

108TH CONGRESS
2D SESSION

H. R. 4935

To amend titles XIX and XXI of the Social Security Act to clarify and ensure that the authority granted to the Secretary of Health and Human Services under section 1115 of that Act is used solely to promote the objectives of the Medicaid and State children's health insurance programs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 22, 2004

Mr. DINGELL (for himself, Mr. BROWN of Ohio, Mr. WAXMAN, and Mrs. CAPPS) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend titles XIX and XXI of the Social Security Act to clarify and ensure that the authority granted to the Secretary of Health and Human Services under section 1115 of that Act is used solely to promote the objectives of the Medicaid and State children's health insurance programs, and for other purposes.

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; TABLE OF CONTENTS.**

2 (a) **SHORT TITLE.**—This Act may be cited as the
3 “Medicaid and CHIP Safety Net Preservation Act of
4 2004”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings; purposes; rule of construction.
- Sec. 3. Clarification that Section 1115 authority does not permit a cap on Federal financial participation.
- Sec. 4. Clarification that section 1115 authority does not permit elimination of, or modification limiting, individual entitlement.
- Sec. 5. Clarification that section 1115 authority does not permit elimination or modification of requirements relating to EPSDT services.
- Sec. 6. Clarification that section 1115 authority does not permit elimination or modification of requirements relating to certain safety-net services.
- Sec. 7. Improvement of the process for the development and approval of Medicaid and CHIP demonstration projects.
- Sec. 8. Effective date.

7 **SEC. 2. FINDINGS; PURPOSES; RULE OF CONSTRUCTION.**

8 (a) **FINDINGS.**—Congress makes the following find-
9 ings:

10 (1) Certain requirements of titles XIX and XXI
11 of the Social Security Act (42 U.S.C. 1396 et seq.,
12 1397aa et seq.) are central to the overall objectives
13 of the Medicaid and State children’s health insurance
14 programs and are not properly subject to waiver,
15 modification, or disregard under the authority of
16 section 1115 of the Social Security Act (42 U.S.C.
17 1315).

18 (2) Some of the requirements of titles XIX and
19 XXI of the Social Security Act that promote the

1 overall objectives of the medicaid and State chil-
2 dren’s health insurance programs have been waived,
3 modified, or otherwise disregarded by the Secretary
4 of Health and Human Services under such section
5 1115, despite the explicit requirement in that section
6 that certain requirements of the medicaid and State
7 children’s health insurance programs only may be
8 waived, modified, or disregarded for the purpose of
9 approving an experimental, pilot, or demonstration
10 project if the waiver, modification, or disregard “is
11 likely to assist in promoting the objectives” of those
12 programs.

13 (b) PURPOSES.—The purposes of this Act are the fol-
14 lowing:

15 (1) To clarify that certain requirements of titles
16 XIX and XXI of the Social Security Act (42 U.S.C.
17 1396 et seq., 1397aa et seq.), which are among
18 those critical to achieving the objectives of the med-
19 icaid and State children’s health insurance pro-
20 grams, may not be waived, modified, or otherwise
21 disregarded by the Secretary of Health and Human
22 Services under the authority of section 1115 of the
23 Social Security Act (42 U.S.C. 1315).

24 (2) To ensure that the authority granted to the
25 Secretary of Health and Human Services under sec-

1 tion 1115 of the Social Security Act (42 U.S.C.
2 1315) with respect to the medicaid and State chil-
3 dren’s health insurance programs for the purpose of
4 approving experimental, pilot, or demonstration
5 projects is not used inappropriately.

6 (c) RULE OF CONSTRUCTION.—Nothing in this Act
7 or the amendments made by this Act shall be construed
8 to—

9 (1) authorize the waiver, modification, or other
10 disregard of any provision of title XIX or XXI of the
11 Social Security Act (42 U.S.C. 1396 et seq., 1397aa
12 et seq.); or

13 (2) imply congressional approval of any dem-
14 onstration project affecting the medicaid program
15 under title XIX of the Social Security Act or the
16 State children’s health insurance program under
17 title XXI of such Act that has been approved by the
18 Secretary of Health and Human Services as of the
19 date of enactment of this Act.

20 **SEC. 3. CLARIFICATION THAT SECTION 1115 AUTHORITY**
21 **DOES NOT PERMIT A CAP ON FEDERAL FI-**
22 **NANCIAL PARTICIPATION.**

23 Title XIX of the Social Security Act is amended by
24 inserting after section 1925 the following:

1 “CLARIFICATIONS OF AUTHORITY UNDER SECTION 1115
2 “SEC. 1926. (a) CLARIFICATION THAT SECTION
3 1115 AUTHORITY DOES NOT PERMIT A CAP ON FEDERAL
4 FINANCIAL PARTICIPATION.—The Secretary may not im-
5 pose or approve under the authority of section 1115 a cap,
6 limitation, or other restriction on payment under section
7 1903(a) to a State for amounts expended as medical as-
8 sistance in accordance with the requirements of this
9 title.”.

10 **SEC. 4. CLARIFICATION THAT SECTION 1115 AUTHORITY**
11 **DOES NOT PERMIT ELIMINATION OF, OR**
12 **MODIFICATION LIMITING, INDIVIDUAL ENTI-**
13 **TLEMENT.**

14 Section 1926 of the Social Security Act, as added by
15 section 3, is amended by adding at the end the following:

16 “(b) CLARIFICATION THAT SECTION 1115 AUTHOR-
17 ITY DOES NOT PERMIT ELIMINATION OF, OR MODIFICA-
18 TION LIMITING, INDIVIDUAL ENTITLEMENT.—The Sec-
19 retary may not approve or impose under the authority of
20 section 1115 an elimination of, or modification limiting,
21 the entitlement (established under section 1902(a),
22 1905(a), or otherwise) of an individual to receive any med-
23 ical assistance for which Federal financial participation is
24 claimed under this title.”.

1 **SEC. 5. CLARIFICATION THAT SECTION 1115 AUTHORITY**
2 **DOES NOT PERMIT ELIMINATION OR MODI-**
3 **FICATION OF REQUIREMENTS RELATING TO**
4 **EPSDT SERVICES.**

5 Section 1926 of the Social Security Act, as added by
6 section 3 and amended by section 4, is amended by adding
7 at the end the following:

8 “(c) CLARIFICATION THAT SECTION 1115 AUTHOR-
9 ITY DOES NOT PERMIT ELIMINATION OR MODIFICATION
10 OF REQUIREMENTS RELATING TO EPSDT SERVICES.—
11 The Secretary may not impose or approve under the au-
12 thority of section 1115 an elimination or modification of
13 the amount, duration, or scope of the services described
14 in section 1905(a)(4)(B) (relating to early and periodic
15 screening, diagnostic, and treatment services (as defined
16 in section 1905(r))) or of the requirements of subpara-
17 graphs (A) through (C) of section 1902(a)(43).”.

18 **SEC. 6. CLARIFICATION THAT SECTION 1115 AUTHORITY**
19 **DOES NOT PERMIT ELIMINATION OR MODI-**
20 **FICATION OF REQUIREMENTS RELATING TO**
21 **CERTAIN SAFETY-NET SERVICES.**

22 Section 1926 of the Social Security Act, as added by
23 section 3 and amended by sections 4 and 5, is amended
24 by adding at the end the following:

25 “(d) CLARIFICATION THAT SECTION 1115 AUTHOR-
26 ITY DOES NOT PERMIT ELIMINATION OR MODIFICATION

1 OF REQUIREMENTS RELATING TO CERTAIN SAFETY-NET
2 SERVICES.—The Secretary may not impose or approve
3 under the authority of section 1115 an elimination or
4 modification of the amount, duration, or scope of the serv-
5 ices described in subparagraphs (B) and (C) of section
6 1905(a)(2) (relating to services provided by a rural health
7 clinic (as defined in section 1905(l)(1)) and services pro-
8 vided by a Federally-qualified health center (as defined in
9 section 1905(l)(2))) or of the requirements of section
10 1902(bb) (relating to payment for such services).”.

11 **SEC. 7. IMPROVEMENT OF THE PROCESS FOR THE DEVEL-**
12 **OPMENT AND APPROVAL OF MEDICAID AND**
13 **CHIP DEMONSTRATION PROJECTS.**

14 Section 1115 of the Social Security Act (42 U.S.C.
15 1315) is amended by inserting after subsection (c) the fol-
16 lowing:

17 “(d) In the case of any experimental, pilot, or dem-
18 onstration project under subsection (a) to assist in pro-
19 moting the objectives of title XIX or XXI in a State that
20 would result in a substantive change in eligibility, enroll-
21 ment, benefits, financing, or cost-sharing (to the extent
22 permitted under section 1916(f)) with respect to a State
23 program under title XIX or XXI (in this subsection re-
24 ferred to as a ‘demonstration project’) the following shall
25 apply:

1 “(1) The Secretary may not approve a proposal
2 for a demonstration project, or for an amendment of
3 a demonstration project, submitted by a State on or
4 after the date of enactment of this subsection, unless
5 the State requesting approval certifies that the State
6 provided reasonable public notice and a reasonable
7 opportunity for receipt and consideration of public
8 comment on the proposal prior to submission of the
9 proposal to the Secretary. Such notice shall in-
10 clude—

11 “(A) the proposal;

12 “(B) the methodologies underlying the pro-
13 posal;

14 “(C) the justifications for the proposal;

15 “(D) the State’s projections regarding the
16 likely effect and impact of the proposal on indi-
17 viduals eligible for assistance and providers or
18 suppliers of items or services under title XIX or
19 XXI (including under any demonstration
20 project conducted in conjunction with either of
21 those titles); and

22 “(E) the State’s assumptions on which the
23 projections described in subparagraph (D) are
24 based.

1 “(2) With respect to any proposal for a dem-
2 onstration project, or for an amendment or exten-
3 sion of a demonstration project, which has not been
4 approved or disapproved by the Secretary as of the
5 date of enactment of this subsection, the Secretary
6 shall—

7 “(A) provide public notice in the Federal
8 Register and on the Internet website of the
9 Centers for Medicare Medicaid Services of the
10 proposal, any revisions of the proposal, and any
11 conditions for the financing or approval of the
12 proposal;

13 “(B) provide adequate opportunity for
14 public comment on the proposal, any revisions
15 of the proposal, and any such conditions;

16 “(C) approve such proposal, any revisions
17 of the proposal, and any such conditions only if,
18 after consideration of the public comments re-
19 ceived, the Secretary determines that the pro-
20 posal, any revisions of the proposal, and any
21 such conditions are likely to assist in promoting
22 the objectives of title XIX or XXI and identifies
23 in writing the basis for such determination; and

24 “(D) publish on such website all docu-
25 mentation relating to the proposal (including

1 the written determination required under sub-
2 paragraph (C)), any revisions of the proposal,
3 and any such conditions, including if the pro-
4 posal, any revisions of the proposal, and any
5 such conditions are approved—

6 “(i) the final terms and conditions for
7 the demonstration project; and

8 “(ii) a list identifying each provision
9 of title XIX or XXI, and each regulation
10 relating to either such title, with which
11 compliance is waived, modified, or other-
12 wise disregarded or for which costs that
13 would otherwise not be permitted under
14 such title will be allowed.”.

15 **SEC. 8. EFFECTIVE DATE.**

16 (a) IN GENERAL.—Except as provided in subsection
17 (b), the amendments made by sections 3 through 6 shall
18 apply to the approval on or after the date of enactment
19 of this Act of—

20 (1) a waiver, experimental, pilot, or demonstra-
21 tion project under section 1115 of the Social Secu-
22 rity Act (42 U.S.C. 1315); and

23 (2) an amendment or extension of such a
24 project.

1 (b) EXCEPTION.—The amendment made by section
2 5 shall not apply with respect to any extension of approval
3 of a waiver, experimental, pilot, or demonstration project
4 with respect to title XIX of the Social Security Act that
5 was first approved before 1994 and that provides a com-
6 prehensive and preventive child health program under
7 such project that includes screening, diagnosis, and treat-
8 ment of children who have not attained age 21.

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