

106TH CONGRESS
1ST SESSION

S. 584

To amend title XIX of the Social Security Act to permit the Secretary of Health and Human Services to waive recoupment under the medicaid program of certain tobacco-related funds received by a State if a State uses a portion of such funds for tobacco use prevention and health care and early learning programs.

IN THE SENATE OF THE UNITED STATES

MARCH 10, 1999

Mr. KENNEDY (for himself and Mr. LAUTENBERG) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend title XIX of the Social Security Act to permit the Secretary of Health and Human Services to waive recoupment under the medicaid program of certain tobacco-related funds received by a State if a State uses a portion of such funds for tobacco use prevention and health care and early learning programs.

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 This Act may be cited as the “Children’s Smoking
5 Prevention, Health, and Learning Trust Fund Act of
6 1999”.

1 **SEC. 2. AUTHORITY TO WAIVE RECOUPMENT UNDER THE**
2 **MEDICAID PROGRAM OF TOBACCO-RELATED**
3 **FUNDS.**

4 (a) IN GENERAL.—Section 1903(d)(3) of the Social
5 Security Act (42 U.S.C. 1396b(d)(3)) is amended—

6 (1) by inserting “(A)” before “The”; and

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

8 “(B) Subparagraph (A) and paragraph (2)(B) shall
9 not apply to any amount recovered or paid to a State as
10 part of the comprehensive settlement of November 1998
11 between manufacturers of tobacco products (as defined in
12 section 5702(d) of the Internal Revenue Code of 1986)
13 and States, or as part of any individual State settlement
14 or judgment reached in litigation initiated or pursued by
15 a State against one or more such manufacturers, if the
16 Secretary finds that the following conditions are met:

17 “(i) Subject to subparagraph (C), with respect
18 to any fiscal year, the State demonstrates, through
19 a plan submitted to, and approved by, the Secretary,
20 that 50 percent of amounts so recovered or paid (in
21 this subparagraph referred to as the ‘Federal share’)
22 during the fiscal year shall be expended consistent
23 with the following:

24 “(I) At least 35 percent of the Federal
25 share shall be expended on one or more of the

1 tobacco use prevention programs described in
2 subparagraph (D).

3 “(II) Subject to subparagraph (F), the re-
4 mainder of the Federal share (determined after
5 the application of subclause (I)) shall be ex-
6 pended on one or more of the health care and
7 early learning programs described in subpara-
8 graph (E).

9 “(ii) With respect to any fiscal year—

10 “(I) the level of funds expended by the
11 State (determined without regard to any por-
12 tion of the Federal share expended by the
13 State) for any program on which a portion of
14 the Federal share is to be expended is not less
15 than the level of funds expended by the State
16 during the most recent State fiscal year ending
17 before the date on which the State first recov-
18 ered or received any funds pursuant to a settle-
19 ment or judgment described in this subpara-
20 graph; and

21 “(II) an amount equal to the Federal
22 share is used to supplement and not supplant
23 the level of funds expended by the State for any
24 such program during such State fiscal year.

1 “(iii) The State files with the Secretary an annual report that, with respect to a fiscal year—

2
3 “(I) details how the Federal share of the amounts so recovered or paid has been spent consistent with clause (i); and

4
5
6 “(II) identifies, with respect to each program funded in accordance with clause (i) (and, if applicable, subparagraph (F))—

7
8
9 “(aa) the amount of additional expenditures made for each such program;

10
11 “(bb) the number of additional individuals participating in the program and the nature of the services provided; and

12
13 “(cc) such other information as the Secretary determines is necessary.

14
15
16 “(C) If any State can demonstrate to the Secretary that the Federal share of the total amount expended by the State under this title to treat tobacco-induced illnesses is less than 50 percent of the total amount recovered or paid to the State as a result of a settlement or judgment described in subparagraph (B), clause (i) of that subparagraph shall be applied by substituting for ‘50 percent’ the percentage so demonstrated by the State.

1 “(D) For purposes of subparagraph (B)(i)(I), tobacco
2 use prevention programs described in this subparagraph
3 are the following:

4 “(i) Counter-advertising programs to discourage
5 tobacco use.

6 “(ii) Smoking cessation programs.

7 “(iii) School-based tobacco use prevention pro-
8 grams.

9 “(iv) Community-based tobacco use prevention
10 programs.

11 “(v) Programs to enforce prohibitions on the
12 sale of tobacco products to youth.

13 “(vi) Other State-initiated programs to deter
14 tobacco use and assist individuals suffering from
15 nicotine addiction or smoking-induced disease.

16 “(E) For purposes of subparagraph (B)(i)(II), health
17 care and early learning programs described in this sub-
18 paragraph are the following:

19 “(i) Community health centers that receive
20 funds under section 330 of the Public Health Serv-
21 ice Act (42 U.S.C. 254b).

22 “(ii) Prescription drug assistance programs to
23 help senior citizens pay for pharmaceuticals.

24 “(iii) The State Children’s Health Insurance
25 Program established under title XXI.

1 “(iv) Maternal and child health services pro-
2 vided under title V.

3 “(v) The Child Care and Development Block
4 Grant Act of 1990 (42 U.S.C. 9858 et
5 seq.).

6 “(vi) The Safe and Drug-Free Schools and
7 Communities Program under title IV of the Elemen-
8 tary and Secondary Education Act of 1965 (20
9 U.S.C. 7101 et seq.).

10 “(vii) State-initiated programs approved by the
11 Secretary to—

12 “(I) make health insurance available to the
13 uninsured;

14 “(II) provide health services to the under-
15 served or uninsured;

16 “(III) reduce public health risks; or

17 “(IV) support medical research and expand
18 access to clinical trials for individuals with seri-
19 ous illnesses.

20 “(viii) State-initiated programs approved by the
21 Secretary to—

22 “(I) award grants to communities for the
23 creation, improvement, and expansion of early
24 childhood education opportunities; or

1 “(II) serve the educational and develop-
2 mental needs of children 5 years of age or
3 younger.

4 “(F) In the case of any State that is a tobacco-grow-
5 ing State, the State may use up to 25 percent of the re-
6 mainder of the Federal share (determined after the appli-
7 cation of subparagraph (B)(i)(I)) for programs to assist
8 tobacco farmers and tobacco workers who have sustained
9 an adverse financial impact as a direct result of a settle-
10 ment or judgment described in subparagraph (B).

11 “(G) Amounts provided to a State under any provi-
12 sion of law referred to in subparagraph (D) or (E) shall
13 not be reduced solely as a result of the availability of funds
14 recovered or received pursuant to a settlement or judg-
15 ment described in subparagraph (B).

16 “(H) If the Secretary determines that amounts de-
17 scribed in subparagraph (B)(i) are not being spent in ac-
18 cordance with subparagraphs (D), (E), and, as applicable,
19 (C) and (F), or that a State has failed to comply with
20 the requirements of clauses (ii) and (iii) of subparagraph
21 (B), subparagraph (A) and paragraph (2)(B) shall apply
22 to such amounts and the Secretary shall take appropriate
23 action to offset such amounts from the amounts otherwise
24 paid to the State under this title.”.

1 (b) PROHIBITION ON PAYMENT FOR ADMINISTRA-
2 TIVE EXPENSES INCURRED IN PURSUING TOBACCO LITI-
3 GATION.—Section 1903(i) of the Social Security Act (42
4 U.S.C. 1396b(i)) is amended—

5 (1) in paragraph (18), by striking the period
6 and inserting “; or”; and

7 (2) by inserting after paragraph (18) the fol-
8 lowing:

9 “(19) with respect to any amount expended on
10 administrative costs to initiate or pursue litigation
11 against one or more manufacturers of tobacco prod-
12 ucts (as defined in section 5702(d) of the Internal
13 Revenue Code of 1986).”.

14 (c) EFFECTIVE DATE.—The amendments made by
15 this section apply to amounts recovered or paid to a State
16 before, on, or after the date of enactment of this Act.

○