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Medicaid Tamper Resistant Prescription Law

1023 IS
110th CONGRESS
1st Session

S. 1023

To amend title XXI of the Social Security Act to eliminate the remainder of funding shortfalls for the State Children's Health Insurance Program (SCHIP) for fiscal year 2007, and for other purposes.

IN THE SENATE OF THE UNITED STATES

March 29, 2007

Mr. MENENDEZ introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend title XXI of the Social Security Act to eliminate the remainder of funding shortfalls for the State Children's Health Insurance Program (SCHIP) for fiscal year 2007, and for other purposes.

SECTION 1. ELIMINATION OF REMAINDER OF SCHIP FUNDING SHORTFALLS FOR FISCAL YEAR 2007.

(a) In General- Section 2104(h) of the Social Security Act (42 U.S.C. 1397dd(h)), as added by section 201(a) of the National Institutes of Health Reform Act of 2006 (Public Law 109-482), is amended--

(1) in the heading for paragraph (2), by striking 'REMAINDER OF REDUCTION' and inserting 'PART'; and

(2) by striking paragraph (4) and inserting the following:

` (4) ADDITIONAL AMOUNTS TO ELIMINATE REMAINDER OF FISCAL YEAR 2007 FUNDING SHORTFALLS-

` (A) IN GENERAL- The Secretary shall allot to each remaining shortfall State described in subparagraph (B) such amount as the Secretary determines will eliminate the estimated shortfall described in such subparagraph for the State for fiscal year 2007.

` (B) REMAINING SHORTFALL STATE DESCRIBED- For purposes of subparagraph (A), a remaining shortfall State is a State with a State child health plan approved under this title for which the Secretary estimates, on the basis of the most recent data available to the Secretary as of the date of the enactment of this paragraph, that the projected federal expenditures under such plan for the State for fiscal year 2007 will exceed the sum of-

` (i) the amount of the State's allotments for each of fiscal years 2005 and 2006 that will not be expended by the end of fiscal year 2006;



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- (ii) the amount of the State's allotment for fiscal year 2007; and
- (iii) the amounts, if any, that are to be redistributed to the State during fiscal year 2007 in accordance with paragraphs (1) and (2).
- (C) APPROPRIATION; ALLOTMENT AUTHORITY- For the purpose of providing additional allotments to remaining shortfall States under this paragraph there is appropriated, out of any funds in the Treasury not otherwise appropriated, such sums as are necessary for fiscal year 2007. Amounts appropriated pursuant to the preceding sentence are designated as an emergency requirement pursuant to section 402 of H. Con. Res. 95 (109th Congress).'
- (b) Conforming Amendments- Section 2104(h) of such Act (42 U.S.C. 1397dd(h)) (as so added), is amended--
 - (1) in paragraph (1)(B), by striking `subject to paragraph (4)(B) and';
 - (2) in paragraph (2)(B), by striking `subject to paragraph (4)(B) and';
 - (3) in paragraph (5)(A), by striking `and (3)' and inserting `(3), and (4)'; and
 - (4) in paragraph (6)--
 - (A) in the first sentence--
 - (i) by inserting `or allotted' after `redistributed'; and
 - (ii) by inserting `or allotments' after `redistributions'; and
- (B) by striking `and (3)' and inserting `(3), and (4)'

SEC. 2. FUNDING PROVISIONS.

- (a) Requirement for Use of Tamper-Resistant Prescription Pads Under the Medicaid Program-
 - (1) IN GENERAL- Section 1903(i) of the Social Security Act (42 U.S.C. 1396b(i)) is amended--
 - (A) by striking `or' at the end of paragraph (21);
 - (B) by striking the period at the end of paragraph (22) and inserting `; or'; and
 - (C) by inserting after paragraph (22) the following new paragraph:
 - (23) with respect to amounts expended for medical assistance for covered outpatient drugs (as defined in section 1927(k)(2)) for which the prescription was executed in written (and non-electronic) form unless the prescription was executed on a tamper-resistant pad.'
 - (2) EFFECTIVE DATE- The amendments made by paragraph (1) shall apply to prescriptions executed after September 30, 2007.
- (b) Repeal of the Limited Continuous Enrollment Provision for Certain Beneficiaries Under the Medicare Advantage Program-
 - (1) IN GENERAL- Subparagraph (E) of section 1851(e)(2) of the Social Security Act (42 U.S.C. 1395w-21(e)(2)), as added by section 206(a) of division B of the Tax Relief and Health Care Act of 2006 (Public Law 109-432), is repealed.



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- (2) CONFORMING AMENDMENT- Section 1860D-1(b)(1)(B)(iii) of the Social Security Act (42 U.S.C. 1395w-101(b)(1)(B)(iii)), as amended by 206(b) of division B of the Tax Relief and Health Care Act of 2006 (Public Law 109-432), is amended by striking ` subparagraphs (B), (C), and (E)' and inserting ` subparagraphs (B) and (C)'.
- (3) EFFECTIVE DATE- The amendments made by this subsection shall take effect on the day after the date of enactment of this Act.
- (c) Denial of Payments for Hospital Services or Ambulatory Surgical Center Services That Directly Harm Patients-
- (1) IN GENERAL- Section 1862(a) of the Social Security Act (42 U.S.C. 1395y(a)) is amended--
- (A) by striking ` or' at the end of paragraph (21);
- (B) by striking the period at the end of paragraph (22) and inserting ` ; or'; and
- (C) by inserting after paragraph (22) the following new paragraph:
- ` (23) which are inpatient or outpatient hospital services or facility services furnished in an ambulatory surgical facility if in the provision of such services there occurred a type of event (such as a surgical event, product or device event, patient protection event, care management event, environmental event, or criminal event) which the Secretary has determined, based on a consensus process involving clinicians, quality experts, health care providers, and patients, which should never occur.'
- (2) POTENTIAL APPLICATION OF NQF ` NEVER EVENTS' LISTS- Nothing in section 1862(a)(23) of the Social Security Act, as inserted by paragraph (1), shall be construed as preventing the Secretary of Health and Human Services from applying all (or a subset of) the events that are listed and endorsed as ` serious reportable events' (also known as ` never events)' by the National Quality Forum as of November 16, 2006, (or such subsequent, revised list of such events issued by such Forum as the Secretary may specify) as events described in such section.
- (3) CONFORMING AMENDMENTS-
- (A) Section 1834(j)(4)(C) of the Social Security Act (42 U.S.C. 1395m(j)(4)©) is amended by striking ` or 1862(a)(23)' after ` 1862(a)(1)'.
- (B) Section 1842(l) of such Act (42 U.S.C. 1395u(l)) is amended--
- (i) in paragraph (1)(A)(iii)--
- (I) by striking ` or (II)' and inserting ` , (II)'; and
- (II) by inserting ` , or (III) payment under this title is denied under section 1862(a)(23)' after ` section 1154(a)(1)(B)'; and
- (ii) in paragraph (2), by inserting ` or 1862(a)(23)' after ` 1862(a)(1)'.
- (C) Section 1866(a)(1)(K) of such Act (42 U.S.C. 1395cc(a)(1)(K)) is amended by inserting ` or is denied under section 1862(a)(23)' after ` 1154(a)(1)(B)'.



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- (4) REPORT ON DISCLOSURE- Not later than January 1, 2009, the Secretary of Health and Human Services shall submit to Congress a report on a process for public disclosure on never events described in section 1862(a)(24) of the Social Security Act, as inserted by paragraph (1)(C), which will ensure protection of patient privacy and will permit the use of the disclosed information for a root cause analysis to inform the public and the medical community about safety issues involved.
- (5) EFFECTIVE DATE- The amendments made by this subsection shall take effect on the date of the enactment of this Act and shall apply to payments for--
- (A) inpatient hospital services for discharges occurring on or after October 1, 2007; and
 - (B) outpatient hospital services and facility services in an ambulatory surgical center furnished on or after January 1, 2008.