

Calendar No. 719

110TH CONGRESS
2D SESSION**H. R. 5613**

IN THE SENATE OF THE UNITED STATES

APRIL 24, 2008

Received and read the first time

APRIL 28, 2008

Read the second time and placed on the calendar

AN ACT

To extend certain moratoria and impose additional moratoria on certain Medicaid regulations through April 1, 2009, 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 “Protecting the Med-
5 icaid Safety Net Act of 2008”.

6 **SEC. 2. MORATORIA ON CERTAIN MEDICAID REGULATIONS.**

7 (a) EXTENSION OF CERTAIN MORATORIA IN PUBLIC
8 LAW 110–28.—Section 7002(a)(1) of the U.S. Troop
9 Readiness, Veterans’ Care, Katrina Recovery, and Iraq

1 Accountability Appropriations Act, 2007 (Public Law
2 110–28) is amended—

3 (1) by striking “prior to the date that is 1 year
4 after the date of enactment of this Act” and insert-
5 ing “prior to April 1, 2009”;

6 (2) in subparagraph (A), by inserting after
7 “Federal Regulations)” the following: “or in the
8 final regulation, relating to such parts, published on
9 May 29, 2007 (72 Federal Register 29748)”;

10 (3) in subparagraph (C), by inserting before the
11 period at the end the following: “, including the pro-
12 posed regulation published on May 23, 2007 (72
13 Federal Register 28930)”.

14 (b) EXTENSION OF CERTAIN MORATORIA IN PUBLIC
15 LAW 110–173.—Section 206 of the Medicare, Medicaid,
16 and SCHIP Extension Act of 2007 (Public Law 110–173)
17 is amended—

18 (1) by striking “June 30, 2008” and inserting
19 “April 1, 2009”;

20 (2) by inserting “, including the proposed regu-
21 lation published on August 13, 2007 (72 Federal
22 Register 45201),” after “rehabilitation services”;
23 and

1 (3) by inserting “, including the final regulation
2 published on December 28, 2007 (72 Federal Reg-
3 ister 73635),” after “school-based transportation”.

4 (c) ADDITIONAL MORATORIA.—

5 (1) IN GENERAL.—Notwithstanding any other
6 provision of law, the Secretary of Health and
7 Human Services shall not, prior to April 1, 2009,
8 take any action (through promulgation of regulation,
9 issuance of regulatory guidance, use of Federal pay-
10 ment audit procedures, or other administrative ac-
11 tion, policy, or practice, including a Medical Assist-
12 ance Manual transmittal or letter to State Medicaid
13 directors) to impose any restrictions relating to a
14 provision described in subparagraph (A), (B), or (C)
15 of paragraph (2) if such restrictions are more re-
16 strictive in any aspect than those applied to the re-
17 spective provision as of the date specified in para-
18 graph (3) for such provision.

19 (2) PROVISIONS DESCRIBED.—

20 (A) PORTION OF INTERIM FINAL REGULA-
21 TION RELATING TO MEDICAID TREATMENT OF
22 OPTIONAL CASE MANAGEMENT SERVICES.—

23 (i) IN GENERAL.—Subject to clause
24 (ii), the provision described in this sub-
25 paragraph is the interim final regulation

1 relating to optional State plan case man-
2 agement services under the Medicaid pro-
3 gram published on December 4, 2007 (72
4 Federal Register 68077) in its entirety.

5 (ii) EXCEPTION.—The provision de-
6 scribed in this subparagraph does not in-
7 clude the portion of such regulation as re-
8 lates directly to implementing section
9 1915(g)(2)(A)(ii) of the Social Security
10 Act, as amended by section 6052 of the
11 Deficit Reduction Act of 2005 (Public Law
12 109–171), through the definition of case
13 management services and targeted case
14 management services contained in pro-
15 posed section 440.169 of title 42, Code of
16 Federal Regulations, but only to the extent
17 that such portion is not more restrictive
18 than the policies set forth in the Dear
19 State Medicaid Director letter on case
20 management issued on January 19, 2001
21 (SMDL #01–013), and with respect to
22 community transition case management,
23 the Dear State Medicaid Director letter
24 issued on July 25, 2000 (Olmstead Update
25 3).

1 (B) PROPOSED REGULATION RELATING TO
2 REDEFINITION OF MEDICAID OUTPATIENT HOS-
3 PITAL SERVICES.—The provision described in
4 this subparagraph is the proposed regulation re-
5 lating to clarification of outpatient clinic and
6 hospital facility services definition and upper
7 payment limit under the Medicaid program
8 published on September 28, 2007 (72 Federal
9 Register 55158) in its entirety.

10 (C) PORTION OF PROPOSED REGULATION
11 RELATING TO MEDICAID ALLOWABLE PROVIDER
12 TAXES.—

13 (i) IN GENERAL.—Subject to clause
14 (ii), the provision described in this sub-
15 paragraph is the final regulation relating
16 to health-care-related taxes under the Med-
17 icaid program published on February 22,
18 2008 (73 Federal Register 9685) in its en-
19 tirety.

20 (ii) EXCEPTION.—The provision de-
21 scribed in this subparagraph does not in-
22 clude the portions of such regulation as re-
23 late to the following:

24 (I) REDUCTION IN THRESH-
25 OLD.—The reduction from 6 percent

1 to 5.5 percent in the threshold applied
2 under section 433.68(f)(3)(i) of title
3 42, Code of Federal Regulations, for
4 determining whether or not there is
5 an indirect guarantee to hold a tax-
6 payer harmless, as required to carry
7 out section 1903(w)(4)(C)(ii) of the
8 Social Security Act, as added by sec-
9 tion 403 of the Medicare Improvement
10 and Extension Act of 2006 (division
11 B of Public Law 109–432).

12 (II) CHANGE IN DEFINITION OF
13 MANAGED CARE.—The change in the
14 definition of managed care as pro-
15 posed in the revision of section
16 433.56(a)(8) of title 42, Code of Fed-
17 eral Regulations, as required to carry
18 out section 1903(w)(7)(A)(viii) of the
19 Social Security Act, as amended by
20 section 6051 of the Deficit Reduction
21 Act of 2005 (Public Law 109–171).

22 (3) DATE SPECIFIED.—The date specified in
23 this paragraph for the provision described in—

24 (A) subparagraph (A) of paragraph (2) is
25 December 3, 2007;

1 (B) subparagraph (B) of such paragraph is
2 September 27, 2007; or

3 (C) subparagraph (C) of such paragraph is
4 February 21, 2008.

5 **SEC. 3. FUNDS TO REDUCE MEDICAID FRAUD AND ABUSE.**

6 (a) IN GENERAL.—For purposes of reducing fraud
7 and abuse in the Medicaid program under title XIX of
8 the Social Security Act, there is appropriated to the Sec-
9 retary of Health and Human Services, out of any money
10 in the Treasury not otherwise appropriated, \$25,000,000,
11 for each fiscal year (beginning with fiscal year 2009).
12 Amounts appropriated under this section shall remain
13 available for expenditure until expended and shall be in
14 addition to any other amounts appropriated or made avail-
15 able to the Secretary for such purposes with respect to
16 the Medicaid program.

17 (b) ANNUAL REPORT.—Not later than September 30
18 of 2009 and of each subsequent year, the Secretary of
19 Health and Human Services shall submit to the Com-
20 mittee on Energy and Commerce of the House of Rep-
21 resentatives and the Committee on Finance of the Senate
22 a report on the activities (and the results of such activi-
23 ties) funded under subsection (a) to reduce waste, fraud,
24 and abuse in the Medicaid program under title XIX of
25 the Social Security Act during the previous 12 month pe-

1 rioid, including the amount of funds appropriated under
2 such subsection (a) for each such activity and an estimate
3 of the savings to the Medicaid program resulting from
4 each such activity.

5 **SEC. 4. STUDY AND REPORTS TO CONGRESS.**

6 (a) SECRETARIAL REPORT IDENTIFYING PROB-
7 LEMS.—Not later than July 1, 2008, the Secretary of
8 Health and Human Services shall submit to the Com-
9 mittee on Energy and Commerce of the House of Rep-
10 resentatives and the Committee on Finance of the Senate
11 a report that—

12 (1) outlines the specific problems the Medicaid
13 regulations referred to in the amendments made by
14 subsections (a) and (b) of section 2 and in the provi-
15 sions described in subsection (c)(2) of such section
16 were intended to address;

17 (2) detailing how these regulations were de-
18 signed to address these specific problems; and

19 (3) cites the legal authority for such regula-
20 tions.

21 (b) INDEPENDENT COMPREHENSIVE STUDY AND RE-
22 PORT.—

23 (1) IN GENERAL.—Not later than July 1, 2008,
24 the Secretary of Health and Human Services shall

1 enter into a contract with an independent organiza-
2 tion for the purpose of—

3 (A) producing a comprehensive report on
4 the prevalence of the problems outlined in the
5 report submitted under subsection (a);

6 (B) identifying strategies in existence to
7 address these problems; and

8 (C) assessing the impact of each regulation
9 referred to in such subsection on each State
10 and the District of Columbia.

11 (2) ADDITIONAL MATTER.—The report under
12 paragraph (1) shall also include—

13 (A) an identification of which claims for
14 items and services (including administrative ac-
15 tivities) under title XIX of the Social Security
16 Act are not processed through systems de-
17 scribed in section 1903(r) of such Act;

18 (B) an examination of the reasons why
19 these claims for such items and services are not
20 processed through such systems; and

21 (C) recommendations on actions by the
22 Federal government and the States that can
23 make claims for such items and services more
24 accurate and complete consistent with such
25 title.

1 (3) DEADLINE.—The report under paragraph
2 (1) shall be submitted to the Committee on Energy
3 and Commerce of the House of Representatives and
4 the Committee on Finance of the Senate not later
5 than March 1, 2009.

6 (4) COOPERATION OF STATES.—If the Sec-
7 retary of Health and Human Services determines
8 that a State or the District of Columbia has not co-
9 operated with the independent organization for pur-
10 poses of the report under this subsection, the Sec-
11 retary shall reduce the amount paid to the State or
12 District under section 1903(a) of the Social Security
13 Act (42 U.S.C. 1396b(a)) by \$25,000 for each day
14 on which the Secretary determines such State or
15 District has not so cooperated. Such reduction shall
16 be made through a process that permits the State or
17 District to challenge the Secretary's determination.

18 (c) FUNDING.—

19 (1) IN GENERAL.—Out of any money in the
20 Treasury of the United States not otherwise appro-
21 priated, there are appropriated to the Secretary
22 without further appropriation, \$5,000,000 to carry
23 out this section.

24 (2) AVAILABILITY; AMOUNTS IN ADDITION TO
25 OTHER AMOUNTS APPROPRIATED FOR SUCH ACTIVI-

1 TIES.—Amounts appropriated pursuant to para-
2 graph (1) shall—

3 (A) remain available until expended; and

4 (B) be in addition to any other amounts
5 appropriated or made available to the Secretary
6 of Health and Human Services with respect to
7 the Medicaid program.

8 **SEC. 5. ASSET VERIFICATION THROUGH ACCESS TO INFOR-**
9 **MATION HELD BY FINANCIAL INSTITUTIONS.**

10 (a) ADDITION OF AUTHORITY.—Title XIX of the So-
11 cial Security Act is amended by inserting after section
12 1939 the following new section:

13 “ASSET VERIFICATION THROUGH ACCESS TO
14 INFORMATION HELD BY FINANCIAL INSTITUTIONS

15 “SEC. 1940. (a) IMPLEMENTATION.—

16 “(1) IN GENERAL.—Subject to the provisions of
17 this section, each State shall implement an asset
18 verification program described in subsection (b), for
19 purposes of determining or redetermining the eligi-
20 bility of an individual for medical assistance under
21 the State plan under this title.

22 “(2) PLAN SUBMITTAL.—In order to meet the
23 requirement of paragraph (1), each State shall—

24 “(A) submit not later than a deadline spec-
25 ified by the Secretary consistent with paragraph
26 (3), a State plan amendment under this title

1 that describes how the State intends to imple-
2 ment the asset verification program; and

3 “(B) provide for implementation of such
4 program for eligibility determinations and rede-
5 terminations made on or after 6 months after
6 the deadline established for submittal of such
7 plan amendment.

8 “(3) PHASE-IN.—

9 “(A) IN GENERAL.—

10 “(i) IMPLEMENTATION IN CURRENT
11 ASSET VERIFICATION DEMO STATES.—The
12 Secretary shall require those States speci-
13 fied in subparagraph (C) (to which an
14 asset verification program has been applied
15 before the date of the enactment of this
16 section) to implement an asset verification
17 program under this subsection by the end
18 of fiscal year 2009.

19 “(ii) IMPLEMENTATION IN OTHER
20 STATES.—The Secretary shall require
21 other States to submit and implement an
22 asset verification program under this sub-
23 section in such manner as is designed to
24 result in the application of such programs,
25 in the aggregate for all such other States,

1 to enrollment of approximately, but not
2 less than, the following percentage of en-
3 rollees, in the aggregate for all such other
4 States, by the end of the fiscal year in-
5 volved:

6 “(I) 12.5 percent by the end of
7 fiscal year 2009.

8 “(II) 25 percent by the end of
9 fiscal year 2010.

10 “(III) 50 percent by the end of
11 fiscal year 2011.

12 “(IV) 75 percent by the end of
13 fiscal year 2012.

14 “(V) 100 percent by the end of
15 fiscal year 2013.

16 “(B) CONSIDERATION.—In selecting States
17 under subparagraph (A)(ii), the Secretary shall
18 consult with the States involved and take into
19 account the feasibility of implementing asset
20 verification programs in each such State.

21 “(C) STATES SPECIFIED.—The States
22 specified in this subparagraph are California,
23 New York, and New Jersey.

24 “(D) CONSTRUCTION.—Nothing in sub-
25 paragraph (A)(ii) shall be construed as pre-

1 venting a State from requesting, and the Sec-
2 retary approving, the implementation of an
3 asset verification program in advance of the
4 deadline otherwise established under such sub-
5 paragraph.

6 “(4) EXEMPTION OF TERRITORIES.—This sec-
7 tion shall only apply to the 50 States and the Dis-
8 trict of Columbia.

9 “(b) ASSET VERIFICATION PROGRAM.—

10 “(1) IN GENERAL.—For purposes of this sec-
11 tion, an asset verification program means a program
12 described in paragraph (2) under which a State—

13 “(A) requires each applicant for, or recipi-
14 ent of, medical assistance under the State plan
15 under this title on the basis of being aged,
16 blind, or disabled to provide authorization by
17 such applicant or recipient (and any other per-
18 son whose resources are material to the deter-
19 mination of the eligibility of the applicant or re-
20 cipient for such assistance) for the State to ob-
21 tain (subject to the cost reimbursement require-
22 ments of section 1115(a) of the Right to Finan-
23 cial Privacy Act but at no cost to the applicant
24 or recipient) from any financial institution
25 (within the meaning of section 1101(1) of such

1 Act) any financial record (within the meaning
2 of section 1101(2) of such Act) held by the in-
3 stitution with respect to the applicant or recipi-
4 ent (and such other person, as applicable),
5 whenever the State determines the record is
6 needed in connection with a determination with
7 respect to such eligibility for (or the amount or
8 extent of) such medical assistance; and

9 “(B) uses the authorization provided under
10 subparagraph (A) to verify the financial re-
11 sources of such applicant or recipient (and such
12 other person, as applicable), in order to deter-
13 mine or redetermine the eligibility of such appli-
14 cant or recipient for medical assistance under
15 the State plan.

16 “(2) PROGRAM DESCRIBED.—A program de-
17 scribed in this paragraph is a program for verifying
18 individual assets in a manner consistent with the ap-
19 proach used by the Commissioner of Social Security
20 under section 1631(e)(1)(B)(ii).

21 “(c) DURATION OF AUTHORIZATION.—Notwith-
22 standing section 1104(a)(1) of the Right to Financial Pri-
23 vacy Act, an authorization provided to a State under sub-
24 section (b)(1) shall remain effective until the earliest of—

1 “(1) the rendering of a final adverse decision on
2 the applicant’s application for medical assistance
3 under the State’s plan under this title;

4 “(2) the cessation of the recipient’s eligibility
5 for such medical assistance; or

6 “(3) the express revocation by the applicant or
7 recipient (or such other person described in sub-
8 section (b)(1), as applicable) of the authorization, in
9 a written notification to the State.

10 “(d) TREATMENT OF RIGHT TO FINANCIAL PRIVACY
11 ACT REQUIREMENTS.—

12 “(1) An authorization obtained by the State
13 under subsection (b)(1) shall be considered to meet
14 the requirements of the Right to Financial Privacy
15 Act for purposes of section 1103(a) of such Act, and
16 need not be furnished to the financial institution,
17 notwithstanding section 1104(a) of such Act.

18 “(2) The certification requirements of section
19 1103(b) of the Right to Financial Privacy Act shall
20 not apply to requests by the State pursuant to an
21 authorization provided under subsection (b)(1).

22 “(3) A request by the State pursuant to an au-
23 thorization provided under subsection (b)(1) is
24 deemed to meet the requirements of section
25 1104(a)(3) of the Right to Financial Privacy Act

1 and of section 1102 of such Act, relating to a rea-
2 sonable description of financial records.

3 “(e) REQUIRED DISCLOSURE.—The State shall in-
4 form any person who provides authorization pursuant to
5 subsection (b)(1)(A) of the duration and scope of the au-
6 thorization.

7 “(f) REFUSAL OR REVOCATION OF AUTHORIZA-
8 TION.—If an applicant for, or recipient of, medical assist-
9 ance under the State plan under this title (or such other
10 person described in subsection (b)(1), as applicable) re-
11 fuses to provide, or revokes, any authorization made by
12 the applicant or recipient (or such other person, as appli-
13 cable) under subsection (b)(1)(A) for the State to obtain
14 from any financial institution any financial record, the
15 State may, on that basis, determine that the applicant or
16 recipient is ineligible for medical assistance.

17 “(g) USE OF CONTRACTOR.—For purposes of imple-
18 menting an asset verification program under this section,
19 a State may select and enter into a contract with a public
20 or private entity meeting such criteria and qualifications
21 as the State determines appropriate, consistent with re-
22 quirements in regulations relating to general contracting
23 provisions and with section 1903(i)(2). In carrying out ac-
24 tivities under such contract, such an entity shall be subject
25 to the same requirements and limitations on use and dis-

1 closure of information as would apply if the State were
2 to carry out such activities directly.

3 “(h) TECHNICAL ASSISTANCE.—The Secretary shall
4 provide States with technical assistance to aid in imple-
5 mentation of an asset verification program under this sec-
6 tion.

7 “(i) REPORTS.—A State implementing an asset
8 verification program under this section shall furnish to the
9 Secretary such reports concerning the program, at such
10 times, in such format, and containing such information
11 as the Secretary determines appropriate.

12 “(j) TREATMENT OF PROGRAM EXPENSES.—Not-
13 withstanding any other provision of law, reasonable ex-
14 penses of States in carrying out the program under this
15 section shall be treated, for purposes of section 1903(a),
16 in the same manner as State expenditures specified in
17 paragraph (7) of such section.”.

18 (b) STATE PLAN REQUIREMENTS.—Section 1902(a)
19 of such Act (42 U.S.C. 1396a(a)) is amended—

20 (1) in paragraph (69) by striking “and” at the
21 end;

22 (2) in paragraph (70) by striking the period at
23 the end and inserting “; and”; and

24 (3) by inserting after paragraph (70), as so
25 amended, the following new paragraph:

1 “(71) provide that the State will implement an
2 asset verification program as required under section
3 1940.”.

4 (c) WITHHOLDING OF FEDERAL MATCHING PAY-
5 MENTS FOR NONCOMPLIANT STATES.—Section 1903(i) of
6 such Act (42 U.S.C. 1396b(i)) is amended—

7 (1) in paragraph (22) by striking “or” at the
8 end;

9 (2) in paragraph (23) by striking the period at
10 the end and inserting “; or”; and

11 (3) by adding after paragraph (23) the fol-
12 lowing new paragraph:

13 “(24) if a State is required to implement an
14 asset verification program under section 1940 and
15 fails to implement such program in accordance with
16 such section, with respect to amounts expended by
17 such State for medical assistance for individuals
18 subject to asset verification under such section, un-
19 less—

20 “(A) the State demonstrates to the Sec-
21 retary’s satisfaction that the State made a good
22 faith effort to comply;

23 “(B) not later than 60 days after the date
24 of a finding that the State is in noncompliance,
25 the State submits to the Secretary (and the

1 Secretary approves) a corrective action plan to
2 remedy such noncompliance; and

3 “(C) not later than 12 months after the
4 date of such submission (and approval), the
5 State fulfills the terms of such corrective action
6 plan.”.

7 (d) REPEAL.—Section 4 of Public Law 110–90 is re-
8 pealed.

9 **SEC. 6. ADJUSTMENT TO PAQI FUND.**

10 Section 1848(l)(2) of the Social Security Act (42
11 U.S.C. 1395w-4(l)(2)), as amended by section 101(a)(2)
12 of the Medicare, Medicaid, and SCHIP Extension Act of
13 2007 (Public Law 110-173), is amended—

14 (1) in subparagraph (A)(i)—

15 (A) in subclause (III), by striking
16 “\$4,960,000,000” and inserting
17 “\$3,790,000,000”; and

18 (B) by adding at the end the following new
19 subclause:

20 “(IV) For expenditures during
21 2014, an amount equal to
22 \$3,690,000,000.”;

23 (2) in subparagraph (A)(ii), by adding at the
24 end the following new subclause:

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H. R. 5613

AN ACT

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APRIL 28, 2008

Read the second time and placed on the calendar