

109TH CONGRESS
1ST SESSION

S. 1563

To amend title XIX of the Social Security Act to protect and strengthen the safety net of children's public health coverage by extending the enhanced Federal matching rate under the State children's health insurance program to children covered by medicaid at State option and by encouraging innovations in children's enrollment and retention, to advance quality and performance in children's public health insurance programs, to provide payments for children's hospitals to reward quality and performance, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 29, 2005

Mr. DEWINE (for himself and Mrs. LINCOLN) 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 protect and strengthen the safety net of children's public health coverage by extending the enhanced Federal matching rate under the State children's health insurance program to children covered by medicaid at State option and by encouraging innovations in children's enrollment and retention, to advance quality and performance in children's public health insurance programs, to provide payments for children's hospitals to reward quality and performance, 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Advancing Better Cov-
 5 erage and Care for Children’s Health Act of 2005” or the
 6 “ABCs for Children’s Health Act of 2005”.

7 **SEC. 2. TABLE OF CONTENTS.**

8 The table of contents for this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.

TITLE I—COVERING CHILDREN

- Sec. 101. Phased-in application of enhanced FMAP for children whose eligi-
 bility is optional under medicaid.
- Sec. 102. Enhanced matching rate for the effective enrollment and retention of
 children under medicaid.
- Sec. 103. Preserving comprehensive benefits appropriate to children’s needs.

TITLE II—ADVANCING QUALITY AND PERFORMANCE:
 INNOVATIONS IN CARE

- Sec. 201. Purpose.
- Sec. 202. National quality forum; advancing consensus-based pediatric quality
 and performance measures.
- Sec. 203. Research grant program; developing new pediatric quality and per-
 formance measures.
- Sec. 204. Medicaid demonstration program; evaluating evidence-based quality
 and performance measures for children’s health services.
- Sec. 205. Funding.

TITLE III—ENSURING ACCESS TO CARE

- Sec. 301. Pay for performance for children’s critical access hospitals.
- Sec. 302. Inclusion of children’s hospitals as covered entities for purposes of
 limitation of purchased drug price.

1 **TITLE I—COVERING CHILDREN**

2 **SEC. 101. PHASED-IN APPLICATION OF ENHANCED FMAP**
 3 **FOR CHILDREN WHOSE ELIGIBILITY IS OP-**
 4 **TIONAL UNDER MEDICAID.**

5 (a) IN GENERAL.—The first sentence of section 1905
 6 of the Social Security Act (42 U.S.C. 1396d) is amend-
 7 ed—

8 (1) in subsection (b)—

9 (A) by striking “and (4)” and inserting
 10 “(4)”; and

11 (B) by inserting before the period the fol-
 12 lowing: “, and (5) the Federal medical assist-
 13 ance percentage shall be equal to the applicable
 14 percentage determined under subsection (y)
 15 with respect to medical assistance provided to
 16 children who are eligible for such assistance on
 17 the basis of subsection (a)(10)(A)(ii),
 18 (a)(10)(C), (e)(3), or (e)(9) of section 1902, or
 19 a waiver under subsection (c) or (e) of section
 20 1915, or who are eligible for such assistance
 21 during a presumptive eligibility period under
 22 section 1920A (but only if the child is not eligi-
 23 ble for medical assistance on the basis of sec-
 24 tion 1902(a)(10)(A)(i))”; and

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

1 “(y) For purposes of the fifth clause of the first sen-
2 tence of subsection (b), the applicable percentage deter-
3 mined under this subsection is—

4 “(1) in the case of fiscal year 2006, the en-
5 hanced FMAP determined under section 2105(b) by
6 substituting ‘6 percent’ for ‘30 percent’ in such sec-
7 tion;

8 “(2) in the case of fiscal year 2007, the en-
9 hanced FMAP determined under section 2105(b) by
10 substituting ‘12 percent’ for ‘30 percent’ in such
11 section;

12 “(3) in the case of fiscal year 2008, the en-
13 hanced FMAP determined under section 2105(b) by
14 substituting ‘18 percent’ for ‘30 percent’ in such
15 section;

16 “(4) in the case of fiscal year 2009, the en-
17 hanced FMAP determined under section 2105(b) by
18 substituting ‘24 percent’ for ‘30 percent’ in such
19 section; and

20 “(5) in the case of fiscal year 2010 or any fiscal
21 year thereafter, the enhanced FMAP determined
22 under section 2105(b).”.

23 (b) EFFECTIVE DATE.—The amendments made by
24 subsection (a) take effect on October 1, 2005.

1 **SEC. 102. ENHANCED MATCHING RATE FOR THE EFFEC-**
2 **TIVE ENROLLMENT AND RETENTION OF**
3 **CHILDREN UNDER MEDICAID.**

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

6 (1) in subparagraph (E), by striking “plus” at
7 the end and inserting “and”; and

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

9 “(F) 90 percent of the sums expended dur-
10 ing such quarter which are attributable to the
11 design, development, implementation, and eval-
12 uation of such enrollment systems as the Sec-
13 retary determines are likely to provide more ef-
14 ficient and effective administration of the plan’s
15 enrollment and retention of eligible children, in-
16 cluding—

17 “(i) ‘express lane’ enrollment for chil-
18 dren through procedures to ensure that
19 children’s eligibility for medical assistance
20 is determined and expedited through the
21 use of technology and shared information
22 with other public benefit programs, such as
23 the school lunch program under the Rich-
24 ard B. Russell National School Lunch Act
25 and the food stamp program under the
26 Food Stamp Act of 1977;

1 “(ii) a single, simplified application
2 form for medical assistance under this title
3 and for children’s health assistance under
4 title XXI;

5 “(iii) procedures which allow for the
6 enrollment of children by mail or through
7 the Internet;

8 “(iv) the timely evaluation, assistance,
9 and determination of presumptive eligi-
10 bility under section 1920A;

11 “(v) procedures which allow for pas-
12 sive reenrollment of children to protect
13 against the loss of coverage among eligible
14 children; and

15 “(vi) such other enrollment system
16 changes as the Secretary determines are
17 likely to provide more efficient and effec-
18 tive administration of the plan’s enrollment
19 and retention of eligible children; plus”.

20 (b) EXCLUSION FROM ERRONEOUS EXCESS PAY-
21 MENT DETERMINATION.—Section 1903(u)(1)(D) of such
22 Act (42 U.S.C. 1396a(u)(1)(D)) is amended by adding at
23 the end the following:

24 “(vi)(I) Notwithstanding clauses (ii)
25 and (iii), and subject to subclause (II), in

1 determining the amount of erroneous ex-
 2 cess payments, there shall not be included
 3 any erroneous payments made with respect
 4 to medical assistance provided to children
 5 who are erroneously enrolled or erro-
 6 neously provided with continued enrollment
 7 under this title as a result of the applica-
 8 tion of enrollment systems described in
 9 subsection (a)(3)(F).

10 “(II) Subclause (I) shall only apply
 11 with respect to erroneous payments made
 12 during the first 5 fiscal years that begin on
 13 or after the date of enactment of this
 14 clause.”.

15 **SEC. 103. PRESERVING COMPREHENSIVE BENEFITS APPRO-**
 16 **PRIATE TO CHILDREN’S NEEDS.**

17 (a) IN GENERAL.—Title XIX of the Social Security
 18 Act is amended by inserting after section 1925 the fol-
 19 lowing:

20 “CLARIFICATION OF AUTHORITY UNDER SECTION 1115

21 “SEC. 1926. The Secretary may not impose or ap-
 22 prove under the authority of section 1115 an elimination
 23 or modification of the amount, duration, or scope of the
 24 services described in section 1905(a)(4)(B) (relating to
 25 early and periodic screening, diagnostic, and treatment
 26 services (as defined in section 1905(r))) or of the require-

1 ments of subparagraphs (A) through (C) of section
2 1902(a)(43).”.

3 (b) EFFECTIVE DATE.—

4 (1) IN GENERAL.—Except as provided in para-
5 graph (2), section 1926 of the Social Security Act,
6 as added by subsection (a), shall apply to the ap-
7 proval on or after the date of enactment of this Act
8 of—

9 (A) a waiver, experimental, pilot, or dem-
10 onstration project under section 1115 of the So-
11 cial Security Act (42 U.S.C. 1315); and

12 (B) an amendment or extension of such a
13 project.

14 (2) EXCEPTION.—Section 1926 of the Social
15 Security Act, as so added, shall not apply with re-
16 spect to any extension of approval of a waiver, ex-
17 perimental, pilot, or demonstration project with re-
18 spect to title XIX of the Social Security Act that
19 was first approved before 1994 and that provides a
20 comprehensive and preventive child health program
21 under such project that includes screening, diag-
22 nosis, and treatment of children who have not at-
23 tained age 21.

1 **TITLE II—ADVANCING QUALITY**
2 **AND PERFORMANCE: INNOVA-**
3 **TIONS IN CARE**

4 **SEC. 201. PURPOSE.**

5 The purpose of this title is to increase the quality
6 of the health care furnished to children under the health
7 insurance programs under titles XIX and XXI of the So-
8 cial Security Act.

9 **SEC. 202. NATIONAL QUALITY FORUM; ADVANCING CON-**
10 **SENSUS-BASED PEDIATRIC QUALITY AND**
11 **PERFORMANCE MEASURES.**

12 (a) IN GENERAL.—The Secretary of Health and
13 Human Services (in this title referred to as the “Sec-
14 retary”), acting through the Director of the Center for
15 Medicaid and State Operations of the Centers for Medi-
16 care & Medicaid Services, shall enter into agreements with
17 the National Quality Forum to facilitate the development
18 of consensus-based pediatric quality and performance
19 measures.

20 (b) CONSULTATION.—In carrying out agreements
21 under subsection (a), the Director of the Center for Med-
22 icaid and State Operations shall consult with—

23 (1) the Agency for Healthcare Research and
24 Quality; and

25 (2) national pediatric provider groups.

1 **SEC. 203. RESEARCH GRANT PROGRAM; DEVELOPING NEW**
2 **PEDIATRIC QUALITY AND PERFORMANCE**
3 **MEASURES.**

4 (a) **IN GENERAL.**—The Secretary, acting through the
5 Administrator of the Agency for Healthcare Research and
6 Quality, shall award grants to eligible entities for the de-
7 velopment and evaluation of pediatric quality and perform-
8 ance measures.

9 (b) **ELIGIBLE ENTITY DEFINED.**—In this section,
10 the term “eligible entity” means—

11 (1) an institution or multiple institutions with
12 demonstrated expertise and capacity to evaluate pe-
13 diatric quality and performance measures;

14 (2) a National nonprofit association of pediatric
15 academic medical centers with demonstrated experi-
16 ence in working with other pediatric provider and
17 accrediting organizations in developing quality and
18 performance measures for children’s inpatient and
19 outpatient care; and

20 (3) a collaboration of national pediatric organi-
21 zations working to improve quality and performance
22 in pediatric critical care.

23 (c) **APPLICATION.**—Each eligible entity desiring a
24 grant under this section shall submit an application to the
25 Secretary at such time, in such manner, and accompanied
26 by such information as the Secretary may require.

1 **SEC. 204. MEDICAID DEMONSTRATION PROGRAM; EVALU-**
2 **ATING EVIDENCE-BASED QUALITY AND PER-**
3 **FORMANCE MEASURES FOR CHILDREN'S**
4 **HEALTH SERVICES.**

5 (a) IN GENERAL.—Not later than 1 year after the
6 date of enactment of this Act, the Secretary, acting
7 through the Director of the Center for Medicaid and State
8 Operations of the Centers for Medicare & Medicaid Serv-
9 ices, shall establish demonstration projects in each of the
10 3 categories described in subsection (c) to advance quality
11 and performance in the delivery of medical assistance pro-
12 vided to children under the medicaid program established
13 under title XIX of the Social Security Act (42 U.S.C.
14 1396 et seq.).

15 (b) AUTHORITY.—

16 (1) IN GENERAL.—The Secretary is authorized
17 to award grants to States or providers to conduct
18 such projects.

19 (2) USE OF FUNDS.—Funds provided under a
20 grant awarded under this section may be used for
21 administrative costs, including costs associated with
22 the design, data collection, and evaluation of the
23 demonstration project conducted with such funds,
24 and other expenditures that are not otherwise eligi-
25 ble for reimbursement under the medicaid program.

1 (3) EVIDENCE OF ORGANIZATIONAL COMMIT-
2 MENT REQUIRED FOR AWARD OF GRANTS.—A State
3 or provider shall not be eligible to receive a grant to
4 conduct a demonstration project under this section
5 unless the State or provider demonstrates a commit-
6 ment to the concept of change and transformation in
7 the delivery of children’s health services. Dedication
8 of financial resources of the State or provider to the
9 project may be deemed to demonstrate evidence of
10 such a commitment.

11 (c) PROJECT CATEGORIES DESCRIBED.—The 3 dem-
12 onstration project categories described in this subsection
13 are the following:

14 (1) Projects that adopt and use health informa-
15 tion technology and evidenced-based outcome meas-
16 ures for pediatric inpatient and sub-specialty physi-
17 cian care and evaluate the impact of such technology
18 and measures on the quality, safety, and costs of
19 such care.

20 (2) Projects that demonstrate and evaluate care
21 management for children with chronic conditions to
22 determine the extent to which such management
23 promotes continuity of care, stabilization of medical
24 conditions, and functional outcomes, prevents or
25 minimizes acute exacerbations of chronic conditions,

1 and reduces adverse health outcomes and avoidable
2 hospitalizations.

3 (3) Projects that implement evidenced-based
4 approaches to improving efficiency, safety, and effec-
5 tiveness in the delivery of hospital care for children
6 across hospital services and evaluate the impact of
7 such changes on the quality and costs of such care.

8 (d) SITES.—To the extent practicable, the Secretary
9 shall use multiple sites in different geographical locations
10 in conducting each of the 3 demonstration project cat-
11 egories described in subsection (c).

12 (e) UNIFORM MEASURES, DATA, PROJECT EVALUA-
13 TIONS.—Working in consultation with experts described in
14 subsection (f) and with participating States or providers,
15 the Secretary shall establish uniform measures (adjusted
16 for patient acuity), collect data, and conduct evaluations
17 with respect to the 3 demonstration project categories de-
18 scribed in subsection (c).

19 (f) CONSULTATION.—In developing and imple-
20 menting demonstration projects under this section, the
21 Secretary shall consult with national pediatric provider or-
22 ganizations, consumers, and such other entities or individ-
23 uals with relevant expertise as the Secretary deems nec-
24 essary.

1 (g) REPORT.—Not later than 6 months after the
 2 completion of all demonstration projects conducted under
 3 this section, the Secretary shall evaluate such projects and
 4 submit a report to Congress that includes the findings of
 5 the evaluation and recommendations with respect to—

6 (1) expanding the projects to additional sites;

7 and

8 (2) the broad implementation of identified suc-
 9 cessful approaches in advancing quality and per-
 10 formance in the delivery of medical assistance pro-
 11 vided to children under the medicaid program.

12 **SEC. 205. FUNDING.**

13 In order to carry out the provisions of this title, out
 14 of funds in the Treasury not otherwise appropriated, there
 15 are appropriated to the Secretary—

16 (1) \$25,000,000 for fiscal year 2006;

17 (2) \$30,000,000 for fiscal year 2007; and

18 (3) \$35,000,000 for each of the fiscal years
 19 2008, 2009, and 2010.

20 **TITLE III—ENSURING ACCESS**
 21 **TO CARE**

22 **SEC. 301. PAY FOR PERFORMANCE FOR CHILDREN'S CRIT-**
 23 **ICAL ACCESS HOSPITALS.**

24 (a) IN GENERAL.—The Secretary of Health and
 25 Human Services (in this section referred to as the “Sec-

1 retary”), acting through the Administrator of the Centers
2 for Medicare & Medicaid Services (in this section referred
3 to as the “Administrator”), shall implement a 4-year pro-
4 gram to develop, implement, and evaluate a pay-for-per-
5 formance program for eligible children’s hospitals pro-
6 viding critical access to children eligible for medical assist-
7 ance under the medicaid program established under title
8 XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

9 (b) CONSULTATION.—Measures of quality and per-
10 formance utilized in the program will be determined by
11 the Administrator in collaboration with participating eligi-
12 ble children’s hospitals and in consultation with States,
13 the National Association of Children’s Hospitals and Re-
14 lated Institutions, the Agency for Healthcare Research
15 and Quality, the National Quality Forum, and such other
16 entities or individuals with expertise in pediatric quality
17 and performance measures as the Administrator deems
18 appropriate.

19 (c) ELIGIBLE CHILDREN’S HOSPITALS.—For pur-
20 poses of this section, an eligible children’s hospital is a
21 children’s hospital that, not later than January 1, 2006,
22 has submitted an application to the Secretary to partici-
23 pate in the program established under this section and has
24 been certified by the Secretary as—

1 (1) meeting the criteria described in subsection
2 (d);

3 (2) agreeing to report data on quality and per-
4 formance measures; and

5 (3) meeting or exceeding such measures as are
6 established by the Secretary with respect to the pro-
7 vision of care by the hospital.

8 (d) CRITERIA DESCRIBED.—In order to be certified
9 as meeting the criteria described in this subsection, a hos-
10 pital shall be a general acute care children’s hospital or
11 a specialty children’s hospital as defined under
12 1886(d)(1)(B)(iii) of the Social Security Act (42 U.S.C.
13 1395ww(d)(1)(B)(iii)), or a non-freestanding general
14 acute care children’s hospital which shares a provider
15 number with another hospital or hospital system that—

16 (1) has 62 or more total pediatric beds;

17 (2) has 38 or more total combined pediatric
18 general medical or surgical and pediatric intensive
19 care beds;

20 (3) has at least 4 pediatric intensive care beds;

21 (4) has a pediatric emergency room in the hos-
22 pital or access to an emergency room with pediatric
23 services through the hospital system; and

1 (5) provides a minimum of 25 percent of its
2 days of care to patients eligible for medical assist-
3 ance under the medicaid program.

4 (e) PAYMENT METHODOLOGY.—

5 (1) IN GENERAL.—An eligible children’s hos-
6 pital that participates in the program established
7 under this section shall receive supplemental Federal
8 payments for inpatient and outpatient care (which
9 shall be in addition to any other payments the hos-
10 pitals receive for such care under the medicaid pro-
11 gram) for cost reporting periods or portions of such
12 reporting periods occurring during fiscal years 2007
13 through 2010 in accordance with the following:

14 (A) FISCAL YEARS 2007 AND 2008.—

15 (i) IN GENERAL.—For hospital cost
16 reporting periods or portions of such re-
17 porting periods occurring during fiscal year
18 2007 or 2008, hospitals reporting data for
19 quality and performance measures estab-
20 lished under the program and participating
21 in the development of pay-for-performance
22 methodology under this section, subject to
23 clause (ii), shall receive with respect to in-
24 patient or outpatient care that is deter-
25 mined to meet such measures, a Federal

1 supplemental payment increase equal to
2 the amount received under the medicaid
3 program for such care multiplied by the
4 market basket percentage increase for the
5 year (as defined under section
6 1886(b)(3)(B)(iii) of the Social Security
7 Act (42 U.S.C. 1395ww(b)(3)(B)(iii)).

8 (ii) LIMITATION.—The total amount
9 of all Federal supplemental payments
10 made with respect to cost reporting periods
11 or portions of such periods described in
12 clause (i) shall not exceed the amounts ap-
13 propriated under this section for fiscal
14 years 2007 and 2008.

15 (B) FISCAL YEARS 2009 AND 2010.—

16 (i) IN GENERAL.—For cost reporting
17 periods or portions of such periods occur-
18 ring during fiscal year 2009 or 2010, hos-
19 pitals shall receive supplemental Federal
20 payments reflecting measures of quality
21 and performance and a pay-for-perform-
22 ance methodology developed by the Sec-
23 retary in consultation with the entities de-
24 scribed in subsection (b). Such method-
25 ology shall recognize clinical measures, pa-

1 tient satisfaction and adoption of informa-
2 tion technology.

3 (ii) LIMITATION.—The total amount
4 of all Federal supplemental payments
5 made for cost reporting periods or portions
6 of such periods described in clause (i) shall
7 not exceed the amounts appropriated
8 under this section for fiscal years 2009
9 and 2010.

10 (2) STATE MAINTENANCE OF EFFORT.—With
11 respect to the periods for payment of the Federal
12 supplemental payments established under paragraph
13 (1), in no case shall a State—

14 (A) pay a participating hospital less for
15 services for children eligible for medical assist-
16 ance under the medicaid program than the hos-
17 pital was paid with respect to the most recent
18 cost reporting period ending before the date of
19 enactment of this Act; or

20 (B) not provide an eligible children’s hos-
21 pital participating in the program established
22 under this section (determined on a facility-spe-
23 cific basis) with the same increase in payment
24 that the State may provide to any other hos-
25 pital participating in the State medicaid pro-

1 gram, including any State-owned or operated
2 hospital or any hospital operated by a State
3 university system.

4 (f) APPROPRIATIONS.—

5 (1) IN GENERAL.—Out of funds in the Treas-
6 ury not otherwise appropriated, there are appro-
7 priated for making payments under this section—

8 (A) for fiscal year 2007, \$80,000,000;

9 (B) for fiscal year 2008, \$100,000,000;

10 and

11 (C) for each of fiscal years 2009 and 2010,
12 \$120,000,000.

13 (2) CARRYOVER.—Any amount appropriated
14 under paragraph (1) with respect to a fiscal year
15 that remains unobligated as of the end of that fiscal
16 year, shall remain available for obligation during the
17 succeeding fiscal year, in addition to the amount ap-
18 propriated under that paragraph for such succeeding
19 fiscal year.

20 (g) EVALUATION AND REPORT.—Not later than Sep-
21 tember 1, 2010, the Secretary shall report to Congress
22 on the program established under this section. In pro-
23 viding such a report, the Secretary shall—

24 (1) conduct an independent evaluation;

1 (2) consult with States, eligible children’s hos-
2 pitals participating in the program, the National As-
3 sociation of Children’s Hospitals and Related Insti-
4 tutions, and other national pediatric organizations
5 and individuals with expertise in pediatric measures
6 of quality and performance;

7 (3) include a detailed description of the meas-
8 ures and payment enhancements used in deter-
9 mining and rewarding performance under the pro-
10 gram;

11 (4) assess the impact of rewarding performance
12 through the Federal supplemental payments pro-
13 vided under the program, including with respect to
14 any improvements and innovations in the delivery of
15 children’s hospital care and children’s access to ap-
16 propriate care;

17 (5) assess how State hospital payment meth-
18 odologies under the medicaid program, including
19 hospital and physician payments and coverage, affect
20 the capacity of the medicaid program to reward per-
21 formance; and

22 (6) include recommendations to the Committee
23 on Finance of the Senate and the Committee on En-
24 ergy and Commerce of the House of Representatives
25 regarding the implementation and design of the per-

1 performance-based payments made under the program,
 2 whether to continue such program, and potential al-
 3 ternative approaches to making performance-based
 4 payments to such hospitals.

5 **SEC. 302. INCLUSION OF CHILDREN'S HOSPITALS AS COV-**
 6 **ERED ENTITIES FOR PURPOSES OF LIMITA-**
 7 **TION OF PURCHASED DRUG PRICE.**

8 (a) IN GENERAL.—Section 340B(a)(4) of the Public
 9 Health Services Act (42 U.S.C. 256b(a)(4)) is amended
 10 by adding at the end the following new subparagraph:

11 “(M) A children’s hospital described in sec-
 12 tion 1886(d)(1)(B)(iii) of the Social Security
 13 Act which meets the requirements of clauses (i)
 14 and (iii) of subparagraph (L) and which would
 15 meet the requirements of clause (ii) of such
 16 subparagraph if that clause were applied by
 17 taking into account the percentage of care pro-
 18 vided by the hospital to patients eligible for
 19 medical assistance under the medicaid pro-
 20 gram.”.

21 (b) EFFECTIVE DATE.—The amendment made by
 22 subsection (a) shall apply to drugs purchased on or after
 23 the date of enactment of this Act.

○