

110TH CONGRESS
2D SESSION

S. 2845

To amend title XIX of the Social Security Act to require asset verification through access to information held by financial institutions, to reduce fraud and abuse in State Medicaid programs, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 10, 2008

Mr. MARTINEZ 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 require asset verification through access to information held by financial institutions, to reduce fraud and abuse in State Medicaid programs, 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 Fraud Re-
5 duction Act of 2008”.

1 **SEC. 2. ASSET VERIFICATION THROUGH ACCESS TO INFOR-**
 2 **MATION HELD BY FINANCIAL INSTITUTIONS.**

3 (a) ADDITION OF AUTHORITY.—Title XIX of the So-
 4 cial Security Act is amended by inserting after section
 5 1939 the following new section:

6 “ASSET VERIFICATION THROUGH ACCESS TO
 7 INFORMATION HELD BY FINANCIAL INSTITUTIONS
 8 “SEC. 1940. (a) IMPLEMENTATION.—

9 “(1) IN GENERAL.—Subject to the provisions of
 10 this section, each State shall implement an asset
 11 verification program described in subsection (b), for
 12 purposes of determining or redetermining the eligi-
 13 bility of an individual for medical assistance under
 14 the State plan under this title.

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

17 “(A) submit not later than January 1,
 18 2009, a State plan amendment under this title
 19 that describes how the State intends to imple-
 20 ment the asset verification program; and

21 “(B) provide for implementation of such
 22 program for eligibility determinations and rede-
 23 terminations made on or after July 1, 2009.

24 “(b) ASSET VERIFICATION PROGRAM.—

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

4 “(A) requires each applicant for, or recipi-
5 ent of, medical assistance under the State plan
6 under this title to provide authorization by such
7 applicant or recipient (and any other person
8 whose income or resources are material to the
9 determination of the eligibility of the applicant
10 or recipient for such assistance) for the State to
11 obtain (subject to the cost reimbursement re-
12 quirements of section 1115(a) of the Right to
13 Financial Privacy Act) from any financial insti-
14 tution (within the meaning of section 1101(1)
15 of such Act) any financial record (within the
16 meaning of section 1101(2) of such Act) held
17 by the institution with respect to the applicant
18 or recipient (and such other person, as applica-
19 ble), to permit the State to obtain such record
20 whenever the State determines the record is
21 needed in connection with a determination with
22 respect to such eligibility for (or the amount or
23 extent of) such medical assistance; and

24 “(B) uses the authorization provided under
25 subparagraph (A) to verify the financial re-

1 sources of such applicant or recipient (and such
 2 other person, as applicable), in order to deter-
 3 mine or redetermine the eligibility of such appli-
 4 cant or recipient for medical assistance under
 5 the State plan.

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

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

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

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

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

24 “(d) TREATMENT OF RIGHT TO FINANCIAL PRIVACY
 25 ACT REQUIREMENTS.—

1 “(1) An authorization obtained by the State
2 under subsection (b)(1) shall be considered to meet
3 the requirements of the Right to Financial Privacy
4 Act for purposes of section 1103(a) of such Act, and
5 need not be furnished to the financial institution,
6 notwithstanding section 1104(a) of such Act.

7 “(2) The certification requirements of section
8 1103(b) of the Right to Financial Privacy Act shall
9 not apply to requests by the State pursuant to an
10 authorization provided under subsection (b)(1).

11 “(3) A request by the State pursuant to an au-
12 thorization provided under subsection (b)(1) is
13 deemed to meet the requirements of section
14 1104(a)(3) of the Right to Financial Privacy Act
15 and of section 1102 of such Act, relating to a rea-
16 sonable description of financial records.

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

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

1 the applicant or recipient (or such other person, as appli-
2 cable) for the State to obtain from any financial institu-
3 tion any financial record, the State shall, on that basis,
4 determine that the applicant or recipient is ineligible for
5 medical assistance.

6 “(g) USE OF CONTRACTOR.—For purposes of imple-
7 menting an asset verification program under this section,
8 a State may select and enter into a contract with a public
9 or private entity meeting such criteria and qualifications
10 as the State determines appropriate.

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

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

20 “(j) PAYMENT ADJUSTMENT.—

21 “(1) IN GENERAL.—In the case of a State that
22 submits the State plan amendment required under
23 subsection (a)(2)(A) by January 1, 2009, in addition
24 to any other amounts payable to the State under
25 this title (and notwithstanding the limitations of

1 subsections (f) and (g) of section 1108), there shall
 2 be paid to the State under section 1903(a) for the
 3 calendar quarter beginning on such date, the
 4 amount of \$1,000,000.

5 “(2) RECOVERY OF PAYMENTS FOR PROGRAMS
 6 NOT IMPLEMENTED BY JULY 1, 2009.—In the case of
 7 a State that received an additional payment under
 8 paragraph (1) and fails to implement the asset
 9 verification program by July 1, 2009, the amount
 10 paid to the State under such paragraph shall be sub-
 11 ject to disallowance and recovery.

12 “(k) TREATMENT OF PROGRAM EXPENSES.—Not-
 13 withstanding any other provision of law, reasonable ex-
 14 penses of States in carrying out the program under this
 15 section shall be treated, for purposes of section 1903(a),
 16 in the same manner as State expenditures specified in
 17 paragraph (7) of such section.”.

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

20 (1) in paragraph (69) by striking “and” at the
 21 end;

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

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

1 “(71) provide that the State will implement an
2 asset verification program under section 1940.”.

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

6 (1) in paragraph (22) by striking “or” at the
7 end;

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

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

12 “(24) if a State fails to implement an asset
13 verification program in accordance with the require-
14 ments of section 1940, with respect to amounts ex-
15 pended by such State for medical assistance for indi-
16 viduals subject to asset verification under such sec-
17 tion, unless—

18 “(A) the State demonstrates to the Sec-
19 retary’s satisfaction that the State made a good
20 faith effort to comply;

21 “(B) not later than 60 days after the date
22 of a finding of that the State is in noncompli-
23 ance, the State submits to the Secretary (and
24 the Secretary approves) a corrective action plan
25 to remedy such noncompliance; and

1 “(C) not later than 12 months after the
 2 date of such submission (and approval), the
 3 State fulfills the terms of such corrective action
 4 plan.”.

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

7 **SEC. 3. FUNDS FOR STATES TO REDUCE MEDICAID FRAUD.**

8 Section 1903 of the Social Security Act (42 U.S.C.
 9 1396b) is amended by adding at the end the following new
 10 subsection:

11 “(aa) PAYMENTS TO REDUCE FRAUD.—

12 “(1) PAYMENTS.—In addition to the payments
 13 otherwise provided under subsection (a), subject to
 14 paragraph (2), the Secretary shall provide for pay-
 15 ments to eligible States under such subsection to es-
 16 tablish and carry out practices to reduce fraud
 17 under the State Medicaid program under this title.

18 “(2) LIMITATION.—The total amount of pay-
 19 ments under this subsection shall not exceed
 20 \$250,000,000, and shall be available to the Sec-
 21 retary for payments under this subsection during fis-
 22 cal years 2009 and 2010 and during subsequent fis-
 23 cal years in the case described in paragraph (6)(B).
 24 This subsection constitutes budget authority in ad-
 25 vance of appropriations Acts and represents the obli-

1 gation of the Secretary to provide for the payment
2 of amounts provided under this subsection.

3 “(3) ELIGIBILITY.—The Secretary shall provide
4 for a payment to a State under paragraph (1) if
5 such State—

6 “(A) demonstrates to the satisfaction of
7 the Secretary a need for assistance to reduce
8 fraud under the State Medicaid program;

9 “(B) provides an effective proposal to re-
10 duce such fraud; and

11 “(C) satisfies any other criteria specified
12 by the Secretary.

13 “(4) FORM AND MANNER OF PAYMENT.—Pay-
14 ment to a State under this subsection shall be made
15 only upon the submission to the Secretary of such
16 application in such form and in such manner as the
17 Secretary shall specify. Payment to a State under
18 this subsection shall be made in the same manner as
19 other payments under subsection (a). There is no re-
20 quirement for State matching funds to receive pay-
21 ments under this subsection.

22 “(5) NOTIFICATION.—The Secretary shall pro-
23 vide for States to be notified of the opportunity to
24 receive payments under this subsection as soon as

feasible after the date of the enactment of this subsection, but not later than April 1, 2009.

“(6) AVAILABILITY OF PAYMENTS TO STATES.—

“(A) IN GENERAL.—Payment to a State under this subsection shall be available to the State during the period provided in the approved proposal of the State provided under paragraph (3).

“(B) RECOVERY AND REUSE OF MISSPENT FUNDS.—Amounts paid to a State under this subsection that are expended in a manner inconsistent with the approved proposal of the State under paragraph (3) are subject to disallowance and recovery. Insofar as such amounts are so disallowed and recovered such amounts shall be made available to other States under this subsection.

“(7) REPORTS.—Each State receiving payment under this subsection shall submit to the Secretary a reports on the impact of the practices carried out with such payment on the reduction of fraud under the State Medicaid program, as specified by the Secretary.”.

1 **SEC. 4. FUNDS TO REDUCE MEDICAID FRAUD AND ABUSE.**

2 (a) IN GENERAL.—For purposes of reducing fraud
3 and abuse in the Medicaid program under title XIX of
4 the Social Security Act, there is appropriated to the Sec-
5 retary of Health and Human Services, out of any money
6 in the Treasury not otherwise appropriated, \$25,000,000,
7 for fiscal year 2009 and each subsequent fiscal year, to
8 be equally divided between the Office of the Inspector Gen-
9 eral of the Department of Health and Human Services
10 and the Center for Medicaid and State Operations of the
11 Centers for Medicare & Medicaid Services. Amounts ap-
12 propriated under this section shall remain available for ex-
13 penditure until expended and shall be in addition to any
14 other amounts appropriated or made available to the Of-
15 fice of Inspector General or the Center for Medicaid and
16 State Operations for activities of such Office or Center,
17 respectively, with respect to the Medicaid program.

18 (b) ANNUAL REPORT.—Not later than September 30
19 of 2009 and of each subsequent year, the Secretary of
20 Health and Human Services shall submit to the Com-
21 mittee on Energy and Commerce of the House of Rep-
22 resentatives and the Committee on Finance of the Senate
23 a report on the activities (and the results of such activi-
24 ties) funded under subsection (a) to reduce fraud and
25 abuse in the Medicaid program under title XIX of the So-
26 cial Security Act during the previous 12-month period, in-

1 cluding the amount of funds appropriated under such sub-
 2 section (a) for each such activity and an estimate of the
 3 savings to the Medicaid program resulting from each such
 4 activity.

5 **SEC. 5. ELECTRONIC VERIFICATION OF PROPERTY TRANS-**
 6 **FERS.**

7 (a) REPORT.—Not later than July 1, 2009, the Sec-
 8 retary of Health and Human Services shall submit to the
 9 Committee on Energy and Commerce of the House of
 10 Representatives and the Committee on Finance of the
 11 Senate a report that—

12 (1) examines the feasibility of implementing a
 13 system under which transfers of assets, particularly
 14 real property, of applicants and recipients of medical
 15 assistance under State plans under title XIX of the
 16 Social Security Act are verified electronically for
 17 purposes of carrying out section 1917(c) of such Act
 18 (42 U.S.C. 1396p(c)); and

19 (2) estimates the potential savings to the Med-
 20 icaid program under such title from requiring States
 21 to implement such a system.

22 (b) AUTHORIZED IMPLEMENTATION.—If the Sec-
 23 retary of Health and Human Services determines, based
 24 on the report under subsection (a), that it would be fea-
 25 sible and cost-effective to implement a system described

1 in paragraph (1) of such subsection, the Secretary is au-
 2 thorized to require States in their State plans under title
 3 XIX of the Social Security Act to implement such a sys-
 4 tem. For purposes of meeting such requirement, a State
 5 may select and enter into a contract with a public or pri-
 6 vate entity.

7 **SEC. 6. DISALLOWANCE OF EXPENSES ASSOCIATED WITH**
 8 **CERTAIN CONSULTANTS.**

9 (a) WITHHOLDING OF FEDERAL MATCHING PAY-
 10 MENTS FOR NONCOMPLIANT STATES.—Section 1903(i) of
 11 the Social Security Act (42 U.S.C. 1396b(i)), as amended
 12 by section 2(c) of this Act, is amended—

13 (1) in paragraph (23) by striking “or” at the
 14 end;

15 (2) in paragraph (24) by striking the period at
 16 the end and inserting “; or”; and

17 (3) by adding after paragraph (24) the fol-
 18 lowing new paragraph:

19 “(25) with respect to amounts expended by
 20 such State—

21 “(A) other than for compensation of a
 22 State employee or payment to an entity that is
 23 part of a State government, for the purpose of
 24 increasing the amount of payments made to the
 25 State under this title; and

1 “(B) for some or all (as determined by the
 2 Secretary) of any additional amounts of Federal
 3 payments to the State that the Secretary deter-
 4 mines are attributable to expenditures described
 5 in subparagraph (A).”.

6 (b) EFFECTIVE DATE.—The amendments made by
 7 subsection (a) shall apply with respect to expenditures de-
 8 scribed in subparagraph (A) of section 1903(i)(25) of the
 9 Social Security Act, as added by subsection (a), made on
 10 or after October 1, 2008, regardless of whether such ex-
 11 penditures were pursuant to contracts or arrangements
 12 entered into before, on, or after such date.

13 **SEC. 7. STATE INTERNET-BASED TRANSPARENCY PRO-**
 14 **GRAMS UNDER MEDICAID.**

15 Title XIX of the Social Security Act, as amended by
 16 section 2(a) is further amended by inserting after section
 17 1940 the following new section:

18 **“SEC. 1941. STATE INTERNET-BASED TRANSPARENCY PRO-**
 19 **GRAMS.**

20 “(a) IN GENERAL.—Not later than July 1, 2009,
 21 subject to subsection (h), each of the 50 States and the
 22 District of Columbia shall submit a State plan amendment
 23 described in subsection (b) to create an Internet-based
 24 transparency program for purposes of improving public

1 disclosure of information relating to payments made under
2 the State plan under this title.

3 “(b) ELIGIBLE STATE PLAN AMENDMENT.—A State
4 plan amendment described in this subsection is a State
5 plan amendment that provides for the following:

6 “(1) PROGRAM DESCRIBED.—A program under
7 which the State discloses through a publicly acces-
8 sible Internet site the following information:

9 “(A) The name of each hospital, nursing
10 facility, outpatient surgery center, intermediate
11 care facility for the mentally retarded, institu-
12 tion for mental diseases, that receives payment
13 under this title for the provision of health care
14 items and services, and, at the option of the
15 State, such other health care provider (such as
16 a physician) that receives payment under this
17 title for the provision of health care items and
18 services.

19 “(B) The total amount of payments made
20 under this title to each entity described in sub-
21 paragraph (A).

22 “(C) The amount of dollars paid per pa-
23 tient to each such entity.

1 “(2) IMPLEMENTATION DATE.—The implemen-
2 tation of such a program described in paragraph (1)
3 by January 1, 2010.

4 “(c) USE OF CONTRACTOR.—For purposes of imple-
5 menting an Internet-based transparency program, a State
6 or the District of Columbia may select and enter into a
7 contract with a public or private entity meeting such cri-
8 teria and qualifications as the State determines appro-
9 priate.

10 “(d) BONUS PAYMENT FOR TIMELY SUBMISSION OF
11 STATE PLAN AMENDMENTS.—

12 “(1) IN GENERAL.—In the case of a State that
13 submits the State plan amendment under subsection
14 (a) by July 1, 2009, in addition to any other
15 amounts payable to the State under this title there
16 shall be paid to the State under section 1903(a) for
17 the calendar quarter beginning on such date the
18 amount of \$1,000,000.

19 “(2) RECOVERY OF PAYMENTS FOR PROGRAMS
20 NOT IMPLEMENTED BY JANUARY 1, 2010.—In the
21 case of a State that received an additional payment
22 under paragraph (1) and that fails to implement an
23 Internet-based transparency program by January 1,
24 2010, the amount paid to the State under such

1 paragraph shall be subject to disallowance and re-
2 covery.

3 “(e) INCENTIVES FOR IMPLEMENTATION.—If the
4 Secretary determines that one of the 50 State or the Dis-
5 trict of Columbia has not implemented an Internet-based
6 transparency program for any day after January 1, 2010,
7 the Secretary shall reduce the amount paid to the State
8 or the District of Columbia, respectively, under section
9 1903(a) by \$25,000 for each such day. Such reduction
10 shall be made unless—

11 “(1) the State or the District of Columbia, re-
12 spectively, demonstrates to the Secretary’s satisfac-
13 tion that the State made a good faith effort to have
14 such a program implemented;

15 “(2) not later than 60 days after the date of a
16 finding that the State or the District of Columbia,
17 respectively, has not implemented such a program,
18 the State or the District of Columbia, respectively,
19 submits to the Secretary (and the Secretary ap-
20 proves) a corrective action plan to implement such
21 a program; and

22 “(3) not later than 12 months after the date of
23 such submission (and approval), the State or the
24 District of Columbia, respectively, fulfills the terms
25 of such corrective action plan.

1 “(f) TECHNICAL ASSISTANCE.—The Secretary shall
2 provide States with technical assistance to aid in imple-
3 mentation of an Internet-based transparency program.

4 “(g) REPORTS.—A State implementing an Internet-
5 based transparency program under this section shall fur-
6 nish to the Secretary such reports concerning the pro-
7 gram, at such times, in such format, and containing such
8 information as the Secretary determines appropriate.

9 “(h) TREATMENT OF COMMONWEALTHS AND TERRI-
10 TORIES.—A commonwealth or territory may, but is not re-
11 quired to, submit a State plan amendment described in
12 subsection (b) to create an Internet-based transparency
13 program under this section. Payment under subsection (e)
14 shall not be counted against payment limitations imposed
15 under subsection (f) and (g) of section 1108.

16 “(i) INTERNET-BASED TRANSPARENCY PROGRAM
17 DEFINED.—For purposes of this section, the term ‘Inter-
18 net-based transparency program’ means the program de-
19 scribed in subsection (b)(1).”.

20 **SEC. 8. PERMITTING LIMITATIONS, RESTRICTIONS, AND**
21 **SUSPENSIONS OF MEDICAID ELIGIBILITY IN**
22 **CASES OF FRAUD.**

23 (a) IN GENERAL.—Section 1128B(a) of the Social
24 Security Act (42 U.S.C. 1320a–7b(a)) is amended by add-
25 ing at the end the following sentence: “In addition, in any

1 case where an individual who is otherwise eligible for med-
2 ical assistance under a State Medicaid program under title
3 XIX is convicted of an offense of fraud or abuse, relating
4 to such program, under State law or is the subject of a
5 Federal or State civil court judgment or administrative
6 agency decision based on fraud or abuse relating to such
7 program, the Director of the State Medicaid program may
8 at the option of the Director (notwithstanding any other
9 provision of such program) limit, restrict, or suspend the
10 eligibility of that individual, with respect to such program,
11 for such period (not exceeding 10 years) as the Director
12 deems appropriate and the Administrator of the Centers
13 of Medicare & Medicaid Services may at the option of the
14 Administrator (notwithstanding any other provision of
15 such program) deny payment under section 1903(a) for
16 any amounts expended as medical assistance with respect
17 to such individual for such period (not exceeding 10 years)
18 as the Administrator deems appropriate; but the imposi-
19 tion of a limitation, restriction, suspension, or denial with
20 respect to the eligibility of any individual under this sen-
21 tence shall not affect the eligibility of any other person
22 for assistance under the program, regardless of the rela-
23 tionship between that individual and such other person.”.

24 (b) EFFECTIVE DATE.—The amendment made by
25 subsection (a) shall apply to convictions, judgments, and

1 decisions occurring on or after the date of the enactment
2 of this Act.

3 **SEC. 9. EXTENDED PERIOD TO RECOVER MEDICAID OVER-**
4 **PAYMENTS IN CASES OF FRAUD AND ABUSE.**

5 (a) IN GENERAL.—Section 1903(d)(2)(C) of the So-
6 cial Security Act (42 U.S.C. 1396b(d)(2)(C)) is amended
7 by adding at the end the following new sentence: “Not-
8 withstanding the previous provisions of this subparagraph,
9 the Secretary may extend the period of recovery and pay-
10 ment adjustment from 60 days to a period of 1 year in
11 the case of an overpayment that was the result of fraud
12 or abuse.”.

13 (b) EFFECTIVE DATE.—The amendments made by
14 subsection (a) shall apply to overpayments discovered on
15 or after the date of the enactment of this Act.

○