

112TH CONGRESS
1ST SESSION

S. 1031

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 SENATE OF THE UNITED STATES

MAY 19, 2011

Mr. COBURN (for himself, Mr. BURR, and Mr. CHAMBLISS) introduced the following bill; which was read twice and referred to the Committee on Finance

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,*

1 **SECTION 1. SHORT TITLE.**

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

4 (b) **TABLE OF CONTENTS.**—The table of contents for
5 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 CHILD-
REN, 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.

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

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

10 (1) by inserting after section 1900, the fol-
11 lowing:

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

14 and

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

1 **“PART B—TAXPAYER-PROVIDED PASS-THROUGH**
2 **FUNDING OF HEALTH CARE GRANTS TO**
3 **STATES FOR PREGNANT WOMEN, LOW-IN-**
4 **COME CHILDREN, AND LOW-INCOME FAMI-**
5 **LIES AND FOR LONG-TERM CARE SERVICES**
6 **AND SUPPORTS FOR LOW-INCOME ELDERLY**
7 **OR DISABLED INDIVIDUALS**

8 **“SEC. 1950. PURPOSES; APPLICATION.**

9 “(a) IN GENERAL.—The purposes of this part are to
10 empower States with programmatic flexibility and finan-
11 cial predictability in designing and operating State pro-
12 grams to—

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

20 “(2) provide long-term care services and sup-
21 ports for low-income elderly or disabled individuals
22 whose income and resources are insufficient to meet
23 the costs of such services and supports and rehabili-
24 tation and other services to help such individuals at-
25 tain or retain capability for independence or self-
26 care.

1 “(b) APPLICATION.—

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

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

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

18 “(C) The provisions of part A of this title
19 shall no longer apply to a State program estab-
20 lished under this title to provide medical assist-
21 ance for pregnant women, low-income children,
22 or low-income families with children or to pro-
23 vide long-term care services and supports to
24 low-income elderly or disabled individuals and
25 the provisions of any drug rebate agreement

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

8 “(D) A targeted low-income child or a par-
9 ent of such a child who would be eligible for
10 child health assistance or health benefits cov-
11 erage under a State child health plan under
12 title XXI on June 30, 2012, shall no longer re-
13 ceive such assistance or benefits under title
14 XXI and shall be eligible for medical assistance
15 under a State program funded under this part
16 only to the extent the child or parent satisfies
17 the eligibility criteria established by the State in
18 its State plan under section 1951. Federal
19 funds appropriated for making payments under
20 title XXI or for administering title XXI that
21 are unobligated on January 1, 2013, are re-
22 scinded on that date.

23 “(E) No payment shall be made under sec-
24 tion 1903(a) to a State with respect to any dis-
25 proportionate share payment adjustment made

1 under section 1923 on or after January 1,
2 2013.

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

1 the waiver consistent with the requirements of
2 this part.

3 “(2) HOLD HARMLESS PROVISIONS.—

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

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

13 “(ii) RULE OF CONSTRUCTION.—
14 Clause (i) shall not be construed as affect-
15 ing—

16 “(I) the termination under para-
17 graph (1)(E) of payments under sec-
18 tion 1903(a) for disproportionate
19 share hospital adjustment payments
20 under section 1923; or

21 “(II) State flexibility to provide
22 dual eligible individuals with medical
23 assistance for acute care through en-
24 rollment in a managed care entity
25 under the amendment made by section

1 2(b) of the Medicaid Improvement
2 and State Empowerment Act.

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

14 “(C) VACCINES FOR CHILDREN PRO-
15 GRAM.—The program for the distribution of pe-
16 diatric vaccines established under section 1928
17 shall continue to be operated in accordance with
18 the provisions of that section.

19 “(c) BUDGET AUTHORITY.—This part constitutes
20 budget authority in advance of appropriations Acts and
21 represents the obligation of the Federal Government to
22 provide for the payment to States of amounts provided
23 under section 1952.

24 “(d) NONENTITLEMENT.—This part shall not be in-
25 terpreted to entitle any individual or family to medical as-

1 sistance under any State program funded under this part
2 or to entitle any provider or entity to payment for the pro-
3 vision of items or services under any State program fund-
4 ed under this part.

5 **“SEC. 1951. STATE PLANS.**

6 “(a) IN GENERAL.—In order to receive a grant under
7 section 1952 for a year and for the purpose of ensuring
8 transparency with respect to the expenditure of Federal
9 revenues, a State shall submit to the Secretary a plan that
10 includes the following:

11 “(1) OUTLINE OF MEDICAL ASSISTANCE PRO-
12 GRAM.—

13 “(A) GENERAL PROVISIONS.—A written
14 document that outlines how the State intends to
15 conduct a program, designed to serve all polit-
16 ical subdivisions in the State (not necessarily in
17 a uniform manner), that provides—

18 “(i) medical assistance to pregnant
19 women, low-income children, and low-in-
20 come families with children whose income
21 and resources are insufficient to meet the
22 costs of necessary medical services, and re-
23 habilitation and other services to help such
24 women, children, and families attain or re-

1 tain capability for independence or self-
2 care; and

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

11 “(B) SPECIAL PROVISIONS.—

12 “(i) The document shall set forth ob-
13 jective criteria for—

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

21 “(II) fair and equitable treat-
22 ment of recipients and providers, in-
23 cluding an explanation of how the
24 State will provide opportunities for re-
25 cipients and providers who have been

1 adversely affected to be heard in a
2 State administrative or appeal pro-
3 cess.

4 “(ii) The document shall include a de-
5 scription of—

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

12 “(II) the amount (if any) of pre-
13 miums, deductibles, coinsurance, or
14 other cost sharing imposed.

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

1 vouchers, or any other health coverage ben-
2 efit delivery design determined by the
3 State as appropriate for achieving the pur-
4 pose of this part.

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

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

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

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

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

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

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

1 the administration and supervision of the State pro-
2 gram, kickbacks, and the use of political patronage.

3 “(b) PLAN AMENDMENTS.—Within 30 days after a
4 State amends a plan submitted pursuant to subsection (a),
5 the State shall notify the Secretary of the amendment.

6 “(c) PUBLIC AVAILABILITY OF STATE PLAN SUM-
7 MARY.—The State shall make a summary of any plan or
8 plan amendment submitted by the State under this section
9 publicly available on a website and through such other
10 means as the State determines appropriate.

11 “(d) LIMITATION ON SECRETARIAL AUTHORITY.—
12 The Secretary may only review a State plan or plan
13 amendment submitted under this section for the purpose
14 of confirming that a State has submitted the required doc-
15 umentation. The Secretary shall not have any authority
16 to approve or deny a State plan or plan amendment sub-
17 mitted under this section or to otherwise inhibit or control
18 the expenditure of grants paid to a State under section
19 1952.

20 **“SEC. 1952. GRANTS TO STATES.**

21 “(a) ESTABLISHMENT OF SUSTAINABLE MEDICAID
22 FUNDING FOR STATES.—

23 “(1) IN GENERAL.—Beginning January 1,
24 2013, and annually thereafter, each State that has
25 submitted a plan under section 1951 shall be enti-

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

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

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

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

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

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

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

1 “(i) the base appropriation amount
2 determined under paragraph (3); and

3 “(ii) the appropriation increase factor
4 determined under paragraph (4) for the
5 period; and

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

12 “(2) AMOUNT OF GRANTS.—

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

17 “(i) the amount appropriated under
18 paragraph (1) for the period; and

19 “(ii) the ratio of the number of indi-
20 viduals residing in the State whose income
21 does not exceed 100 percent of the poverty
22 line applicable to a family of the size in-
23 volved to the number of such individuals in
24 all States that have submitted a plan
25 under section 1951 for the period (based

1 on data for the most recent 12-month pe-
2 riod for which data is available).

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

13 “(3) BASE APPROPRIATION AMOUNT.—The base
14 appropriation amount determined under this para-
15 graph is the product of—

16 “(A) \$165,000,000,000;

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

21 “(C) the appropriation increase factor de-
22 termined under paragraph (4) with respect to
23 the 12-month period beginning on January 1,
24 2012.

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

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

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

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

22 “(d) REPORTS TO CONGRESS.—Not later than Janu-
23 ary 1 of 2018, and of every 5 years thereafter, the Comp-
24 troller General of the United States shall submit a report
25 to Congress that includes an analysis of changes among

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

9 **“SEC. 1953. USE OF GRANTS.**

10 “(a) GENERAL RULE.—A State to which a grant is
11 made under section 1952 may use the grant in any man-
12 ner that is reasonably demonstrated to accomplish the
13 purpose of this part.

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

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

20 “(2) EXCEPTION.—Paragraph (1) shall not
21 apply to the use of a grant for expenditures related
22 to preventing or eliminating waste, fraud, or abuse,
23 and expenditures for information technology and
24 computerization needed for tracking or monitoring
25 required by or under this part.

1 **“SEC. 1954. ADMINISTRATIVE PROVISIONS.**

2 “(a) PAYMENTS TO STATES.—

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

7 “(2) COMPUTATION AND CERTIFICATION OF
8 PAYMENTS TO STATES.—

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

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

1 adjustment has not been made under this para-
2 graph.

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

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

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

20 **“SEC. 1955. PENALTIES.**

21 “(a) IN GENERAL.—Subject to this section:

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

24 “(A) GENERAL PENALTY.—If an audit
25 conducted under chapter 75 of title 31, United

1 States Code, finds that an amount paid to a
2 State under section 1952 for a period has been
3 used in violation of this part, the Secretary
4 shall reduce the grant payable to the State
5 under that section for the immediately suc-
6 ceeding period by the amount so used.

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

17 “(2) FAILURE TO SUBMIT REQUIRED RE-
18 PORT.—If the Secretary determines that a State has
19 not, within 45 days after the end of a period for
20 which a grant is made under section 1952, sub-
21 mitted the report required by section 1957 for the
22 period, the Secretary shall reduce the grant payable
23 to the State under section 1952 for the immediately
24 succeeding period by an amount equal to 5 percent
25 of the State health grant determined for that period.

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

6 “(c) CORRECTIVE COMPLIANCE PLAN.—

7 “(1) IN GENERAL.—

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

18 “(B) 60-DAY PERIOD TO PROPOSE A COR-
19 RECTIVE COMPLIANCE PLAN.—During the 60-
20 day period that begins on the date the State re-
21 ceives a notice provided under subparagraph
22 (A) with respect to a violation, the State may
23 submit to the Federal Government a corrective
24 compliance plan to correct or discontinue, as
25 appropriate, the violation.

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

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

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

22 “(3) EFFECT OF FAILING TO CORRECT OR DIS-
23 CONTINUE VIOLATION.—The Secretary shall assess
24 some or all of a penalty imposed on a State under
25 subsection (a) with respect to a violation if the State

1 does not, in a timely manner, correct or discontinue,
2 as appropriate, the violation pursuant to a State cor-
3 rective compliance plan accepted by the Secretary.

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

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

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

18 **“SEC. 1956. APPEAL OF ADVERSE DECISION.**

19 “(a) IN GENERAL.—Within 5 days after the date the
20 Secretary takes any adverse action under this part with
21 respect to a State, the Secretary shall notify the Governor
22 of the State of the adverse action, including any action
23 with respect to the State plan submitted under section
24 1951 or the imposition of a penalty under section 1955.

25 “(b) ADMINISTRATIVE REVIEW.—

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

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

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

21 “(1) IN GENERAL.—Within 90 days after the
22 date of a final decision by the Board under this sec-
23 tion with respect to an adverse action taken against
24 a State, the State may obtain judicial review of the

1 final decision (and the findings incorporated into the
2 final decision) by filing an action in—

3 “(A) the district court of the United States
4 for the judicial district in which the principal or
5 headquarters office of the State agency is lo-
6 cated; or

7 “(B) the United States District Court for
8 the District of Columbia.

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

18 **“SEC. 1957. ANNUAL REPORTS.**

19 “Each State shall submit an annual report to the
20 Secretary that describes the State’s expenditures of the
21 amount paid to the State under section 1952 for the most
22 recently ended period, and includes the number of individ-
23 uals provided medical assistance and the number of indi-
24 viduals provided long-term care services and supports
25 under the State plan under this part and such other infor-

1 mation as the Secretary may require. The Secretary shall
2 submit to Congress copies of all State reports submitted
3 under this section with respect to a period.

4 **“SEC. 1958. DEFINITIONS.**

5 “In this part:

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

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

19 “(3) **ELDERLY INDIVIDUAL.**—The term ‘elderly
20 individual’ means an individual who has attained age
21 65 or the age specified in section 226(a)(1), which-
22 ever is greater.

23 “(4) **LONG-TERM CARE SERVICES AND SUP-**
24 **PORTS.**—

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

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

1 independence, training of family members in-
2 cluding foster parents in supportive and behav-
3 ioral modification skills, ongoing and periodic
4 training to maintain life skills, transitional care
5 including room and board not to exceed 60 days
6 within a 12-month period.

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

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

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

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

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

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

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

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

9 **SEC. 3. MEDICAL MALPRACTICE REFORM STATE INCEN-**
10 **TIVE FUND.**

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

15 (b) ELIGIBILITY.—

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

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

22 (B) shall certify, as part of the application
23 under subparagraph (A), that the State has
24 carried out activities, including enacting State
25 laws, that have been demonstrated to lower

1 medical malpractice claim or premiums costs
2 for physicians or to lower health care costs for
3 patients.

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

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

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

1 (1) \$500,000,000 for the period of fiscal years
2 2012 through 2016; and

3 (2) \$500,000,000 for the period of fiscal years
4 2017 through 2021.

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

7 **SEC. 4. REPEALS.**

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

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

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

18 (B) Effective as of the enactment of the
19 Health Care and Education Reconciliation Act
20 of 2010 (Public Law 111–152), title I and sub-
21 title B of title II of such Act are repealed, and
22 the provisions of law amended or repealed by
23 such title or subtitle, respectively, are restored
24 or revived as if such title and subtitle had not
25 been enacted.

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

5 (A) Section 2801 of Public Law 111–148
6 (relating to MACPAC).

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

9 (C) Subtitle D of title I of Public Law
10 111–152 (relating to reducing fraud, waste, and
11 abuse).

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

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

19 **SEC. 5. DEVELOPMENT OF NEW FORMULA FOR FEDERAL**
20 **FINANCIAL PARTICIPATION FOR STATE**
21 **CHILD SUPPORT AND WELFARE PROGRAMS**
22 **TO REPLACE THE FMAP.**

23 Not later than January 1, 2012, the Secretary of
24 Health and Human Services, in consultation with the
25 States, shall establish a new formula for payments made

1 to or received from States under parts D and E of title
2 IV of the Social Security Act that are based on the Fed-
3 eral medical assistance percentage applicable to the State
4 under title XIX of the Social Security Act. On and after
5 January 1, 2013, the Federal medical assistance percent-
6 age shall only be used for purposes of making payments
7 to States under part A of title XIX of that Act for expend-
8 itures attributable to providing medical assistance for el-
9 derly individuals, disabled individual, and dual eligible in-
10 dividuals in accordance with section 1958 of such Act (as
11 added by section 3). Payments made to or received from
12 a State under parts D or E of title IV of such Act shall
13 be made on and after January 1, 2013, by applying the
14 formula developed by the Secretary of Health and Human
15 Services under this section in lieu of the Federal medical
16 assistance percentage.

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