

110TH CONGRESS
2^D SESSION

H. R. 6365

To amend part C of title XVIII of the Social Security Act with respect to Medicare special needs plans and the alignment of Medicare and Medicaid for dually eligible individuals.

IN THE HOUSE OF REPRESENTATIVES

JUNE 25, 2008

Mr. KIND (for himself and Mr. RAMSTAD) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend part C of title XVIII of the Social Security Act with respect to Medicare special needs plans and the alignment of Medicare and Medicaid for dually eligible individuals.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Medicare Special Needs Plans Extension and Amend-
6 ments Act of 2008”.

1 (b) TABLE OF CONTENTS.—The table of contents of
2 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Extend SNP authority through December 31, 2012.

Sec. 3. Require targeting of high-risk groups; advance specialty care capabilities.

Sec. 4. Study on improving risk adjustment for high-risk, high-cost beneficiaries.

Sec. 5. Advance alignment of Medicare and Medicaid for dual eligibles.

3 **SEC. 2. EXTEND SNP AUTHORITY THROUGH DECEMBER 31,**
4 **2012.**

5 Section 1859(f) of the Social Security Act (42 U.S.C.
6 1395w–28(f)), as amended by section 108 of the Medicare,
7 Medicaid, and SCHIP Extension Act of 2007 (Public Law
8 110–173), is amended by striking “2010” and inserting
9 “2013”.

10 **SEC. 3. REQUIRE TARGETING OF HIGH-RISK GROUPS; AD-**
11 **VANCE SPECIALTY CARE CAPABILITIES.**

12 (a) REQUIRING TARGETING OF HIGH-RISK
13 GROUPS.—

14 (1) IN GENERAL.—Section 1859(b)(6) of the
15 Social Security Act (42 U.S.C. 1395w–28(b)(6)) is
16 amended—

17 (A) in subparagraph (A), by striking all
18 that follows “means” and inserting the fol-
19 lowing: “an MA plan—

20 “(i) that serves special needs individ-
21 uals (as defined in subparagraph (B)); and

22 “(ii) for which—

1 “(I) at least 90 percent of the in-
2 dividuals enrolled after December 31,
3 2008, are described in subparagraph
4 (B)(i);

5 “(II) at least 90 percent of the
6 individuals enrolled after December
7 31, 2008, are described in subpara-
8 graph (B)(ii); or

9 “(III) at least 90 percent of the
10 individuals enrolled after December
11 31, 2008, are described in subpara-
12 graph (B)(iii) and have a severe or
13 disabling chronic condition of the type
14 that the plan is committed to serve.”;

15 (B) by adding at the end of subparagraph
16 (A) the following: “For purposes of applying
17 clause (ii), an individual who is described in
18 subparagraph (B)(i) or (B)(ii) and who is en-
19 rolled in a specialized MA plan for special needs
20 individuals shall thereafter be treated as con-
21 tinuing to be described in such respective sub-
22 paragraph regardless of changes in the individ-
23 ual’s circumstances so long as the individual
24 maintains continuous enrollment in such plan.
25 Clause (ii) shall not apply to a plan described

1 in section 231(d) of the Medicare Prescription
2 Drug, Improvement, and Modernization Act of
3 2003 (Public Law 108–173) which was pre-
4 viously operated under section 2355 of the Def-
5 icit Reduction Act of 1984 (Public Law 98–
6 369) and which is operating as a specialized
7 MA plan for special needs individuals as of the
8 date of the enactment of this sentence.”; and

9 (C) in subparagraph (B)—

10 (i) in clause (i), by inserting “under
11 regulations in effect as of July 1, 2007”
12 after “as defined by the Secretary”; and

13 (ii) by amending clause (iii) to read as
14 follows:

15 “(iii) has a severe or disabling chronic
16 condition that requires complex care man-
17 agement capabilities, of the type described
18 in subsection (f)(4), and specialized deliv-
19 ery systems to reduce medical complica-
20 tions and adverse health outcomes.”.

21 (2) COORDINATED FINANCING FOR DUAL-ELIGI-
22 BLE SNPS.—The Secretary of Health and Human
23 Services shall enter into agreements with States (as
24 defined for purposes of title XIX of the Social Secu-
25 rity Act) for coordinating the financing of special-

1 ized MA plans for special needs individuals described
2 in section 1859(b)(6)(A)(ii)(II) of such Act for en-
3 rollees who are entitled to medical assistance under
4 State plans under such title.

5 (b) ADVANCE SPECIALTY CARE CAPABILITIES.—

6 (1) IN GENERAL.—Section 1859 of such Act
7 (42 U.S.C. 1395w–28) is further amended—

8 (A) in subsection (b)(6)(A), as amended by
9 subsection (a)(1)—

10 (i) by striking “and” at the end of
11 clause (i);

12 (ii) by striking the period at the end
13 of clause (ii) and inserting “; and” ; and

14 (iii) by adding at the end the fol-
15 lowing new clause:

16 “(iii) meets the applicable require-
17 ments specified in subsection (f) for the
18 plan.”; and

19 (B) in subsection (f)—

20 (i) by amending the heading to read
21 as follows: “REQUIREMENTS FOR ENROLL-
22 MENT IN SPECIALIZED MA PLANS FOR
23 SPECIAL NEEDS BENEFICIARIES”;

24 (ii) by designating the sentence begin-
25 ning “In the case of” as paragraph (1)

1 with the heading “REQUIREMENTS FOR
2 ENROLLMENT.—” and with appropriate in-
3 dentation; and

4 (iii) by adding at the end the fol-
5 lowing new paragraphs:

6 “(2) ADDITIONAL REQUIREMENTS FOR DUAL
7 SNPS.—In the case of a specialized MA plan for spe-
8 cial needs individuals described in subsection
9 (b)(6)(A)(ii)(II), the applicable requirements of this
10 subsection include the following:

11 “(A)(i) Subject to clause (ii), the plan has
12 an agreement with the State Medicaid agency
13 that—

14 “(I) includes provisions regarding co-
15 operation on the coordination of care and
16 the coordination of the financing of care
17 for such individuals;

18 “(II) includes a description of any
19 Medicaid services to be covered by the plan
20 for individuals enrolled in the plan eligible
21 under such title for medical assistance;

22 “(III) includes a description of the
23 manner that the State Medicaid program
24 under title XIX will fulfill its responsibil-
25 ities under such title (including section

1 1902) with respect to payment for Medi-
2 care cost-sharing and with respect to pay-
3 ment for any Medicaid services not covered
4 by Medicare for individuals enrolled in the
5 plan eligible under such title for medical
6 assistance; and

7 “(IV) requires the disclosure to enroll-
8 ees, including in the marketing materials
9 of such plan, of Medicaid benefits and of
10 those provider networks that contract with
11 the State under the Medicaid program.

12 “(ii) The agreement requirement of clause
13 (i) between a plan and a State Medicaid agency
14 shall not apply if the Secretary determines that
15 the State—

16 “(I) does not have the administrative
17 infrastructure to enter into such agree-
18 ments with such plan or to provide for co-
19 ordination of benefits or payments with
20 such plans;

21 “(II) is unable to enter into such an
22 agreement because of a State limitation on
23 the number of Medicaid managed care con-
24 tracts issued; or

1 “(III) is otherwise unwilling or unable
2 to enter into such an agreement.

3 “(B) The out-of-pocket costs for services
4 under parts A and B that are charged to enroll-
5 ees may not exceed the out-of-pocket costs for
6 same services permitted for such individuals
7 under title XIX.

8 “(3) ADDITIONAL REQUIREMENTS FOR SEVERE
9 OR DISABLING CHRONIC CONDITION SNPS.—In the
10 case of a specialized MA plan for special needs indi-
11 viduals described in subsection (b)(6)(A)(ii)(III), the
12 applicable requirements of this subsection include
13 the following:

14 “(A) The plan is designated to serve, and
15 serves, individuals described in subsection
16 (b)(6)(1)(B)(iii).

17 “(B) The plan meets any of the 3 following
18 criteria:

19 “(i) The plan specializes in care of in-
20 dividuals who are disabled or have end-
21 stage renal disease, including individuals
22 who are eligible for benefits under part A
23 through the application of section 226(b)
24 or section 226A.

1 “(ii) The plan specializes in care for
2 persons who have co-morbid or complex
3 chronic conditions that influence other as-
4 pects of health and have a high risk of hos-
5 pitalization or other significant adverse
6 health outcomes.

7 “(iii) The plan has an average risk
8 score under section 1853(a)(1)(C) of 1.35
9 or greater.

10 “(4) COMPLEX CARE MANAGEMENT CAPABILI-
11 TIES FOR ALL SNPS.—The complex care manage-
12 ment capabilities for a specialized need plan shall in-
13 clude with respect to a special needs individual en-
14 rolled under the plan the following:

15 “(A) Conducting an initial assessment, and
16 annual reassessment, of the individual’s phys-
17 ical, social, medical, and functional needs for
18 each individual enrolled in the plan.

19 “(B) Developing, for each such individual
20 and with input of the individual, an individual-
21 ized plan of care that identifies goals and objec-
22 tives, including measurable outcomes.

23 “(C) Using an interdisciplinary team in
24 management of care and assuring appropriate
25 access to specialty care networks.

1 “(D) Developing interventions based on
2 population-based protocols and best practices to
3 the extent available.

4 “(E) Assigning appropriate clinicians to
5 meet the unique needs of the population being
6 served.

7 “(F) Assuring coordination among clini-
8 cians and other service providers involved.

9 “(G) Assisting individuals enrolled in the
10 plan who are entitled to medical assistance
11 under title XIX in accessing and coordinating
12 benefits and services under this title and under
13 such title.

14 “(5) SPECIALTY CARE NETWORK DEFINED.—In
15 this subsection, the term ‘specialty care network’
16 means, with respect to a specialized need plan, a
17 group of health care providers under contract with
18 the plan that—

19 “(A) includes physicians, hospitals, nursing
20 facilities, and allied health and social service
21 providers with special expertise relevant to the
22 special needs population being served;

23 “(B) serves a common chronically ill or im-
24 paired population, either at the same time or in
25 sequence to one another; and

1 “(C) work together to improve total quality
2 and cost performance.”.

3 (2) QUALITY STANDARDS AND QUALITY RE-
4 PORTING.—Section 1852(e)(3) of such Act (42
5 U.S.C. 1395w–22(e)(3)) is amended—

6 (A) in subparagraph (A)(i), by adding at
7 the end the following: “In the case of a special-
8 ized MA plan for special needs individuals, the
9 organization shall provide for the reporting on
10 quality measures developed for the plan under
11 subparagraph (C).”; and

12 (B) by adding at the end the following new
13 subparagraph:

14 “(C) SPECIFICATION OF QUALITY MEAS-
15 UREMENTS FOR SPECIALIZED MA PLANS.—

16 “(i) IN GENERAL.—Notwithstanding
17 subparagraph (B), the Secretary shall
18 specify quality measures appropriate to
19 meeting the needs of beneficiaries enrolled
20 in specialized MA plans for special needs
21 individuals (described in section
22 1859(b)(6)(A)). In implementing such
23 measures, the Secretary shall take into ac-
24 count those HEDIS measures and struc-
25 ture and process measures identified that

1 are unique to special needs individuals en-
2 rolled under such plans.

3 “(ii) SATISFACTION THROUGH CUR-
4 RENT REPORTING REQUIREMENTS.—Noth-
5 ing in clause (i) shall be construed as re-
6 quiring the Secretary to impose on special-
7 ized MA plans for special needs individuals
8 requirements that are in addition to the re-
9 porting requirements that are imposed on
10 such plans as of the date of the enactment
11 of this subparagraph. In implementing
12 such clause, the Secretary shall not require
13 the reporting by such plans of measures
14 under such clause in a manner that is
15 more burdensome to such plans than the
16 reporting burden imposed on other MA
17 plans.”.

18 (c) EFFECTIVE DATE; GRANDFATHER; TRANSI-
19 TION.—

20 (1) EFFECTIVE DATE.—

21 (A) IN GENERAL.—Except as otherwise
22 provided, the amendments made by this section
23 shall take effect for enrollments occurring on or
24 after January 1, 2010.

1 (B) MEDICAID CONTRACT REQUIRE-
2 MENT.—Section 1859(f)(2)(A) of the Social Se-
3 curity Act, as added by subsection
4 (b)(1)(B)(iii), shall apply to plan years begin-
5 ning on or after the date that is 3 years after
6 the date of the enactment of this Act.

7 (2) PERMITTING MAINTENANCE OF POLICIES
8 AND PROCEDURES FOR CURRENT DUAL-ELIGIBLE
9 SNPS UNDER A STATE INTEGRATION PROGRAM.—In
10 the case of a specialized MA plan for special needs
11 individuals described in section
12 1859(b)(6)(A)(ii)(II) of the Social Security Act (42
13 U.S.C. 1395w–28(b)(6)(A)(ii)(II)) that is offered
14 under a State Medicaid Integrated Medicare-Med-
15 icaid Program that was approved by the Adminis-
16 trator of the Centers for Medicaid & Medicare Serv-
17 ices before the date of the enactment of this Act,
18 and expansions of such a Program offered on or
19 after such date, the Secretary of Health and Human
20 Services shall permit the continuation of policies and
21 procedures in effect under such a Program as of the
22 date of the enactment of this Act notwithstanding
23 the amendments made by this section.

24 (3) ORDERLY TRANSITION FOR CERTAIN EN-
25 ROLLEES.—The Secretary of Health and Human

1 Services shall provide for an orderly transition of
2 those specialized MA plans for special needs individ-
3 uals (as defined in subparagraph (A) of section
4 1859(b)(6) of the Social Security Act (42 U.S.C.
5 1395w-28(b)(6)), as of the date of the enactment of
6 this Act), and their enrollees, that no longer qualify
7 as such plans or as such individuals under such sec-
8 tion, as amended by this section.

9 **SEC. 4. STUDY ON IMPROVING RISK ADJUSTMENT FOR**
10 **HIGH-RISK, HIGH-COST BENEFICIARIES.**

11 (a) IN GENERAL.—Not later than 1 year after the
12 date of enactment of this Act, the Secretary of Health and
13 Human Services shall submit to Congress a report that
14 evaluates the adequacy of the Medicare Advantage risk ad-
15 justment system under section 1853(a)(1)(C) of the Social
16 Security Act (42 U.S.C. 1395w-23(a)(1)(C)), as well as
17 the risk adjustment mechanism under section 1860D-
18 15(c)(1)(A) of such Act (42 U.S.C. 1395w-115(c)(1)(A)).

19 (b) PARTICULARS.—The report under subsection (a)
20 shall include an evaluation of the need for improving the
21 adequacy of the existing hierarchical condition categories
22 and pharmacy risk adjustment methods for plans that spe-
23 cialize in care of high-risk beneficiaries as it relates to—

24 (1) accurately predicting costs for beneficiaries
25 with—

1 (A) sustained high-risk scores over mul-
2 tiple contract periods;

3 (B) high costs;

4 (C) co-morbid chronic conditions;

5 (D) diagnoses not included in the risk-ad-
6 justment methodology, including dementia and
7 other cognitive impairments;

8 (E) physical disabilities, developmental dis-
9 abilities, or both; and

10 (F) frailty;

11 (2) including further gradations of diseases and
12 conditions to better reflect stage of condition, condi-
13 tion severity and costs related to burden of illness;

14 (3) accounting for costs of pre-existing condi-
15 tions at the time of initial enrollment for new en-
16 trants to the Medicare program; and

17 (4) enhancing coding persistency by calculating
18 risk scores using data covering at least two years.

19 (c) REFINEMENT.—The Secretary shall refine the
20 risk-adjusted payment methods referred to in subsection
21 (a) for high-risk, high-cost beneficiaries, consistent with
22 the results of the study, not later than 2 years after the
23 date of the enactment of this Act.

1 **SEC. 5. ADVANCE ALIGNMENT OF MEDICARE AND MED-**
2 **ICAID FOR DUAL ELIGIBLES.**

3 (a) ALIGNMENT OF MEDICARE AND MEDICAID POLI-
4 CIES AND PROCEDURES FOR SNPs SERVING DUAL ELIGI-
5 BLES.—In order to increase simplicity for dual eligibles
6 in accessing and coordinating Medicare and Medicaid ben-
7 efits by enhancing coordination between CMS and State
8 Medicaid agencies in the oversight of SNPs insofar as they
9 serve dual eligibles, the Secretary may modify rules, poli-
10 cies, and procedures under titles XVIII and XIX of such
11 Act in order to provide for the alignment of Medicare and
12 Medicaid requirements, including marketing, enrollment,
13 care coordination, auditing, reporting, quality assurance,
14 and other relevant oversight functions.

15 (b) OFFICE OF MEDICARE/MEDICAID INTEGRA-
16 TION.—

17 (1) ESTABLISHMENT.—The Secretary shall es-
18 tablish or designate an Office on Medicare/Medicaid
19 Integration (in this subsection referred to as the
20 “Office”) for the purpose of aligning Medicare and
21 Medicaid policies and procedures and developing
22 tools to support State integration efforts in order—

23 (A) to simplify dual eligible access to Medi-
24 care and Medicaid benefits and services;

25 (B) to improve care continuity and ensure
26 safe and effective care transitions;

1 (C) to eliminate cost shifting between
2 Medicare and Medicaid and among related care
3 providers;

4 (D) to eliminate regulatory conflicts be-
5 tween Medicare and Medicaid rules; and

6 (E) to improve total cost and quality per-
7 formance.

8 (2) HEAD.—The head of the Office who shall
9 report to the Administrator of the Centers for Medi-
10 care & Medicaid Services.

11 (3) RESPONSIBILITIES.—The responsibilities of
12 the Office are to develop policies and procedures—

13 (A) to support State efforts to coordinate
14 and align acute and long-term care benefits for
15 dual eligibles through a State plan option or
16 other means;

17 (B) to provide support for coordination of
18 State and Federal contracting and oversight for
19 dual integration programs supportive of the
20 goals described in paragraph (1); and

21 (C) to align Federal rules for Medicaid
22 managed care and Medicare Advantage Plans
23 to include methods for integrating marketing,
24 enrollment, grievances and appeals, auditing,

1 reporting, quality assurance and other relevant
2 oversight functions.

3 (c) FACILITATION OF ALIGNMENT.—The Secretary
4 shall—

5 (1) submit to Congress a report on statutory
6 changes needed to facilitate the alignment of Medi-
7 care and Medicaid policies for dual eligibles;

8 (2) work with the Congressional Budget Office
9 and the Office of Management and Budget to estab-
10 lish a process for evaluating total Medicare and
11 Medicaid spending for beneficiaries who are dually
12 eligible for Medicare and Medicaid and enrolled in
13 plans that integrate Medicare and Medicaid benefits
14 such that the enrollment of such beneficiaries in
15 such plans is treated as “budget neutral” if the com-
16 bined Medicare and Medicaid costs under such plans
17 do not exceed the combined costs of providing Medi-
18 care and Medicaid services on a fee-for-service basis
19 for a comparable risk group; and

20 (3) provide States and SNPs with education
21 and tools for developing programs that align Medi-
22 care and Medicaid benefits for dual eligibles.

23 (d) IDENTIFICATION OF INCENTIVES IN SUPPORT OF
24 STATE INTEGRATION EFFORTS.—The Secretary shall
25 identify incentives for States to advance the development

1 of integrated approaches in providing health care services
2 for dual eligibles.

3 (e) DEFINITIONS.—In this section:

4 (1) CMS.—The term “CMS” means the Cen-
5 ters for Medicare & Medicaid Services.

6 (2) DUAL ELIGIBLE.—The term “dual eligible”
7 means an MA eligible individual (as defined in sec-
8 tion 1851(a)(3) of the Social Security Act, 42
9 U.S.C. 13195w–21(a)(3)) who is also entitled to
10 medical assistance under a State plan under title
11 XIX of the Social Security Act.

12 (3) DUAL ELIGIBLE SNP.—The term “dual eli-
13 gible SNP” means a SNP described in section
14 1859(b)(6)(A)(ii)(II) of the Social Security Act, as
15 amended by section 3(a).

16 (4) SECRETARY.—The term “Secretary” means
17 the Secretary of Health and Human Services.

18 (5) SNP.—The term “SNP” means a special-
19 ized MA plan for special needs individuals, as de-
20 fined in section 1859(b)(6)(A) of the Social Security
21 Act (42 U.S.C. 1395w–28(b)(6)(A)).

22 (6) STATE.—The term “State” has the mean-
23 ing given such term for purposes of title XIX of the
24 Social Security Act.

○