

110TH CONGRESS
2^D SESSION

H. R. 5613

AN ACT

To extend certain moratoria and impose additional moratoria on certain Medicaid regulations through April 1, 2009, 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.**

2 This Act may be cited as the “Protecting the Med-
3 icaid Safety Net Act of 2008”.

4 **SEC. 2. MORATORIA ON CERTAIN MEDICAID REGULATIONS.**

5 (a) EXTENSION OF CERTAIN MORATORIA IN PUBLIC
6 LAW 110–28.—Section 7002(a)(1) of the U.S. Troop
7 Readiness, Veterans’ Care, Katrina Recovery, and Iraq
8 Accountability Appropriations Act, 2007 (Public Law
9 110–28) is amended—

10 (1) by striking “prior to the date that is 1 year
11 after the date of enactment of this Act” and insert-
12 ing “prior to April 1, 2009”;

13 (2) in subparagraph (A), by inserting after
14 “Federal Regulations)” the following: “or in the
15 final regulation, relating to such parts, published on
16 May 29, 2007 (72 Federal Register 29748)”; and

17 (3) in subparagraph (C), by inserting before the
18 period at the end the following: “, including the pro-
19 posed regulation published on May 23, 2007 (72
20 Federal Register 28930)”.

21 (b) EXTENSION OF CERTAIN MORATORIA IN PUBLIC
22 LAW 110–173.—Section 206 of the Medicare, Medicaid,
23 and SCHIP Extension Act of 2007 (Public Law 110–173)
24 is amended—

25 (1) by striking “June 30, 2008” and inserting
26 “April 1, 2009”;

1 (2) by inserting “, including the proposed regu-
2 lation published on August 13, 2007 (72 Federal
3 Register 45201),” after “rehabilitation services”;
4 and

5 (3) by inserting “, including the final regulation
6 published on December 28, 2007 (72 Federal Reg-
7 ister 73635),” after “school-based transportation”.

8 (c) ADDITIONAL MORATORIA.—

9 (1) IN GENERAL.—Notwithstanding any other
10 provision of law, the Secretary of Health and
11 Human Services shall not, prior to April 1, 2009,
12 take any action (through promulgation of regulation,
13 issuance of regulatory guidance, use of Federal pay-
14 ment audit procedures, or other administrative ac-
15 tion, policy, or practice, including a Medical Assist-
16 ance Manual transmittal or letter to State Medicaid
17 directors) to impose any restrictions relating to a
18 provision described in subparagraph (A), (B), or (C)
19 of paragraph (2) if such restrictions are more re-
20 strictive in any aspect than those applied to the re-
21 spective provision as of the date specified in para-
22 graph (3) for such provision.

23 (2) PROVISIONS DESCRIBED.—

1 (A) PORTION OF INTERIM FINAL REGULA-
2 TION RELATING TO MEDICAID TREATMENT OF
3 OPTIONAL CASE MANAGEMENT SERVICES.—

4 (i) IN GENERAL.—Subject to clause
5 (ii), the provision described in this sub-
6 paragraph is the interim final regulation
7 relating to optional State plan case man-
8 agement services under the Medicaid pro-
9 gram published on December 4, 2007 (72
10 Federal Register 68077) in its entirety.

11 (ii) EXCEPTION.—The provision de-
12 scribed in this subparagraph does not in-
13 clude the portion of such regulation as re-
14 lates directly to implementing section
15 1915(g)(2)(A)(ii) of the Social Security
16 Act, as amended by section 6052 of the
17 Deficit Reduction Act of 2005 (Public Law
18 109–171), through the definition of case
19 management services and targeted case
20 management services contained in pro-
21 posed section 440.169 of title 42, Code of
22 Federal Regulations, but only to the extent
23 that such portion is not more restrictive
24 than the policies set forth in the Dear
25 State Medicaid Director letter on case

1 management issued on January 19, 2001
2 (SMDL #01-013), and with respect to
3 community transition case management,
4 the Dear State Medicaid Director letter
5 issued on July 25, 2000 (Olmstead Update
6 3).

7 (B) PROPOSED REGULATION RELATING TO
8 REDEFINITION OF MEDICAID OUTPATIENT HOS-
9 PITAL SERVICES.—The provision described in
10 this subparagraph is the proposed regulation re-
11 lating to clarification of outpatient clinic and
12 hospital facility services definition and upper
13 payment limit under the Medicaid program
14 published on September 28, 2007 (72 Federal
15 Register 55158) in its entirety.

16 (C) PORTION OF PROPOSED REGULATION
17 RELATING TO MEDICAID ALLOWABLE PROVIDER
18 TAXES.—

19 (i) IN GENERAL.—Subject to clause
20 (ii), the provision described in this sub-
21 paragraph is the final regulation relating
22 to health-care-related taxes under the Med-
23 icaid program published on February 22,
24 2008 (73 Federal Register 9685) in its en-
25 tirety.

1 (ii) EXCEPTION.—The provision de-
2 scribed in this subparagraph does not in-
3 clude the portions of such regulation as re-
4 late to the following:

5 (I) REDUCTION IN THRESH-
6 OLD.—The reduction from 6 percent
7 to 5.5 percent in the threshold applied
8 under section 433.68(f)(3)(i) of title
9 42, Code of Federal Regulations, for
10 determining whether or not there is
11 an indirect guarantee to hold a tax-
12 payer harmless, as required to carry
13 out section 1903(w)(4)(C)(ii) of the
14 Social Security Act, as added by sec-
15 tion 403 of the Medicare Improvement
16 and Extension Act of 2006 (division
17 B of Public Law 109–432).

18 (II) CHANGE IN DEFINITION OF
19 MANAGED CARE.—The change in the
20 definition of managed care as pro-
21 posed in the revision of section
22 433.56(a)(8) of title 42, Code of Fed-
23 eral Regulations, as required to carry
24 out section 1903(w)(7)(A)(viii) of the
25 Social Security Act, as amended by

1 section 6051 of the Deficit Reduction
2 Act of 2005 (Public Law 109–171).

3 (3) DATE SPECIFIED.—The date specified in
4 this paragraph for the provision described in—

5 (A) subparagraph (A) of paragraph (2) is
6 December 3, 2007;

7 (B) subparagraph (B) of such paragraph is
8 September 27, 2007; or

9 (C) subparagraph (C) of such paragraph is
10 February 21, 2008.

11 **SEC. 3. FUNDS TO REDUCE MEDICAID FRAUD AND ABUSE.**

12 (a) IN GENERAL.—For purposes of reducing fraud
13 and abuse in the Medicaid program under title XIX of
14 the Social Security Act, there is appropriated to the Sec-
15 retary of Health and Human Services, out of any money
16 in the Treasury not otherwise appropriated, \$25,000,000,
17 for each fiscal year (beginning with fiscal year 2009).
18 Amounts appropriated under this section shall remain
19 available for expenditure until expended and shall be in
20 addition to any other amounts appropriated or made avail-
21 able to the Secretary for such purposes with respect to
22 the Medicaid program.

23 (b) ANNUAL REPORT.—Not later than September 30
24 of 2009 and of each subsequent year, the Secretary of
25 Health and Human Services shall submit to the Com-

1 mittee on Energy and Commerce of the House of Rep-
2 resentatives and the Committee on Finance of the Senate
3 a report on the activities (and the results of such activi-
4 ties) funded under subsection (a) to reduce waste, fraud,
5 and abuse in the Medicaid program under title XIX of
6 the Social Security Act during the previous 12 month pe-
7 riod, including the amount of funds appropriated under
8 such subsection (a) for each such activity and an estimate
9 of the savings to the Medicaid program resulting from
10 each such activity.

11 **SEC. 4. STUDY AND REPORTS TO CONGRESS.**

12 (a) SECRETARIAL REPORT IDENTIFYING PROB-
13 LEMS.—Not later than July 1, 2008, the Secretary of
14 Health and Human Services shall submit to the Com-
15 mittee on Energy and Commerce of the House of Rep-
16 resentatives and the Committee on Finance of the Senate
17 a report that—

18 (1) outlines the specific problems the Medicaid
19 regulations referred to in the amendments made by
20 subsections (a) and (b) of section 2 and in the provi-
21 sions described in subsection (c)(2) of such section
22 were intended to address;

23 (2) detailing how these regulations were de-
24 signed to address these specific problems; and

1 (3) cites the legal authority for such regula-
2 tions.

3 (b) INDEPENDENT COMPREHENSIVE STUDY AND RE-
4 PORT.—

5 (1) IN GENERAL.—Not later than July 1, 2008,
6 the Secretary of Health and Human Services shall
7 enter into a contract with an independent organiza-
8 tion for the purpose of—

9 (A) producing a comprehensive report on
10 the prevalence of the problems outlined in the
11 report submitted under subsection (a);

12 (B) identifying strategies in existence to
13 address these problems; and

14 (C) assessing the impact of each regulation
15 referred to in such subsection on each State
16 and the District of Columbia.

17 (2) ADDITIONAL MATTER.—The report under
18 paragraph (1) shall also include—

19 (A) an identification of which claims for
20 items and services (including administrative ac-
21 tivities) under title XIX of the Social Security
22 Act are not processed through systems de-
23 scribed in section 1903(r) of such Act;

1 (B) an examination of the reasons why
2 these claims for such items and services are not
3 processed through such systems; and

4 (C) recommendations on actions by the
5 Federal government and the States that can
6 make claims for such items and services more
7 accurate and complete consistent with such
8 title.

9 (3) DEADLINE.—The report under paragraph
10 (1) shall be submitted to the Committee on Energy
11 and Commerce of the House of Representatives and
12 the Committee on Finance of the Senate not later
13 than March 1, 2009.

14 (4) COOPERATION OF STATES.—If the Sec-
15 retary of Health and Human Services determines
16 that a State or the District of Columbia has not co-
17 operated with the independent organization for pur-
18 poses of the report under this subsection, the Sec-
19 retary shall reduce the amount paid to the State or
20 District under section 1903(a) of the Social Security
21 Act (42 U.S.C. 1396b(a)) by \$25,000 for each day
22 on which the Secretary determines such State or
23 District has not so cooperated. Such reduction shall
24 be made through a process that permits the State or
25 District to challenge the Secretary's determination.

1 (c) FUNDING.—

2 (1) IN GENERAL.—Out of any money in the
3 Treasury of the United States not otherwise appro-
4 priated, there are appropriated to the Secretary
5 without further appropriation, \$5,000,000 to carry
6 out this section.

7 (2) AVAILABILITY; AMOUNTS IN ADDITION TO
8 OTHER AMOUNTS APPROPRIATED FOR SUCH ACTIVI-
9 TIES.—Amounts appropriated pursuant to para-
10 graph (1) shall—

11 (A) remain available until expended; and

12 (B) be in addition to any other amounts
13 appropriated or made available to the Secretary
14 of Health and Human Services with respect to
15 the Medicaid program.

16 **SEC. 5. ASSET VERIFICATION THROUGH ACCESS TO INFOR-**
17 **MATION HELD BY FINANCIAL INSTITUTIONS.**

18 (a) ADDITION OF AUTHORITY.—Title XIX of the So-
19 cial Security Act is amended by inserting after section
20 1939 the following new section:

21 “ASSET VERIFICATION THROUGH ACCESS TO
22 INFORMATION HELD BY FINANCIAL INSTITUTIONS

23 “SEC. 1940. (a) IMPLEMENTATION.—

24 “(1) IN GENERAL.—Subject to the provisions of
25 this section, each State shall implement an asset
26 verification program described in subsection (b), for

1 purposes of determining or redetermining the eligi-
2 bility of an individual for medical assistance under
3 the State plan under this title.

4 “(2) PLAN SUBMITTAL.—In order to meet the
5 requirement of paragraph (1), each State shall—

6 “(A) submit not later than a deadline spec-
7 ified by the Secretary consistent with paragraph
8 (3), a State plan amendment under this title
9 that describes how the State intends to imple-
10 ment the asset verification program; and

11 “(B) provide for implementation of such
12 program for eligibility determinations and rede-
13 terminations made on or after 6 months after
14 the deadline established for submittal of such
15 plan amendment.

16 “(3) PHASE-IN.—

17 “(A) IN GENERAL.—

18 “(i) IMPLEMENTATION IN CURRENT
19 ASSET VERIFICATION DEMO STATES.—The
20 Secretary shall require those States speci-
21 fied in subparagraph (C) (to which an
22 asset verification program has been applied
23 before the date of the enactment of this
24 section) to implement an asset verification

1 program under this subsection by the end
2 of fiscal year 2009.

3 “(ii) IMPLEMENTATION IN OTHER
4 STATES.—The Secretary shall require
5 other States to submit and implement an
6 asset verification program under this sub-
7 section in such manner as is designed to
8 result in the application of such programs,
9 in the aggregate for all such other States,
10 to enrollment of approximately, but not
11 less than, the following percentage of en-
12 rollees, in the aggregate for all such other
13 States, by the end of the fiscal year in-
14 volved:

15 “(I) 12.5 percent by the end of
16 fiscal year 2009.

17 “(II) 25 percent by the end of
18 fiscal year 2010.

19 “(III) 50 percent by the end of
20 fiscal year 2011.

21 “(IV) 75 percent by the end of
22 fiscal year 2012.

23 “(V) 100 percent by the end of
24 fiscal year 2013.

1 “(B) CONSIDERATION.—In selecting States
2 under subparagraph (A)(ii), the Secretary shall
3 consult with the States involved and take into
4 account the feasibility of implementing asset
5 verification programs in each such State.

6 “(C) STATES SPECIFIED.—The States
7 specified in this subparagraph are California,
8 New York, and New Jersey.

9 “(D) CONSTRUCTION.—Nothing in sub-
10 paragraph (A)(ii) shall be construed as pre-
11 venting a State from requesting, and the Sec-
12 retary approving, the implementation of an
13 asset verification program in advance of the
14 deadline otherwise established under such sub-
15 paragraph.

16 “(4) EXEMPTION OF TERRITORIES.—This sec-
17 tion shall only apply to the 50 States and the Dis-
18 trict of Columbia.

19 “(b) ASSET VERIFICATION PROGRAM.—

20 “(1) IN GENERAL.—For purposes of this sec-
21 tion, an asset verification program means a program
22 described in paragraph (2) under which a State—

23 “(A) requires each applicant for, or recipi-
24 ent of, medical assistance under the State plan
25 under this title on the basis of being aged,

1 blind, or disabled to provide authorization by
2 such applicant or recipient (and any other per-
3 son whose resources are material to the deter-
4 mination of the eligibility of the applicant or re-
5 cipient for such assistance) for the State to ob-
6 tain (subject to the cost reimbursement require-
7 ments of section 1115(a) of the Right to Finan-
8 cial Privacy Act but at no cost to the applicant
9 or recipient) from any financial institution
10 (within the meaning of section 1101(1) of such
11 Act) any financial record (within the meaning
12 of section 1101(2) of such Act) held by the in-
13 stitution with respect to the applicant or recipi-
14 ent (and such other person, as applicable),
15 whenever the State determines the record is
16 needed in connection with a determination with
17 respect to such eligibility for (or the amount or
18 extent of) such medical assistance; and

19 “(B) uses the authorization provided under
20 subparagraph (A) to verify the financial re-
21 sources of such applicant or recipient (and such
22 other person, as applicable), in order to deter-
23 mine or redetermine the eligibility of such appli-
24 cant or recipient for medical assistance under
25 the State plan.

1 “(2) PROGRAM DESCRIBED.—A program de-
2 scribed in this paragraph is a program for verifying
3 individual assets in a manner consistent with the ap-
4 proach used by the Commissioner of Social Security
5 under section 1631(e)(1)(B)(ii).

6 “(c) DURATION OF AUTHORIZATION.—Notwith-
7 standing section 1104(a)(1) of the Right to Financial Pri-
8 vacy Act, an authorization provided to a State under sub-
9 section (b)(1) shall remain effective until the earliest of—

10 “(1) the rendering of a final adverse decision on
11 the applicant’s application for medical assistance
12 under the State’s plan under this title;

13 “(2) the cessation of the recipient’s eligibility
14 for such medical assistance; or

15 “(3) the express revocation by the applicant or
16 recipient (or such other person described in sub-
17 section (b)(1), as applicable) of the authorization, in
18 a written notification to the State.

19 “(d) TREATMENT OF RIGHT TO FINANCIAL PRIVACY
20 ACT REQUIREMENTS.—

21 “(1) An authorization obtained by the State
22 under subsection (b)(1) shall be considered to meet
23 the requirements of the Right to Financial Privacy
24 Act for purposes of section 1103(a) of such Act, and

1 need not be furnished to the financial institution,
2 notwithstanding section 1104(a) of such Act.

3 “(2) The certification requirements of section
4 1103(b) of the Right to Financial Privacy Act shall
5 not apply to requests by the State pursuant to an
6 authorization provided under subsection (b)(1).

7 “(3) A request by the State pursuant to an au-
8 thorization provided under subsection (b)(1) is
9 deemed to meet the requirements of section
10 1104(a)(3) of the Right to Financial Privacy Act
11 and of section 1102 of such Act, relating to a rea-
12 sonable description of financial records.

13 “(e) REQUIRED DISCLOSURE.—The State shall in-
14 form any person who provides authorization pursuant to
15 subsection (b)(1)(A) of the duration and scope of the au-
16 thorization.

17 “(f) REFUSAL OR REVOCATION OF AUTHORIZA-
18 TION.—If an applicant for, or recipient of, medical assist-
19 ance under the State plan under this title (or such other
20 person described in subsection (b)(1), as applicable) re-
21 fuses to provide, or revokes, any authorization made by
22 the applicant or recipient (or such other person, as appli-
23 cable) under subsection (b)(1)(A) for the State to obtain
24 from any financial institution any financial record, the

1 State may, on that basis, determine that the applicant or
2 recipient is ineligible for medical assistance.

3 “(g) USE OF CONTRACTOR.—For purposes of imple-
4 menting an asset verification program under this section,
5 a State may select and enter into a contract with a public
6 or private entity meeting such criteria and qualifications
7 as the State determines appropriate, consistent with re-
8 quirements in regulations relating to general contracting
9 provisions and with section 1903(i)(2). In carrying out ac-
10 tivities under such contract, such an entity shall be subject
11 to the same requirements and limitations on use and dis-
12 closure of information as would apply if the State were
13 to carry out such activities directly.

14 “(h) TECHNICAL ASSISTANCE.—The Secretary shall
15 provide States with technical assistance to aid in imple-
16 mentation of an asset verification program under this sec-
17 tion.

18 “(i) REPORTS.—A State implementing an asset
19 verification program under this section shall furnish to the
20 Secretary such reports concerning the program, at such
21 times, in such format, and containing such information
22 as the Secretary determines appropriate.

23 “(j) TREATMENT OF PROGRAM EXPENSES.—Not-
24 withstanding any other provision of law, reasonable ex-
25 penses of States in carrying out the program under this

1 section shall be treated, for purposes of section 1903(a),
2 in the same manner as State expenditures specified in
3 paragraph (7) of such section.”.

4 (b) STATE PLAN REQUIREMENTS.—Section 1902(a)
5 of such Act (42 U.S.C. 1396a(a)) is amended—

6 (1) in paragraph (69) by striking “and” at the
7 end;

8 (2) in paragraph (70) by striking the period at
9 the end and inserting “; and”; and

10 (3) by inserting after paragraph (70), as so
11 amended, the following new paragraph:

12 “(71) provide that the State will implement an
13 asset verification program as required under section
14 1940.”.

15 (c) WITHHOLDING OF FEDERAL MATCHING PAY-
16 MENTS FOR NONCOMPLIANT STATES.—Section 1903(i) of
17 such Act (42 U.S.C. 1396b(i)) is amended—

18 (1) in paragraph (22) by striking “or” at the
19 end;

20 (2) in paragraph (23) by striking the period at
21 the end and inserting “; or”; and

22 (3) by adding after paragraph (23) the fol-
23 lowing new paragraph:

24 “(24) if a State is required to implement an
25 asset verification program under section 1940 and

1 fails to implement such program in accordance with
2 such section, with respect to amounts expended by
3 such State for medical assistance for individuals
4 subject to asset verification under such section, un-
5 less—

6 “(A) the State demonstrates to the Sec-
7 retary’s satisfaction that the State made a good
8 faith effort to comply;

9 “(B) not later than 60 days after the date
10 of a finding that the State is in noncompliance,
11 the State submits to the Secretary (and the
12 Secretary approves) a corrective action plan to
13 remedy such noncompliance; and

14 “(C) not later than 12 months after the
15 date of such submission (and approval), the
16 State fulfills the terms of such corrective action
17 plan.”.

18 (d) REPEAL.—Section 4 of Public Law 110–90 is re-
19 pealed.

20 **SEC. 6. ADJUSTMENT TO PAQI FUND.**

21 Section 1848(l)(2) of the Social Security Act (42
22 U.S.C. 1395w-4(l)(2)), as amended by section 101(a)(2)
23 of the Medicare, Medicaid, and SCHIP Extension Act of
24 2007 (Public Law 110-173), is amended—

25 (1) in subparagraph (A)(i)—

1 (A) in subclause (III), by striking
2 “\$4,960,000,000” and inserting
3 “\$3,790,000,000”; and

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

6 “(IV) For expenditures during
7 2014, an amount equal to
8 \$3,690,000,000.”;

9 (2) in subparagraph (A)(ii), by adding at the
10 end the following new subclause:

11 “(IV) 2014.—The amount avail-
12 able for expenditures during 2014
13 shall only be available for an adjust-
14 ment to the update of the conversion
15 factor under subsection (d) for that
16 year.”; and

17 (3) in subparagraph (B)—

18 (A) in clause (ii), by striking “and” at the
19 end;

20 (B) in clause (iii), by striking the period at
21 the end and inserting “; and”; and

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

1 “(iv) 2014 for payment with respect
2 to physicians’ services furnished during
3 2014.”.

Passed the House of Representatives April 23, 2008.

Attest:

Clerk.

110TH CONGRESS
2^D SESSION

H. R. 5613

AN ACT

To extend certain moratoria and impose additional moratoria on certain Medicaid regulations through April 1, 2009, and for other purposes.