

110TH CONGRESS
2D SESSION

S. 3584

To comprehensively prevent, treat, and decrease overweight and obesity in our Nation's populations.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 25 (legislative day, SEPTEMBER 17), 2008

Mr. BINGAMAN introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To comprehensively prevent, treat, and decrease overweight and obesity in our Nation's populations.

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 “Obesity Prevention,
5 Treatment, and Research Act of 2008”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) In 2001, the United States Surgeon Gen-
9 eral released the Call to Action to Prevent and De-

1 crease Overweight and Obesity to bring attention to
2 the public health problems related to obesity.

3 (2) Since the Surgeon General's call to action,
4 the problems of obesity and overweight have become
5 epidemic, occurring in all ages, ethnicities and races,
6 and individuals in every State.

7 (3) The United States now has the highest
8 prevalence of obesity among the developed nations,
9 according to 2006 data by the Organisation for Eco-
10 nomic Co-operation and Development. The preva-
11 lence of obesity in the United States (34 percent) is
12 more than twice the average for other developed na-
13 tions (13 percent). The closest nation in prevalence
14 of obesity is the United Kingdom (24 percent) which
15 is over 25 percent less than the United States.

16 (4) The National Health and Nutrition Exam-
17 ination Survey in 2006 estimated that 32 percent of
18 children and adolescents aged 2 to 19 and an alarm-
19 ing 66 percent of adults are overweight or obese.

20 (5) More than 30 percent of young people in
21 grades 9 through 12 do not regularly engage in vig-
22 orous intensity physical activity, while almost 40
23 percent of adults are sedentary and 70 percent re-
24 port getting less than 20 minutes of regular physical
25 activity per day.

1 (6) The Institute of Medicine, in their 2005
2 publication “Preventing Childhood Obesity: Health
3 in the Balance”, reported that over the last 3 dec-
4 ades, the rate of childhood obesity has tripled for
5 children aged 6 to 11 years, and doubled for chil-
6 dren aged 2 to 5 years old and in adolescents aged
7 12 to 19 years old. In 2004, approximately
8 9,000,000 children over 6 years of age were obese.
9 Only 2 percent of children eat a healthy diet con-
10 sistent with Federal nutrition guidelines.

11 (7) For children born in 2000, it is estimated
12 the lifetime risk of being diagnosed with type 2 dia-
13 betes is 40 percent for females and 30 percent for
14 males.

15 (8) Overweight and obesity disproportionately
16 affect minority populations and women. According to
17 the 2006 Behavioral Risk Factor Surveillance Sys-
18 tem of the Centers for the Disease Control and Pre-
19 vention, 61 percent of adults in the United States
20 are overweight or obese.

21 (9) The Centers for the Disease Control and
22 Prevention estimates the annual expenditures related
23 to overweight and obesity in the United States to be
24 \$117,000,000,000 in 2001 and rising rapidly.

1 (10) The Centers for the Disease Control and
2 Prevention estimates that the increase in the num-
3 ber of overweight and obese Americans between
4 1987 and 2001 resulted in a 27 percent increase in
5 per capita health costs, and that as many as
6 112,000 deaths per year are associated with obesity.

7 (11) Being overweight or obese increases the
8 risk of chronic diseases including diabetes, heart dis-
9 ease, stroke, certain cancers, arthritis, and other
10 health problems.

11 (12) According to the National Institute of Dia-
12 betes and Digestive and Kidney Diseases, individuals
13 who are obese have a 50 to 100 percent increased
14 risk of premature death.

15 (13) Healthy People 2010 goals identify over-
16 weight and obesity as 1 of the Nation's leading
17 health problems and include objectives for increasing
18 the proportion of adults who are at a healthy weight,
19 reducing the proportion of adults who are obese, and
20 reducing the proportion of children and adolescents
21 who are overweight or obese.

22 (14) Another Healthy People 2010 goal is to
23 eliminate health disparities among different seg-
24 ments of the population. Obesity is a health problem

1 that disproportionately impacts medically underserved
2 populations.

3 (15) Food and beverage advertisers are esti-
4 mated to spend \$10,000,000 to \$12,000,000,000 per
5 year to target children and youth.

6 (16) The United States spends less than 2 per-
7 cent of its annual health expenditures on prevention.

8 (17) Employer health promotion investments
9 net a return of \$3 for every \$1 invested.

10 (18) High-energy dense and low-nutrient dense
11 foods represent 30 percent of American's total cal-
12 orie intake. Fast food company menus are twice the
13 energy density of recommended healthful diets.

14 (19) Research suggests that individuals eat too
15 much high-energy dense foods without feeling full
16 because the brain's pathways that regulate hunger
17 and influence normal food intake are not triggered
18 by these foods.

19 (20) Packaging, product placement, and high-
20 energy dense food content manipulation contribute
21 to the overweight and obesity epidemic in the United
22 States.

23 (21) Such marketing and content manipulation
24 techniques have been used by other industries to en-
25 courage consumption at the expense of health. To

1 help individuals make healthy choices, education and
2 information must be available with clear, consistent,
3 and accurate labeling.

4 **TITLE I—OBESITY TREATMENT,**
5 **PREVENTION, AND REDUCTION**

6 **SEC. 101. UNITED STATES COUNCIL ON OVERWEIGHT-OBE-**
7 **SITY PREVENTION.**

8 Part P of title III of the Public Health Service Act
9 (42 U.S.C. 280g et seq.) is amended by adding at the end
10 the following:

11 **“SEC. 399R. UNITED STATES COUNCIL ON OVERWEIGHT-**
12 **OBESITY PREVENTION.**

13 “(a) ESTABLISHMENT.—The Secretary shall convene
14 a United States Council on Overweight-Obesity Prevention
15 (referred to in this section as ‘USCO–OP’).

16 “(b) MEMBERSHIP.—

17 “(1) IN GENERAL.—USCO–OP shall be com-
18 posed of 20 members, which shall consist of—

19 “(A) the Secretary;

20 “(B) the Secretary (or his or her designee)

21 of—

22 “(i) the Department of Agriculture;

23 “(ii) the Department of Education;

24 “(iii) the Department of Housing and

25 Urban Development;

1 “(iv) the Department of the Interior

2 “(v) the Federal Trade Commission;

3 “(vi) the Department of Transpor-
4 tation; and

5 “(vii) any other Federal agency that
6 the Secretary of Health and Human Serv-
7 ices determines appropriate;

8 “(C) the Chairman (or his or her designee)
9 of the Federal Communications Commission;

10 “(D) the Director (or his or her designee)
11 of the Centers for Disease Control and Preven-
12 tion, the National Institutes of Health, and the
13 Agency for Healthcare Research and Quality;

14 “(E) the Administrator of the Centers for
15 Medicare and Medicaid Services (or his or her
16 designee);

17 “(F) the Commissioner of Food and Drugs
18 (or his or her designee); and

19 “(G) a minimum of 5 representatives, ap-
20 pointed by the Secretary, of expert organiza-
21 tions such as public health associations, key
22 healthcare provider groups, planning and devel-
23 opment organizations, education associations,
24 advocacy groups, relevant industries, State and

1 local leadership, and other entities as deter-
2 mined appropriate by the Secretary.

3 “(2) APPOINTMENTS.—The Secretary shall ac-
4 cept nominations for representation on USCO–OP
5 through public comment before the initial appoint-
6 ment of members of USCO–OP under paragraph
7 (1)(G), and on a regular basis for open positions
8 thereafter, but not less than every 2 years.

9 “(3) CHAIRPERSON.—The chairperson of
10 USCO–OP shall be—

11 “(A) an individual appointed by the Presi-
12 dent; and

13 “(B) until the date that an individual is
14 appointed under subparagraph (A), the Sec-
15 retary.

16 “(c) MEETINGS.—

17 “(1) IN GENERAL.—USCO–OP shall meet—

18 “(A) not later than 180 days after the date
19 of enactment of the Obesity Prevention, Treat-
20 ment, and Research Act of 2008; and

21 “(B) at the call of the chairperson there-
22 after, but in no case less often than 2 times per
23 year.

24 “(2) MEETINGS OF FEDERAL AGENCIES.—The
25 representatives of the Federal agencies on USCO–

1 OP shall meet on a regular basis, as determined by
2 the Secretary, to develop strategies to coordinate
3 budgets and discuss other issues that are not other-
4 wise permitted to be discussed in a public forum.
5 The purpose of such meetings shall be to allow more
6 rapid interagency strategic planning and interven-
7 tion implementation to address the overweight and
8 obesity epidemic.

9 “(d) DUTIES OF USCO–OP.—USCO–OP shall—

10 “(1) develop strategies to comprehensively pre-
11 vent, treat, and reduce overweight and obesity;

12 “(2) coordinate interagency cooperation and ac-
13 tion related to the prevention, treatment, and reduc-
14 tion of overweight and obesity in the United States;

15 “(3) identify best practices in communities to
16 address overweight and obesity;

17 “(4) work with appropriate entities to evaluate
18 the effectiveness of obesity and overweight interven-
19 tions;

20 “(5) update the National Institutes of Health
21 1998 ‘Clinical Guidelines on the Identification, Eval-
22 uation, and Treatment of Overweight and Obesity in
23 Adults: The Evidence Report’ and include sections
24 on childhood obesity in such updated report;

1 “(6) conduct ongoing surveillance and moni-
2 toring using tools such as the National Health and
3 Nutrition Examination Survey and the Behavioral
4 Risk Factor Surveillance System and assure ade-
5 quate and consistent funding to support data collec-
6 tion and analysis to inform policy;

7 “(7) make recommendations to coordinate
8 budgets, grant and pilot programs, policies, and pro-
9 grams across Federal agencies to cohesively address
10 overweight and obesity, including with respect to the
11 grant programs carried out under sections 306(n),
12 399S, and 1904(a)(1)(H);

13 “(8) make recommendations to update and im-
14 prove the daily physical activity requirements for
15 students under the Elementary and Secondary Edu-
16 cation Act of 1965 (20 U.S.C. 6301 et seq.) and in-
17 clude recommendations about physical activities that
18 families can do together, and involving parents in
19 these activities;

20 “(9) make recommendations about coverage for
21 obesity-related services and for an early and periodic
22 screening, diagnostic, and treatment services pro-
23 gram under the State Children’s Health Insurance
24 Program established under title XXI of the Social
25 Security Act; and

1 “(10) provide guidelines for childhood obesity
2 health care related treatment under the early and
3 periodic screening, diagnostic, and treatment serv-
4 ices program under the Medicaid program estab-
5 lished under title XIX of the Social Security Act and
6 otherwise described in section 2103(c)(5) of such
7 Act.

8 “(e) REPORT.—Not later than 18 months after the
9 date of enactment of the Obesity Prevention, Treatment,
10 and Research Act of 2008, and on an annual basis there-
11 after, USCO–OP shall submit to the President and to the
12 relevant committees of Congress, a report that—

13 “(1) summarizes the activities and efforts of
14 USCO–OP under this section to coordinate inter-
15 agency prevention, treatment, and reduction of obe-
16 sity and overweight, including a detailed strategic
17 plan with recommendations for each Federal agency;

18 “(2) evaluates the effectiveness of these coordi-
19 nated interventions and conducts interim assess-
20 ments and reporting of health outcomes, achieve-
21 ment of milestones, and implementation of strategic
22 plan goals starting with the second report, and year-
23 ly thereafter; and

1 “(3) makes recommendations for the following
2 year’s strategic plan based on data and findings
3 from the previous year.

4 “(f) TECHNICAL ASSISTANCE.—The Department of
5 Health and Human Services may provide technical assist-
6 ance to USCO–OP to carry out the activities under this
7 section.

8 “(g) PERMANENCE OF COMMITTEE.—Section 14 of
9 the Federal Advisory Committee Act (5 U.S.C. App.) shall
10 not apply to USCO–OP.”.

11 **SEC. 102. GRANTS AND DEMONSTRATION PROGRAMS TO**
12 **PROMOTE POSITIVE HEALTH BEHAVIORS IN**
13 **POPULATIONS DISPROPORTIONATELY AF-**
14 **FECTED BY OBESITY AND OVERWEIGHT.**

15 Part P of title III of the Public Health Service Act
16 (42 U.S.C. 280g et seq.), as amended by section 101, is
17 amended by adding at the end the following:

18 **“SEC. 399S. GRANTS AND DEMONSTRATION PROGRAMS TO**
19 **PROMOTE POSITIVE HEALTH BEHAVIORS IN**
20 **POPULATIONS DISPROPORTIONATELY AF-**
21 **FECTED BY OBESITY AND OVERWEIGHT.**

22 “(a) ELIGIBLE ENTITY.—For purposes of this sec-
23 tion, the term ‘eligible entity’ means—

24 “(1) a city, county, Indian tribe, tribal organi-
25 zation, territory, or State;

1 “(2) a local, tribal, or State educational agency;

2 “(3) a Federal medical facility, including a fed-
3 erally qualified health center (as defined in section
4 1861(aa)(4) of the Social Security Act), an Indian
5 Health Service hospital or clinic, any health facility
6 or program operated by or pursuant to a contractor
7 grant from the Indian Health Service, an Indian
8 Health Service entity, an urban Indian center, an
9 Indian tribal clinic, a health care for the homeless
10 center, a rural health center, migrant health center,
11 and any other Federal medical facility;

12 “(4) any entity meeting the criteria for medical
13 home under section 204 of the Tax Relief and
14 Health Care Act of 2006 (Public Law 109–432);

15 “(5) a nonprofit organization (such as an aca-
16 demic health center or community health center);

17 “(6) a health department;

18 “(7) any licensed or certified health provider;

19 “(8) an accredited university or college;

20 “(9) a community-based organization;

21 “(10) a local city planning agency; and

22 “(11) any other entity determined appropriate
23 by the Secretary.

24 “(b) APPLICATION.—An eligible entity that desires a
25 grant under this section shall submit an application at

1 such time, in such manner, and containing such informa-
2 tion as the Secretary may require, including a plan for
3 the use of funds that may be awarded and an evaluation
4 of any training that will be provided under such grant.

5 “(c) GRANT DEMONSTRATION AND PILOT PRO-
6 GRAM.—

7 “(1) IN GENERAL.—The Secretary, acting
8 through the Director of the Centers for Disease
9 Control and Prevention, and in consultation with the
10 United States Council on Overweight-Obesity Pre-
11 vention under section 399R, shall establish and
12 evaluate a grant demonstration and pilot program
13 for entities to—

14 “(A) prevent, treat, or otherwise reduce
15 overweight and obesity;

16 “(B) increase the number of children and
17 adults who safely walk or bike to school or
18 work;

19 “(C) increase the availability and afford-
20 ability of fresh fruits and vegetables in the com-
21 munity;

22 “(D) expand safe and accessible walking
23 paths and recreational facilities to encourage
24 physical activity, and other interventions to cre-
25 ate healthy communities;

1 “(E) create advertising, social marketing,
2 and public health campaigns promoting
3 healthier food choices, increased physical activ-
4 ity, and healthier lifestyles targeted to individ-
5 uals and to families;

6 “(F) promote increased rates and duration
7 of breastfeeding; and

8 “(G) increase worksite and employer pro-
9 motion of and involvement in community initia-
10 tives that prevent, treat, or otherwise reduce
11 overweight and obesity.

12 “(2) SPECIAL PRIORITY.—Special priority will
13 be given to grant proposals that target communities
14 or populations disproportionately affected by over-
15 weight or obesity, including Native Americans, other
16 minorities, and women.

17 “(d) GRANTS TO PROMOTE POSITIVE HEALTH BE-
18 HAVIORS IN POPULATIONS DISPROPORTIONATELY AF-
19 FECTED BY OBESITY AND OVERWEIGHT.—

20 “(1) IN GENERAL.—The Secretary, acting
21 through the Director of the Centers for Disease
22 Control and Prevention, may award grants to eligi-
23 ble entities to promote health behaviors for women
24 and children in target populations, especially racial

1 and ethnic minority populations in medically under-
2 served communities.

3 “(2) USE OF FUNDS.—An award under this
4 section shall be used to carry out any of the fol-
5 lowing:

6 “(A) To educate, promote, prevent, treat
7 and determine best practices in overweight and
8 obese populations.

9 “(B) To address behavioral risk factors in-
10 cluding sedentary lifestyle, poor nutrition, being
11 overweight or obese, and use of tobacco, alcohol
12 or other substances that increase the risk of
13 morbidity and mortality. Special priority will be
14 given to grant applications that—

15 “(i) propose interventions that ad-
16 dress embedded levels of influence on be-
17 havior, including the individual, family,
18 peers, community and society; and

19 “(ii) utilize techniques that promote
20 community involvement in the design and
21 implementation of interventions including
22 community diagnosis and community-based
23 participatory research.

24 “(C) To develop and implement interven-
25 tions to promote a balance of energy consump-

1 tion and expenditure, to attain healthier weight,
2 prevent obesity, and reduce morbidity and mor-
3 tality associated with overweight and obesity.

4 “(D)(i) To train primary care physicians
5 and other licensed or certified health profes-
6 sionals on how to identify, treat, and prevent
7 obesity or eating disorders and aid individuals
8 who are overweight, obese, or who suffer from
9 eating disorders.

10 “(ii) To use evidence-based findings or rec-
11 ommendations that pertain to the prevention
12 and treatment of obesity, being overweight, and
13 eating disorders to conduct educational con-
14 ferences, including Internet-based courses and
15 teleconferences, on—

16 “(I) how to treat or prevent obesity,
17 being overweight, and eating disorders;

18 “(II) the link between obesity, being
19 overweight, eating disorders and related se-
20 rious and chronic medical conditions;

21 “(III) how to discuss varied strategies
22 with patients from at-risk and diverse pop-
23 ulations to promote positive behavior
24 change and healthy lifestyles to avoid obe-

1 sity, being overweight, and eating dis-
2 orders;

3 “(IV) how to identify overweight,
4 obese, individuals with eating disorders,
5 and those who are at risk for obesity and
6 being overweight or suffer from eating dis-
7 orders and, therefore, at risk for related
8 serious and chronic medical conditions; and

9 “(V) how to conduct a comprehensive
10 assessment of individual and familial
11 health risk factors and evaluate the effec-
12 tiveness of the training provided by such
13 entity in increasing knowledge and chang-
14 ing attitudes and behaviors of trainees.

15 “(iii) In awarding a grant to carry out an
16 activity under this subparagraph, preference
17 shall be given to an entity described in sub-
18 section (a)(4).

19 “(e) REPORTING TO CONGRESS.—Not later than 3
20 years after the date of enactment of this section, the Di-
21 rector of the Centers for Disease Control and Prevention
22 shall submit to the Secretary and Congress a report con-
23 cerning the result of the activities conducted through the
24 grants awarded under this section.

1 “(f) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated to carry out this section,
3 \$50,000,000 for fiscal year 2009, and such sums as may
4 be necessary for each of fiscal years 2010 through 2012.”.

5 **SEC. 103. NATIONAL CENTER FOR HEALTH STATISTICS.**

6 Section 306 of the Public Health Service Act (42
7 U.S.C. 242k) is amended—

8 (1) in subsection (m)(4)(B), by striking “sub-
9 section (n)” each place it appears and inserting
10 “subsection (o)”;

11 (2) by redesignating subsection (n) as sub-
12 section (o); and

13 (3) by inserting after subsection (m) the fol-
14 lowing:

15 “(n)(1) The Secretary, acting through the Center,
16 may provide for the—

17 “(A) collection of data for determining the fit-
18 ness levels and energy expenditure of adults, chil-
19 dren, and youth; and

20 “(B) analysis of data collected as part of the
21 National Health and Nutrition Examination Survey
22 and other data sources.

23 “(2) In carrying out paragraph (1), the Secretary,
24 acting through the Center, may make grants to States,
25 public entities, and nonprofit entities.

1 “(3) The Secretary, acting through the Center, may
2 provide technical assistance, standards, and methodologies
3 to grantees supported by this subsection in order to maxi-
4 mize the data quality and comparability with other stud-
5 ies.”.

6 **SEC. 104. HEALTH DISPARITIES REPORT.**

7 Not later than 18 months after the date of enactment
8 of this Act, and annually thereafter, the Director of the
9 Agency for Healthcare Research and Quality shall review
10 all research that results from the activities carried out
11 under this Act (and the amendments made by this Act)
12 and determine if particular information may be important
13 to the report on health disparities required by section
14 903(c)(3) of the Public Health Service Act (42 U.S.C.
15 299a-1(c)(3)).

16 **SEC. 105. PREVENTIVE HEALTH SERVICES BLOCK GRANT.**

17 Section 1904(a)(1) of the Public Health Service Act
18 (42 U.S.C. 300w-3(a)(1)) is amended by adding at the
19 end the following:

20 “(H) Activities and community education pro-
21 grams designed to address and prevent overweight,
22 obesity, and eating disorders through effective pro-
23 grams to promote healthy eating, and exercise habits
24 and behaviors.”.

1 **SEC. 106. REPORT ON OBESITY AND EATING DISORDERS**
2 **RESEARCH.**

3 (a) IN GENERAL.—Not later than 1 year after the
4 date of enactment of this Act, the Secretary of Health and
5 Human Services shall submit to the Committee on Health,
6 Education, Labor, and Pensions of the Senate and the
7 Committee on Energy and Commerce of the House of
8 Representatives a report on research conducted on causes
9 and health implications (including mental health implica-
10 tions) of being overweight, obesity, and eating disorders.

11 (b) CONTENT.—The report described in subsection
12 (a) shall contain—

13 (1) descriptions on the status of relevant, cur-
14 rent, ongoing research being conducted in the De-
15 partment of Health and Human Services including
16 research at the National Institutes of Health, the
17 Centers for Disease Control and Prevention, the
18 Agency for Healthcare Research and Quality, the
19 Health Resources and Services Administration, and
20 other offices and agencies;

21 (2) information about what these studies have
22 shown regarding the causes, prevention, and treat-
23 ment of, being overweight, obesity, and eating dis-
24 orders; and

25 (3) recommendations on further research that
26 is needed, including research among diverse popu-

1 lations, the plan of the Department of Health and
2 Human Services for conducting such research, and
3 how current knowledge can be disseminated.

4 **TITLE II—FOOD AND BEVERAGE**
5 **LABELING FOR HEALTHY**
6 **CHOICES**

7 **SEC. 201. FOOD AND BEVERAGE LABELING FOR HEALTHY**
8 **CHOICES.**

9 (a) USCO–OP.—In this section, the term “USCO–
10 OP” means the United States Council on Overweight–Obe-
11 sity Prevention under section 399R of the Public Health
12 Service Act (as added by section 101).

13 (b) REFORM OF FOOD AND BEVERAGE LABELING.—
14 The Secretary of Health and Human Services and the Sec-
15 retary of Agriculture, in consultation with the USCO–OP,
16 shall, through regulation or other appropriate action, up-
17 date and reform Federal oversight of food and beverage
18 labeling. Such reform shall include improving the trans-
19 parency of such labeling with regard to nutritional and
20 caloric value of food and beverages.

1 **TITLE III—HEALTHY CHOICES**
 2 **FOOD AND BEVERAGE PRO-**
 3 **GRAMS**

4 **SEC. 301. FRESH FRUIT AND VEGETABLE PROGRAM.**

5 Section 19(i) of the Richard B. Russell National
 6 School Lunch Act (42 U.S.C. 1769a(i)) is amended—

7 (1) by redesignating paragraphs (3) through
 8 (7) as paragraphs (4) through (8); and

9 (2) by inserting after paragraph (2) the fol-
 10 lowing:

11 “(3) **ADDITIONAL MANDATORY FUNDING.—**

12 “(A) **IN GENERAL.—**Out of any funds in
 13 the Treasury not otherwise appropriated, the
 14 Secretary of the Treasury shall transfer to the
 15 Secretary of Agriculture to carry out and ex-
 16 pand the program under this section, to remain
 17 available until expended—

18 “(i) on October 1, 2008, \$80,000,000;

19 “(ii) on July 1, 2009, \$130,000,000;

20 “(iii) on July 1, 2010, \$202,000,000;

21 “(iv) on July 1, 2011, \$300,000,000;

22 and

23 “(v) on July 1, 2012, and on each
 24 July 1 thereafter, the amount made avail-

1 able for the previous fiscal year, as ad-
2 justed under subparagraph (B).

3 “(B) ADJUSTMENT.—On July 1, 2012,
4 and on each July 1 thereafter the amount made
5 available under subparagraph (A)(v) shall be
6 calculated by adjusting the amount made avail-
7 able for the previous fiscal year to reflect
8 changes in the Consumer Price Index of the
9 Bureau of Labor Statistics for fresh fruits and
10 vegetables, with the adjustment—

11 “(i) rounded down to the nearest dol-
12 lar increment; and

13 “(ii) based on the unrounded amounts
14 for the preceding 12-month period.

15 “(C) ALLOCATION.—Funds made available
16 under this paragraph shall be allocated among
17 the States and the District of Columbia in the
18 same manner as funds made available under
19 paragraph (1).”.

1 **TITLE IV—AMENDMENTS TO THE**
2 **SOCIAL SECURITY ACT**

3 **SEC. 401. COVERAGE OF EVIDENCE-BASED PREVENTIVE**
4 **SERVICES UNDER MEDICARE, MEDICAID, AND**
5 **SCHIP.**

6 (a) **MEDICARE.**—Section 1861(ddd) of the Social Se-
7 curity Act, as added by section 101 of the Medicare Im-
8 provements for Patients and Providers Act of 2008, is
9 amended—

10 (1) in paragraph (2), by striking “paragraph
11 (1)” and inserting “paragraphs (1) and (3)”; and

12 (2) by adding at the end the following new
13 paragraph:

14 “(3) The term ‘additional preventive services’
15 includes any evidence-based preventive services
16 which the Secretary has determined are reasonable
17 and necessary, including, as so determined, smoking
18 cessation and prevention services, diet and exercise
19 counseling, and healthy weight and obesity coun-
20 seling.”.

21 (b) **STATE OPTION TO PROVIDE MEDICAL ASSIST-**
22 **ANCE FOR EVIDENCE-BASED PREVENTIVE SERVICES.**—

23 (1) **IN GENERAL.**—Section 1905 of the Social
24 Security Act (42 U.S.C. 1396d) is amended—

25 (A) in subsection (a)—

1 (i) in paragraph (27), by striking
2 “and” at the end;

3 (ii) by redesignating paragraph (28)
4 as paragraph (29); and

5 (iii) by inserting after paragraph (27)
6 the following:

7 “(28) evidence-based preventive services de-
8 scribed in subsection (y); and”; and

9 (B) by adding at the end the following:

10 “(y)(1) For purposes of subsection (a)(28), evidence-
11 based preventive services described in this subsection are
12 any preventive services which the Secretary has deter-
13 mined are reasonable and necessary through the process
14 for making national coverage determinations (as defined
15 in section 1869(f)(1)(B)) under title XVIII, including, as
16 so determined, smoking cessation and prevention services,
17 diet and exercise counseling, and healthy weight and obe-
18 sity counseling.”.

19 (2) CONFORMING AMENDMENT.—Section
20 1902(a)(10)(C)(iv) of such Act is amended by in-
21 sserting “and (28)” after “(24)”.

22 (c) STATE OPTION TO PROVIDE CHILD HEALTH AS-
23 SISTANCE FOR EVIDENCE-BASED PREVENTIVE SERV-
24 ICES.—Section 2110(a) of the Social Security Act (42
25 U.S.C. 1397jj(a)) is amended—

1 (1) by redesignating paragraph (28) as para-
2 graph (29); and

3 (2) by inserting after paragraph (27) the fol-
4 lowing:

5 “(28) Evidence-based preventive services de-
6 scribed in section 1905(y).”.

7 **SEC. 402. COVERAGE OF MEDICAL NUTRITION COUNSELING**
8 **UNDER MEDICARE, MEDICAID, AND SCHIP.**

9 (a) **MEDICARE COVERAGE OF MEDICAL NUTRITION**
10 **THERAPY SERVICES FOR PEOPLE WITH PRE-DIABE-**
11 **TES.**—Section 1861(s)(2)(V) of the Social Security Act
12 (42 U.S.C. 1395x(s)(2)(V)) is amended by inserting after
13 “beneficiary with diabetes” the following “, pre-diabetes
14 or its risk factors (including hypertension, dyslipidemia,
15 obesity, or overweight),”.

16 (b) **STATE OPTION TO PROVIDE MEDICAL ASSIST-**
17 **ANCE FOR MEDICAL THERAPY SERVICES.**—

18 (1) **IN GENERAL.**—Section 1905(a) of the So-
19 cial Security Act (42 U.S.C. 1396d), as amended by
20 section 401(b), is amended—

21 (A) in paragraph (28), by striking “and”
22 at the end;

23 (B) by redesignating paragraph (29) as
24 paragraph (30); and

1 (C) by inserting after paragraph (28) the
2 following:

3 “(29) medical nutrition therapy services (as de-
4 fined in section 1861(vv)(1)) for individuals with
5 pre-diabetes or obesity, or who are overweight (as
6 defined by the Secretary); and”.

7 (2) CONFORMING AMENDMENT.—Section
8 1902(a)(10)(C)(iv) of such Act, as amended by sec-
9 tion 401(b)(2), is amended by striking “and (28)”
10 and inserting “, (28) and (29)”.

11 (c) STATE OPTION TO PROVIDE CHILD HEALTH AS-
12 SISTANCE FOR MEDICAL NUTRITION THERAPY SERV-
13 ICES.—Section 2110(a) of the Social Security Act (42
14 U.S.C. 1397jj(a)), as amended by section 401(c), is
15 amended—

16 (1) by redesignating paragraph (29) as para-
17 graph (30); and

18 (2) by inserting after paragraph (28) the fol-
19 lowing:

20 “(29) Medical nutrition therapy services (as de-
21 fined in section 1861(vv)(1)) for individuals with
22 pre-diabetes or obesity, or who are overweight (as
23 defined by the Secretary).”.

1 **SEC. 403. AUTHORIZING EXPANSION OF MEDICARE COV-**
2 **ERAGE OF MEDICAL NUTRITION THERAPY**
3 **SERVICES.**

4 (a) AUTHORIZING EXPANDED ELIGIBLE POPU-
5 LATION.—Section 1861(s)(2)(V) of the Social Security
6 Act (42 U.S.C. 1395x(s)(2)(V)), as amended by section
7 402, is amended—

8 (1) by redesignating clauses (i) through (iii) as
9 subclauses (I) through (III), respectively, and in-
10 denting each such clause an additional 2 ems;

11 (2) by striking “in the case of a beneficiary
12 with diabetes, pre-diabetes or its risk factors (includ-
13 ing hypertension, dyslipidemia, obesity, overweight),
14 or a renal disease who—” and inserting “in the case
15 of a beneficiary—

16 “(i) with diabetes, pre-diabetes or its risk
17 factors (including hypertension, dyslipidemia,
18 obesity, overweight), or a renal disease
19 who—”;

20 (3) by adding “or” at the end of subclause (III)
21 of clause (i), as so redesignated; and

22 (4) by adding at the end the following new
23 clause:

24 “(ii) who is not described in clause (i) but
25 who has another disease, condition, or disorder
26 for which the Secretary has made a national

1 coverage determination (as defined in section
2 1869(f)(1)(B)) for the coverage of such serv-
3 ices;”.

4 (b) COVERAGE OF SERVICES FURNISHED BY PHYSI-
5 CIANS.—Section 1861(vv)(1) of the Social Security Act
6 (42 U.S.C. 1395x(vv)(1)) is amended by inserting “or
7 which are furnished by a physician” before the period at
8 the end.

9 (c) NATIONAL COVERAGE DETERMINATION PROC-
10 ESS.—In making a national coverage determination de-
11 scribed in section 1861(s)(2)(V)(ii) of the Social Security
12 Act, as added by subsection (a)(4), the Secretary of
13 Health and Human Services, acting through the Adminis-
14 trator of the Centers for Medicare & Medicaid Services,
15 shall—

16 (1) consult with dietetic and nutrition profes-
17 sional organizations in determining appropriate pro-
18 tocols for coverage of medical nutrition therapy serv-
19 ices for individuals with different diseases, condi-
20 tions, and disorders; and

21 (2) consider the degree to which medical nutri-
22 tion therapy interventions prevent or help prevent
23 the onset or progression of more serious diseases,
24 conditions, or disorders.

1 **SEC. 404. CLARIFICATION OF EPSDT INCLUSION OF PRE-**
2 **VENTION, SCREENING, AND TREATMENT**
3 **SERVICES FOR OBESITY AND OVERWEIGHT;**
4 **SCHIP COVERAGE.**

5 (a) IN GENERAL.—Section 1905(r)(5) of the Social
6 Security Act (42 U.S.C. 1396d(r)(5)) is amended by in-
7 serting “, including weight and BMI measurement and
8 monitoring, as well as appropriate treatment services (in-
9 cluding but not limited to) medical nutrition therapy serv-
10 ices (as defined in section 1861(vv)(1)), physical therapy
11 or exercise training, and behavioral health counseling,
12 based on recommendations of the United States Council
13 on Overweight-Obesity Prevention under section 399R of
14 the Public Health Service Act and such other expert rec-
15 ommendations and studies as determined by the Sec-
16 retary” before the period.

17 (b) SCHIP.—

18 (1) REQUIRED COVERAGE.—Section 2103 (42
19 U.S.C. 1397cc) is amended—

20 (A) in subsection (a), in the matter before
21 paragraph (1), by striking “subsection (c)(5)”
22 and inserting “paragraphs (5) and (7) of sub-
23 section (c)”; and

24 (B) in subsection (c)—

25 (i) by redesignating paragraph (5) as
26 paragraph (7); and

1 (ii) by inserting after paragraph (4),
2 the following:

3 “(5) PREVENTION, SCREENING, AND TREAT-
4 MENT SERVICES FOR OBESITY AND OVERWEIGHT.—
5 The child health assistance provided to a targeted
6 low-income child shall include coverage of weight
7 and BMI measurement and monitoring, as well as
8 appropriate treatment services (including but not
9 limited to) medical nutrition therapy services (as de-
10 fined in section 1861(vv)(1)), physical therapy or ex-
11 ercise training, and behavioral health counseling,
12 based on recommendations of the United States
13 Council on Overweight-Obesity Prevention under
14 section 399R of the Public Health Service Act and
15 such other expert recommendations and studies as
16 determined by the Secretary.”.

17 (2) CONFORMING AMENDMENT.—Section
18 2102(a)(7)(B) (42 U.S.C. 1397bb(c)(2)) is amended
19 by inserting “and services described in section
20 2103(c)(5)” after “emergency services”.

1 **SEC. 405. INCLUSION OF PREVENTIVE SERVICES IN QUAL-**
2 **ITY MATERNAL AND CHILD HEALTH SERV-**
3 **ICES.**

4 Section 501(b) of the Social Security Act (42 U.S.C.
5 701(b)) is amended by adding at the end the following
6 new paragraph:

7 “(5) The term ‘quality maternal and child
8 health services’ includes the following:

9 “(A) Evidence-based preventive services
10 described in section 1905(y).

11 “(B) Medical nutrition counseling for indi-
12 viduals with pre-diabetes or obesity, or who are
13 overweight (as defined by the Secretary).

14 “(C) Weight and BMI measurement and
15 monitoring, as well as appropriate treatment
16 services (including but not limited to) medical
17 nutrition therapy services (as defined in section
18 1861(vv)(1)), physical therapy or exercise train-
19 ing, and behavioral health counseling, based on
20 recommendations of the United States Council
21 on Overweight-Obesity Prevention under section
22 399R of the Public Health Service Act and
23 such other expert recommendations and studies
24 as determined by the Secretary.”.

1 **SEC. 406. EFFECTIVE DATE.**

2 (a) IN GENERAL.—Except as provided in subsection
3 (b), the amendments made by this title take effect on Oc-
4 tober 1, 2009.

5 (b) EXTENSION OF EFFECTIVE DATE FOR STATE
6 LAW AMENDMENT.—In the case of a State plan under
7 title XIX or XXI of the Social Security Act (42 U.S.C.
8 1396 et seq., 1397aa et seq.) which the Secretary of
9 Health and Human Services determines requires State
10 legislation in order for the plan to meet the additional re-
11 quirements imposed by the amendments made by this sec-
12 tion, the State plan shall not be regarded as failing to
13 comply with the requirements of such title solely on the
14 basis of its failure to meet these additional requirements
15 before the first day of the first calendar quarter beginning
16 after the close of the first regular session of the State leg-
17 islature that begins after the date of enactment of this
18 Act. For purposes of the previous sentence, in the case
19 of a State that has a 2-year legislative session, each year
20 of the session is considered to be a separate regular ses-
21 sion of the State legislature.

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