

110TH CONGRESS
1ST SESSION

S. 1023

To amend title XXI of the Social Security Act to eliminate the remainder of funding shortfalls for the State Children's Health Insurance Program (SCHIP) for fiscal year 2007, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 29, 2007

Mr. MENENDEZ introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend title XXI of the Social Security Act to eliminate the remainder of funding shortfalls for the State Children's Health Insurance Program (SCHIP) for fiscal year 2007, 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. ELIMINATION OF REMAINDER OF SCHIP FUND-**
4 **ING SHORTFALLS FOR FISCAL YEAR 2007.**

5 (a) IN GENERAL.—Section 2104(h) of the Social Se-
6 curity Act (42 U.S.C. 1397dd(h)), as added by section
7 201(a) of the National Institutes of Health Reform Act
8 of 2006 (Public Law 109–482), is amended—

1 (1) in the heading for paragraph (2), by strik-
2 ing “REMAINDER OF REDUCTION” and inserting
3 “PART”; and

4 (2) by striking paragraph (4) and inserting the
5 following:

6 “(4) ADDITIONAL AMOUNTS TO ELIMINATE RE-
7 MAINDER OF FISCAL YEAR 2007 FUNDING SHORT-
8 FALLS.—

9 “(A) IN GENERAL.—The Secretary shall
10 allot to each remaining shortfall State described
11 in subparagraph (B) such amount as the Sec-
12 retary determines will eliminate the estimated
13 shortfall described in such subparagraph for the
14 State for fiscal year 2007.

15 “(B) REMAINING SHORTFALL STATE DE-
16 SCRIBED.—For purposes of subparagraph (A),
17 a remaining shortfall State is a State with a
18 State child health plan approved under this title
19 for which the Secretary estimates, on the basis
20 of the most recent data available to the Sec-
21 retary as of the date of the enactment of this
22 paragraph, that the projected federal expendi-
23 tures under such plan for the State for fiscal
24 year 2007 will exceed the sum of—

1 “(i) the amount of the State’s allot-
2 ments for each of fiscal years 2005 and
3 2006 that will not be expended by the end
4 of fiscal year 2006;

5 “(ii) the amount of the State’s allot-
6 ment for fiscal year 2007; and

7 “(iii) the amounts, if any, that are to
8 be redistributed to the State during fiscal
9 year 2007 in accordance with paragraphs
10 (1) and (2).

11 “(C) APPROPRIATION; ALLOTMENT AU-
12 THORITY.—For the purpose of providing addi-
13 tional allotments to remaining shortfall States
14 under this paragraph there is appropriated, out
15 of any funds in the Treasury not otherwise ap-
16 propriated, such sums as are necessary for fis-
17 cal year 2007. Amounts appropriated pursuant
18 to the preceding sentence are designated as an
19 emergency requirement pursuant to section 402
20 of H. Con. Res. 95 (109th Congress).”.

21 (b) CONFORMING AMENDMENTS.—Section 2104(h)
22 of such Act (42 U.S.C. 1397dd(h)) (as so added), is
23 amended—

24 (1) in paragraph (1)(B), by striking “subject to
25 paragraph (4)(B) and”;

1 (2) in paragraph (2)(B), by striking “subject to
2 paragraph (4)(B) and”;

3 (3) in paragraph (5)(A), by striking “and (3)”
4 and inserting “(3), and (4)”; and

5 (4) in paragraph (6)—

6 (A) in the first sentence—

7 (i) by inserting “or allotted” after
8 “redistributed”; and

9 (ii) by inserting “or allotments” after
10 “redistributions”; and

11 (B) by striking “and (3)” and inserting
12 “(3), and (4)”.

13 **SEC. 2. FUNDING PROVISIONS.**

14 (a) REQUIREMENT FOR USE OF TAMPER-RESISTANT
15 PRESCRIPTION PADS UNDER THE MEDICAID PRO-
16 GRAM.—

17 (1) IN GENERAL.—Section 1903(i) of the Social
18 Security Act (42 U.S.C. 1396b(i)) is amended—

19 (A) by striking “or” at the end of para-
20 graph (21);

21 (B) by striking the period at the end of
22 paragraph (22) and inserting “; or”; and

23 (C) by inserting after paragraph (22) the
24 following new paragraph:

1 “(23) with respect to amounts expended for
2 medical assistance for covered outpatient drugs (as
3 defined in section 1927(k)(2)) for which the pre-
4 scription was executed in written (and non-elec-
5 tronic) form unless the prescription was executed on
6 a tamper-resistant pad.”.

7 (2) EFFECTIVE DATE.—The amendments made
8 by paragraph (1) shall apply to prescriptions exe-
9 cuted after September 30, 2007.

10 (b) REPEAL OF THE LIMITED CONTINUOUS ENROLL-
11 MENT PROVISION FOR CERTAIN BENEFICIARIES UNDER
12 THE MEDICARE ADVANTAGE PROGRAM.—

13 (1) IN GENERAL.—Subparagraph (E) of section
14 1851(e)(2) of the Social Security Act (42 U.S.C.
15 1395w–21(e)(2)), as added by section 206(a) of divi-
16 sion B of the Tax Relief and Health Care Act of
17 2006 (Public Law 109–432), is repealed.

18 (2) CONFORMING AMENDMENT.—Section
19 1860D–1(b)(1)(B)(iii) of the Social Security Act (42
20 U.S.C. 1395w–101(b)(1)(B)(iii)), as amended by
21 206(b) of division B of the Tax Relief and Health
22 Care Act of 2006 (Public Law 109–432), is amend-
23 ed by striking “subparagraphs (B), (C), and (E)”
24 and inserting “subparagraphs (B) and (C)”.

1 (3) EFFECTIVE DATE.—The amendments made
2 by this subsection shall take effect on the day after
3 the date of enactment of this Act.

4 (c) DENIAL OF PAYMENTS FOR HOSPITAL SERVICES
5 OR AMBULATORY SURGICAL CENTER SERVICES THAT DI-
6 RECTLY HARM PATIENTS.—

7 (1) IN GENERAL.—Section 1862(a) of the So-
8 cial Security Act (42 U.S.C. 1395y(a)) is amend-
9 ed—

10 (A) by striking “or” at the end of para-
11 graph (21);

12 (B) by striking the period at the end of
13 paragraph (22) and inserting “; or”; and

14 (C) by inserting after paragraph (22) the
15 following new paragraph:

16 “(23) which are inpatient or outpatient hospital
17 services or facility services furnished in an ambula-
18 tory surgical facility if in the provision of such serv-
19 ices there occurred a type of event (such as a sur-
20 gical event, product or device event, patient protec-
21 tion event, care management event, environmental
22 event, or criminal event) which the Secretary has de-
23 termined, based on a consensus process involving cli-
24 nicians, quality experts, health care providers, and
25 patients, which should never occur.”.

1 (2) POTENTIAL APPLICATION OF NQF “NEVER
2 EVENTS” LISTS.—Nothing in section 1862(a)(23) of
3 the Social Security Act, as inserted by paragraph
4 (1), shall be construed as preventing the Secretary
5 of Health and Human Services from applying all (or
6 a subset of) the events that are listed and endorsed
7 as “serious reportable events” (also known as “never
8 events”) by the National Quality Forum as of No-
9 vember 16, 2006, (or such subsequent, revised list of
10 such events issued by such Forum as the Secretary
11 may specify) as events described in such section.

12 (3) CONFORMING AMENDMENTS.—

13 (A) Section 1834(j)(4)(C) of the Social Se-
14 curity Act (42 U.S.C. 1395m(j)(4)(C)) is
15 amended by striking “or 1862(a)(23)” after
16 “1862(a)(1)”.

17 (B) Section 1842(l) of such Act (42 U.S.C.
18 1395u(l)) is amended—

19 (i) in paragraph (1)(A)(iii)—

20 (I) by striking “or (II)” and in-
21 serting “, (II)”;

22 (II) by inserting “, or (III) pay-
23 ment under this title is denied under
24 section 1862(a)(23)” after “section
25 1154(a)(1)(B)”;

1 (ii) in paragraph (2), by inserting “or
2 1862(a)(23)” after “1862(a)(1)”.

3 (C) Section 1866(a)(1)(K) of such Act (42
4 U.S.C. 1395cc(a)(1)(K)) is amended by insert-
5 ing “or is denied under section 1862(a)(23)”
6 after “1154(a)(1)(B)”.

7 (4) REPORT ON DISCLOSURE.—Not later than
8 January 1, 2009, the Secretary of Health and
9 Human Services shall submit to Congress a report
10 on a process for public disclosure on never events de-
11 scribed in section 1862(a)(24) of the Social Security
12 Act, as inserted by paragraph (1)(C), which will en-
13 sure protection of patient privacy and will permit the
14 use of the disclosed information for a root cause
15 analysis to inform the public and the medical com-
16 munity about safety issues involved.

17 (5) EFFECTIVE DATE.—The amendments made
18 by this subsection shall take effect on the date of the
19 enactment of this Act and shall apply to payments
20 for—

21 (A) inpatient hospital services for dis-
22 charges occurring on or after October 1, 2007;
23 and

1 (B) outpatient hospital services and facility
2 services in an ambulatory surgical center fur-
3 nished on or after January 1, 2008.

○