

112TH CONGRESS  
1ST SESSION

# S. 1031

To empower States with programmatic flexibility and financial predictability to improve their Medicaid programs and State Children’s Health Insurance Programs by ensuring better health care for low-income pregnant women, children, and families, and for elderly individuals and disabled individuals in need of long-term care services and supports, whose income and resources are insufficient to meet the costs of necessary medical services.

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## IN THE SENATE OF THE UNITED STATES

MAY 19, 2011

Mr. COBURN (for himself, Mr. BURR, and Mr. CHAMBLISS) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To empower States with programmatic flexibility and financial predictability to improve their Medicaid programs and State Children’s Health Insurance Programs by ensuring better health care for low-income pregnant women, children, and families, and for elderly individuals and disabled individuals in need of long-term care services and supports, whose income and resources are insufficient to meet the costs of necessary medical services.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 (a) SHORT TITLE.—This Act may be cited as the  
3 “Medicaid Improvement and State Empowerment Act”.

4 (b) TABLE OF CONTENTS.—The table of contents for  
5 this Act is as follows:

Sec. 1. Short title.

Sec. 2. Sustainable Medicaid and CHIP programs that meet the needs of each State.

“PART B—TAXPAYER-PROVIDED PASS-THROUGH FUNDING OF HEALTH CARE GRANTS TO STATES FOR PREGNANT WOMEN, LOW-INCOME CHILDREN, AND LOW-INCOME FAMILIES AND FOR LONG-TERM CARE SERVICES AND SUPPORTS FOR LOW-INCOME ELDERLY OR DISABLED INDIVIDUALS

“Sec. 1950. Purposes; application.

“Sec. 1951. State plans.

“Sec. 1952. Grants to States.

“Sec. 1953. Use of grants.

“Sec. 1954. Administrative provisions.

“Sec. 1955. Penalties.

“Sec. 1956. Appeal of adverse decision.

“Sec. 1957. Annual Reports.

“Sec. 1958. Definitions.

Sec. 3. Medical malpractice reform State incentive fund.

Sec. 4. Repeals.

Sec. 5. Development of new formula for Federal financial participation for State child support and welfare programs to replace the FMAP.

6 **SEC. 2. SUSTAINABLE MEDICAID AND CHIP PROGRAMS**  
7 **THAT MEET THE NEEDS OF EACH STATE.**

8 (a) IN GENERAL.—Title XIX of the Social Security  
9 Act (42 U.S.C. 1396 et seq.) is amended—

10 (1) by inserting after section 1900, the fol-  
11 lowing:

12 “PART A—FMAP-BASED ACUTE CARE STATE HEALTH  
13 PROGRAMS FOR THE ELDERLY AND DISABLED”;

14 and

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

1 **“PART B—TAXPAYER-PROVIDED PASS-THROUGH**  
2 **FUNDING OF HEALTH CARE GRANTS TO**  
3 **STATES FOR PREGNANT WOMEN, LOW-IN-**  
4 **COME CHILDREN, AND LOW-INCOME FAMI-**  
5 **LIES AND FOR LONG-TERM CARE SERVICES**  
6 **AND SUPPORTS FOR LOW-INCOME ELDERLY**  
7 **OR DISABLED INDIVIDUALS**

8 **“SEC. 1950. PURPOSES; APPLICATION.**

9 “(a) IN GENERAL.—The purposes of this part are to  
10 empower States with programmatic flexibility and finan-  
11 cial predictability in designing and operating State pro-  
12 grams to—

13 “(1) provide medical assistance for pregnant  
14 women, low-income children, and low-income families  
15 with children whose income and resources are insuf-  
16 ficient to meet the costs of necessary medical serv-  
17 ices and rehabilitation and other services to help  
18 such women, children, and families attain or retain  
19 capability for independence or self-care; and

20 “(2) provide long-term care services and sup-  
21 ports for low-income elderly or disabled individuals  
22 whose income and resources are insufficient to meet  
23 the costs of such services and supports and rehabili-  
24 tation and other services to help such individuals at-  
25 tain or retain capability for independence or self-  
26 care.

1 “(b) APPLICATION.—

2 “(1) IN GENERAL.—Except as provided in para-  
3 graph (2) and section 1951(a)(1)(B)(iv), with re-  
4 spect to a State, on and after January 1, 2013:

5 “(A) Medical assistance for pregnant  
6 women, low-income children, or low-income fam-  
7 ilies with children shall be provided only in ac-  
8 cordance with the provisions of this part and  
9 the provisions of title XI applicable to the provi-  
10 sion of such assistance.

11 “(B) Long-term care services and supports  
12 for low-income elderly or disabled individuals  
13 (including dual eligible individuals) shall only be  
14 provided in accordance with the provisions of  
15 this part and the provisions of title XI applica-  
16 ble to the provision of such services and sup-  
17 ports.

18 “(C) The provisions of part A of this title  
19 shall no longer apply to a State program estab-  
20 lished under this title to provide medical assist-  
21 ance for pregnant women, low-income children,  
22 or low-income families with children or to pro-  
23 vide long-term care services and supports to  
24 low-income elderly or disabled individuals and  
25 the provisions of any drug rebate agreement

1           that is in effect under section 1927 on that  
2           date that relate to the provision of medical as-  
3           sistance for covered outpatient drugs for such  
4           women, children, or families or to the provision  
5           of long-term care services and supports for low-  
6           income elderly or disabled individuals are termi-  
7           nated as of such effective date.

8           “(D) A targeted low-income child or a par-  
9           ent of such a child who would be eligible for  
10          child health assistance or health benefits cov-  
11          erage under a State child health plan under  
12          title XXI on June 30, 2012, shall no longer re-  
13          ceive such assistance or benefits under title  
14          XXI and shall be eligible for medical assistance  
15          under a State program funded under this part  
16          only to the extent the child or parent satisfies  
17          the eligibility criteria established by the State in  
18          its State plan under section 1951. Federal  
19          funds appropriated for making payments under  
20          title XXI or for administering title XXI that  
21          are unobligated on January 1, 2013, are re-  
22          scinded on that date.

23          “(E) No payment shall be made under sec-  
24          tion 1903(a) to a State with respect to any dis-  
25          proportionate share payment adjustment made

1 under section 1923 on or after January 1,  
2 2013.

3 “(F) In the case of a State conducting a  
4 waiver under section 1115 or other authority to  
5 provide medical assistance for pregnant women,  
6 low-income children, or low-income families with  
7 children under a State program established  
8 under this title or to provide long-term care  
9 services and supports for low-income elderly or  
10 disabled individuals that is in effect on such  
11 date, the State may elect to terminate the waiv-  
12 er as of January 1, 2013, or may submit a re-  
13 quest to continue to provide medical assistance  
14 or long-term care services and supports for  
15 such individuals in accordance with the terms of  
16 the waiver. The Secretary shall approve a re-  
17 quest of a State with such a waiver to extend  
18 the waiver for additional periods so long as the  
19 total amount of Federal funds paid to the State  
20 to conduct the waiver does not exceed the  
21 amount of Federal funds that would be paid to  
22 the State under this part if the waiver were not  
23 conducted and medical assistance or long-term  
24 care services and supports are provided under

1 the waiver consistent with the requirements of  
 2 this part.

3 “(2) HOLD HARMLESS PROVISIONS.—

4 “(A) ACUTE CARE FOR LOW-INCOME EL-  
 5 DERLY AND DISABLED.—

6 “(i) IN GENERAL.—The provisions of  
 7 part A shall apply to State expenditures  
 8 attributable to the provision of medical as-  
 9 sistance for acute care for low-income el-  
 10 derly or disabled individuals (including  
 11 dual eligible individuals) on and after Jan-  
 12 uary 1, 2013.

13 “(ii) RULE OF CONSTRUCTION.—  
 14 Clause (i) shall not be construed as affect-  
 15 ing—

16 “(I) the termination under para-  
 17 graph (1)(E) of payments under sec-  
 18 tion 1903(a) for disproportionate  
 19 share hospital adjustment payments  
 20 under section 1923; or

21 “(II) State flexibility to provide  
 22 dual eligible individuals with medical  
 23 assistance for acute care through en-  
 24 rollment in a managed care entity  
 25 under the amendment made by section

1                   2(b) of the Medicaid Improvement  
2                   and State Empowerment Act.

3                   “(B) COMMONWEALTHS AND TERRI-  
4                   TORIES.—This part shall not apply to the Com-  
5                   monwealth of Puerto Rico, the United States  
6                   Virgin Islands, Guam, the Commonwealth of  
7                   the Northern Mariana Islands, and American  
8                   Samoa. Any program to provide medical assist-  
9                   ance established under this title by any such  
10                  commonwealth or territory shall be operated in  
11                  accordance with the provisions of part A of this  
12                  title and subsections (f) and (g) of section  
13                  1108.

14                  “(C) VACCINES FOR CHILDREN PRO-  
15                  GRAM.—The program for the distribution of pe-  
16                  diatric vaccines established under section 1928  
17                  shall continue to be operated in accordance with  
18                  the provisions of that section.

19                  “(c) BUDGET AUTHORITY.—This part constitutes  
20                  budget authority in advance of appropriations Acts and  
21                  represents the obligation of the Federal Government to  
22                  provide for the payment to States of amounts provided  
23                  under section 1952.

24                  “(d) NONENTITLEMENT.—This part shall not be in-  
25                  terpreted to entitle any individual or family to medical as-



1 sistance under any State program funded under this part  
 2 or to entitle any provider or entity to payment for the pro-  
 3 vision of items or services under any State program fund-  
 4 ed under this part.

5 **“SEC. 1951. STATE PLANS.**

6 “(a) IN GENERAL.—In order to receive a grant under  
 7 section 1952 for a year and for the purpose of ensuring  
 8 transparency with respect to the expenditure of Federal  
 9 revenues, a State shall submit to the Secretary a plan that  
 10 includes the following:

11 “(1) OUTLINE OF MEDICAL ASSISTANCE PRO-  
 12 GRAM.—

13 “(A) GENERAL PROVISIONS.—A written  
 14 document that outlines how the State intends to  
 15 conduct a program, designed to serve all polit-  
 16 ical subdivisions in the State (not necessarily in  
 17 a uniform manner), that provides—

18 “(i) medical assistance to pregnant  
 19 women, low-income children, and low-in-  
 20 come families with children whose income  
 21 and resources are insufficient to meet the  
 22 costs of necessary medical services, and re-  
 23 habilitation and other services to help such  
 24 women, children, and families attain or re-

1           tain capability for independence or self-  
2           care; and

3           “(ii) long-term care services and sup-  
4           ports for low-income elderly or disabled in-  
5           dividuals whose income and resources are  
6           insufficient to meet the costs of such serv-  
7           ices and supports and rehabilitation and  
8           other services to help such individuals at-  
9           tain or retain capability for independence  
10          or self-care.

11          “(B) SPECIAL PROVISIONS.—

12           “(i) The document shall set forth ob-  
13          jective criteria for—

14                  “(I) the determination of eligi-  
15                  bility for medical assistance and for  
16                  long-term care services and supports  
17                  (which may be based on standards re-  
18                  lating to income, family composition,  
19                  patient population, health status, or  
20                  age); and

21                  “(II) fair and equitable treat-  
22                  ment of recipients and providers, in-  
23                  cluding an explanation of how the  
24                  State will provide opportunities for re-  
25                  cipients and providers who have been

1 adversely affected to be heard in a  
2 State administrative or appeal proc-  
3 ess.

4 “(ii) The document shall include a de-  
5 scription of—

6 “(I) the benefits to be provided,  
7 which, in the case of medical assist-  
8 ance, shall at a minimum be of the  
9 types listed in paragraph (1) of sec-  
10 tion 8904(a) of title 5, United States  
11 Code; and

12 “(II) the amount (if any) of pre-  
13 miums, deductibles, coinsurance, or  
14 other cost sharing imposed.

15 “(iii) The document shall include a  
16 description of how medical assistance and  
17 long-term care services and supports will  
18 be provided under the State plan, such as  
19 through contracts with health maintenance  
20 organizations, managed care organizations,  
21 or regional preferred provider organization  
22 care networks, the establishment of cash-  
23 for-counseling programs, family health care  
24 scholarships, or health savings accounts,  
25 the provision of consumer-driven health

1 vouchers, or any other health coverage ben-  
 2 efit delivery design determined by the  
 3 State as appropriate for achieving the pur-  
 4 pose of this part.

5 “(iv) The document shall indicate how  
 6 the State shall satisfy the requirements of  
 7 sections 1902(a)(46) (relating to  
 8 verification of declarations of citizenship,  
 9 nationality, or satisfactory immigration  
 10 status).

11 “(2) CERTIFICATION OF THE ADMINISTRATION  
 12 OF THE PROGRAM.—A certification by the Governor  
 13 of the State specifying which State agency or agen-  
 14 cies will administer and supervise the State plan  
 15 under this part, which shall include assurances that  
 16 local governments and private sector organizations—

17 “(A) have been consulted regarding the  
 18 plan and design of the provision of medical as-  
 19 sistance and long-term care services and sup-  
 20 ports in the State so that such assistance and  
 21 services and supports are provided in a manner  
 22 appropriate to local populations; and

23 “(B) have had at least 45 days to submit  
 24 comments on such plan and design.

1           “(3) CERTIFICATION THAT THE STATE WILL  
2       PROVIDE MEDICAL ASSISTANCE TO CHILDREN IN  
3       FOSTER CARE AND ADOPTION ASSISTANCE PRO-  
4       GRAM.—A certification by the Governor of the State  
5       that the State will take such actions as are nec-  
6       essary to ensure that children receiving assistance  
7       under part E of title IV are eligible for medical as-  
8       sistance under the State plan under this part.

9           “(4) CERTIFICATION THAT THE STATE WILL  
10      PROVIDE INDIANS WITH EQUITABLE ACCESS TO AS-  
11      SISTANCE.—A certification by the Governor of the  
12      State that the State will provide each member of an  
13      Indian tribe who is domiciled in the State with equi-  
14      table access to medical assistance and to long-term  
15      care services and supports under the State plan  
16      under this part.

17          “(5) CERTIFICATION OF STANDARDS AND PRO-  
18      CEDURES TO ENSURE AGAINST PROGRAM FRAUD,  
19      WASTE, AND ABUSE.—A certification by the Gov-  
20      ernor of the State that the State has established and  
21      is enforcing standards and procedures to ensure  
22      against program fraud, waste, and abuse, including  
23      standards and procedures concerning nepotism, con-  
24      flicts of interest among individuals responsible for

1 the administration and supervision of the State pro-  
 2 gram, kickbacks, and the use of political patronage.

3 “(b) PLAN AMENDMENTS.—Within 30 days after a  
 4 State amends a plan submitted pursuant to subsection (a),  
 5 the State shall notify the Secretary of the amendment.

6 “(c) PUBLIC AVAILABILITY OF STATE PLAN SUM-  
 7 MARY.—The State shall make a summary of any plan or  
 8 plan amendment submitted by the State under this section  
 9 publicly available on a website and through such other  
 10 means as the State determines appropriate.

11 “(d) LIMITATION ON SECRETARIAL AUTHORITY.—  
 12 The Secretary may only review a State plan or plan  
 13 amendment submitted under this section for the purpose  
 14 of confirming that a State has submitted the required doc-  
 15 umentation. The Secretary shall not have any authority  
 16 to approve or deny a State plan or plan amendment sub-  
 17 mitted under this section or to otherwise inhibit or control  
 18 the expenditure of grants paid to a State under section  
 19 1952.

20 **“SEC. 1952. GRANTS TO STATES.**

21 “(a) ESTABLISHMENT OF SUSTAINABLE MEDICAID  
 22 FUNDING FOR STATES.—

23 “(1) IN GENERAL.—Beginning January 1,  
 24 2013, and annually thereafter, each State that has  
 25 submitted a plan under section 1951 shall be enti-

1 tled to receive from the Secretary for each 12-month  
 2 period, a grant in an amount equal to the State  
 3 health grant determined for the State for the period  
 4 under subsection (b).

5 “(2) TERMINATION OF OLD MEDICAID AND  
 6 CHIP FUNDING.—No payment shall be made by the  
 7 Secretary to any State under part A of this title or  
 8 under title XXI for State expenditures attributable  
 9 to providing on or after January 1, 2013—

10 “(A) medical assistance (as defined in sec-  
 11 tion 1905(a)), child health assistance (as de-  
 12 fined in section 2110(a)), or health benefits  
 13 coverage for pregnant women, low-income chil-  
 14 dren, or low-income families with children; or

15 “(B) long-term care services and supports  
 16 for elderly or disabled individuals.

17 “(b) TAXPAYER-PROVIDED PASS-THROUGH FUND-  
 18 ING OF HEALTH GRANTS TO STATES.—

19 “(1) APPROPRIATION.—For the purpose of  
 20 making health grants to States under this part,  
 21 there is appropriated, out of any money in the  
 22 Treasury not otherwise appropriated—

23 “(A) for the 12-month period beginning  
 24 January 1, 2013, an amount equal to the prod-  
 25 uct of—

1 “(i) the base appropriation amount  
2 determined under paragraph (3); and

3 “(ii) the appropriation increase factor  
4 determined under paragraph (4) for the  
5 period; and

6 “(B) for each 12-month period thereafter,  
7 an amount equal to the amount appropriated  
8 under this paragraph for the preceding 12-  
9 month period, increased by the appropriation  
10 increase factor determined under paragraph (4)  
11 for the period.

12 “(2) AMOUNT OF GRANTS.—

13 “(A) BASED ON POVERTY POPULATION.—  
14 For each 12-month period beginning on and  
15 after January 1, 2013, the Secretary shall pay  
16 each State an amount equal to the product of—

17 “(i) the amount appropriated under  
18 paragraph (1) for the period; and

19 “(ii) the ratio of the number of indi-  
20 viduals residing in the State whose income  
21 does not exceed 100 percent of the poverty  
22 line applicable to a family of the size in-  
23 volved to the number of such individuals in  
24 all States that have submitted a plan  
25 under section 1951 for the period (based



1           on data for the most recent 12-month pe-  
2           riod for which data is available).

3           “(B) PRO RATA ADJUSTMENTS.—The Sec-  
4           retary shall make pro rata increases or reduc-  
5           tions in the amounts determined for States  
6           under subparagraph (A) for a period as nec-  
7           essary to ensure that the total amount appro-  
8           priated for the period is allotted among all  
9           States and that the total amount of all health  
10          grants for States determined for a period does  
11          not exceed the amount appropriated for the pe-  
12          riod.

13          “(3) BASE APPROPRIATION AMOUNT.—The base  
14          appropriation amount determined under this para-  
15          graph is the product of—

16               “(A) \$165,000,000,000;

17               “(B) the appropriation increase factor de-  
18               termined under paragraph (4) with respect to  
19               the 12-month period beginning on January 1,  
20               2011; and

21               “(C) the appropriation increase factor de-  
22               termined under paragraph (4) with respect to  
23               the 12-month period beginning on January 1,  
24               2012.

1           “(4) APPROPRIATION INCREASE FACTOR.—The  
2           appropriation increase factor determined under this  
3           paragraph for a 12-month period is equal to the sum  
4           of 1 plus the sum of following:

5                   “(A) CPI-U GROWTH FACTOR.—The per-  
6                   centage increase, if any, in the consumer price  
7                   index for all urban consumers (all items; United  
8                   States city average) published by the Bureau of  
9                   Labor Statistics, or the successor index thereto,  
10                  for the fiscal year ending on September 30 of  
11                  the preceding 12-month period.

12                   “(B) POPULATION GROWTH FACTOR.—The  
13                   percentage increase (if any) in the population of  
14                   the United States for the fiscal year ending on  
15                   September 30 of the preceding 12-month pe-  
16                   riod, as determined by the Secretary based on  
17                   the most recent published estimates of the Bu-  
18                   reau of the Census.

19           “(c) AVAILABILITY.—A health grant paid to a State  
20           under this section for a period shall remain available until  
21           expended.

22           “(d) REPORTS TO CONGRESS.—Not later than Janu-  
23           ary 1 of 2018, and of every 5 years thereafter, the Comp-  
24           troller General of the United States shall submit a report  
25           to Congress that includes an analysis of changes among

1 the States in the population of individuals described in  
 2 each clause of subsection (b)(2)(A) and such recommenda-  
 3 tions for legislative changes to the health grant distribu-  
 4 tion formula applied under subsection (b)(2) as the Comp-  
 5 troller General determines appropriate to achieve the pur-  
 6 pose of this part and ensure a fair distribution of the Fed-  
 7 eral funds appropriated to carry out this part among the  
 8 States.

9 **“SEC. 1953. USE OF GRANTS.**

10       “(a) GENERAL RULE.—A State to which a grant is  
 11 made under section 1952 may use the grant in any man-  
 12 ner that is reasonably demonstrated to accomplish the  
 13 purpose of this part.

14       “(b) LIMITATION ON USE OF GRANT FOR ADMINIS-  
 15 TRATIVE PURPOSES.—

16               “(1) LIMITATION.—A State to which a grant is  
 17 made under section 1952 shall not expend more  
 18 than 5 percent of the grant for administrative pur-  
 19 poses.

20               “(2) EXCEPTION.—Paragraph (1) shall not  
 21 apply to the use of a grant for expenditures related  
 22 to preventing or eliminating waste, fraud, or abuse,  
 23 and expenditures for information technology and  
 24 computerization needed for tracking or monitoring  
 25 required by or under this part.

1   **“SEC. 1954. ADMINISTRATIVE PROVISIONS.**

2       “(a) PAYMENTS TO STATES.—

3           “(1) QUARTERLY PAYMENTS.—The Secretary  
4       shall pay each health grant payable to a State under  
5       section 1952 in quarterly installments, subject to  
6       this section.

7           “(2) COMPUTATION AND CERTIFICATION OF  
8       PAYMENTS TO STATES.—

9           “(A) COMPUTATION.—The Secretary shall  
10       estimate the amount to be paid to each State  
11       for each quarter under this part, with such esti-  
12       mate to be based on a report filed by the State  
13       containing an estimate by the State of the total  
14       sum to be expended by the State in the quarter  
15       under the State program funded under this  
16       part and such other information as the Sec-  
17       retary may find necessary.

18          “(B) CERTIFICATION.—The Secretary of  
19       Health and Human Services shall certify to the  
20       Secretary of the Treasury the amount estimated  
21       under subparagraph (A) with respect to a  
22       State, reduced or increased to the extent of any  
23       overpayment or underpayment which the Sec-  
24       retary of Health and Human Services deter-  
25       mines was made under this part to the State  
26       for any prior quarter and with respect to which

1 adjustment has not been made under this para-  
 2 graph.

3 “(3) PAYMENT METHOD.—Upon receipt of a  
 4 certification under paragraph (2)(B) with respect to  
 5 a State, the Secretary of the Treasury shall, through  
 6 the Fiscal Service of the Department of the Treas-  
 7 ury and before audit or settlement by the General  
 8 Accounting Office, pay to the State, at the time or  
 9 times fixed by the Secretary of Health and Human  
 10 Services, the amount so certified.

11 “(b) NO WAIVER AUTHORITY.—Except as provided  
 12 in section 1950(b)(1)(F), the Secretary may not waive any  
 13 provision of this part under section 1115 or any other au-  
 14 thority.

15 “(c) LIMITATION ON FEDERAL AUTHORITY.—No of-  
 16 ficer or employee of the Federal Government may regulate  
 17 the conduct of States under this part or enforce any provi-  
 18 sion of this part, except to the extent expressly provided  
 19 in this part.

20 **“SEC. 1955. PENALTIES.**

21 “(a) IN GENERAL.—Subject to this section:

22 “(1) USE OF GRANT IN VIOLATION OF THIS  
 23 PART.—

24 “(A) GENERAL PENALTY.—If an audit  
 25 conducted under chapter 75 of title 31, United

1 States Code, finds that an amount paid to a  
2 State under section 1952 for a period has been  
3 used in violation of this part, the Secretary  
4 shall reduce the grant payable to the State  
5 under that section for the immediately suc-  
6 ceeding period by the amount so used.

7 “(B) ENHANCED PENALTY FOR INTEN-  
8 TIONAL VIOLATIONS.—If the State does not  
9 prove to the satisfaction of the Secretary that  
10 the State did not intend to use the amount in  
11 violation of this part, the Secretary shall fur-  
12 ther reduce the grant payable to the State  
13 under section 1952 for the immediately suc-  
14 ceeding period by an amount equal to 5 percent  
15 of the State health grant determined for that  
16 period.

17 “(2) FAILURE TO SUBMIT REQUIRED RE-  
18 PORT.—If the Secretary determines that a State has  
19 not, within 45 days after the end of a period for  
20 which a grant is made under section 1952, sub-  
21 mitted the report required by section 1957 for the  
22 period, the Secretary shall reduce the grant payable  
23 to the State under section 1952 for the immediately  
24 succeeding period by an amount equal to 5 percent  
25 of the State health grant determined for that period.

1       “(b) REASONABLE CAUSE EXCEPTION.—The Sec-  
 2 retary may not impose a penalty on a State under sub-  
 3 section (a) with respect to a requirement if the Secretary  
 4 determines that the State has reasonable cause for failing  
 5 to comply with the requirement.

6       “(c) CORRECTIVE COMPLIANCE PLAN.—

7           “(1) IN GENERAL.—

8               “(A) NOTIFICATION OF VIOLATION.—Be-  
 9 fore imposing a penalty against a State under  
 10 subsection (a) with respect to a violation of this  
 11 part, the Secretary shall notify the State of the  
 12 violation and allow the State the opportunity to  
 13 enter into a corrective compliance plan in ac-  
 14 cordance with this subsection which outlines  
 15 how the State will correct or discontinue, as ap-  
 16 propriate, the violation and how the State will  
 17 insure continuing compliance with this part.

18               “(B) 60-DAY PERIOD TO PROPOSE A COR-  
 19 RECTIVE COMPLIANCE PLAN.—During the 60-  
 20 day period that begins on the date the State re-  
 21 ceives a notice provided under subparagraph  
 22 (A) with respect to a violation, the State may  
 23 submit to the Federal Government a corrective  
 24 compliance plan to correct or discontinue, as  
 25 appropriate, the violation.

1           “(C) CONSULTATION ABOUT MODIFICA-  
2           TIONS.—During the 60-day period that begins  
3           with the date the Secretary receives a corrective  
4           compliance plan submitted by a State in accord-  
5           ance with subparagraph (B), the Secretary may  
6           consult with the State on modifications to the  
7           plan.

8           “(D) ACCEPTANCE OF PLAN.—A corrective  
9           compliance plan submitted by a State in accord-  
10          ance with subparagraph (B) is deemed to be ac-  
11          cepted by the Secretary if the Secretary does  
12          not accept or reject the plan during 60-day pe-  
13          riod that begins on the date the plan is sub-  
14          mitted.

15          “(2) EFFECT OF CORRECTING OR DIS-  
16          CONTINUING VIOLATION.—The Secretary may not  
17          impose any penalty under subsection (a) with re-  
18          spect to any violation covered by a State corrective  
19          compliance plan accepted by the Secretary if the  
20          State corrects or discontinues, as appropriate, the  
21          violation pursuant to the plan.

22          “(3) EFFECT OF FAILING TO CORRECT OR DIS-  
23          CONTINUE VIOLATION.—The Secretary shall assess  
24          some or all of a penalty imposed on a State under  
25          subsection (a) with respect to a violation if the State



1 does not, in a timely manner, correct or discontinue,  
 2 as appropriate, the violation pursuant to a State cor-  
 3 rective compliance plan accepted by the Secretary.

4 “(d) LIMITATION ON AMOUNT OF PENALTIES.—

5 “(1) IN GENERAL.—In imposing the penalties  
 6 described in subsection (a), the Secretary shall not  
 7 reduce any health grant payable to a State for a pe-  
 8 riod by more than 10 percent.

9 “(2) CARRYFORWARD OF UNRECOVERED PEN-  
 10 ALTIES.—To the extent that paragraph (1) of this  
 11 subsection prevents the Secretary from recovering  
 12 during a period the full amount of penalties imposed  
 13 on a State under subsection (a) of this section for  
 14 a prior period, the Secretary shall apply any remain-  
 15 ing amount of such penalties to the health grant  
 16 payable to the State under section 1952 for the im-  
 17 mediately succeeding period.

18 **“SEC. 1956. APPEAL OF ADVERSE DECISION.**

19 “(a) IN GENERAL.—Within 5 days after the date the  
 20 Secretary takes any adverse action under this part with  
 21 respect to a State, the Secretary shall notify the Governor  
 22 of the State of the adverse action, including any action  
 23 with respect to the State plan submitted under section  
 24 1951 or the imposition of a penalty under section 1955.

25 “(b) ADMINISTRATIVE REVIEW.—

1           “(1) IN GENERAL.—Within 60 days after the  
2           date a State receives notice under subsection (a) of  
3           an adverse action, the State may appeal the action,  
4           in whole or in part, to the Departmental Appeals  
5           Board established in the Department of Health and  
6           Human Services (in this section referred to as the  
7           ‘Board’) by filing an appeal with the Board.

8           “(2) PROCEDURAL RULES.—The Board shall  
9           consider an appeal filed by a State under paragraph  
10          (1) on the basis of such documentation as the State  
11          may submit and as the Board may require to sup-  
12          port the final decision of the Board. In deciding  
13          whether to uphold an adverse action or any portion  
14          of such an action, the Board shall conduct a thor-  
15          ough review of the issues and take into account all  
16          relevant evidence. The Board shall make a final de-  
17          termination with respect to an appeal filed under  
18          paragraph (1) not less than 60 days after the date  
19          the appeal is filed.

20          “(c) JUDICIAL REVIEW OF ADVERSE DECISION.—

21               “(1) IN GENERAL.—Within 90 days after the  
22               date of a final decision by the Board under this sec-  
23               tion with respect to an adverse action taken against  
24               a State, the State may obtain judicial review of the

1 final decision (and the findings incorporated into the  
2 final decision) by filing an action in—

3 “(A) the district court of the United States  
4 for the judicial district in which the principal or  
5 headquarters office of the State agency is lo-  
6 cated; or

7 “(B) the United States District Court for  
8 the District of Columbia.

9 “(2) PROCEDURAL RULES.—The district court  
10 in which an action is filed under paragraph (1) shall  
11 review the final decision of the Board on the record  
12 established in the administrative proceeding, in ac-  
13 cordance with the standards of review prescribed by  
14 subparagraphs (A) through (E) of section 706(2) of  
15 title 5, United States Code. The review shall be on  
16 the basis of the documents and supporting data sub-  
17 mitted to the Board.

18 **“SEC. 1957. ANNUAL REPORTS.**

19 “Each State shall submit an annual report to the  
20 Secretary that describes the State’s expenditures of the  
21 amount paid to the State under section 1952 for the most  
22 recently ended period, and includes the number of individ-  
23 uals provided medical assistance and the number of indi-  
24 viduals provided long-term care services and supports  
25 under the State plan under this part and such other infor-

1 mation as the Secretary may require. The Secretary shall  
 2 submit to Congress copies of all State reports submitted  
 3 under this section with respect to a period.

4 **“SEC. 1958. DEFINITIONS.**

5 “In this part:

6 “(1) **DISABLED INDIVIDUAL.**—The term ‘dis-  
 7 abled individual’ means an individual who would be  
 8 considered disabled under section 1614(a)(3) or  
 9 under criteria applied under the State plan under  
 10 part A (as in effect on March 22, 2010).

11 “(2) **DUAL ELIGIBLE DEFINED.**—The term  
 12 ‘dual eligible individual’ means an individual who is  
 13 entitled to, or enrolled for, benefits under part A of  
 14 title XVIII of the Social Security Act, or enrolled for  
 15 benefits under part B of title XVIII of such Act, and  
 16 is eligible for medical assistance under a State plan  
 17 under this title or under a waiver of such plan (as  
 18 in effect on March 22, 2010).

19 “(3) **ELDERLY INDIVIDUAL.**—The term ‘elderly  
 20 individual’ means an individual who has attained age  
 21 65 or the age specified in section 226(a)(1), which-  
 22 ever is greater.

23 “(4) **LONG-TERM CARE SERVICES AND SUP-**  
 24 **PORTS.**—

1           “(A) IN GENERAL.—The term ‘long-term  
2           care services and supports’ means any of the  
3           services or supports described in subparagraph  
4           (B) that may be provided in a nursing facility,  
5           an institution, a home, or other setting.

6           “(B) SERVICES AND SUPPORTS DE-  
7           SCRIBED.—For purposes of subparagraph (A),  
8           the services and supports described in this sub-  
9           paragraph include assistive technology, adaptive  
10          equipment, remote monitoring equipment, case  
11          management for the aged, case management for  
12          individuals with disabilities, nursing home serv-  
13          ices, long-term rehabilitative services necessary  
14          to restore functional abilities, services provided  
15          in intermediate care facilities for people with  
16          disabilities, habilitation services (including adult  
17          day care programs), community treatment  
18          teams for individuals with mental illness, home  
19          health services, services provided in an institu-  
20          tion for mental disease, a Program of All-Inclu-  
21          sive Care for the Elderly (PACE), personal care  
22          (including personal assistance services), recov-  
23          ery support including peer counseling, sup-  
24          portive employment, training skills necessary to  
25          assist the individual in achieving or maintaining

1 independence, training of family members in-  
2 cluding foster parents in supportive and behav-  
3 ioral modification skills, ongoing and periodic  
4 training to maintain life skills, transitional care  
5 including room and board not to exceed 60 days  
6 within a 12-month period.

7 “(5) LOW-INCOME.—The term ‘low-income’  
8 means income (as determined under standards es-  
9 tablished by the State) that does not exceed such  
10 percentage of the poverty line for a family of the size  
11 involved as the State shall establish.

12 “(6) MEDICAL ASSISTANCE.—The term ‘med-  
13 ical assistance’ means health care coverage, as deter-  
14 mined by a State and described in the State plan in  
15 accordance with section 1951(a)(1)(B)(ii).

16 “(7) POVERTY LINE DEFINED.—The term ‘pov-  
17 erty line’ has the meaning given such term in section  
18 673(2) of the Community Services Block Grant Act  
19 (42 U.S.C. 9902(2)), including any revision required  
20 by such section.

21 “(8) PREGNANT WOMAN.—The term ‘pregnant  
22 woman’ includes a woman during the 60-day period  
23 beginning on the last day of the pregnancy.

24 “(9) STATE.—The term ‘State’ means each of  
25 the 50 States and the District of Columbia.”.

1 (b) REMOVAL OF BARRIER TO PROVIDING DUAL ELI-  
 2 GIBLE INDIVIDUALS WITH ACUTE CARE THROUGH A  
 3 MANAGED CARE ENTITY.—

4 (1) IN GENERAL.—Section 1932(a)(2) of the  
 5 Social Security Act (42 U.S.C. 1396u-2(a)(2)) is  
 6 amended by striking subparagraph (B).

7 (2) EFFECTIVE DATE.—The amendment made  
 8 by paragraph (1) takes effect on January 1, 2013.

9 **SEC. 3. MEDICAL MALPRACTICE REFORM STATE INCEN-**  
 10 **TIVE FUND.**

11 (a) GRANTS.—The Secretary of Health and Human  
 12 Services (referred to in this section as the “Secretary”)  
 13 shall award grants to eligible States to assist such States  
 14 in implementing State-based medical malpractice reforms.

15 (b) ELIGIBILITY.—

16 (1) IN GENERAL.—To be eligible to receive a  
 17 grant under subsection (a), a State shall—

18 (A) submit to the Secretary an application,  
 19 at such time, in such manner, and containing  
 20 such information as the Secretary may require;  
 21 and

22 (B) shall certify, as part of the application  
 23 under subparagraph (A), that the State has  
 24 carried out activities, including enacting State  
 25 laws, that have been demonstrated to lower

1           medical malpractice claim or premiums costs  
2           for physicians or to lower health care costs for  
3           patients.

4           (2) STUDY.—As part of a certification provided  
5           under paragraph (1)(B), the State shall include the  
6           results of at least one longitudinal, empirically-based  
7           study or data based on an actuarial analysis that  
8           demonstrates cost reductions of the type described in  
9           such paragraph. Such results shall be provided in a  
10          manner that enables the Comptroller General of the  
11          United States to make a determination as to wheth-  
12          er such results are the reasonable and demonstrable  
13          conclusion of the State activities involved.

14          (3) TYPES OF LAWS.—Laws described in para-  
15          graph (1)(B) may include caps on non-economic  
16          damages, the establishment of health courts, the es-  
17          tablishment of a comprehensive patient compensa-  
18          tion program, providing for administrative deter-  
19          minations of compensation, providing for early of-  
20          fers, establishing safe harbors for the practice of evi-  
21          dence-based medicine, or other demonstrated meth-  
22          ods to reduce costs.

23          (c) AUTHORIZATION OF APPROPRIATIONS.—There is  
24          authorized to be appropriated to carry out this section—



1           (1) \$500,000,000 for the period of fiscal years  
2           2012 through 2016; and

3           (2) \$500,000,000 for the period of fiscal years  
4           2017 through 2021.

5           (d) SUNSET.—The authority established under this  
6 section shall not apply after September 30, 2021.

7 **SEC. 4. REPEALS.**

8           (a) PPACA AND THE HEALTH CARE-RELATED PRO-  
9 VISIONS IN THE HEALTH CARE AND EDUCATION REC-  
10 ONCILIATION ACT OF 2010.—

11           (1) IN GENERAL.—Except as provided in para-  
12 graph (2):

13                   (A) Effective as of the enactment of Public  
14 Law 111–148, such Act is repealed, and the  
15 provisions of law amended or repealed by such  
16 Act are restored or revived as if such Act had  
17 not been enacted.

18                   (B) Effective as of the enactment of the  
19 Health Care and Education Reconciliation Act  
20 of 2010 (Public Law 111–152), title I and sub-  
21 title B of title II of such Act are repealed, and  
22 the provisions of law amended or repealed by  
23 such title or subtitle, respectively, are restored  
24 or revived as if such title and subtitle had not  
25 been enacted.

1           (2) NONAPPLICATION TO PROGRAM INTEGRITY  
 2           PROVISIONS.—The repeals under paragraph (1) do  
 3           not apply to the provisions of, and amendments  
 4           made by the following:

5                   (A) Section 2801 of Public Law 111–148  
 6                   (relating to MACPAC).

7                   (B) Title IV of Public Law 111–148 (re-  
 8                   lating to transparency and program integrity).

9                   (C) Subtitle D of title I of Public Law  
 10                  111–152 (relating to reducing fraud, waste, and  
 11                  abuse).

12           (b) REPEAL OF ARRA MAINTENANCE OF EFFORT.—  
 13           Subsection (f) of section 5001 of the American Recovery  
 14           and Reinvestment Act of 2009 (Public Law 111–5) is  
 15           amended by striking paragraph (1).

16           (c) CHIP.—Effective January 1, 2013, title XXI of  
 17           the Social Security Act (42 U.S.C. 1397aa et seq.) is re-  
 18           pealed.

19   **SEC. 5. DEVELOPMENT OF NEW FORMULA FOR FEDERAL**  
 20                   **FINANCIAL PARTICIPATION FOR STATE**  
 21                   **CHILD SUPPORT AND WELFARE PROGRAMS**  
 22                   **TO REPLACE THE FMAP.**

23           Not later than January 1, 2012, the Secretary of  
 24           Health and Human Services, in consultation with the  
 25           States, shall establish a new formula for payments made

1 to or received from States under parts D and E of title  
2 IV of the Social Security Act that are based on the Fed-  
3 eral medical assistance percentage applicable to the State  
4 under title XIX of the Social Security Act. On and after  
5 January 1, 2013, the Federal medical assistance percent-  
6 age shall only be used for purposes of making payments  
7 to States under part A of title XIX of that Act for expend-  
8 itures attributable to providing medical assistance for el-  
9 derly individuals, disabled individual, and dual eligible in-  
10 dividuals in accordance with section 1958 of such Act (as  
11 added by section 3). Payments made to or received from  
12 a State under parts D or E of title IV of such Act shall  
13 be made on and after January 1, 2013, by applying the  
14 formula developed by the Secretary of Health and Human  
15 Services under this section in lieu of the Federal medical  
16 assistance percentage.

○