

109<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 3757

To amend title XIX of the Social Security Act to provide for health opportunity accounts under the Medicaid Program.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 13, 2005

Mr. ROGERS of Michigan (for himself, Mr. BURGESS, Mr. BLUNT, and Mr. SHIMKUS) introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To amend title XIX of the Social Security Act to provide for health opportunity accounts under the Medicaid Program.

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

3 **SECTION 1. SHORT TITLE.**

4        This Act may be cited as the “Medicaid Health Op-  
5 portunity Account Act of 2005”.

6 **SEC. 2. HEALTH OPPORTUNITY ACCOUNTS UNDER THE**  
7 **MEDICAID PROGRAM.**

8        Title XIX of the Social Security Act is amended—

9            (1) by redesignating section 1936 as section  
10        1937; and

1           (2) by inserting after section 1935 the following  
2 new section:

3           “HEALTH OPPORTUNITY ACCOUNTS

4           “SEC. 1936. (a) AUTHORITY.—

5           “(1) IN GENERAL.—Notwithstanding any other  
6 provision of this title, the Secretary shall establish a  
7 demonstration program under which States may pro-  
8 vide under their State plans under this title (includ-  
9 ing such a plan operating under a statewide waiver  
10 under section 1115) in accordance with this section  
11 for the provision of alternative benefits consistent  
12 with subsection (c) for eligible population groups in  
13 one or more geographic areas of the State specified  
14 by the State. An amendment under the previous sen-  
15 tence is referred to in this section as a ‘State dem-  
16 onstration program’.

17           “(2) INITIAL DEMONSTRATION.—The dem-  
18 onstration program under this section shall begin on  
19 January 1, 2006. During the first 5 years of such  
20 program, the Secretary shall not approve more than  
21 10 State demonstration programs, with each State  
22 demonstration program covering one or more geo-  
23 graphic areas specified by the State. After such 5-  
24 year period—

25           “(A) unless the Secretary finds, taking  
26 into account cost-effectiveness, quality of care,

1 and other criteria that the Secretary specifies,  
2 that a State demonstration program previously  
3 implemented has been unsuccessful, such a  
4 demonstration program may be extended or  
5 made permanent in the State; and

6 “(B) unless the Secretary finds, taking  
7 into account cost-effectiveness, quality of care,  
8 and other criteria that the Secretary specifies,  
9 that all State demonstration program previously  
10 implemented were unsuccessful, other States  
11 may implement State demonstration programs.

12 “(3) APPROVAL.—The Secretary shall not ap-  
13 prove a State demonstration program under para-  
14 graph (1) unless the program incorporates the fol-  
15 lowing:

16 “(A) Creating patient awareness of the  
17 high cost of medical care.

18 “(B) Providing incentives to patients to  
19 seek preventive care services.

20 “(C) Reducing inappropriate use of health  
21 care services.

22 “(D) Enabling patients to take responsi-  
23 bility for health outcomes.

24 “(E) Providing enrollment counselors and  
25 ongoing education activities.

1           “(F) Providing transactions involving  
2           health opportunity accounts to be conducted  
3           electronically and without cash.

4           “(G) Providing access to negotiated pro-  
5           vider payment rates consistent with this section.

6           Nothing in this section shall be construed as pre-  
7           venting a State demonstration program from pro-  
8           viding incentives for patients obtaining appropriate  
9           preventive care (as defined for purposes of section  
10          223(c)(2)(C) of the Internal Revenue Code of 1986),  
11          such as additional account contributions for an indi-  
12          vidual demonstrating healthy prevention practices.

13          “(4)           NO           REQUIREMENT           FOR  
14          STATEWIDENESS.—Nothing in this section or any  
15          other provision of law shall be construed to require  
16          that a State must provide for the implement of a  
17          State demonstration program on a Statewide basis.

18          “(5) REPORTS.—The Secretary shall periodi-  
19          cally submit to Congress reports regarding the suc-  
20          cess of State demonstration programs.

21          “(b) ELIGIBLE POPULATION GROUPS.—

22          “(1) IN GENERAL.—A State demonstration pro-  
23          gram under this section shall specify the eligible  
24          population groups consistent with paragraph (2).

1           “(2) ELIGIBILITY LIMITATIONS DURING INITIAL  
2 DEMONSTRATION PERIOD.—During the initial 5  
3 years of the demonstration program under this sec-  
4 tion, a State demonstration project shall not apply  
5 to any of the following individuals:

6           “(A) Individuals who are 65 years of age  
7 or older.

8           “(B) Individuals who are disabled, regard-  
9 less of whether or not their eligibility for med-  
10 ical assistance under this title is based on such  
11 disability.

12           “(C) Individuals who are eligible for med-  
13 ical assistance under this title only because they  
14 are (or were within previous 60 days) pregnant.

15           “(D) Individuals who have been eligible for  
16 medical assistance for a continuous period of  
17 less than 3 months.

18           “(3) LIMITATIONS.—

19           “(A) STATE OPTION.—This subsection  
20 shall not be construed as preventing a State  
21 from further limiting eligibility to individuals  
22 who are likely to be eligible for medical assist-  
23 ance for a period of one year or longer.

24           “(B) ON ENROLLEES IN MEDICAID MAN-  
25 AGED CARE ORGANIZATIONS.—Insofar as the

1 State provides for eligibility of individuals who  
2 are enrolled in medicaid managed care organi-  
3 zations, such individuals may participate in the  
4 State demonstration project only if the State  
5 provides assurances satisfactory to the Sec-  
6 retary that the following conditions are met  
7 with respect to any such organization:

8 “(i) In no case may the number of  
9 such individuals enrolled in the organiza-  
10 tion who participate in the project exceed  
11 5 percent of the total number of individ-  
12 uals enrolled in such organization.

13 “(ii) The proportion of enrollees in  
14 the organization who so participate is not  
15 significantly disproportionate to the pro-  
16 portion of such enrollees in other such or-  
17 ganizations who participate.

18 “(iii) The State has provided for an  
19 appropriate adjustment in the per capita  
20 payments to the organization to account  
21 for such participation, taking into account  
22 differences in the likely use of health serv-  
23 ices between enrollees who so participate  
24 and enrollees who do not so participate.

1           “(4) VOLUNTARY PARTICIPATION.—An eligible  
2 individual shall be enrolled in a State demonstration  
3 project only if the individual voluntarily enrolls.  
4 Such an enrollment shall be effective for a period of  
5 12 months, but may be extended for additional peri-  
6 ods of 12 months each with the consent of the indi-  
7 vidual.

8           “(c) ALTERNATIVE BENEFITS.—

9           “(1) IN GENERAL.—The alternative benefits  
10 provided under this section shall consist, consistent  
11 with this subsection, of at least—

12                   “(A) coverage for medical expenses in a  
13 year for items and services for which benefits  
14 are otherwise provided under this title after an  
15 annual deductible described in paragraph (2)  
16 has been met; and

17                   “(B) contribution into a health opportunity  
18 account.

19 Nothing in subparagraph (A) shall be construed as  
20 preventing a State from providing for coverage of  
21 preventive care (referred to in subsection (a)(3))  
22 within the alternative benefits without regard to the  
23 annual deductible.

24           “(2) ANNUAL DEDUCTIBLE.—The amount of  
25 the annual deductible described in paragraph (1)(A)

1 shall be at least 100 percent, but no more than 110  
2 percent, of the annualized amount of contributions  
3 to the health opportunity account under subsection  
4 (d)(2)(A)(i), determined without regard to any limi-  
5 tation described in subsection (d)(2)(C)(ii).

6 “(3) ACCESS TO NEGOTIATED PROVIDER PAY-  
7 MENT RATES.—

8 “(A) FEE-FOR-SERVICE ENROLLEES.—In  
9 the case of an individual who is participating in  
10 a State demonstration project and who is not  
11 enrolled with a medicaid managed care organi-  
12 zation, the State shall provide that the indi-  
13 vidual may obtain demonstration project med-  
14 icaid services from—

15 “(i) any participating provider under  
16 this title at the same payment rates that  
17 would be applicable to such services if the  
18 deductible described in paragraph (1)(A)  
19 was not applicable; or

20 “(ii) any provider at payment rates  
21 that do not exceed 125 percent of the pay-  
22 ment rate that would be applicable to such  
23 services furnished by a participating pro-  
24 vider under this title if the deductible de-



1           scribed in paragraph (1)(A) was not appli-  
2           cable.

3           “(B) TREATMENT UNDER MEDICAID MAN-  
4           AGED CARE PLANS.—In the case of an indi-  
5           vidual who is participating in a State dem-  
6           onstration project and is enrolled with a med-  
7           icaid managed care organization, the State shall  
8           enter into an arrangement with the organiza-  
9           tion under which the individual may obtain  
10          demonstration project medicaid services from  
11          any provider under such organization at pay-  
12          ment rates that do not the payment rate that  
13          would be applicable to such services if the de-  
14          ductible described in paragraph (1)(A) was not  
15          applicable.

16          “(C) COMPUTATION.—The payment rates  
17          described in subparagraphs (A) and (B) shall  
18          be computed without regard to any cost-sharing  
19          that would be otherwise applicable under sec-  
20          tion 1916.

21          “(D) DEFINITIONS.—For purposes of this  
22          paragraph:

23                  “(i) The term ‘demonstration project  
24                  medicaid services’ means, with respect to  
25                  an individual participating in a State dem-

1 onstration project, services for which the  
2 individual would be provided medical as-  
3 sistance under this title but for the appli-  
4 cation of the deductible described in para-  
5 graph (1)(A).

6 “(ii) The term ‘participating provider’  
7 means—

8 “(I) with respect to an individual  
9 described in subparagraph (A), a  
10 health care provider that has entered  
11 into a participation agreement with  
12 the State for the provision of services  
13 to individuals entitled to benefits  
14 under the State plan; or

15 “(II) with respect to an indi-  
16 vidual described in subparagraph (B)  
17 who is enrolled in a medicaid man-  
18 aged care organization, a health care  
19 provider that has entered into an ar-  
20 rangement for the provision of serv-  
21 ices to enrollees of the organization  
22 under this title.

23 “(4) NO EFFECT ON SUBSEQUENT BENEFITS.—

24 Except as provided under paragraphs (1) and (2),  
25 alternative benefits for an eligible individual shall

1 consist of the benefits otherwise provided to the indi-  
2 vidual, including cost-sharing relating to such bene-  
3 fits.

4 “(5) OVERRIDING COST-SHARING AND COM-  
5 PARABILITY REQUIREMENTS FOR ALTERNATIVE  
6 BENEFITS.—The provisions of this title relating to  
7 cost-sharing for benefits (including section 1916)  
8 shall not apply with respect to benefits to which the  
9 annual deductible under paragraph (1)(A) applies.  
10 The provisions of section 1902(a)(10)(B) (relating  
11 to comparability) shall not apply with respect to the  
12 provision of alternative benefits (as described in this  
13 subsection).

14 “(6) TREATMENT AS MEDICAL ASSISTANCE.—  
15 Subject to subparagraphs (D) and (E) of subsection  
16 (d)(2), payments for alternative benefits under this  
17 section (including contributions into a health oppor-  
18 tunity account) shall be treated as medical assist-  
19 ance for purposes of section 1903(a).

20 “(7) USE OF TIERED DEDUCTIBLE AND COST-  
21 SHARING.—

22 “(A) IN GENERAL.—A State—

23 “(i) may vary the amount of the an-  
24 nual deductible applied under paragraph  
25 (1)(A) based on the income of the family

1 involved so long as it does not favor fami-  
2 lies with higher income over those with  
3 lower income; and

4 “(ii) may vary the amount of the max-  
5 imum out-of-pocket cost-sharing (as de-  
6 fined in subparagraph (B)) based on the  
7 income of the family involved so long as it  
8 does not favor families with higher income  
9 over those with lower income.

10 “(B) MAXIMUM OUT-OF-POCKET COST-  
11 SHARING.—For purposes of subparagraph  
12 (A)(ii), the term ‘maximum out-of-pocket cost-  
13 sharing’ means, for an individual or family, the  
14 amount by which the annual deductible level ap-  
15 plied under paragraph (1)(A) to the individual  
16 or family exceeds the balance in the health op-  
17 portunity account for the individual or family.

18 “(8) CONTRIBUTIONS BY EMPLOYERS.—Noth-  
19 ing in this section shall be construed as preventing  
20 an employer from providing health benefits coverage  
21 consisting of the coverage described in paragraph  
22 (1)(A) to individuals who are provided alternative  
23 benefits under this section.

24 “(d) HEALTH OPPORTUNITY ACCOUNT.—

1           “(1) IN GENERAL.—For purposes of this sec-  
2           tion, the term ‘health opportunity account’ means an  
3           account that meets the requirements of this sub-  
4           section.

5           “(2) CONTRIBUTIONS.—

6           “(A) IN GENERAL.—No contribution may  
7           be made into a health opportunity account ex-  
8           cept—

9                   “(i) contributions by the State under  
10                   this title; and

11                   “(ii) contributions by other persons  
12                   and entities, such as charitable organiza-  
13                   tions.

14           “(B) STATE CONTRIBUTION.—A State  
15           shall specify the contribution amount that shall  
16           be deposited under subparagraph (A)(i) into a  
17           health opportunity account.

18           “(C) LIMITATION ON ANNUAL STATE CON-  
19           TRIBUTION PROVIDED AND PERMITTING IMPO-  
20           SITION OF MAXIMUM ACCOUNT BALANCE.—

21                   “(i) IN GENERAL.—A State—

22                           “(I) may impose limitations on  
23                           the maximum contributions that may  
24                           be deposited under subparagraph

1 (A)(i) into a health opportunity ac-  
2 count in a year;

3 “(II) may limit contributions into  
4 such an account once the balance in  
5 the account reaches a level specified  
6 by the State; and

7 “(III) subject to clauses (ii) and  
8 (iii) and subparagraph (D)(i), may  
9 not provide contributions described in  
10 subparagraph (A)(i) to a health op-  
11 portunity account on behalf of an in-  
12 dividual or family to the extent the  
13 amount of such contributions (includ-  
14 ing both State and Federal shares)  
15 exceeds, on an annual basis, \$2,500  
16 for each individual (or family mem-  
17 ber) who is an adult and \$1,000 for  
18 each individual (or family member)  
19 who is a child.

20 “(ii) INDEXING OF DOLLAR LIMITA-  
21 TIONS.—For each year after 2006, the dol-  
22 lar amounts specified in clause (i)(III)  
23 shall be annually increased by the Sec-  
24 retary by an percentage that reflects the  
25 annual percentage increase in the medical

1 care component of the consumer price  
2 index for all urban consumers.

3 “(iii) BUDGET NEUTRAL ADJUST-  
4 MENT.—A State may provide for dollar  
5 limitations in excess of those specified in  
6 clause (i)(III) (as increased under clause  
7 (ii)) for specified individuals if the State  
8 provides assurances satisfactory to the Sec-  
9 retary that contributions otherwise made  
10 to other individuals will be reduced in a  
11 manner so as to provide for aggregate con-  
12 tributions that do not exceed the aggregate  
13 contributions that would otherwise be per-  
14 mitted under this subparagraph.

15 “(D) LIMITATIONS ON FEDERAL MATCH-  
16 ING.—

17 “(i) STATE CONTRIBUTION.—A State  
18 may contribute under subparagraph (A)(i)  
19 amounts to a health opportunity account in  
20 excess of the limitations provided under  
21 subparagraph (C)(i)(III), but no Federal  
22 financial participation shall be provided  
23 under section 1903(a) with respect to con-  
24 tributions in excess of such limitations.

1           “(ii) NO FFP FOR PRIVATE CONTRIBU-  
2           TIONS.—No Federal financial participation  
3           shall be provided under section 1903(a)  
4           with respect to any contributions described  
5           in subparagraph (A)(ii) to a health oppor-  
6           tunity account.

7           “(E) APPLICATION OF DIFFERENT MATCH-  
8           ING RATES.—The Secretary shall provide a  
9           method under which, for expenditures made  
10          from a health opportunity account for medical  
11          care for which the Federal matching rate under  
12          section 1903(a) exceeds the Federal medical as-  
13          sistance percentage, a State may obtain pay-  
14          ment under such section at such higher match-  
15          ing rate for such expenditures.

16          “(3) USE.—

17                 “(A) GENERAL USES.—

18                         “(i) IN GENERAL.—Subject to the  
19                         succeeding provisions of this paragraph,  
20                         amounts in a health opportunity account  
21                         may be used for payment of such health  
22                         care expenditures as the State specifies.

23                         “(ii) GENERAL LIMITATION.—In no  
24                         case shall such account be used for pay-  
25                         ment for health care expenditures that are



1 not payment of medical care (as defined by  
2 section 213(d) of the Internal Revenue  
3 Code of 1986).

4 “(iii) STATE RESTRICTIONS.—In ap-  
5 plying clause (i), a State may restrict pay-  
6 ment for—

7 “(I) providers of items and serv-  
8 ices to providers that are licensed or  
9 otherwise authorized under State law  
10 to provide the item or service and may  
11 deny payment for such a provider on  
12 the basis that the provider has been  
13 found, whether with respect to this  
14 title or any other health benefit pro-  
15 gram, to have failed to meet quality  
16 standards or to have committed one  
17 or more acts of fraud or abuse; and

18 “(II) items and services insofar  
19 as the State finds they are not medi-  
20 cally appropriate or necessary.

21 “(iv) ELECTRONIC WITHDRAWALS.—  
22 The State demonstration program shall  
23 provide for a method whereby withdrawals  
24 may be made from the account for such  
25 purposes using an electronic system and

1           shall not permit withdrawals from the ac-  
2           count in cash.

3           “(B) MAINTENANCE OF HEALTH OPPOR-  
4           TUNITY ACCOUNT AFTER BECOMING INELI-  
5           GIBLE FOR PUBLIC BENEFIT; 25 PERCENT SAV-  
6           INGS TO GOVERNMENT.—

7                   “(i) IN GENERAL.—Notwithstanding  
8                   any other provision of law, if an account  
9                   holder of a health opportunity account be-  
10                  comes ineligible for benefits under this title  
11                  because of an increase in income or as-  
12                  sets—

13                           “(I) no additional contribution  
14                           shall be made into the account under  
15                           paragraph (2)(A)(i);

16                           “(II) subject to clause (iii), the  
17                           balance in the account shall be re-  
18                           duced by 25 percent; and

19                           “(III) subject to the succeeding  
20                           provisions of this subparagraph, the  
21                           account shall remain available to the  
22                           account holder for withdrawals under  
23                           the same terms and conditions as if  
24                           the account holder remained eligible  
25                           for such benefits.

1           “(ii) SPECIAL RULES.—Withdrawals  
2 under this subparagraph from an ac-  
3 count—

4                   “(I) shall be available for the  
5 purchase of health insurance coverage;  
6 and

7                   “(II) may, subject to clause (iv),  
8 be made available (at the option of  
9 the State) for such additional expendi-  
10 tures (such as job training and tuition  
11 expenses) specified by the State (and  
12 approved by the Secretary) as the  
13 State may specify.

14           “(iii) EXCEPTION FROM 25 PERCENT  
15 SAVINGS TO GOVERNMENT FOR PRIVATE  
16 CONTRIBUTIONS.—Clause (i)(II) shall not  
17 apply to the portion of the account that is  
18 attributable to contributions described in  
19 paragraph (2)(A)(ii). For purposes of ac-  
20 counting for such contributions, with-  
21 draws from a health opportunity account  
22 shall first be attributed to contributions  
23 described in paragraph (2)(A)(i).

24           “(iv) CONDITION FOR NON-HEALTH  
25 WITHDRAWALS.—No withdrawal may be

1           made from an account under clause (ii)(II)  
2           unless the accountholder has participated  
3           in the program under this section for at  
4           least 1 year.

5           “(v) NO REQUIREMENT FOR CONTINU-  
6           ATION OF COVERAGE.—An account holder  
7           of a health opportunity account, after be-  
8           coming ineligible for medical assistance  
9           under this title, is not required to purchase  
10          high-deductible or other insurance as a  
11          condition of maintaining or using the ac-  
12          count.

13          “(4) ADMINISTRATION.—A State may coordi-  
14          nate administration of health opportunity accounts  
15          through the use of a third party administrator.

16          “(5) TREATMENT.—Amounts in, or contributed  
17          to, a health opportunity account shall not be counted  
18          as income or assets for purposes of determining eli-  
19          gibility for benefits under this title.

20          “(6) UNAUTHORIZED WITHDRAWALS.—A State  
21          may establish procedures—

22                  “(A) to penalize or remove an individual  
23                  from the health opportunity account based on  
24                  nonqualified withdrawals by the individual from  
25                  such an account; and

1                   “(B) to recoup costs that derive from such  
2                   nonqualified withdrawals.”.

○