

109TH CONGRESS
1ST SESSION

S. 338

To provide for the establishment of a Bipartisan Commission on Medicaid.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 9, 2005

Mr. SMITH (for himself, Mr. BINGAMAN, Ms. SNOWE, Mr. JEFFORDS, Mr. SANTORUM, Mr. KERRY, Mr. DEWINE, Mr. DURBIN, Mr. CHAFEE, Mrs. LINCOLN, Ms. COLLINS, Mr. NELSON of Nebraska, Mr. VOINOVICH, Mr. CORZINE, and Mr. COLEMAN) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To provide for the establishment of a Bipartisan Commission on Medicaid.

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 “Bipartisan Commission
5 on Medicaid Act of 2005”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

8 (1) The medicaid program under title XIX of
9 the Social Security Act (42 U.S.C. 1396 et seq.) (in

1 this Act referred to as “Medicaid”) provides essen-
2 tial health care and long-term care coverage to low-
3 income children, pregnant women and families, indi-
4 viduals with disabilities, and senior citizens consti-
5 tuting 1 in 6 Americans.

6 (2) State participation in Medicaid is voluntary,
7 and all States have elected to participate, admin-
8 istering the program within broad Federal guide-
9 lines.

10 (3) The Federal Government matches the costs
11 of delivering covered services by participating pro-
12 viders to individuals entitled to benefits that are in-
13 curred by State Medicaid programs at rates ranging
14 from 50 percent to 77 percent, depending upon a
15 State’s per capita income.

16 (4) Medicaid pays for health care services for
17 over $\frac{1}{4}$ of America’s children, including children who
18 live in poverty.

19 (5) Medicaid is America’s largest single pur-
20 chaser of maternity care, paying for over $\frac{1}{3}$ of all
21 the births in the Nation each year.

22 (6) Although low-income children and their par-
23 ents make up $\frac{3}{4}$ of the recipients of benefits under
24 Medicaid, they account for only 30 percent of Med-
25 icaid spending.

1 (7) Medicaid is America's single largest pur-
2 chaser of nursing home services and other long-term
3 care, covering the majority of nursing home resi-
4 dents.

5 (8) Medicaid is an essential supplement to the
6 medicare program under title XVIII of the Social
7 Security Act (42 U.S.C. 1395 et seq.) (in this Act
8 referred to as "Medicare") for over 6,000,000 low-
9 income elderly and disabled Medicare beneficiaries,
10 assisting them with their Medicare premiums and
11 co-insurance and, in most cases, the costs of nursing
12 home care that Medicare does not cover.

13 (9) The elderly and individuals with disabilities
14 comprise $\frac{1}{4}$ of the recipients of benefits under Med-
15 icaid and 70 percent of Medicaid spending on serv-
16 ices.

17 (10) States will be required, beginning in 2006,
18 to contribute billions of dollars to the Federal Gov-
19 ernment to help finance the Medicare prescription
20 drug benefit established under part D of title XVIII
21 of the Social Security Act.

22 (11) Medicaid pays for personal care and other
23 supportive services necessary to enable individuals
24 with disabilities to remain in the community, to
25 work, and to maintain independence.

1 (12) Medicaid is the single largest source of
2 revenue for the Nation's safety net hospitals and
3 health centers and is critical to the ability of these
4 providers to continue to serve medicaid enrollees and
5 uninsured Americans.

6 (13) Medicaid is the single largest Federal
7 grant-in-aid program to the States, accounting for
8 over 40 percent of all Federal grants to States.

9 (14) Medicaid serves a major role in ensuring
10 that the number of Americans without health insur-
11 ance, approximately 45,000,000, is not substantially
12 higher.

13 (15) Medicaid finances services for many spe-
14 cial health care needs populations, providing health
15 care for 55 percent of all individuals living with
16 HIV/AIDS and 60 percent of all public mental
17 health care for people with severe mental illnesses.

18 (16) Medicaid's multiple roles present financial
19 challenges for Federal, and State governments that
20 warrant a comprehensive review in light of the in-
21 creasing number of uninsured Americans and the in-
22 creasing number of low-income Americans in need of
23 long-term care services.

1 **SEC. 3. BIPARTISAN COMMISSION ON MEDICAID.**

2 (a) ESTABLISHMENT.—There is established a com-
3 mission to be known as the Bipartisan Commission on
4 Medicaid (in this section referred to as the “Commis-
5 sion”). The Commission shall locate its headquarters in
6 the District of Columbia.

7 (b) MEMBERSHIP.—

8 (1) APPOINTMENT.—The Commission shall be
9 composed of 23 members to be appointed as follows:

10 (A) One member shall be appointed by the
11 President.

12 (B) Three members shall be appointed by
13 the majority leader of the Senate of whom—

14 (i) one shall be a Member or former
15 Member of Congress;

16 (ii) one shall be an advocate for popu-
17 lations who are served by Medicaid; and

18 (iii) one shall be a health care pro-
19 vider that provides a disproportionate
20 share of care to recipients of benefits
21 under Medicaid or a representative of an
22 organization that represent such providers.

23 (C) Three members shall be appointed by
24 the minority leader of the Senate of whom—

25 (i) one shall be a Member or former
26 Member of Congress;

1 (ii) one shall be an advocate for popu-
 2 lations who are served by Medicaid; and

3 (iii) one shall be a health care pro-
 4 vider that provides a disproportionate
 5 share of care to recipients of benefits
 6 under Medicaid or a representative of an
 7 organization that represent such providers.

8 (D) Three members shall be appointed by
 9 the Speaker of the House of Representatives of
 10 whom—

11 (i) one shall be a Member or former
 12 Member of Congress;

13 (ii) one shall be an advocate for popu-
 14 lations who are served by Medicaid; and

15 (iii) one shall be a health care pro-
 16 vider that provides a disproportionate
 17 share of care to recipients of benefits
 18 under Medicaid or a representative of an
 19 organization that represent such providers.

20 (E) Three members shall be appointed by
 21 the minority leader of the House of Representa-
 22 tives of whom—

23 (i) one shall be a Member or former
 24 Member of Congress;

1 (ii) one shall be an advocate for popu-
2 lations who are served by Medicaid; and

3 (iii) one shall be a health care pro-
4 vider that provides a disproportionate
5 share of care to recipients of benefits
6 under Medicaid or a representative of an
7 organization that represent such providers.

8 (F) Two members shall be appointed by
9 the National Governors Association and shall be
10 chief executive officers of a State who are not
11 of the same political party.

12 (G) Two members shall be appointed by
13 the National Conference of State Legislatures
14 and shall be members of a State legislature who
15 are not of the same political party.

16 (H) Two members shall be appointed by
17 the National Association of State Medicaid Di-
18 rectors and shall be chief officials responsible
19 for administering Medicaid in a State who are
20 not of the same political party.

21 (I) Two members shall be appointed by the
22 National Association of Counties and shall be
23 officials of a local government involved in Med-
24 icaid financing or that directly provides medical
25 services to Medicaid beneficiaries and uninsured

1 individuals who are not of the same political
2 party.

3 (J) Two members shall be appointed by
4 the Comptroller General of the United States
5 and shall be health policy experts with special
6 expertise regarding Medicaid or the populations
7 served by Medicaid who are not of the same po-
8 litical party.

9 (2) QUALIFICATIONS.—The members of the
10 Commission appointed under paragraph (1), shall
11 reflect—

12 (A) a broad geographic representation; and

13 (B) a balance between urban and rural
14 representation.

15 (3) DEADLINE FOR APPOINTMENT.—Members
16 of the Commission shall be appointed by not later
17 than the 60th day after the date of enactment of
18 this Act.

19 (c) DUTIES OF COMMISSION.—

20 (1) IN GENERAL.—The Commission shall—

21 (A) review and make recommendations
22 with respect to each of Medicaid’s major func-
23 tional responsibilities, including being—

1 (i) a source of coverage for low-income
 2 children, pregnant women, and some par-
 3 ents;

4 (ii) a payer for a complex range of
 5 acute and long-term care services for the
 6 frail elderly and individuals with disabil-
 7 ities, including the medically needy;

8 (iii) the source of wrap-around cov-
 9 erage or assistance for low-income seniors
 10 and individuals with disabilities on Medi-
 11 care, including coverage of additional bene-
 12 fits and assistance with Medicare pre-
 13 miums and copayments; and

14 (iv) the primary source of funding to
 15 safety net providers that serve both Med-
 16 icaid patients and the 45,000,000 unin-
 17 sured;

18 (B) review and make recommendations for
 19 a clearer delineation of—

20 (i) the Federal and State roles and re-
 21 sponsibilities under Medicaid; and

22 (ii) the interaction of Medicaid with
 23 Medicare and other Federal health pro-
 24 grams;

1 (C) review and identify issues that either
2 threaten or could improve the long-term finan-
3 cial condition of Medicaid, including forth-
4 coming demographic changes, Federal and
5 State revenue options, private sector health cov-
6 erage, and health care information;

7 (D) review the Federal matching payments
8 and requirements under Medicaid, and issues
9 related to such payments and requirements, and
10 make recommendations on how to make such
11 payments more equitable with respect to the
12 populations served and the States, and on how
13 to improve the program's responsiveness to
14 changes in economic conditions;

15 (E) review and make recommendations
16 with respect to health care for individuals du-
17 ally eligible for both Medicare and Medicaid, in-
18 cluding issues related to Federal, State, pro-
19 vider, and beneficiary responsibilities, coordina-
20 tion, and outcomes;

21 (F) review research and data with respect
22 to health disparities for populations served by
23 Medicaid, particularly with respect to individ-
24 uals with disabilities or special health care
25 needs, and make recommendations on how to

1 improve health quality, coordination of services
2 and providers, and access to health care for vul-
3 nerable populations, including the implementa-
4 tion of managed care protections for Medicaid
5 enrollees with special health care needs;

6 (G) review Federal and State policies for
7 enrollment (including enrollment sites), income
8 eligibility (including methodology and length of
9 eligibility periods), outreach, and documentation
10 with respect to Medicaid and Medicare and
11 make recommendations on how to simplify such
12 policies and improve enrollment and retention
13 in such programs and coordination with other
14 Federal and State programs to improve service
15 delivery and coverage;

16 (H) review the operation and effectiveness
17 of Medicaid premium assistance programs, in-
18 cluding the payment of premiums under section
19 1906(a)(3) of the Social Security Act (42
20 U.S.C. 1396e(a)(3)) and payment waivers
21 under section 1115 of such Act (42 U.S.C.
22 1315), and the adequacy of covered benefits, af-
23 fordability of cost-sharing and premiums, and
24 access to care under such programs;

1 (I) review and make recommendations re-
2 garding payment policies under Medicaid, in-
3 cluding the adequacy of such policies with re-
4 spect to—

5 (i) managed care plans (including
6 payment policies for single benefit man-
7 aged care arrangements, such as managed
8 behavioral health and dental care);

9 (ii) providers in managed care, fee-
10 for-service, long-term care, and primary
11 care case management settings; and

12 (iii) measures to assure and reward
13 quality and access to care for Medicaid en-
14 rollees;

15 (J) review how Medicare payment policies
16 impact Medicaid and make recommendations on
17 ways to address specific payment problems that
18 such policies may create in service delivery to
19 populations typically not covered by Medicare,
20 such as children and pregnant women;

21 (K) review payments to safety net pro-
22 viders, including a review of—

23 (i) the adjustments to payments under
24 Medicaid—

1 (I) under section 1923 of the So-
2 cial Security Act (42 U.S.C. 1396r-4)
3 for inpatient hospital services fur-
4 nished by disproportionate share hos-
5 pitals; and

6 (II) under section 1902(bb) of
7 such Act (42 U.S.C. 1396a(bb)) for
8 payments to federally-qualified health
9 centers and rural health clinics; and

10 (ii) other payments that impact the
11 capacity of the health care safety net to
12 care for uninsured individuals, recipients of
13 benefits under Medicaid, and other vulner-
14 able populations;

15 (L) review interstate payment, enrollment,
16 access, and quality concerns with respect to re-
17 cipients of benefits under Medicaid that are
18 served by interstate providers, and make rec-
19 ommendations on ways to improve interstate
20 health care delivery;

21 (M) review and make recommendations
22 with respect to financing and other issues im-
23 pacting Commonwealth and territorial programs
24 as compared to other States; and

1 (N) review and make recommendations on
 2 such other matters related to Medicaid as the
 3 Commission deems appropriate.

4 (2) ANALYSIS OF EFFECT OF EACH REC-
 5 OMMENDATION.—Each recommendation required
 6 under paragraph (1) shall include an analysis of the
 7 effect of the recommendation under Medicaid and, if
 8 applicable, Medicare and other Federal health pro-
 9 grams, on—

- 10 (A) Federal and State expenditures;
- 11 (B) provider payment rates;
- 12 (C) beneficiary out-of-pocket expenditures;
- 13 (D) beneficiary access to covered items and
- 14 services; and
- 15 (E) coverage of items and services.

16 (3) EXPERT ADVICE.—The Comptroller General
 17 of the United States and the Director of the Con-
 18 gressional Research Service shall advise the Commis-
 19 sion on the methodology to be used in identifying
 20 problems and analyzing potential solutions in ac-
 21 cordance with the duties of the Commission de-
 22 scribed in paragraph (1).

23 (d) GENERAL ADMINISTRATIVE PROVISIONS.—

1 (1) TERMS OF APPOINTMENT.—The members
2 of the Commission shall be appointed for the life of
3 the Commission.

4 (2) VACANCIES.—A vacancy on the Commission
5 shall be filled, not later than 30 days after the date
6 on which the Commission is given notice of the va-
7 cancy, in the same manner in which the original ap-
8 pointment was made.

9 (3) CHAIRPERSON AND VICE CHAIRPERSON.—
10 The Commission shall designate 2 of its members to
11 serve as the chairperson and vice chairperson of the
12 Commission.

13 (4) MEETINGS.—The Commission shall meet at
14 the call of the chairperson of the Commission.

15 (5) QUORUM.—Twelve members of the Commis-
16 sion shall constitute a quorum for purposes of vot-
17 ing, but a lesser number of members may meet and
18 hold hearings.

19 (6) COMPENSATION AND EXPENSES.—

20 (A) COMPENSATION.—Except as provided
21 in subparagraph (B), members of the Commis-
22 sion shall receive no additional pay, allowances,
23 or benefits by reason of their service on the
24 Commission.

1 (B) EXPENSES.—While away from their
 2 homes or regular places of business in the per-
 3 formance of services for the Commission, mem-
 4 bers of the Commission shall be allowed travel
 5 expenses, including per diem in lieu of subsist-
 6 ence, at rates authorized for employees of agen-
 7 cies under subchapter I of chapter 57 of title 5,
 8 United States Code.

9 (7) ETHICAL DISCLOSURE.—The Comptroller
 10 General of the United States shall establish and im-
 11 plement a system for public disclosure of financial
 12 and other potential conflicts of interest by members
 13 of the Commission.

14 (e) STAFF AND SUPPORT SERVICES.—

15 (1) EXECUTIVE DIRECTOR.—The chairperson
 16 and vice-chair shall appoint an executive director of
 17 the Commission.

18 (2) STAFF.—With the approval of the Commis-
 19 sion, the executive director may appoint such per-
 20 sonnel as the executive director determines to be ap-
 21 propriate.

22 (3) APPLICABILITY OF CIVIL SERVICE LAW;
 23 ETC.—The executive director and staff of the Com-
 24 mission shall be appointed without regard to the
 25 provisions of title 5, United States Code, governing

1 appointment in the competitive service, and shall be
2 paid without regard to chapter 51 and subchapter
3 III of chapter 53 of title 5, United States Code, re-
4 lating to classification of positions and General
5 Schedule pay rates, except that the rate of pay for
6 the executive director and other personnel may not
7 exceed the rate payable for level V of the Executive
8 Schedule under section 5316 of such title.

9 (4) EXPERTS AND CONSULTANTS.—With the
10 approval of the Commission, the executive director
11 may procure temporary and intermittent services
12 under section 3109(b) of title 5, United States Code.

13 (5) FEDERAL AGENCIES.—

14 (A) STAFF OF OTHER FEDERAL AGEN-
15 CIES.—Upon the request of the Commission,
16 the head of any Federal agency may detail,
17 without reimbursement, any of the personnel of
18 such agency to the Commission to assist in car-
19 rying out the duties of the Commission. Any
20 such detail shall not interrupt or otherwise af-
21 fect the civil service status or privileges of the
22 Federal employee.

23 (B) TECHNICAL ASSISTANCE.—Upon the
24 request of the Commission, the head of a Fed-
25 eral agency shall provide such technical assist-

1 ance to the Commission as the Commission de-
2 termines to be necessary to carry out its duties.

3 (6) OTHER RESOURCES.—The Commission
4 shall have reasonable access to materials, resources,
5 statistical data, and other information from the Li-
6 brary of Congress and agencies and elected rep-
7 resentatives of the executive and legislative branches
8 of the Federal Government. The chairperson or vice-
9 chair of the Commission shall make requests for
10 such access in writing when necessary.

11 (7) GAO SERVICES.—

12 (A) PHYSICAL FACILITIES.—The Adminis-
13 trator of General Services shall locate suitable
14 office space for the operation of the Commis-
15 sion. The facilities shall serve as the head-
16 quarters of the Commission and shall include
17 all necessary equipment and incidentals re-
18 quired for the proper functioning of the Com-
19 mission.

20 (B) ADMINISTRATIVE SUPPORT SERV-
21 ICES.—Upon the request of the Commission,
22 the Administrator of General Services shall pro-
23 vide to the Commission, on a reimbursable
24 basis, such administrative support services as
25 the Commission may request.

1 (f) POWERS OF THE COMMISSION.—

2 (1) HEARINGS.—The Commission shall conduct
3 public hearings or forums at the discretion of the
4 Commission, at any time and place the Commission
5 is able to secure facilities and witnesses, for the pur-
6 pose of carrying out the duties of the Commission.

7 (2) STUDIES OR INVESTIGATIONS.—Upon the
8 request of the Commission, the Comptroller General
9 of the United States, the Medicare Payment Advi-
10 sory Commission, or the Director of the Congres-
11 sional Research Service shall conduct such studies or
12 investigations as the Commission determines to be
13 necessary to carry out its duties.

14 (3) COST ESTIMATES.—The Director of the
15 Congressional Budget Office, the Chief Actuary of
16 the Centers for Medicare & Medicaid Services, the
17 Medicare Payment Advisory Commission, or all
18 three, shall provide to the Commission, upon the re-
19 quest of the Commission and without reimburse-
20 ment, such cost estimates as the Commission deter-
21 mines to be necessary to carry out its duties.

22 (4) GIFTS.—The Commission may accept, use,
23 and dispose of gifts or donations of services or prop-
24 erty.

1 (5) **MAILS.**—The Commission may use the
2 United States mails in the same manner and under
3 the same conditions as Federal agencies.

4 (g) **REPORT.**—

5 (1) **IN GENERAL.**—Not later than 14 months
6 after the date of enactment of this Act, the Commis-
7 sion shall prepare and submit a report that contains
8 a detailed statement of the recommendations, find-
9 ings, and conclusions of the Commission (as deter-
10 mined in accordance with paragraph (3)) to each of
11 the following:

12 (A) The President.

13 (B) The Committee on Finance of the Sen-
14 ate.

15 (C) The Committee on Energy and Com-
16 merce of the House of Representatives.

17 (D) The chief executive officer of each
18 State.

19 (2) **AVAILABILITY.**—The report shall be made
20 available to the public.

21 (3) **RECOMMENDATIONS, FINDINGS, AND CON-**
22 **CLUSIONS.**—The recommendations, findings, and
23 conclusions of the Commission shall be included in
24 the report under paragraph (1) only if—

1 (A) each member of the Commission has
2 had an opportunity to vote on such rec-
3 ommendation, finding, or conclusion;

4 (B) the results of the vote are printed in
5 the report, including a record of how each mem-
6 ber voted; and

7 (C) at least 14 of the 23 members of the
8 Commission voted in favor of such rec-
9 ommendation, finding, or conclusion.

10 (h) AUTHORIZATION OF APPROPRIATIONS.—There is
11 authorized to be appropriated to the Commission such
12 sums as may be necessary to carry out this section.

13 (i) DEFINITION OF STATE.—In this Act, the term
14 “State” has the meaning given such term for purposes of
15 title XIX of the Social Security Act (42 U.S.C. 1396 et
16 seq.).

17 (j) TERMINATION.—The Commission shall terminate
18 on the date that is 30 days after the date on which the
19 Commission submits the report under subsection (g) to the
20 President, Congress, and the chief executive officer of each
21 State.

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