To prohibit cuts in Federal funding under the Medicaid Program until full consideration is given to recommendations of a Bipartisan Commission on Medicaid.

IN THE HOUSE OF REPRESENTATIVES

November 3, 2005

Mr. Pascrell introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To prohibit cuts in Federal funding under the Medicaid Program until full consideration is given to recommendations of a Bipartisan Commission on Medicaid.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Medicaid Preservation Act of 2005”.

SEC. 2. FINDINGS.

Congress finds the following:

(1) Medicaid was established by law in 1965 as title XIX of the Social Security Act.
(2) Medicaid is the cornerstone of the United State’s health care safety net providing health and long-term care services to more than 40 million low-income families.

(3) Medicaid is the largest public health insurance programs in the United States, covering more than one in seven Americans and accounting for more than 15 percent of spending on health care in the United States.

(4) Medicaid is the primary source of Federal financial assistance to the States in a shared dedication to improving the lives and the health of America’s low-income population.

(5) Medicaid is a health insurance program for low-income adults and children, a comprehensive source of medical coverage for people with disabilities, the primary source of public funding for long-term care, and a supplement to Medicare for the elderly.

(6) Medicaid is the most efficient payor in the market.

(7) Medicaid reduces disparities in health care delivery to racial and ethnic minorities, who make up approximately one-third of the total population of the United States.
(8) Medicaid’s protection against high out-of-pocket expenses for vulnerable, low-income Americans has encouraged and increased access to necessary health care.

(9) Medicaid has drawn on the flexibility built into the program for States to pioneer innovations in coverage and service delivery.

(10) Medicaid has provided a stable source of financing to States to meet the challenges of a rapidly changing health care marketplace and has fostered the development of consumer protections for the frailest and most vulnerable in our society.

(11) Medicaid’s multiple roles present financial challenges for Federal, and State governments that warrant a comprehensive review in light of the increasing number of uninsured Americans and the increasing number of low-income Americans in need of long-term care services.

SEC. 3. NO CUTS IN FEDERAL MEDICAID FUNDING UNTIL FULL CONSIDERATION OF RECOMMENDATIONS OF BIPARTISAN COMMISSION ON MEDICAID.

No reductions shall be made in authorized Federal funding under the medicaid program under title XIX of the Social Security Act until full consideration has been
given to the recommendations of the Bipartisan Commis-
ion on Medicaid established under section 4.

SEC. 4. BIPARTISAN COMMISSION ON MEDICAID.

(a) Establishment.—There is established a com-
mission to be known as the Bipartisan Commission on
Medicaid (in this section referred to as the “Commis-
son”). The Commission shall locate its headquarters in
the District of Columbia.

(b) Membership.—

(1) Appointment.—The Commission shall be
composed of 23 members to be appointed as follows:

(A) One member shall be appointed by the
President.

(B) Three members shall be appointed by
the majority leader of the Senate of whom—

(i) one shall be a Member or former
Member of Congress;

(ii) one shall be an advocate for popu-
lations who are served by Medicaid; and

(iii) one shall be a health care pro-
vider that provides a disproportionate
share of care to recipients of benefits
under Medicaid or a representative of an
organization that represent such providers.
(C) Three members shall be appointed by the minority leader of the Senate of whom—

(i) one shall be a Member or former Member of Congress;

(ii) one shall be an advocate for populations who are served by Medicaid; and

(iii) one shall be a health care provider that provides a disproportionate share of care to recipients of benefits under Medicaid or a representative of an organization that represent such providers.

(D) Three members shall be appointed by the Speaker of the House of Representatives of whom—

(i) one shall be a Member or former Member of Congress;

(ii) one shall be an advocate for populations who are served by Medicaid; and

(iii) one shall be a health care provider that provides a disproportionate share of care to recipients of benefits under Medicaid or a representative of an organization that represent such providers.
(E) Three members shall be appointed by the minority leader of the House of Representatives of whom—

(i) one shall be a Member or former Member of Congress;

(ii) one shall be an advocate for populations who are served by Medicaid; and

(iii) one shall be a health care provider that provides a disproportionate share of care to recipients of benefits under Medicaid or a representative of an organization that represent such providers.

(F) Two members shall be appointed by the National Governors Association and shall be chief executive officers of a State who are not of the same political party.

(G) Two members shall be appointed by the National Conference of State Legislatures and shall be members of a State legislature who are not of the same political party.

(H) Two members shall be appointed by the National Association of State Medicaid Directors and shall be chief officials responsible for administering Medicaid in a State who are not of the same political party.
(I) Two members shall be appointed by the National Association of Counties and shall be officials of a local government involved in Medicaid financing or that directly provides medical services to Medicaid beneficiaries and uninsured individuals who are not of the same political party.

(J) Two members shall be appointed by the Comptroller General of the United States and shall be health policy experts with special expertise regarding Medicaid or the populations served by Medicaid who are not of the same political party.

(2) QUALIFICATIONS.—The members of the Commission appointed under paragraph (1), shall reflect—

(A) a broad geographic representation; and

(B) a balance between urban and rural representation.

(3) DEADLINE FOR APPOINTMENT.—Members of the Commission shall be appointed by not later than the 60th day after the date of enactment of this Act.

(c) DUTIES OF COMMISSION.—

(1) IN GENERAL.—The Commission shall—
(A) review and make recommendations with respect to each of Medicaid’s major functional responsibilities, including being—

(i) a source of coverage for low-income children, pregnant women, and some parents;

(ii) a payer for a complex range of acute and long-term care services for the frail elderly and individuals with disabilities, including the medically needy;

(iii) the source of wrap-around coverage or assistance for low-income seniors and individuals with disabilities on Medicare, including coverage of additional benefits and assistance with Medicare premiums and copayments; and

(iv) the primary source of funding to safety net providers that serve both Medicaid patients and the 45,000,000 uninsured;

(B) review and make recommendations for a clearer delineation of—

(i) the Federal and State roles and responsibilities under Medicaid; and
(ii) the interaction of Medicaid with Medicare and other Federal health programs;

(C) review and identify issues that either threaten or could improve the long-term financial condition of Medicaid, including forthcoming demographic changes, Federal and State revenue options, private sector health coverage, and health care information;

(D) review the Federal matching payments and requirements under Medicaid, and issues related to such payments and requirements, and make recommendations on how to make such payments more equitable with respect to the populations served and the States, and on how to improve the program’s responsiveness to changes in economic conditions;

(E) review and make recommendations with respect to health care for individuals dually eligible for both Medicare and Medicaid, including issues related to Federal, State, provider, and beneficiary responsibilities, coordination, and outcomes;

(F) review research and data with respect to health disparities for populations served by
Medicaid, particularly with respect to individuals with disabilities or special health care needs, and make recommendations on how to improve health quality, coordination of services and providers, and access to health care for vulnerable populations, including the implementation of managed care protections for Medicaid enrollees with special health care needs;

(G) review Federal and State policies for enrollment (including enrollment sites), income eligibility (including methodology and length of eligibility periods), outreach, and documentation with respect to Medicaid and Medicare and make recommendations on how to simplify such policies and improve enrollment and retention in such programs and coordination with other Federal and State programs to improve service delivery and coverage;

(H) review the operation and effectiveness of Medicaid premium assistance programs, including the payment of premiums under section 1906(a)(3) of the Social Security Act (42 U.S.C. 1396e(a)(3)) and payment waivers under section 1115 of such Act (42 U.S.C. 1315), and the adequacy of covered benefits, af-
fordability of cost-sharing and premiums, and access to care under such programs;

(I) review and make recommendations regarding payment policies under Medicaid, including the adequacy of such policies with respect to—

(i) managed care plans (including payment policies for single benefit managed care arrangements, such as managed behavioral health and dental care);

(ii) providers in managed care, fee-for-service, long-term care, and primary care case management settings; and

(iii) measures to assure and reward quality and access to care for Medicaid enrollees;

(J) review how Medicare payment policies impact Medicaid and make recommendations on ways to address specific payment problems that such policies may create in service delivery to populations typically not covered by Medicare, such as children and pregnant women;

(K) review payments to safety net providers, including a review of—
(i) the adjustments to payments under Medicaid—

(I) under section 1923 of the Social Security Act (42 U.S.C. 1396r–4) for inpatient hospital services furnished by disproportionate share hospitals; and

(II) under section 1902(bb) of such Act (42 U.S.C. 1396a(bb)) for payments to Federally-qualified health centers and rural health clinics; and

(ii) other payments that impact the capacity of the health care safety net to care for uninsured individuals, recipients of benefits under Medicaid, and other vulnerable populations;

(L) review interstate payment, enrollment, access, and quality concerns with respect to recipients of benefits under Medicaid that are served by interstate providers, and make recommendations on ways to improve interstate health care delivery;

(M) review and make recommendations with respect to financing and other issues im-
pacting Commonwealth and territorial programs
as compared to other States; and

(N) review and make recommendations on
such other matters related to Medicaid as the
Commission deems appropriate.

(2) ANALYSIS OF EFFECT OF EACH RECOMMENDATION.—Each recommendation required
under paragraph (1) shall include an analysis of the
effect of the recommendation under Medicaid and, if
applicable, Medicare and other Federal health pro-
grams, on—

(A) Federal and State expenditures;
(B) provider payment rates;
(C) beneficiary out-of-pocket expenditures;
(D) beneficiary access to covered items and
services; and
(E) coverage of items and services.

(3) EXPERT ADVICE.—The Comptroller General
of the United States and the Director of the Con-
gressional Research Service shall advise the Commiss-
ion on the methodology to be used in identifying
problems and analyzing potential solutions in ac-
cordance with the duties of the Commission de-
scribed in paragraph (1).

(d) GENERAL ADMINISTRATIVE PROVISIONS.—
(1) TERMS OF APPOINTMENT.—The members of the Commission shall be appointed for the life of the Commission.

(2) VACANCIES.—A vacancy on the Commission shall be filled, not later than 30 days after the date on which the Commission is given notice of the vacancy, in the same manner in which the original appointment was made.

(3) CHAIRPERSON AND VICE CHAIRPERSON.—The Commission shall designate 2 of its members to serve as the chairperson and vice chairperson of the Commission.

(4) MEETINGS.—The Commission shall meet at the call of the chairperson of the Commission.

(5) QUORUM.—Twelve members of the Commission shall constitute a quorum for purposes of voting, but a lesser number of members may meet and hold hearings.

(6) COMPENSATION AND EXPENSES.—

(A) COMPENSATION.—Except as provided in subparagraph (B), members of the Commission shall receive no additional pay, allowances, or benefits by reason of their service on the Commission.
(B) EXPENSES.—While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code.

(7) ETHICAL DISCLOSURE.—The Comptroller General of the United States shall establish and implement a system for public disclosure of financial and other potential conflicts of interest by members of the Commission.

(e) STAFF AND SUPPORT SERVICES.—

(1) EXECUTIVE DIRECTOR.—The chairperson and vice-chair shall appoint an executive director of the Commission.

(2) STAFF.—With the approval of the Commission, the executive director may appoint such personnel as the executive director determines to be appropriate.

(3) APPLICABILITY OF CIVIL SERVICE LAW; ETC.—The executive director and staff of the Commission shall be appointed without regard to the provisions of title 5, United States Code, governing
appointment in the competitive service, and shall be paid without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(4) EXPERTS AND CONSULTANTS.—With the approval of the Commission, the executive director may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

(5) FEDERAL AGENCIES.—

(A) STAFF OF OTHER FEDERAL AGENCIES.—Upon the request of the Commission, the head of any Federal agency may detail, without reimbursement, any of the personnel of such agency to the Commission to assist in carrying out the duties of the Commission. Any such detail shall not interrupt or otherwise affect the civil service status or privileges of the Federal employee.

(B) TECHNICAL ASSISTANCE.—Upon the request of the Commission, the head of a Federal agency shall provide such technical assist-
ance to the Commission as the Commission determines to be necessary to carry out its duties.

(6) OTHER RESOURCES.—The Commission shall have reasonable access to materials, resources, statistical data, and other information from the Library of Congress and agencies and elected representatives of the executive and legislative branches of the Federal Government. The chairperson or vice-chair of the Commission shall make requests for such access in writing when necessary.

(7) GSA SERVICES.—

(A) PHYSICAL FACILITIES.—The Administrator of General Services shall locate suitable office space for the operation of the Commission. The facilities shall serve as the headquarters of the Commission and shall include all necessary equipment and incidentals required for the proper functioning of the Commission.

(B) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Commission, the Administrator of General Services shall provide to the Commission, on a reimbursable basis, such administrative support services as the Commission may request.
(f) Powers of the Commission.—

(1) Hearings.—The Commission shall conduct public hearings or forums at the discretion of the Commission, at any time and place the Commission is able to secure facilities and witnesses, for the purpose of carrying out the duties of the Commission.

(2) Studies or Investigations.—Upon the request of the Commission, the Comptroller General of the United States, the Medicare Payment Advisory Commission, or the Director of the Congressional Research Service shall conduct such studies or investigations as the Commission determines to be necessary to carry out its duties.

(3) Cost Estimates.—The Director of the Congressional Budget Office, the Chief Actuary of the Centers for Medicare & Medicaid Services, the Medicare Payment Advisory Commission, or all three, shall provide to the Commission, upon the request of the Commission and without reimbursement, such cost estimates as the Commission determines to be necessary to carry out its duties.

(4) Gifts.—The Commission may accept, use, and dispose of gifts or donations of services or property.
(5) **Mails.**—The Commission may use the United States mails in the same manner and under the same conditions as Federal agencies.

(g) **Report.**—

(1) **In general.**—Not later than 14 months after the date of enactment of this Act, the Commission shall prepare and submit a report that contains a detailed statement of the recommendations, findings, and conclusions of the Commission (as determined in accordance with paragraph (3)) to each of the following:

(A) The President.

(B) The Committee on Finance of the Senate.

(C) The Committee on Energy and Commerce of the House of Representatives.

(D) The chief executive officer of each State.

(2) **Availability.**—The report shall be made available to the public.

(3) **Recommendations, findings, and conclusions.**—The recommendations, findings, and conclusions of the Commission shall be included in the report under paragraph (1) only if—
(A) each member of the Commission has had an opportunity to vote on such recommendation, finding, or conclusion;

(B) the results of the vote are printed in the report, including a record of how each member voted; and

(C) at least 14 of the 23 members of the Commission voted in favor of such recommendation, finding, or conclusion.

(h) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Commission such sums as may be necessary to carry out this section.

(i) DEFINITION OF STATE.—In this Act, the term “State” has the meaning given such term for purposes of title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

(j) TERMINATION.—The Commission shall terminate on the date that is 30 days after the date on which the Commission submits the report under subsection (g) to the President, Congress, and the chief executive officer of each State.