

**Calendar No. 555**110TH CONGRESS  
2D SESSION**S. 2532****[Report No. 110-255]**

To amend titles XVIII, XIX, and XXI of the Social Security Act to improve health care provided to Indians under the Medicare, Medicaid, and State Children's Health Insurance Programs, and for other purposes.

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**IN THE SENATE OF THE UNITED STATES**

JANUARY 8, 2008

Mr. BAUCUS, from the Committee on Finance, reported under authority of the order of the Senate of December 19, 2007, the following original bill; which was read twice and placed on the calendar

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**A BILL**

To amend titles XVIII, XIX, and XXI of the Social Security Act to improve health care provided to Indians under the Medicare, Medicaid, and State Children's Health Insurance Programs, and for other purposes.

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; TABLE OF CONTENTS.**

2 (a) **SHORT TITLE.**—This Act may be cited as the  
 3 “Medicare, Medicaid, and SCHIP Indian Health Care Im-  
 4 provement Act of 2007”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Expansion of payments under Medicare, Medicaid, and SCHIP for all covered services furnished by Indian Health Programs.
- Sec. 3. Increased outreach to Indians under Medicaid and SCHIP and improved cooperation in the provision of items and services to Indians under Social Security Act health benefit programs.
- Sec. 4. Additional provisions to increase outreach to, and enrollment of, Indians in SCHIP and Medicaid.
- Sec. 5. Premiums and cost sharing protections under Medicaid, eligibility determinations under Medicaid and SCHIP, and protection of certain Indian property from Medicaid estate recovery.
- Sec. 6. Nondiscrimination in qualifications for payment for services under Federal health care programs.
- Sec. 7. Consultation on Medicaid, SCHIP, and other health care programs funded under the Social Security Act involving Indian Health Programs and Urban Indian Organizations.
- Sec. 8. Exclusion waiver authority for affected Indian Health Programs and safe harbor transactions under the Social Security Act.
- Sec. 9. Rules applicable under Medicaid and SCHIP to managed care entities with respect to Indian enrollees and Indian health care providers and Indian managed care entities.
- Sec. 10. Annual report on Indians served by Social Security Act health benefit programs.
- Sec. 11. Effective Date.

7 **SEC. 2. EXPANSION OF PAYMENTS UNDER MEDICARE, MED-**  
 8 **ICAID, AND SCHIP FOR ALL COVERED SERV-**  
 9 **ICES FURNISHED BY INDIAN HEALTH PRO-**  
 10 **GRAMS.**

11 (a) **MEDICAID.**—

12 (1) **EXPANSION TO ALL COVERED SERVICES.**—

13 Section 1911 of the Social Security Act (42 U.S.C.  
 14 1396j) is amended—

1 (A) by amending the heading to read as  
2 follows:

3 **“SEC. 1911. INDIAN HEALTH PROGRAMS.”;**

4 and

5 (B) by amending subsection (a) to read as  
6 follows:

7 “(a) **ELIGIBILITY FOR PAYMENT FOR MEDICAL AS-**  
8 **SISTANCE.**—The Indian Health Service and an Indian  
9 Tribe, Tribal Organization, or an Urban Indian Organiza-  
10 tion shall be eligible for payment for medical assistance  
11 provided under a State plan or under waiver authority  
12 with respect to items and services furnished by the Indian  
13 Health Service, Indian Tribe, Tribal Organization, or  
14 Urban Indian Organization if the furnishing of such serv-  
15 ices meets all the conditions and requirements which are  
16 applicable generally to the furnishing of items and services  
17 under this title and under such plan or waiver authority.”.

18 (2) **COMPLIANCE WITH CONDITIONS AND RE-**  
19 **QUIREMENTS.**—Subsection (b) of such section is  
20 amended to read as follows:

21 “(b) **COMPLIANCE WITH CONDITIONS AND REQUIRE-**  
22 **MENTS.**—A facility of the Indian Health Service or an In-  
23 dian Tribe, Tribal Organization, or an Urban Indian Or-  
24 ganization which is eligible for payment under subsection  
25 (a) with respect to the furnishing of items and services,

1 but which does not meet all of the conditions and require-  
2 ments of this title and under a State plan or waiver au-  
3 thority which are applicable generally to such facility, shall  
4 make such improvements as are necessary to achieve or  
5 maintain compliance with such conditions and require-  
6 ments in accordance with a plan submitted to and accept-  
7 ed by the Secretary for achieving or maintaining compli-  
8 ance with such conditions and requirements, and shall be  
9 deemed to meet such conditions and requirements (and to  
10 be eligible for payment under this title), without regard  
11 to the extent of its actual compliance with such conditions  
12 and requirements, during the first 12 months after the  
13 month in which such plan is submitted.”.

14 (3) REVISION OF AUTHORITY TO ENTER INTO  
15 AGREEMENTS.—Subsection (c) of such section is  
16 amended to read as follows:

17 “(c) AUTHORITY TO ENTER INTO AGREEMENTS.—  
18 The Secretary may enter into an agreement with a State  
19 for the purpose of reimbursing the State for medical as-  
20 sistance provided by the Indian Health Service, an Indian  
21 Tribe, Tribal Organization, or an Urban Indian Organiza-  
22 tion (as so defined), directly, through referral, or under  
23 contracts or other arrangements between the Indian  
24 Health Service, an Indian Tribe, Tribal Organization, or  
25 an Urban Indian Organization and another health care

1 provider to Indians who are eligible for medical assistance  
2 under the State plan or under waiver authority.”.

3 (4) CROSS-REFERENCES TO SPECIAL FUND FOR  
4 IMPROVEMENT OF IHS FACILITIES; DIRECT BILLING  
5 OPTION; DEFINITIONS.—Such section is further  
6 amended by striking subsection (d) and adding at  
7 the end the following new subsections:

8 “(d) SPECIAL FUND FOR IMPROVEMENT OF IHS FA-  
9 CILITIES.—For provisions relating to the authority of the  
10 Secretary to place payments to which a facility of the In-  
11 dian Health Service is eligible for payment under this title  
12 into a special fund established under section 401(c)(1) of  
13 the Indian Health Care Improvement Act, and the require-  
14 ment to use amounts paid from such fund for making im-  
15 provements in accordance with subsection (b), see sub-  
16 paragraphs (A) and (B) of section 401(c)(1) of such Act.

17 “(e) DIRECT BILLING.—For provisions relating to  
18 the authority of a Tribal Health Program or an Urban  
19 Indian Organization to elect to directly bill for, and receive  
20 payment for, health care items and services provided by  
21 such Program or Organization for which payment is made  
22 under this title, see section 401(d) of the Indian Health  
23 Care Improvement Act.

24 “(f) DEFINITIONS.—In this section, the terms ‘In-  
25 dian Health Program’, ‘Indian Tribe’, ‘Tribal Health Pro-

1 gram', 'Tribal Organization', and 'Urban Indian Organi-  
2 zation' have the meanings given those terms in section 4  
3 of the Indian Health Care Improvement Act.”.

4 (b) MEDICARE.—

5 (1) EXPANSION TO ALL COVERED SERVICES.—

6 Section 1880 of such Act (42 U.S.C. 1395qq) is  
7 amended—

8 (A) by amending the heading to read as  
9 follows:

10 **“SEC. 1880. INDIAN HEALTH PROGRAMS.”;**

11 and

12 (B) by amending subsection (a) to read as  
13 follows:

14 “(a) ELIGIBILITY FOR PAYMENTS.—Subject to sub-  
15 section (e), the Indian Health Service and an Indian  
16 Tribe, Tribal Organization, or an Urban Indian Organi-  
17 zation shall be eligible for payments under this title with  
18 respect to items and services furnished by the Indian  
19 Health Service, Indian Tribe, Tribal Organization, or  
20 Urban Indian Organization if the furnishing of such serv-  
21 ices meets all the conditions and requirements which are  
22 applicable generally to the furnishing of items and services  
23 under this title.”.

1           (2) COMPLIANCE WITH CONDITIONS AND RE-  
2           QUIREMENTS.—Subsection (b) of such section is  
3           amended to read as follows:

4           “(b) COMPLIANCE WITH CONDITIONS AND REQUIRE-  
5           MENTS.—Subject to subsection (e), a facility of the Indian  
6           Health Service or an Indian Tribe, Tribal Organization,  
7           or an Urban Indian Organization which is eligible for pay-  
8           ment under subsection (a) with respect to the furnishing  
9           of items and services, but which does not meet all of the  
10          conditions and requirements of this title which are applica-  
11          ble generally to such facility, shall make such improve-  
12          ments as are necessary to achieve or maintain compliance  
13          with such conditions and requirements in accordance with  
14          a plan submitted to and accepted by the Secretary for  
15          achieving or maintaining compliance with such conditions  
16          and requirements, and shall be deemed to meet such con-  
17          ditions and requirements (and to be eligible for payment  
18          under this title), without regard to the extent of its actual  
19          compliance with such conditions and requirements, during  
20          the first 12 months after the month in which such plan  
21          is submitted.”.

22           (3) CROSS-REFERENCES TO SPECIAL FUND FOR  
23           IMPROVEMENT OF IHS FACILITIES; DIRECT BILLING  
24           OPTION; DEFINITIONS.—

1                   (A) IN GENERAL.—Such section is further  
2                   amended by striking subsections (c) and (d)  
3                   and inserting the following new subsections:

4           “(c) SPECIAL FUND FOR IMPROVEMENT OF IHS FA-  
5           CILITIES.—For provisions relating to the authority of the  
6           Secretary to place payments to which a facility of the In-  
7           dian Health Service is eligible for payment under this title  
8           into a special fund established under section 401(c)(1) of  
9           the Indian Health Care Improvement Act, and the require-  
10          ment to use amounts paid from such fund for making im-  
11          provements in accordance with subsection (b), see sub-  
12          paragraphs (A) and (B) of section 401(c)(1) of such Act.

13          “(d) DIRECT BILLING.—For provisions relating to  
14          the authority of a Tribal Health Program or an Urban  
15          Indian Organization to elect to directly bill for, and receive  
16          payment for, health care items and services provided by  
17          such Program or Organization for which payment is made  
18          under this title, see section 401(d) of the Indian Health  
19          Care Improvement Act.”.

20                   (B) CONFORMING AMENDMENT.—Para-  
21                   graph (3) of section 1880(e) of such Act (42  
22                   U.S.C. 1395qq(e)) is amended by inserting  
23                   “and section 401(c)(1) of the Indian Health  
24                   Care Improvement Act” after “Subsection (c)”.

1           (4) DEFINITIONS.—Such section is further  
2           amended by amending subsection (f) to read as fol-  
3           lows:

4           “(f) DEFINITIONS.—In this section, the terms ‘In-  
5           dian Health Program’, ‘Indian Tribe’, ‘Service Unit’,  
6           ‘Tribal Health Program’, ‘Tribal Organization’, and  
7           ‘Urban Indian Organization’ have the meanings given  
8           those terms in section 4 of the Indian Health Care Im-  
9           provement Act.”.

10          (c) APPLICATION TO SCHIP.—Section 2107(e)(1) of  
11          the Social Security Act (42 U.S.C. 1397gg(e)(1)) is  
12          amended—

13                 (1) by redesignating subparagraph (D) as sub-  
14                 paragraph (E); and

15                 (2) by inserting after subparagraph (C), the fol-  
16                 lowing new subparagraph:

17                         “(D) Section 1911 (relating to Indian  
18                         Health Programs, other than subsection (d) of  
19                         such section).”.

1 **SEC. 3. INCREASED OUTREACH TO INDIANS UNDER MED-**  
2 **ICAID AND SCHIP AND IMPROVED COOPERA-**  
3 **TION IN THE PROVISION OF ITEMS AND**  
4 **SERVICES TO INDIANS UNDER SOCIAL SECU-**  
5 **RITY ACT HEALTH BENEFIT PROGRAMS.**

6 Section 1139 of the Social Security Act (42 U.S.C.  
7 1320b–9) is amended to read as follows:

8 **“SEC. 1139. IMPROVED ACCESS TO, AND DELIVERY OF,**  
9 **HEALTH CARE FOR INDIANS UNDER TITLES**  
10 **XVIII, XIX, AND XXI.**

11 **“(a) AGREEMENTS WITH STATES FOR MEDICAID**  
12 **AND SCHIP OUTREACH ON OR NEAR RESERVATIONS TO**  
13 **INCREASE THE ENROLLMENT OF INDIANS IN THOSE**  
14 **PROGRAMS.—**

15 **“(1) IN GENERAL.—**In order to improve the ac-  
16 cess of Indians residing on or near a reservation to  
17 obtain benefits under the Medicaid and State chil-  
18 dren’s health insurance programs established under  
19 titles XIX and XXI, the Secretary shall encourage  
20 the State to take steps to provide for enrollment on  
21 or near the reservation. Such steps may include out-  
22 reach efforts such as the outstationing of eligibility  
23 workers, entering into agreements with the Indian  
24 Health Service, Indian Tribes, Tribal Organizations,  
25 and Urban Indian Organizations to provide out-  
26 reach, education regarding eligibility and benefits,

1 enrollment, and translation services when such serv-  
2 ices are appropriate.

3 “(2) CONSTRUCTION.—Nothing in paragraph  
4 (1) shall be construed as affecting arrangements en-  
5 tered into between States and the Indian Health  
6 Service, Indian Tribes, Tribal Organizations, or  
7 Urban Indian Organizations for such Service,  
8 Tribes, or Organizations to conduct administrative  
9 activities under such titles.

10 “(b) REQUIREMENT TO FACILITATE COOPERA-  
11 TION.—The Secretary, acting through the Centers for  
12 Medicare & Medicaid Services, shall take such steps as are  
13 necessary to facilitate cooperation with, and agreements  
14 between, States and the Indian Health Service, Indian  
15 Tribes, Tribal Organizations, or Urban Indian Organiza-  
16 tions with respect to the provision of health care items  
17 and services to Indians under the programs established  
18 under title XVIII, XIX, or XXI.

19 “(c) DEFINITION OF INDIAN; INDIAN TRIBE; INDIAN  
20 HEALTH PROGRAM; TRIBAL ORGANIZATION; URBAN IN-  
21 DIAN ORGANIZATION.—In this section, the terms ‘Indian’,  
22 ‘Indian Tribe’, ‘Indian Health Program’, ‘Tribal Organi-  
23 zation’, and ‘Urban Indian Organization’ have the mean-  
24 ings given those terms in section 4 of the Indian Health  
25 Care Improvement Act.”.

1 **SEC. 4. ADDITIONAL PROVISIONS TO INCREASE OUTREACH**  
2 **TO, AND ENROLLMENT OF, INDIANS IN SCHIP**  
3 **AND MEDICAID.**

4 (a) NONAPPLICATION OF 10 PERCENT LIMIT ON  
5 OUTREACH AND CERTAIN OTHER EXPENDITURES.—Sec-  
6 tion 2105(c)(2) of the Social Security Act (42 U.S.C.  
7 1397ee(c)(2)) is amended by adding at the end the fol-  
8 lowing new subparagraph:

9 “(C) NONAPPLICATION TO EXPENDITURES  
10 FOR OUTREACH TO INCREASE THE ENROLL-  
11 MENT OF INDIAN CHILDREN UNDER THIS TITLE  
12 AND TITLE XIX.—The limitation under sub-  
13 paragraph (A) on expenditures for items de-  
14 scribed in subsection (a)(1)(D) shall not apply  
15 in the case of expenditures for outreach activi-  
16 ties to families of Indian children likely to be el-  
17 igible for child health assistance under the plan  
18 or medical assistance under the State plan  
19 under title XIX (or under a waiver of such  
20 plan), to inform such families of the availability  
21 of, and to assist them in enrolling their children  
22 in, such plans, including such activities con-  
23 ducted under grants, contracts, or agreements  
24 entered into under section 1139(a).”.

25 (b) ASSURANCE OF PAYMENTS TO INDIAN HEALTH  
26 CARE PROVIDERS FOR CHILD HEALTH ASSISTANCE.—

1 Section 2102(b)(3)(D) of such Act (42 U.S.C.  
2 1397bb(b)(3)(D)) is amended by striking “(as defined in  
3 section 4(c) of the Indian Health Care Improvement Act,  
4 25 U.S.C. 1603(c))” and inserting “, including how the  
5 State will ensure that payments are made to Indian  
6 Health Programs and Urban Indian Organizations oper-  
7 ating in the State for the provision of such assistance”.

8 (c) INCLUSION OF OTHER INDIAN FINANCED  
9 HEALTH CARE PROGRAMS IN EXEMPTION FROM PROHI-  
10 BITION ON CERTAIN PAYMENTS.—Section 2105(c)(6)(B)  
11 of such Act (42 U.S.C. 1397ee(c)(6)(B)) is amended by  
12 striking “insurance program, other than an insurance pro-  
13 gram operated or financed by the Indian Health Service”  
14 and inserting “program, other than a health care program  
15 operated or financed by the Indian Health Service or by  
16 an Indian Tribe, Tribal Organization, or Urban Indian  
17 Organization”.

18 (d) SATISFACTION OF MEDICAID DOCUMENTATION  
19 REQUIREMENTS.—

20 (1) IN GENERAL.—Section 1903(x)(3)(B) of the  
21 Social Security Act (42 U.S.C. 1396b(x)(3)(B)) is  
22 amended—

23 (A) by redesignating clause (v) as clause  
24 (vi); and

1 (B) by inserting after clause (iv), the fol-  
2 lowing new clause:

3 “(v)(I) Except as provided in subclause (II), a  
4 document issued by a federally-recognized Indian  
5 tribe evidencing membership or enrollment in, or af-  
6 filiation with, such tribe (such as a tribal enrollment  
7 card or certificate of degree of Indian blood).

8 “(II) With respect to those federally-recognized  
9 Indian tribes located within States having an inter-  
10 national border whose membership includes individ-  
11 uals who are not citizens of the United States, the  
12 Secretary shall, after consulting with such tribes,  
13 issue regulations authorizing the presentation of  
14 such other forms of documentation (including tribal  
15 documentation, if appropriate) that the Secretary  
16 determines to be satisfactory documentary evidence  
17 of citizenship or nationality for purposes of satis-  
18 fying the requirement of this subsection.”.

19 (2) TRANSITION RULE.—During the period that  
20 begins on July 1, 2006, and ends on the effective  
21 date of final regulations issued under subclause (II)  
22 of section 1903(x)(3)(B)(v) of the Social Security  
23 Act (42 U.S.C. 1396b(x)(3)(B)(v)) (as added by  
24 paragraph (1)), an individual who is a member of a  
25 federally-recognized Indian tribe described in sub-

1 clause (II) of that section who presents a document  
 2 described in subclause (I) of such section that is  
 3 issued by such Indian tribe, shall be deemed to have  
 4 presented satisfactory evidence of citizenship or na-  
 5 tionality for purposes of satisfying the requirement  
 6 of subsection (x) of section 1903 of such Act.

7 (e) DEFINITIONS.—Section 2110(c) of such Act (42  
 8 U.S.C. 1397jj(c)) is amended by adding at the end the  
 9 following new paragraph:

10 “(9) INDIAN; INDIAN HEALTH PROGRAM; IN-  
 11 DIAN TRIBE; ETC.—The terms ‘Indian’, ‘Indian  
 12 Health Program’, ‘Indian Tribe’, ‘Tribal Organiza-  
 13 tion’, and ‘Urban Indian Organization’ have the  
 14 meanings given those terms in section 4 of the In-  
 15 dian Health Care Improvement Act.”.

16 **SEC. 5. PREMIUMS AND COST SHARING PROTECTIONS**  
 17 **UNDER MEDICAID, ELIGIBILITY DETERMINA-**  
 18 **TIONS UNDER MEDICAID AND SCHIP, AND**  
 19 **PROTECTION OF CERTAIN INDIAN PROPERTY**  
 20 **FROM MEDICAID ESTATE RECOVERY.**

21 (a) PREMIUMS AND COST SHARING PROTECTION  
 22 UNDER MEDICAID.—

23 (1) IN GENERAL.—Section 1916 of the Social  
 24 Security Act (42 U.S.C. 1396o) is amended—

1 (A) in subsection (a), in the matter pre-  
2 ceding paragraph (1), by striking “and (i)” and  
3 inserting “, (i), and (j)”; and

4 (B) by adding at the end the following new  
5 subsection:

6 “(j) NO PREMIUMS OR COST SHARING FOR INDIANS  
7 FURNISHED ITEMS OR SERVICES DIRECTLY BY INDIAN  
8 HEALTH PROGRAMS OR THROUGH REFERRAL UNDER  
9 THE CONTRACT HEALTH SERVICE.—

10 “(1) NO COST SHARING FOR ITEMS OR SERV-  
11 ICES FURNISHED TO INDIANS THROUGH INDIAN  
12 HEALTH PROGRAMS.—

13 “(A) IN GENERAL.—No enrollment fee,  
14 premium, or similar charge, and no deduction,  
15 copayment, cost sharing, or similar charge shall  
16 be imposed against an Indian who is furnished  
17 an item or service directly by the Indian Health  
18 Service, an Indian Tribe, Tribal Organization,  
19 or Urban Indian Organization or through refer-  
20 ral under the contract health service for which  
21 payment may be made under this title.

22 “(B) NO REDUCTION IN AMOUNT OF PAY-  
23 MENT TO INDIAN HEALTH PROVIDERS.—Pay-  
24 ment due under this title to the Indian Health  
25 Service, an Indian Tribe, Tribal Organization,

1 or Urban Indian Organization, or a health care  
2 provider through referral under the contract  
3 health service for the furnishing of an item or  
4 service to an Indian who is eligible for assist-  
5 ance under such title, may not be reduced by  
6 the amount of any enrollment fee, premium, or  
7 similar charge, or any deduction, copayment,  
8 cost sharing, or similar charge that would be  
9 due from the Indian but for the operation of  
10 subparagraph (A).

11 “(2) RULE OF CONSTRUCTION.—Nothing in  
12 this subsection shall be construed as restricting the  
13 application of any other limitations on the imposi-  
14 tion of premiums or cost sharing that may apply to  
15 an individual receiving medical assistance under this  
16 title who is an Indian.

17 “(3) DEFINITIONS.—In this subsection, the  
18 terms ‘contract health service’, ‘Indian’, ‘Indian  
19 Tribe’, ‘Tribal Organization’, and ‘Urban Indian Or-  
20 ganization’ have the meanings given those terms in  
21 section 4 of the Indian Health Care Improvement  
22 Act.”.

23 (2) CONFORMING AMENDMENT.—Section  
24 1916A (a)(1) of such Act (42 U.S.C. 1396o–1(a)(1))

1 is amended by striking “section 1916(g)” and in-  
2 serting “subsection (g) or (j) of section 1916”.

3 (b) TREATMENT OF CERTAIN PROPERTY FOR MED-  
4 ICAID AND SCHIP ELIGIBILITY.—

5 (1) MEDICAID.—Section 1902(e) of the Social  
6 Security Act (42 U.S.C. 1396a) is amended by add-  
7 ing at the end the following new paragraph:

8 “(13) Notwithstanding any other requirement  
9 of this title or any other provision of Federal or  
10 State law, a State shall disregard the following prop-  
11 erty for purposes of determining the eligibility of an  
12 individual who is an Indian (as defined in section 4  
13 of the Indian Health Care Improvement Act) for  
14 medical assistance under this title:

15 “(A) Property, including real property and  
16 improvements, that is held in trust, subject to  
17 Federal restrictions, or otherwise under the su-  
18 pervision of the Secretary of the Interior, lo-  
19 cated on a reservation, including any federally  
20 recognized Indian Tribe’s reservation, pueblo,  
21 or colony, including former reservations in  
22 Oklahoma, Alaska Native regions established by  
23 the Alaska Native Claims Settlement Act, and  
24 Indian allotments on or near a reservation as

1 designated and approved by the Bureau of In-  
2 dian Affairs of the Department of the Interior.

3 “(B) For any federally recognized Tribe  
4 not described in subparagraph (A), property lo-  
5 cated within the most recent boundaries of a  
6 prior Federal reservation.

7 “(C) Ownership interests in rents, leases,  
8 royalties, or usage rights related to natural re-  
9 sources (including extraction of natural re-  
10 sources or harvesting of timber, other plants  
11 and plant products, animals, fish, and shellfish)  
12 resulting from the exercise of federally pro-  
13 tected rights.

14 “(D) Ownership interests in or usage  
15 rights to items not covered by subparagraphs  
16 (A) through (C) that have unique religious,  
17 spiritual, traditional, or cultural significance or  
18 rights that support subsistence or a traditional  
19 lifestyle according to applicable tribal law or  
20 custom.”.

21 (2) APPLICATION TO SCHIP.—Section  
22 2107(e)(1) of such Act (42 U.S.C. 1397gg(e)(1)) is  
23 amended—

1 (A) by redesignating subparagraphs (B)  
2 through (E), as subparagraphs (C) through  
3 (F), respectively; and

4 (B) by inserting after subparagraph (A),  
5 the following new subparagraph:

6 “(B) Section 1902(e)(13) (relating to dis-  
7 regard of certain property for purposes of mak-  
8 ing eligibility determinations).”.

9 (c) CONTINUATION OF CURRENT LAW PROTECTIONS  
10 OF CERTAIN INDIAN PROPERTY FROM MEDICAID ESTATE  
11 RECOVERY.—Section 1917(b)(3) of the Social Security  
12 Act (42 U.S.C. 1396p(b)(3)) is amended—

13 (1) by inserting “(A)” after “(3)”; and

14 (2) by adding at the end the following new sub-  
15 paragraph:

16 “(B) The standards specified by the Sec-  
17 retary under subparagraph (A) shall require  
18 that the procedures established by the State  
19 agency under subparagraph (A) exempt income,  
20 resources, and property that are exempt from  
21 the application of this subsection as of April 1,  
22 2003, under manual instructions issued to carry  
23 out this subsection (as in effect on such date)  
24 because of the Federal responsibility for Indian  
25 Tribes and Alaska Native Villages. Nothing in

1           this subparagraph shall be construed as pre-  
 2           venting the Secretary from providing additional  
 3           estate recovery exemptions under this title for  
 4           Indians.”.

5 **SEC. 6. NONDISCRIMINATION IN QUALIFICATIONS FOR**  
 6                   **PAYMENT FOR SERVICES UNDER FEDERAL**  
 7                   **HEALTH CARE PROGRAMS.**

8           Section 1139 of the Social Security Act (42 U.S.C.  
 9 1320b–9), as amended by section 3, is amended by redesh-  
 10 ignating subsection (c) as subsection (d), and inserting  
 11 after subsection (b) the following new subsection:

12           “(c) NONDISCRIMINATION IN QUALIFICATIONS FOR  
 13 PAYMENT FOR SERVICES UNDER FEDERAL HEALTH  
 14 CARE PROGRAMS.—

15                   “(1) REQUIREMENT TO SATISFY GENERALLY  
 16 APPLICABLE PARTICIPATION REQUIREMENTS.—

17                           “(A) IN GENERAL.—A Federal health care  
 18 program must accept an entity that is operated  
 19 by the Indian Health Service, an Indian Tribe,  
 20 Tribal Organization, or Urban Indian Organiza-  
 21 tion as a provider eligible to receive payment  
 22 under the program for health care services fur-  
 23 nished to an Indian on the same basis as any  
 24 other provider qualified to participate as a pro-  
 25 vider of health care services under the program

1 if the entity meets generally applicable State or  
2 other requirements for participation as a pro-  
3 vider of health care services under the program.

4 “(B) SATISFACTION OF STATE OR LOCAL  
5 LICENSURE OR RECOGNITION REQUIRE-  
6 MENTS.—Any requirement for participation as  
7 a provider of health care services under a Fed-  
8 eral health care program that an entity be li-  
9 censed or recognized under the State or local  
10 law where the entity is located to furnish health  
11 care services shall be deemed to have been met  
12 in the case of an entity operated by the Indian  
13 Health Service, an Indian Tribe, Tribal Organi-  
14 zation, or Urban Indian Organization if the en-  
15 tity meets all the applicable standards for such  
16 licensure or recognition, regardless of whether  
17 the entity obtains a license or other documenta-  
18 tion under such State or local law. In accord-  
19 ance with section 221 of the Indian Health  
20 Care Improvement Act, the absence of the licen-  
21 sure of a health care professional employed by  
22 such an entity under the State or local law  
23 where the entity is located shall not be taken  
24 into account for purposes of determining wheth-

1           er the entity meets such standards, if the pro-  
2           fessional is licensed in another State.

3           “(2) PROHIBITION ON FEDERAL PAYMENTS TO  
4 ENTITIES OR INDIVIDUALS EXCLUDED FROM PAR-  
5 TICIPATION IN FEDERAL HEALTH CARE PROGRAMS  
6 OR WHOSE STATE LICENSES ARE UNDER SUSPEN-  
7 SION OR HAVE BEEN REVOKED.—

8           “(A) EXCLUDED ENTITIES.—No entity op-  
9 erated by the Indian Health Service, an Indian  
10 Tribe, Tribal Organization, or Urban Indian  
11 Organization that has been excluded from par-  
12 ticipation in any Federal health care program  
13 or for which a license is under suspension or  
14 has been revoked by the State where the entity  
15 is located shall be eligible to receive payment  
16 under any such program for health care serv-  
17 ices furnished to an Indian.

18           “(B) EXCLUDED INDIVIDUALS.—No indi-  
19 vidual who has been excluded from participation  
20 in any Federal health care program or whose  
21 State license is under suspension or has been  
22 revoked shall be eligible to receive payment  
23 under any such program for health care serv-  
24 ices furnished by that individual, directly or  
25 through an entity that is otherwise eligible to

1 receive payment for health care services, to an  
2 Indian.

3 “(C) FEDERAL HEALTH CARE PROGRAM  
4 DEFINED.—In this subsection, the term, ‘Fed-  
5 eral health care program’ has the meaning  
6 given that term in section 1128B(f), except  
7 that, for purposes of this subsection, such term  
8 shall include the health insurance program  
9 under chapter 89 of title 5, United States  
10 Code.”.

11 **SEC. 7. CONSULTATION ON MEDICAID, SCHIP, AND OTHER**  
12 **HEALTH CARE PROGRAMS FUNDED UNDER**  
13 **THE SOCIAL SECURITY ACT INVOLVING IN-**  
14 **DIAN HEALTH PROGRAMS AND URBAN IN-**  
15 **DIAN ORGANIZATIONS.**

16 (a) IN GENERAL.—Section 1139 of the Social Secu-  
17 rity Act (42 U.S.C. 1320b–9), as amended by sections 3  
18 and 6, is amended by redesignating subsection (d) as sub-  
19 section (e), and inserting after subsection (c) the following  
20 new subsection:

21 “(d) CONSULTATION WITH TRIBAL TECHNICAL AD-  
22 VISORY GROUP (TTAG).—The Secretary shall maintain  
23 within the Centers for Medicaid & Medicare Services  
24 (CMS) a Tribal Technical Advisory Group, established in  
25 accordance with requirements of the charter dated Sep-

1   tember 30, 2003, and in such group shall include a rep-  
2   resentative of the Urban Indian Organizations and the  
3   Service. The representative of the Urban Indian Organiza-  
4   tion shall be deemed to be an elected officer of a tribal  
5   government for purposes of applying section 204(b) of the  
6   Unfunded Mandates Reform Act of 1995 (2 U.S.C.  
7   1534(b)).”.

8           (b) SOLICITATION OF ADVICE UNDER MEDICAID AND  
9   SCHIP.—

10           (1) MEDICAID STATE PLAN AMENDMENT.—Sec-  
11   tion 1902(a) of the Social Security Act (42 U.S.C.  
12   1396a(a)) is amended—

13           (A) in paragraph (69), by striking “and”  
14   at the end;

15           (B) in paragraph (70)(B)(iv), by striking  
16   the period at the end and inserting “; and”;  
17   and

18           (C) by inserting after paragraph  
19   (70)(B)(iv), the following new paragraph:

20           “(71) in the case of any State in which the In-  
21   dian Health Service operates or funds health care  
22   programs, or in which 1 or more Indian Health Pro-  
23   grams or Urban Indian Organizations (as such  
24   terms are defined in section 4 of the Indian Health  
25   Care Improvement Act) provide health care in the

1 State for which medical assistance is available under  
2 such title, provide for a process under which the  
3 State seeks advice on a regular, ongoing basis from  
4 designees of such Indian Health Programs and  
5 Urban Indian Organizations on matters relating to  
6 the application of this title that are likely to have a  
7 direct effect on such Indian Health Programs and  
8 Urban Indian Organizations and that—

9 “(A) shall include solicitation of advice  
10 prior to submission of any plan amendments,  
11 waiver requests, and proposals for demonstra-  
12 tion projects likely to have a direct effect on In-  
13 dians, Indian Health Programs, or Urban In-  
14 dian Organizations; and

15 “(B) may include appointment of an advi-  
16 sory committee and of a designee of such In-  
17 dian Health Programs and Urban Indian Orga-  
18 nizations to the medical care advisory com-  
19 mittee advising the State on its State plan  
20 under this title.”.

21 (2) APPLICATION TO SCHIP.—Section  
22 2107(e)(1) of such Act (42 U.S.C. 1397gg(e)(1)), as  
23 amended by section 5(b)(2), is amended—

1 (A) by redesignating subparagraphs (B)  
 2 through (F) as subparagraphs (C) through (G),  
 3 respectively; and

4 (B) by inserting after subparagraph (A),  
 5 the following new subparagraph:

6 “(B) Section 1902(a)(71) (relating to the  
 7 option of certain States to seek advice from  
 8 designees of Indian Health Programs and  
 9 Urban Indian Organizations).”.

10 (c) **RULE OF CONSTRUCTION.**—Nothing in the  
 11 amendments made by this section shall be construed as  
 12 superseding existing advisory committees, working groups,  
 13 guidance, or other advisory procedures established by the  
 14 Secretary of Health and Human Services or by any State  
 15 with respect to the provision of health care to Indians.

16 **SEC. 8. EXCLUSION WAIVER AUTHORITY FOR AFFECTED IN-**  
 17 **DIAN HEALTH PROGRAMS AND SAFE HARBOR**  
 18 **TRANSACTIONS UNDER THE SOCIAL SECU-**  
 19 **RITY ACT.**

20 (a) **EXCLUSION WAIVER AUTHORITY.**—Section 1128  
 21 of the Social Security Act (42 U.S.C. 1320a-7) is amend-  
 22 ed by adding at the end the following new subsection:

23 “(k) **ADDITIONAL EXCLUSION WAIVER AUTHORITY**  
 24 **FOR AFFECTED INDIAN HEALTH PROGRAMS.**—In addi-  
 25 tion to the authority granted the Secretary under sub-

1 sections (c)(3)(B) and (d)(3)(B) to waive an exclusion  
 2 under subsection (a)(1), (a)(3), (a)(4), or (b), the Sec-  
 3 retary may, in the case of an Indian Health Program,  
 4 waive such an exclusion upon the request of the adminis-  
 5 trator of an affected Indian Health Program (as defined  
 6 in section 4 of the Indian Health Care Improvement Act)  
 7 who determines that the exclusion would impose a hard-  
 8 ship on individuals entitled to benefits under or enrolled  
 9 in a Federal health care program.”.

10 (b) CERTAIN TRANSACTIONS INVOLVING INDIAN  
 11 HEALTH CARE PROGRAMS DEEMED TO BE IN SAFE HAR-  
 12 BORS.—Section 1128B(b) of the Social Security Act (42  
 13 U.S.C. 1320a–7b(b)) is amended by adding at the end the  
 14 following new paragraph:

15 “(4) Subject to such conditions as the Secretary may  
 16 promulgate from time to time as necessary to prevent  
 17 fraud and abuse, for purposes of paragraphs (1) and (2)  
 18 and section 1128A(a), the following transfers shall not be  
 19 treated as remuneration:

20 “(A) TRANSFERS BETWEEN INDIAN HEALTH  
 21 PROGRAMS, INDIAN TRIBES, TRIBAL ORGANIZATIONS,  
 22 AND URBAN INDIAN ORGANIZATIONS.—Transfers of  
 23 anything of value between or among an Indian  
 24 Health Program, Indian Tribe, Tribal Organization,  
 25 or Urban Indian Organization, that are made for the

1 purpose of providing necessary health care items and  
2 services to any patient served by such Program,  
3 Tribe, or Organization and that consist of—

4 “(i) services in connection with the collec-  
5 tion, transport, analysis, or interpretation of di-  
6 agnostic specimens or test data;

7 “(ii) inventory or supplies;

8 “(iii) staff; or

9 “(iv) a waiver of all or part of premiums  
10 or cost sharing.

11 “(B) TRANSFERS BETWEEN INDIAN HEALTH  
12 PROGRAMS, INDIAN TRIBES, TRIBAL ORGANIZATIONS,  
13 OR URBAN INDIAN ORGANIZATIONS AND PA-  
14 TIENTS.—Transfers of anything of value between an  
15 Indian Health Program, Indian Tribe, Tribal Orga-  
16 nization, or Urban Indian Organization and any pa-  
17 tient served or eligible for service from an Indian  
18 Health Program, Indian Tribe, Tribal Organization,  
19 or Urban Indian Organization, including any patient  
20 served or eligible for service pursuant to section 807  
21 of the Indian Health Care Improvement Act, but  
22 only if such transfers—

23 “(i) consist of expenditures related to pro-  
24 viding transportation for the patient for the  
25 provision of necessary health care items or serv-

1           ices, provided that the provision of such trans-  
2           portation is not advertised, nor an incentive of  
3           which the value is disproportionately large in  
4           relationship to the value of the health care item  
5           or service (with respect to the value of the item  
6           or service itself or, for preventative items or  
7           services, the future health care costs reasonably  
8           expected to be avoided);

9           “(ii) consist of expenditures related to pro-  
10          viding housing to the patient (including a preg-  
11          nant patient) and immediate family members or  
12          an escort necessary to assuring the timely pro-  
13          vision of health care items and services to the  
14          patient, provided that the provision of such  
15          housing is not advertised nor an incentive of  
16          which the value is disproportionately large in  
17          relationship to the value of the health care item  
18          or service (with respect to the value of the item  
19          or service itself or, for preventative items or  
20          services, the future health care costs reasonably  
21          expected to be avoided); or

22          “(iii) are for the purpose of paying pre-  
23          miums or cost sharing on behalf of such a pa-  
24          tient, provided that the making of such pay-  
25          ment is not subject to conditions other than

1 conditions agreed to under a contract for the  
2 delivery of contract health services.

3 “(C) CONTRACT HEALTH SERVICES.—A trans-  
4 fer of anything of value negotiated as part of a con-  
5 tract entered into between an Indian Health Pro-  
6 gram, Indian Tribe, Tribal Organization, Urban In-  
7 dian Organization, or the Indian Health Service and  
8 a contract care provider for the delivery of contract  
9 health services authorized by the Indian Health  
10 Service, provided that—

11 “(i) such a transfer is not tied to volume  
12 or value of referrals or other business generated  
13 by the parties; and

14 “(ii) any such transfer is limited to the fair  
15 market value of the health care items or serv-  
16 ices provided or, in the case of a transfer of  
17 items or services related to preventative care,  
18 the value of the future health care costs reason-  
19 ably expected to be avoided.

20 “(D) OTHER TRANSFERS.—Any other transfer  
21 of anything of value involving an Indian Health Pro-  
22 gram, Indian Tribe, Tribal Organization, or Urban  
23 Indian Organization, or a patient served or eligible  
24 for service from an Indian Health Program, Indian  
25 Tribe, Tribal Organization, or Urban Indian Organi-

1 zation, that the Secretary, in consultation with the  
 2 Attorney General, determines is appropriate, taking  
 3 into account the special circumstances of such In-  
 4 dian Health Programs, Indian Tribes, Tribal Orga-  
 5 nizations, and Urban Indian Organizations, and of  
 6 patients served by such Programs, Tribes, and Orga-  
 7 nizations.”.

8 **SEC. 9. RULES APPLICABLE UNDER MEDICAID AND SCHIP**  
 9 **TO MANAGED CARE ENTITIES WITH RESPECT**  
 10 **TO INDIAN ENROLLEES AND INDIAN HEALTH**  
 11 **CARE PROVIDERS AND INDIAN MANAGED**  
 12 **CARE ENTITIES.**

13 (a) IN GENERAL.—Section 1932 of the Social Secu-  
 14 rity Act (42 U.S.C. 1396u–2) is amended by adding at  
 15 the end the following new subsection:

16 “(h) SPECIAL RULES WITH RESPECT TO INDIAN EN-  
 17 ROLLEES, INDIAN HEALTH CARE PROVIDERS, AND IN-  
 18 DIAN MANAGED CARE ENTITIES.—

19 “(1) ENROLLEE OPTION TO SELECT AN INDIAN  
 20 HEALTH CARE PROVIDER AS PRIMARY CARE PRO-  
 21 VIDER.—In the case of a non-Indian Medicaid man-  
 22 aged care entity that—

23 “(A) has an Indian enrolled with the enti-  
 24 ty; and

1           “(B) has an Indian health care provider  
2           that is participating as a primary care provider  
3           within the network of the entity,  
4           insofar as the Indian is otherwise eligible to receive  
5           services from such Indian health care provider and  
6           the Indian health care provider has the capacity to  
7           provide primary care services to such Indian, the  
8           contract with the entity under section 1903(m) or  
9           under section 1905(t)(3) shall require, as a condi-  
10          tion of receiving payment under such contract, that  
11          the Indian shall be allowed to choose such Indian  
12          health care provider as the Indian’s primary care  
13          provider under the entity.

14           “(2) ASSURANCE OF PAYMENT TO INDIAN  
15          HEALTH CARE PROVIDERS FOR PROVISION OF COV-  
16          ERED SERVICES.—Each contract with a managed  
17          care entity under section 1903(m) or under section  
18          1905(t)(3) shall require any such entity that has a  
19          significant percentage of Indian enrollees (as deter-  
20          mined by the Secretary), as a condition of receiving  
21          payment under such contract to satisfy the following  
22          requirements:

23           “(A) DEMONSTRATION OF PARTICIPATING  
24          INDIAN HEALTH CARE PROVIDERS OR APPLICA-

1 TION OF ALTERNATIVE PAYMENT ARRANGE-  
2 MENTS.—Subject to subparagraph (E), to—

3 “(i) demonstrate that the number of  
4 Indian health care providers that are par-  
5 ticipating providers with respect to such  
6 entity are sufficient to ensure timely access  
7 to covered Medicaid managed care services  
8 for those enrollees who are eligible to re-  
9 ceive services from such providers; or

10 “(ii) agree to pay Indian health care  
11 providers who are not participating pro-  
12 viders with the entity for covered Medicaid  
13 managed care services provided to those  
14 enrollees who are eligible to receive services  
15 from such providers at a rate equal to the  
16 rate negotiated between such entity and  
17 the provider involved or, if such a rate has  
18 not been negotiated, at a rate that is not  
19 less than the level and amount of payment  
20 which the entity would make for the serv-  
21 ices if the services were furnished by a par-  
22 ticipating provider which is not an Indian  
23 health care provider.

24 “(B) PROMPT PAYMENT.—To agree to  
25 make prompt payment (in accordance with

1 rules applicable to managed care entities) to In-  
2 dian health care providers that are participating  
3 providers with respect to such entity or, in the  
4 case of an entity to which subparagraph (A)(ii)  
5 or (E) applies, that the entity is required to pay  
6 in accordance with that subparagraph.

7 “(C) SATISFACTION OF CLAIM REQUIRE-  
8 MENT.—To deem any requirement for the sub-  
9 mission of a claim or other documentation for  
10 services covered under subparagraph (A) by the  
11 enrollee to be satisfied through the submission  
12 of a claim or other documentation by an Indian  
13 health care provider that is consistent with sec-  
14 tion 403(h) of the Indian Health Care Improve-  
15 ment Act.

16 “(D) COMPLIANCE WITH GENERALLY AP-  
17 PLICABLE REQUIREMENTS.—

18 “(i) IN GENERAL.—Subject to clause  
19 (ii), as a condition of payment under sub-  
20 paragraph (A), an Indian health care pro-  
21 vider shall comply with the generally appli-  
22 cable requirements of this title, the State  
23 plan, and such entity with respect to cov-  
24 ered Medicaid managed care services pro-  
25 vided by the Indian health care provider to

1 the same extent that non-Indian providers  
2 participating with the entity must comply  
3 with such requirements.

4 “(ii) LIMITATIONS ON COMPLIANCE  
5 WITH MANAGED CARE ENTITY GENERALLY  
6 APPLICABLE REQUIREMENTS.—An Indian  
7 health care provider—

8 “(I) shall not be required to com-  
9 ply with a generally applicable re-  
10 quirement of a managed care entity  
11 described in clause (i) as a condition  
12 of payment under subparagraph (A) if  
13 such compliance would conflict with  
14 any other statutory or regulatory re-  
15 quirements applicable to the Indian  
16 health care provider; and

17 “(II) shall only need to comply  
18 with those generally applicable re-  
19 quirements of a managed care entity  
20 described in clause (i) as a condition  
21 of payment under subparagraph (A)  
22 that are necessary for the entity’s  
23 compliance with the State plan, such  
24 as those related to care management,

1                   quality assurance, and utilization  
2                   management.

3                   “(E) APPLICATION OF SPECIAL PAYMENT  
4                   REQUIREMENTS FOR FEDERALLY-QUALIFIED  
5                   HEALTH CENTERS AND ENCOUNTER RATE FOR  
6                   SERVICES PROVIDED BY CERTAIN INDIAN  
7                   HEALTH CARE PROVIDERS.—

8                   “(i) FEDERALLY-QUALIFIED HEALTH  
9                   CENTERS.—

10                   “(I) MANAGED CARE ENTITY  
11                   PAYMENT REQUIREMENT.—To agree  
12                   to pay any Indian health care provider  
13                   that is a Federally-qualified health  
14                   center but not a participating provider  
15                   with respect to the entity, for the pro-  
16                   vision of covered Medicaid managed  
17                   care services by such provider to an  
18                   Indian enrollee of the entity at a rate  
19                   equal to the amount of payment that  
20                   the entity would pay a Federally-  
21                   qualified health center that is a par-  
22                   ticipating provider with respect to the  
23                   entity but is not an Indian health care  
24                   provider for such services.

1                   “(II) CONTINUED APPLICATION  
2                   OF STATE REQUIREMENT TO MAKE  
3                   SUPPLEMENTAL PAYMENT.—Nothing  
4                   in subclause (I) or subparagraph (A)  
5                   or (B) shall be construed as waiving  
6                   the application of section 1902(bb)(5)  
7                   regarding the State plan requirement  
8                   to make any supplemental payment  
9                   due under such section to a Federally-  
10                  qualified health center for services  
11                  furnished by such center to an en-  
12                  rollee of a managed care entity (re-  
13                  gardless of whether the Federally-  
14                  qualified health center is or is not a  
15                  participating provider with the entity).

16                  “(ii) CONTINUED APPLICATION OF  
17                  ENCOUNTER RATE FOR SERVICES PRO-  
18                  VIDED BY CERTAIN INDIAN HEALTH CARE  
19                  PROVIDERS.—If the amount paid by a  
20                  managed care entity to an Indian health  
21                  care provider that is not a Federally-quali-  
22                  fied health center and that has elected to  
23                  receive payment under this title as an In-  
24                  dian Health Service provider under the  
25                  July 11, 1996, Memorandum of Agreement

1           between the Health Care Financing Ad-  
2           ministration (now the Centers for Medicare  
3           & Medicaid Services) and the Indian  
4           Health Service for services provided by  
5           such provider to an Indian enrollee with  
6           the managed care entity is less than the  
7           encounter rate that applies to the provision  
8           of such services under such memorandum,  
9           the State plan shall provide for payment to  
10          the Indian health care provider of the dif-  
11          ference between the applicable encounter  
12          rate under such memorandum and the  
13          amount paid by the managed care entity to  
14          the provider for such services.

15           “(F) CONSTRUCTION.—Nothing in this  
16          paragraph shall be construed as waiving the ap-  
17          plication of section 1902(a)(30)(A) (relating to  
18          application of standards to assure that pay-  
19          ments are consistent with efficiency, economy,  
20          and quality of care).

21           “(3) OFFERING OF MANAGED CARE THROUGH  
22          INDIAN MEDICAID MANAGED CARE ENTITIES.—If—

23           “(A) a State elects to provide services  
24          through Medicaid managed care entities under  
25          its Medicaid managed care program; and

1           “(B) an Indian health care provider that is  
2           funded in whole or in part by the Indian Health  
3           Service, or a consortium composed of 1 or more  
4           Tribes, Tribal Organizations, or Urban Indian  
5           Organizations, and which also may include the  
6           Indian Health Service, has established an In-  
7           dian Medicaid managed care entity in the State  
8           that meets generally applicable standards re-  
9           quired of such an entity under such Medicaid  
10          managed care program,

11          the State shall offer to enter into an agreement with  
12          the entity to serve as a Medicaid managed care enti-  
13          ty with respect to eligible Indians served by such en-  
14          tity under such program.

15                 “(4) SPECIAL RULES FOR INDIAN MANAGED  
16          CARE ENTITIES.—The following are special rules re-  
17          garding the application of a Medicaid managed care  
18          program to Indian Medicaid managed care entities:

19                         “(A) ENROLLMENT.—

20                                 “(i) LIMITATION TO INDIANS.—An In-  
21                                 dian Medicaid managed care entity may re-  
22                                 strict enrollment under such program to  
23                                 Indians and to members of specific Tribes  
24                                 in the same manner as Indian Health Pro-

1           grams may restrict the delivery of services  
2           to such Indians and tribal members.

3           “(ii) NO LESS CHOICE OF PLANS.—

4           Under such program the State may not  
5           limit the choice of an Indian among Med-  
6           icaid managed care entities only to Indian  
7           Medicaid managed care entities or to be  
8           more restrictive than the choice of man-  
9           aged care entities offered to individuals  
10          who are not Indians.

11          “(iii) DEFAULT ENROLLMENT.—

12           “(I) IN GENERAL.—If such pro-  
13           gram of a State requires the enroll-  
14           ment of Indians in a Medicaid man-  
15           aged care entity in order to receive  
16           benefits, the State, taking into consid-  
17           eration the criteria specified in sub-  
18           section (a)(4)(D)(ii)(I), shall provide  
19           for the enrollment of Indians de-  
20           scribed in subclause (II) who are not  
21           otherwise enrolled with such an entity  
22           in an Indian Medicaid managed care  
23           entity described in such clause.

24           “(II) INDIAN DESCRIBED.—An  
25           Indian described in this subclause,

1 with respect to an Indian Medicaid  
2 managed care entity, is an Indian  
3 who, based upon the service area and  
4 capacity of the entity, is eligible to be  
5 enrolled with the entity consistent  
6 with subparagraph (A).

7 “(iv) EXCEPTION TO STATE LOCK-  
8 IN.—A request by an Indian who is en-  
9 rolled under such program with a non-In-  
10 dian Medicaid managed care entity to  
11 change enrollment with that entity to en-  
12 rollment with an Indian Medicaid managed  
13 care entity shall be considered cause for  
14 granting such request under procedures  
15 specified by the Secretary.

16 “(B) FLEXIBILITY IN APPLICATION OF  
17 SOLVENCY.—In applying section 1903(m)(1) to  
18 an Indian Medicaid managed care entity—

19 “(i) any reference to a ‘State’ in sub-  
20 paragraph (A)(ii) of that section shall be  
21 deemed to be a reference to the ‘Sec-  
22 retary’; and

23 “(ii) the entity shall be deemed to be  
24 a public entity described in subparagraph  
25 (C)(ii) of that section.

1           “(C) EXCEPTIONS TO ADVANCE DIREC-  
2 TIVES.—The Secretary may modify or waive the  
3 requirements of section 1902(w) (relating to  
4 provision of written materials on advance direc-  
5 tives) insofar as the Secretary finds that the re-  
6 quirements otherwise imposed are not an appro-  
7 priate or effective way of communicating the in-  
8 formation to Indians.

9           “(D) FLEXIBILITY IN INFORMATION AND  
10 MARKETING.—

11           “(i) MATERIALS.—The Secretary may  
12 modify requirements under subsection  
13 (a)(5) to ensure that information described  
14 in that subsection is provided to enrollees  
15 and potential enrollees of Indian Medicaid  
16 managed care entities in a culturally ap-  
17 propriate and understandable manner that  
18 clearly communicates to such enrollees and  
19 potential enrollees their rights, protections,  
20 and benefits.

21           “(ii) DISTRIBUTION OF MARKETING  
22 MATERIALS.—The provisions of subsection  
23 (d)(2)(B) requiring the distribution of  
24 marketing materials to an entire service  
25 area shall be deemed satisfied in the case

1 of an Indian Medicaid managed care entity  
2 that distributes appropriate materials only  
3 to those Indians who are potentially eligi-  
4 ble to enroll with the entity in the service  
5 area.

6 “(5) MALPRACTICE INSURANCE.—Insofar as,  
7 under a Medicaid managed care program, a health  
8 care provider is required to have medical malpractice  
9 insurance coverage as a condition of contracting as  
10 a provider with a Medicaid managed care entity, an  
11 Indian health care provider that is—

12 “(A) a Federally-qualified health center  
13 that is covered under the Federal Tort Claims  
14 Act (28 U.S.C. 1346(b), 2671 et seq.);

15 “(B) providing health care services pursu-  
16 ant to a contract or compact under the Indian  
17 Self-Determination and Education Assistance  
18 Act (25 U.S.C. 450 et seq.) that are covered  
19 under the Federal Tort Claims Act (28 U.S.C.  
20 1346(b), 2671 et seq.); or

21 “(C) the Indian Health Service providing  
22 health care services that are covered under the  
23 Federal Tort Claims Act (28 U.S.C. 1346(b),  
24 2671 et seq.);

25 are deemed to satisfy such requirement.

1           “(6) DEFINITIONS.—For purposes of this sub-  
2 section:

3           “(A) INDIAN HEALTH CARE PROVIDER.—  
4 The term ‘Indian health care provider’ means  
5 an Indian Health Program or an Urban Indian  
6 Organization.

7           “(B) INDIAN; INDIAN HEALTH PROGRAM;  
8 SERVICE; TRIBE, TRIBAL ORGANIZATION; URBAN  
9 INDIAN ORGANIZATION.—The terms ‘Indian’,  
10 ‘Indian Health Program’, ‘Service’, ‘Tribe’,  
11 ‘tribal organization’, ‘Urban Indian Organiza-  
12 tion’ have the meanings given such terms in  
13 section 4 of the Indian Health Care Improve-  
14 ment Act.

15           “(C) INDIAN MEDICAID MANAGED CARE  
16 ENTITY.—The term ‘Indian Medicaid managed  
17 care entity’ means a managed care entity that  
18 is controlled (within the meaning of the last  
19 sentence of section 1903(m)(1)(C)) by the In-  
20 dian Health Service, a Tribe, Tribal Organiza-  
21 tion, or Urban Indian Organization, or a con-  
22 sortium, which may be composed of 1 or more  
23 Tribes, Tribal Organizations, or Urban Indian  
24 Organizations, and which also may include the  
25 Service.

1           “(D) NON-INDIAN MEDICAID MANAGED  
2 CARE ENTITY.—The term ‘non-Indian Medicaid  
3 managed care entity’ means a managed care en-  
4 tity that is not an Indian Medicaid managed  
5 care entity.

6           “(E) COVERED MEDICAID MANAGED CARE  
7 SERVICES.—The term ‘covered Medicaid man-  
8 aged care services’ means, with respect to an  
9 individual enrolled with a managed care entity,  
10 items and services that are within the scope of  
11 items and services for which benefits are avail-  
12 able with respect to the individual under the  
13 contract between the entity and the State in-  
14 volved.

15           “(F) MEDICAID MANAGED CARE PRO-  
16 GRAM.—The term ‘Medicaid managed care pro-  
17 gram’ means a program under sections  
18 1903(m) and 1932 and includes a managed  
19 care program operating under a waiver under  
20 section 1915(b) or 1115 or otherwise.”.

21           (b) APPLICATION TO SCHIP.—Section 2107(e)(1) of  
22 such Act (42 U.S.C. 1397gg(1)), as amended by section  
23 7(b)(2), is amended by adding at the end the following  
24 new subparagraph:

1                   “(H) Subsections (a)(2)(C) and (h) of sec-  
2                   tion 1932.”.

3 **SEC. 10. ANNUAL REPORT ON INDIANS SERVED BY SOCIAL**  
4 **SECURITY ACT HEALTH BENEFIT PROGRAMS.**

5           Section 1139 of the Social Security Act (42 U.S.C.  
6 1320b-9), as amended by the sections 3, 6, and 7, is  
7 amended by redesignating subsection (e) as subsection (f),  
8 and inserting after subsection (d) the following new sub-  
9 section:

10           “(e) ANNUAL REPORT ON INDIANS SERVED BY  
11 HEALTH BENEFIT PROGRAMS FUNDED UNDER THIS  
12 ACT.—Beginning January 1, 2008, and annually there-  
13 after, the Secretary, acting through the Administrator of  
14 the Centers for Medicare & Medicaid Services and the Di-  
15 rector of the Indian Health Service, shall submit a report  
16 to Congress regarding the enrollment and health status  
17 of Indians receiving items or services under health benefit  
18 programs funded under this Act during the preceding  
19 year. Each such report shall include the following:

20                   “(1) The total number of Indians enrolled in, or  
21                   receiving items or services under, such programs,  
22                   disaggregated with respect to each such program.

23                   “(2) The number of Indians described in para-  
24                   graph (1) that also received health benefits under  
25                   programs funded by the Indian Health Service.

1           “(3) General information regarding the health  
2 status of the Indians described in paragraph (1),  
3 disaggregated with respect to specific diseases or  
4 conditions and presented in a manner that is con-  
5 sistent with protections for privacy of individually  
6 identifiable health information under section 264(c)  
7 of the Health Insurance Portability and Account-  
8 ability Act of 1996.

9           “(4) A detailed statement of the status of facili-  
10 ties of the Indian Health Service or an Indian Tribe,  
11 Tribal Organization, or an Urban Indian Organiza-  
12 tion with respect to such facilities’ compliance with  
13 the applicable conditions and requirements of titles  
14 XVIII, XIX, and XXI, and, in the case of title XIX  
15 or XXI, under a State plan under such title or  
16 under waiver authority, and of the progress being  
17 made by such facilities (under plans submitted  
18 under section 1880(b), 1911(b) or otherwise) toward  
19 the achievement and maintenance of such compli-  
20 ance.

21           “(5) Such other information as the Secretary  
22 determines is appropriate.”.

**1 SEC. 11. EFFECTIVE DATE.**

2       The amendments made by this Act take effect on the  
3 effective date of the amendments made by the Indian  
4 Health Care Improvement Act Amendments of 2007.

Calendar No. 555

110<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**S. 2532**

[Report No. 110-255]

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## **A BILL**

To amend titles XVIII, XIX, and XXI of the Social Security Act to improve health care provided to Indians under the Medicare, Medicaid, and State Children's Health Insurance Programs, and for other purposes.

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JANUARY 8, 2008

Read twice and placed on the calendar