

109TH CONGRESS
1ST SESSION

S. 2074

To amend title XIX of the Social Security Act to provide for fair treatment of services furnished to Indians under the medicaid program, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 18, 2005

Mr. BINGAMAN (for himself, Mr. BAUCUS, Mr. DORGAN, Mrs. MURRAY, Ms. CANTWELL, and Mr. JOHNSON) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend title XIX of the Social Security Act to provide for fair treatment of services furnished to Indians under the medicaid program, 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Medicaid Indian
5 Health Act of 2005”.

1 **SEC. 2. APPLICATION OF 100 PERCENT FMAP FOR SERV-**
 2 **ICES FURNISHED TO AN INDIAN BY AN**
 3 **URBAN INDIAN HEALTH PROGRAM.**

4 (a) IN GENERAL.—The third sentence of section
 5 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)),
 6 is amended by inserting before the period at the end the
 7 following: “, or through an urban Indian health program
 8 receiving funds under title V of the Indian Health Care
 9 Improvement Act”.

10 (b) CONFORMING AMENDMENT.—Section 1911(c) of
 11 such Act (42 U.S.C. 1396j(c)), is amended by inserting
 12 “, or through an urban Indian health program receiving
 13 funds under title V of the Indian Health Care Improve-
 14 ment Act” after “facilities”.

15 **SEC. 3. PROHIBITION ON IMPOSITION OF PREMIUMS,**
 16 **DEDUCTIBLES, COPAYMENTS, AND OTHER**
 17 **COST-SHARING ON INDIANS.**

18 Section 1916 of the Social Security Act (42 U.S.C.
 19 1396o) is amended—

20 (1) in subsection (a)(3), by inserting “(other
 21 than such individuals who are Indians (as defined in
 22 section 4 of the Indian Health Care Improvement
 23 Act)” after “other such individuals”;

24 (2) in subsection (b), in the matter preceding
 25 paragraph (1), by inserting “or who are Indians (as

1 defined in section 4 of the Indian Health Care Im-
 2 provement Act)” after “section 1902(a)(10)”;

3 (3) in subsection (c)(1), by inserting “(other
 4 than such an individual who is an Indian (as defined
 5 in section 4 of the Indian Health Care Improvement
 6 Act))” after “section 1902(l)(1)”.

7 **SEC. 4. PROHIBITION ON RECOVERY AGAINST ESTATES OF**
 8 **INDIANS.**

9 Section 1917(b)(1) of the Social Security Act (42
 10 U.S.C. 1396p(b)(1)) is amended, in the matter preceding
 11 subparagraph (A), by inserting “ who is not an Indian
 12 (as defined in section 4 of the Indian Health Care Im-
 13 provement Act)” after “an individual” the second place
 14 it appears.

15 **SEC. 5. REQUIREMENT FOR CONSULTATION WITH INDIAN**
 16 **TRIBES PRIOR TO APPROVAL OF SECTION**
 17 **1115 WAIVERS.**

18 Section 1115 of the Social Security Act (42 U.S.C.
 19 1315) is amended by adding at the end the following:

20 “(g) In the case of an application for a waiver of com-
 21 pliance with the requirements of section 1902 (or a re-
 22 newal or extension of such a waiver) that is likely to affect
 23 members of an Indian tribe (as defined in section 4 of
 24 the Indian Health Care Improvement Act) or a tribal
 25 health program (whether operated by an Indian tribe or

1 a tribal organization (as so defined) serving such mem-
 2 bers, the Secretary shall, prior to granting such a waiver
 3 under subsection (a) or renewing or extending such a
 4 waiver under subsection (e), consult with each such Indian
 5 tribe.”.

6 **SEC. 6. REQUIREMENT FOR FAIR PAYMENT BY MEDICAID**
 7 **MANAGED CARE ENTITIES TO INDIAN**
 8 **HEALTH PROGRAM PROVIDERS.**

9 Section 1903(m)(2)(A)(ii) of the Social Security Act
 10 (42 U.S.C. 1396b(m)(2)(A)(ii)) is amended to read as fol-
 11 lows:

12 “(ii) such contract provides, in the
 13 case of entity that has entered into a con-
 14 tract for the provision of services with a
 15 facility or program of the Indian Health
 16 Service, whether operated by the Service or
 17 an Indian tribe or tribal organization (as
 18 defined in section 4 of the Indian Health
 19 Care Improvement Act) or an urban In-
 20 dian health program receiving funds under
 21 title V of the Indian Health Care Improve-
 22 ment Act , that is not a Federally-qualified
 23 health center or a rural health clinic, that
 24 the entity shall provide payment that is not
 25 less than the highest level and amount of

1 payment that the entity would make for
 2 the services if the services were furnished
 3 by a provider that is not a facility or pro-
 4 gram of the Indian Health Service;”.

5 **SEC. 7. TREATMENT OF MEDICAL EXPENSES PAID BY OR**
 6 **ON BEHALF OF AN INDIAN BY AN INDIAN**
 7 **HEALTH PROGRAM AS COSTS INCURRED FOR**
 8 **MEDICAL CARE FOR PURPOSES OF DETER-**
 9 **MINING MEDICALLY NEEDY ELIGIBILITY.**

10 Section 1902(a)(17)(D) of the Social Security Act
 11 (42 U.S.C. 1396a(a)(17)(D)) is amended by inserting “or
 12 by the Indian Health Service or an Indian tribe or tribal
 13 organization (as defined in section 4 of the Indian Health
 14 Care Improvement Act)” after “political subdivision there-
 15 of”.

16 **SEC. 8. STATE OPTION TO EXEMPT INDIANS FROM REDUC-**
 17 **TIONS IN ELIGIBILITY OR BENEFITS.**

18 Section 1902 of the Social Security Act (42 U.S.C.
 19 1396a)) is amended by inserting after subsection (j) the
 20 following:

21 “(k) The Secretary shall not disapprove a State plan
 22 amendment, or deny a State request for a waiver under
 23 section 1115 (or a renewal or extension of such a waiver),
 24 on the grounds that the amendment or waiver would ex-
 25 empt Indians (as defined in section 4 of the Indian Health

1 Care Improvement Act) eligible for medical assistance
 2 from—

3 “(1) any restriction on eligibility for medical as-
 4 sistance under this title that would otherwise apply
 5 under the amendment or waiver;

6 “(2) any imposition of premiums, deductibles,
 7 copayments, or other cost-sharing that would other-
 8 wise apply under the amendment or waiver; or

9 “(3) any reduction in covered services or sup-
 10 plies that would otherwise apply under the amend-
 11 ment or waiver.”.

12 **SEC. 9. EFFECTIVE DATE.**

13 (a) IN GENERAL.—Except as provided in subsection
 14 (b), this Act and the amendments made by this Act apply
 15 to items or services furnished on or after January 1, 2006.

16 (b) EXTENSION OF EFFECTIVE DATE FOR STATE
 17 LAW AMENDMENT.—In the case of a State plan under
 18 title XIX of the Social Security Act which the Secretary
 19 of Health and Human Services determines requires State
 20 legislation in order for the plan to meet the additional re-
 21 quirements imposed by the amendments made by a provi-
 22 sion of this Act, the State plan shall not be regarded as
 23 failing to comply with the requirements of this Act solely
 24 on the basis of its failure to meet these additional require-
 25 ments before the first day of the first calendar quarter

1 beginning after the close of the first regular session of the
2 State legislature that begins after the date of enactment
3 of this Act. For purposes of the previous sentence, in the
4 case of a State that has a 2-year legislative session, each
5 year of the session shall be considered to be a separate
6 regular session of the State legislature.

