the State on modifications to the
11 plan.

12 “(D) ACCEPTANCE OF PLAN.—A corrective
13 compliance plan submitted by a State in accord-
14 ance with subparagraph (B) is deemed to be ac-
15 cepted by the Secretary if the Secretary does
16 not accept or reject the plan during 60-day pe-
17 riod that begins on the date the plan is sub-
18 mitted.

19 “(2) EFFECT OF CORRECTING OR DIS-
20 CONTINUING VIOLATION.—The Secretary may not
21 impose any penalty under subsection (a) with re-
22 spect to any violation covered by a State corrective
23 compliance plan accepted by the Secretary if the
24 State corrects or discontinues, as appropriate, the
25 violation pursuant to the plan.

1 “(3) EFFECT OF FAILING TO CORRECT OR DIS-
2 CONTINUE VIOLATION.—The Secretary shall assess
3 some or all of a penalty imposed on a State under
4 subsection (a) with respect to a violation if the State
5 does not, in a timely manner, correct or discontinue,
6 as appropriate, the violation pursuant to a State cor-
7 rective compliance plan accepted by the Secretary.

8 “(d) LIMITATION ON AMOUNT OF PENALTIES.—

9 “(1) IN GENERAL.—In imposing the penalties
10 described in subsection (a), the Secretary shall not
11 reduce any health grant payable to a State for a pe-
12 riod by more than 10 percent.

13 “(2) CARRYFORWARD OF UNRECOVERED PEN-
14 ALTIES.—To the extent that paragraph (1) of this
15 subsection prevents the Secretary from recovering
16 during a period the full amount of penalties imposed
17 on a State under subsection (a) of this section for
18 a prior period, the Secretary shall apply any remain-
19 ing amount of such penalties to the health grant
20 payable to the State under section 1952 for the im-
21 mediately succeeding period.

22 “APPEAL OF ADVERSE DECISION

23 “SEC. 1956. (a) IN GENERAL.—Within 5 days after
24 the date the Secretary takes any adverse action under this
25 part with respect to a State, the Secretary shall notify the
26 Governor of the State of the adverse action, including any

1 action with respect to the State plan submitted under sec-
2 tion 1951 or the imposition of a penalty under section
3 1955.

4 “(b) ADMINISTRATIVE REVIEW.—

5 “(1) IN GENERAL.—Within 60 days after the
6 date a State receives notice under subsection (a) of
7 an adverse action, the State may appeal the action,
8 in whole or in part, to the Departmental Appeals
9 Board established in the Department of Health and
10 Human Services (in this section referred to as the
11 ‘Board’) by filing an appeal with the Board.

12 “(2) PROCEDURAL RULES.—The Board shall
13 consider an appeal filed by a State under paragraph
14 (1) on the basis of such documentation as the State
15 may submit and as the Board may require to sup-
16 port the final decision of the Board. In deciding
17 whether to uphold an adverse action or any portion
18 of such an action, the Board shall conduct a thor-
19 ough review of the issues and take into account all
20 relevant evidence. The Board shall make a final de-
21 termination with respect to an appeal filed under
22 paragraph (1) not less than 60 days after the date
23 the appeal is filed.

24 “(c) JUDICIAL REVIEW OF ADVERSE DECISION.—

1 “(1) IN GENERAL.—Within 90 days after the
2 date of a final decision by the Board under this sec-
3 tion with respect to an adverse action taken against
4 a State, the State may obtain judicial review of the
5 final decision (and the findings incorporated into the
6 final decision) by filing an action in—

7 “(A) the district court of the United States
8 for the judicial district in which the principal or
9 headquarters office of the State agency is lo-
10 cated; or

11 “(B) the United States District Court for
12 the District of Columbia.

13 “(2) PROCEDURAL RULES.—The district court
14 in which an action is filed under paragraph (1) shall
15 review the final decision of the Board on the record
16 established in the administrative proceeding, in ac-
17 cordance with the standards of review prescribed by
18 subparagraphs (A) through (E) of section 706(2) of
19 title 5, United States Code. The review shall be on
20 the basis of the documents and supporting data sub-
21 mitted to the Board.

22 “ANNUAL REPORTS

23 “SEC. 1957. Each State shall submit an annual re-
24 port to the Secretary that describes the State’s expendi-
25 tures of the amount paid to the State under section 1952
26 for the most recently ended period, and includes the num-

1 ber of individuals provided medical assistance and the
2 number of individuals provided long-term care services
3 and supports under the State plan under this part and
4 such other information as the Secretary may require. The
5 Secretary shall submit to Congress copies of all State re-
6 ports submitted under this section with respect to a pe-
7 riod.

8 “DEFINITIONS

9 “SEC. 1958. In this part:

10 “(1) DISABLED INDIVIDUAL.—The term ‘dis-
11 abled individual’ means an individual who would be
12 considered disabled under section 1614(a)(3) or
13 under criteria applied under the State plan under
14 part A (as in effect on March 22, 2010).

15 “(2) DUAL ELIGIBLE.—The term ‘dual eligible
16 individual’ means an individual who is entitled to, or
17 enrolled for, benefits under part A of title XVIII of
18 the Social Security Act, or enrolled for benefits
19 under part B of title XVIII of such Act, and is eligi-
20 ble for medical assistance under a State plan under
21 this title or under a waiver of such plan (as in effect
22 on March 22, 2010).

23 “(3) ELDERLY INDIVIDUAL.—The term ‘elderly
24 individual’ means an individual who has attained age
25 65 or the age specified in section 226(a)(1), which-
26 ever is greater.

1 “(4) LONG-TERM CARE SERVICES AND SUP-
2 PORTS.—

3 “(A) IN GENERAL.—The term ‘long-term
4 care services and supports’ means any of the
5 services or supports described in subparagraph
6 (B) that may be provided in a nursing facility,
7 an institution, a home, or other setting.

8 “(B) SERVICES AND SUPPORTS DE-
9 SCRIBED.—For purposes of subparagraph (A),
10 the services and supports described in this sub-
11 paragraph include assistive technology, adaptive
12 equipment, remote monitoring equipment, case
13 management for the aged, case management for
14 individuals with disabilities, nursing home serv-
15 ices, long-term rehabilitative services necessary
16 to restore functional abilities, services provided
17 in intermediate care facilities for people with
18 disabilities, habilitation services (including adult
19 day care programs), community treatment
20 teams for individuals with mental illness, home
21 health services, services provided in an institu-
22 tion for mental disease, a Program of All-Inclu-
23 sive Care for the Elderly (PACE), personal care
24 (including personal assistance services), recov-
25 ery support including peer counseling, sup-

1 portive employment, training skills necessary to
2 assist the individual in achieving or maintaining
3 independence, training of family members in-
4 cluding foster parents in supportive and behav-
5 ioral modification skills, ongoing and periodic
6 training to maintain life skills, transitional care
7 including room and board not to exceed 60 days
8 within a 12-month period.

9 “(5) LOW-INCOME.—The term ‘low-income’
10 means income (as determined under standards es-
11 tablished by the State) that does not exceed such
12 percentage of the poverty line for a family of the size
13 involved as the State shall establish.

14 “(6) MEDICAL ASSISTANCE.—The term ‘med-
15 ical assistance’ means health care coverage, as deter-
16 mined by a State and described in the State plan in
17 accordance with section 1951(a)(1)(B)(ii).

18 “(7) POVERTY LINE DEFINED.—The term ‘pov-
19 erty line’ has the meaning given such term in section
20 673(2) of the Community Services Block Grant Act
21 (42 U.S.C. 9902(2)), including any revision required
22 by such section.

23 “(8) PREGNANT WOMAN.—The term ‘pregnant
24 woman’ includes a woman during the 60-day period
25 beginning on the last day of the pregnancy.

1 “(9) STATE.—The term ‘State’ means each of
2 the 50 States and the District of Columbia.”.

3 (b) REMOVAL OF BARRIER TO PROVIDING DUAL ELI-
4 GIBLE INDIVIDUALS WITH ACUTE CARE THROUGH A
5 MANAGED CARE ENTITY.—

6 (1) IN GENERAL.—Section 1932(a)(2) of the
7 Social Security Act (42 U.S.C. 1396u–2(a)(2)) is
8 amended by striking subparagraph (B).

9 (2) EFFECTIVE DATE.—The amendment made
10 by paragraph (1) takes effect on January 1, 2013.

11 **SEC. 3. MEDICAL MALPRACTICE REFORM STATE INCEN-**
12 **TIVE FUND.**

13 (a) GRANTS.—The Secretary of Health and Human
14 Services (referred to in this section as the “Secretary”)
15 shall award grants to eligible States to assist such States
16 in implementing State-based medical malpractice reforms.

17 (b) ELIGIBILITY.—

18 (1) IN GENERAL.—To be eligible to receive a
19 grant under subsection (a), a State shall—

20 (A) submit to the Secretary an application,
21 at such time, in such manner, and containing
22 such information as the Secretary may require;
23 and

24 (B) shall certify, as part of the application
25 under subparagraph (A), that the State has

1 carried out activities, including enacting State
2 laws, that have been demonstrated to lower
3 medical malpractice claim or premiums costs
4 for physicians or to lower health care costs for
5 patients.

6 (2) STUDY.—As part of a certification provided
7 under paragraph (1)(B), the State shall include the
8 results of at least one longitudinal, empirically based
9 study that demonstrates cost reductions of the type
10 described in such paragraph. Such results shall be
11 provided in a manner that enables the Comptroller
12 General of the United States to make a determina-
13 tion as to whether such results are the reasonable
14 and demonstrable conclusion of the State activities
15 involved.

16 (3) TYPES OF LAWS.—Laws described in para-
17 graph (1)(B) may include caps on non-economic
18 damages, the establishment of health courts, the es-
19 tablishment of a comprehensive patient compensa-
20 tion program, providing for administrative deter-
21 minations of compensation, providing for early of-
22 fers, establishing safe harbors for the practice of evi-
23 dence-based medicine, or other demonstrated meth-
24 ods to reduce costs.

1 (c) AUTHORIZATION OF APPROPRIATIONS.—There is
2 authorized to be appropriated to carry out this section—

3 (1) \$500,000,000 for the period of fiscal years
4 2012 through 2016; and

5 (2) \$500,000,000 for the period of fiscal years
6 2017 through 2021.

7 (d) SUNSET.—The authority established under this
8 section shall not apply after September 30, 2021.

9 **SEC. 4. REPEALS.**

10 (a) PPACA AND THE HEALTH CARE-RELATED PRO-
11 VISIONS IN THE HEALTH CARE AND EDUCATION REC-
12 ONCILIATION ACT OF 2010.—

13 (1) IN GENERAL.—Except as provided in para-
14 graph (2):

15 (A) Effective as of the enactment of Public
16 Law 111–148, such Act is repealed, and the
17 provisions of law amended or repealed by such
18 Act are restored or revived as if such Act had
19 not been enacted.

20 (B) Effective as of the enactment of the
21 Health Care and Education Reconciliation Act
22 of 2010 (Public Law 111–152), title I and sub-
23 title B of title II of such Act are repealed, and
24 the provisions of law amended or repealed by
25 such title or subtitle, respectively, are restored

1 or revived as if such title and subtitle had not
2 been enacted.

3 (2) NONAPPLICATION TO PROGRAM INTEGRITY
4 PROVISIONS.—The repeals under paragraph (1) do
5 not apply to the provisions of, and amendments
6 made by the following:

7 (A) Section 2801 of Public Law 111–148
8 (relating to MACPAC).

9 (B) Title IV of Public Law 111–148 (re-
10 lating to transparency and program integrity).

11 (C) Subtitle D of title I of Public Law
12 111–152 (relating to reducing fraud, waste, and
13 abuse).

14 (b) REPEAL OF ARRA MAINTENANCE OF EFFORT.—
15 Subsection (f) of section 5001 of the American Recovery
16 and Reinvestment Act of 2009 (Public Law 111–5) is
17 amended by striking paragraph (1).

18 (c) CHIP.—Effective January 1, 2013, title XXI of
19 the Social Security Act (42 U.S.C. 1397aa et seq.) is re-
20 pealed.

1 **SEC. 5. DEVELOPMENT OF NEW FORMULA FOR FEDERAL**
2 **FINANCIAL PARTICIPATION FOR STATE**
3 **CHILD SUPPORT AND WELFARE PROGRAMS**
4 **TO REPLACE THE FMAP.**

5 Not later than January 1, 2012, the Secretary of
6 Health and Human Services, in consultation with the
7 States, shall establish a new formula for payments made
8 to or received from States under parts D and E of title
9 IV of the Social Security Act that are based on the Fed-
10 eral medical assistance percentage applicable to the State
11 under title XIX of the Social Security Act. On and after
12 January 1, 2013, the Federal medical assistance percent-
13 age shall only be used for purposes of making payments
14 to States under part A of title XIX of that Act for expend-
15 itures attributable to providing medical assistance for el-
16 derly individuals, disabled individual, and dual eligible in-
17 dividuals in accordance with section 1958 of such Act (as
18 added by section 3). Payments made to or received from
19 a State under parts D or E of title IV of such Act shall
20 be made on and after January 1, 2013, by applying the
21 formula developed by the Secretary of Health and Human
22 Services under this section in lieu of the Federal medical
23 assistance percentage.

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