111TH CONGRESS
1ST SESSION

S. 1060

To comprehensively prevent, treat, and decrease overweight and obesity in our Nation's populations.

IN THE SENATE OF THE UNITED STATES

MAY 18, 2009

Mr. BINGAMAN introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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A BILL

To comprehensively prevent, treat, and decrease overweight and obesity in our Nation's populations.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Obesity Prevention, Treatment, and Research Act of 2009''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) In 2001, the United States Surgeon General released the Call to Action to Prevent and De-

crease Overweight and Obesity to bring attention to the public health problems related to obesity.

(2) Since the Surgeon General's call to action, the problems of obesity and overweight have become epidemic, occurring in all ages, ethnicities and races, and individuals in every State.

(3) The United States now has the highest prevalence of obesity among the developed nations, according to 2006 data by the Organisation for Economic Co-operation and Development. The prevalence of obesity in the United States (34 percent) is more than twice the average for other developed nations (13 percent). The closest nation in prevalence of obesity is the United Kingdom (24 percent) which is over 25 percent less than the United States.

(4) The National Health and Nutrition Examination Survey in 2006 estimated that 32 percent of children and adolescents aged 2 to 19 and an alarming 66 percent of adults are overweight or obese.

(5) More than 30 percent of young people in grades 9 through 12 do not regularly engage in vigorous intensity physical activity, while almost 40 percent of adults are sedentary and 70 percent report getting less than 20 minutes of regular physical activity per day.

(6) The Institute of Medicine, in their 2005 publication ''Preventing Childhood Obesity: Health in the Balance'', reported that over the last 3 decades, the rate of childhood obesity has tripled for children aged 6 to 11 years, and doubled for children aged 2 to 5 years old and in adolescents aged 12 to 19 years old. In 2004, approximately 9,000,000 children over 6 years of age were obese. Only 2 percent of children eat a healthy diet consistent with Federal nutrition guidelines.

(7) For children born in 2000, it is estimated the lifetime risk of being diagnosed with type 2 diabetes is 40 percent for females and 30 percent for males.

(8) Overweight and obesity disproportionately affect minority populations and women. According to the 2006 Behavioral Risk Factor Surveillance System of the Centers for the Disease Control and Prevention, 61 percent of adults in the United States are overweight or obese.

(9) The Centers for the Disease Control and Prevention estimates the annual expenditures related to overweight and obesity in the United States to be $117,000,000,000 in 2001 and rising rapidly.

(10) The Centers for the Disease Control and Prevention estimates that the increase in the number of overweight and obese Americans between 1987 and 2001 resulted in a 27 percent increase in per capita health costs, and that as many as 112,000 deaths per year are associated with obesity.

(11) Being overweight or obese increases the risk of chronic diseases including diabetes, heart disease, stroke, certain cancers, arthritis, and other health problems.

(12) According to the National Institute of Diabetes and Digestive and Kidney Diseases, individuals who are obese have a 50 to 100 percent increased risk of premature death.

(13) Healthy People 2010 goals identify overweight and obesity as 1 of the Nation's leading health problems and include objectives for increasing the proportion of adults who are at a healthy weight, reducing the proportion of adults who are obese, and reducing the proportion of children and adolescents who are overweight or obese.

(14) Another Healthy People 2010 goal is to eliminate health disparities among different segments of the population. Obesity is a health problem

that disproportionally impacts medically underserved populations.

(15) Food and beverage advertisers are estimated to spend $10,000,000 to $12,000,000,000 per year to target children and youth.

(16) The United States spends less than 2 percent of its annual health expenditures on prevention.

(17) Employer health promotion investments net a return of $3 for every $1 invested.

(18) High-energy dense and low-nutrient dense foods represent 30 percent of American's total calorie intake. Fast food company menus are twice the energy density of recommended healthful diets.

(19) Research suggests that individuals eat too much high-energy dense foods without feeling full because the brain's pathways that regulate hunger and influence normal food intake are not triggered by these foods.

(20) Packaging, product placement, and high-energy dense food content manipulation contribute to the overweight and obesity epidemic in the United States.

(21) Such marketing and content manipulation techniques have been used by other industries to encourage consumption at the expense of health. To

help individuals make healthy choices, education and information must be available with clear, consistent, and accurate labeling.

TITLE I—OBESITY TREATMENT, PREVENTION, AND REDUCTION

SEC. 101. UNITED STATES COUNCIL ON OVERWEIGHT-OBESITY PREVENTION.

Part P of title III of the Public Health Service Act (42 U.S.C. 280g et seq.) is amended by—

(1) redesignating section 399R (as inserted by section 2 of Public Law 110–373) as section 399S;

(2) redesignating section 399R (as inserted by section 3 of Public Law 110–374) as section 399T; and

(3) adding at the end the following:

"SEC. 399U. UNITED STATES COUNCIL ON OVERWEIGHT-OBESITY PREVENTION.

''(a) ESTABLISHMENT.—The Secretary shall convene a United States Council on Overweight-Obesity Prevention (referred to in this section as 'USCO–OP').

''(b) MEMBERSHIP.—

''(1) IN GENERAL.—USCO–OP shall be composed of 20 members, which shall consist of—

''(A) the Secretary;

"(B) the Secretary (or his or her designee) of—

"(i) the Department of Agriculture;

"(ii) the Department of Education;

"(iii) the Department of Housing and Urban Development;

"(iv) the Department of the Interior

"(v) the Federal Trade Commission;

"(vi) the Department of Transportation; and

"(vii) any other Federal agency that the Secretary of Health and Human Services determines appropriate;

"(C) the Chairman (or his or her designee) of the Federal Communications Commission;

"(D) the Director (or his or her designee) of the Centers for Disease Control and Prevention, the National Institutes of Health, and the Agency for Healthcare Research and Quality;

"(E) the Administrator of the Centers for Medicare and Medicaid Services (or his or her designee);

"(F) the Commissioner of Food and Drugs (or his or her designee); and

''(G) a minimum of 5 representatives, appointed by the Secretary, of expert organizations such as public health associations, key healthcare provider groups, planning and development organizations, education associations, advocacy groups, relevant industries, State and local leadership, and other entities as determined appropriate by the Secretary.

''(2) APPOINTMENTS.—The Secretary shall accept nominations for representation on USCO–OP through public comment before the initial appointment of members of USCO–OP under paragraph (1)(G), and on a regular basis for open positions thereafter, but not less than every 2 years.

''(3) CHAIRPERSON.—The chairperson of USCO–OP shall be—

''(A) an individual appointed by the President; and

''(B) until the date that an individual is appointed under subparagraph (A), the Secretary.

''(c) MEETINGS.—

''(1) IN GENERAL.—USCO–OP shall meet—

''(A) not later than 180 days after the date of enactment of the Obesity Prevention, Treatment, and Research Act of 2009; and

''(B) at the call of the chairperson thereafter, but in no case less often than 2 times per year.

''(2) MEETINGS OF FEDERAL AGENCIES.—The representatives of the Federal agencies on USCO–OP shall meet on a regular basis, as determined by the Secretary, to develop strategies to coordinate budgets and discuss other issues that are not otherwise permitted to be discussed in a public forum. The purpose of such meetings shall be to allow more rapid interagency strategic planning and intervention implementation to address the overweight and obesity epidemic.

''(d) DUTIES OF USCO–OP.—USCO–OP shall—

''(1) develop strategies to comprehensively prevent, treat, and reduce overweight and obesity;

''(2) coordinate interagency cooperation and action related to the prevention, treatment, and reduction of overweight and obesity in the United States;

''(3) identify best practices in communities to address overweight and obesity;

''(4) work with appropriate entities to evaluate the effectiveness of obesity and overweight interventions;

''(5) update the National Institutes of Health 1998 'Clinical Guidelines on the Identification, Evaluation, and Treatment of Overweight and Obesity in Adults: The Evidence Report' and include sections on childhood obesity in such updated report;

''(6) conduct ongoing surveillance and monitoring using tools such as the National Health and Nutrition Examination Survey and the Behavioral Risk Factor Surveillance System and assure adequate and consistent funding to support data collection and analysis to inform policy;

''(7) make recommendations to coordinate budgets, grant and pilot programs, policies, and programs across Federal agencies to cohesively address overweight and obesity, including with respect to the grant programs carried out under sections 306(n), 399V, and 1904(a)(1)(H);

''(8) make recommendations to update and improve the daily physical activity requirements for students under the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) and include recommendations about physical activities that

families can do together, and involving parents in these activities;

''(9) make recommendations about coverage for obesity-related services and for an early and periodic screening, diagnostic, and treatment services program under the State Children's Health Insurance Program established under title XXI of the Social Security Act;

''(10) make recommendations for obesity-related information, including height, weight, and body mass index, to be included in electronic health records for the purpose of ongoing surveillance and monitoring; and

''(11) provide guidelines for childhood obesity health care related treatment under the early and periodic screening, diagnostic, and treatment services program under the Medicaid program established under title XIX of the Social Security Act and otherwise described in section 2103(c)(5) of such Act.

''(e) REPORT.—Not later than 18 months after the date of enactment of the Obesity Prevention, Treatment, and Research Act of 2009, and on an annual basis thereafter, USCO–OP shall submit to the President and to the relevant committees of Congress, a report that—

''(1) summarizes the activities and efforts of USCO–OP under this section to coordinate interagency prevention, treatment, and reduction of obesity and overweight, including a detailed strategic plan with recommendations for each Federal agency;

''(2) evaluates the effectiveness of these coordinated interventions and conducts interim assessments and reporting of health outcomes, achievement of milestones, and implementation of strategic plan goals starting with the second report, and yearly thereafter; and

''(3) makes recommendations for the following year's strategic plan based on data and findings from the previous year.

''(f) TECHNICAL ASSISTANCE.—The Department of Health and Human Services may provide technical assistance to USCO–OP to carry out the activities under this section.

''(g) PERMANENCE OF COMMITTEE.—Section 14 of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to USCO–OP.''.

SEC. 102. GRANTS AND DEMONSTRATION PROGRAMS TO PROMOTE POSITIVE HEALTH BEHAVIORS IN POPULATIONS DISPROPORTIONATELY AFFECTED BY OBESITY AND OVERWEIGHT.

Part P of title III of the Public Health Service Act (42 U.S.C. 280g et seq.), as amended by section 101, is amended by adding at the end the following:

"SEC. 399V. GRANTS AND DEMONSTRATION PROGRAMS TO PROMOTE POSITIVE HEALTH BEHAVIORS IN POPULATIONS DISPROPORTIONATELY AFFECTED BY OBESITY AND OVERWEIGHT.

''(a) ELIGIBLE ENTITY.—For purposes of this section, the term 'eligible entity' means—

''(1) a city, county, Indian tribe, tribal organization, territory, or State;

''(2) a local, tribal, or State educational agency;

''(3) a Federal medical facility, including a federally qualified health center (as defined in section 1861(aa)(4) of the Social Security Act), an Indian Health Service hospital or clinic, any health facility or program operated by or pursuant to a contractor grant from the Indian Health Service, an Indian Health Service entity, an urban Indian center, an Indian tribal clinic, a health care for the homeless center, a rural health center, migrant health center, and any other Federal medical facility;

''(4) any entity meeting the criteria for medical home under section 204 of the Tax Relief and Health Care Act of 2006 (Public Law 109–432);

''(5) a nonprofit organization (such as an academic health center or community health center);

''(6) a health department;

''(7) any licensed or certified health provider;

''(8) an accredited university or college;

''(9) a community-based organization;

''(10) a local city planning agency; and

''(11) any other entity determined appropriate by the Secretary.

''(b) APPLICATION.—An eligible entity that desires a grant under this section shall submit an application at such time, in such manner, and containing such information as the Secretary may require, including a plan for the use of funds that may be awarded and an evaluation of any training that will be provided under such grant.

''(c) GRANT DEMONSTRATION AND PILOT PROGRAM.—

''(1) IN GENERAL.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention, and in consultation with the United States Council on Overweight-Obesity Prevention under section 399U, shall establish and

evaluate a grant demonstration and pilot program for entities to—

"(A) prevent, treat, or otherwise reduce overweight and obesity;

"(B) increase the number of children and adults who safely walk or bike to school or work;

"(C) increase the availability and affordability of fresh fruits and vegetables in the community;

"(D) expand safe and accessible walking paths and recreational facilities to encourage physical activity, and other interventions to create healthy communities;

"(E) create advertising, social marketing, and public health campaigns promoting healthier food choices, increased physical activity, and healthier lifestyles targeted to individuals and to families;

"(F) promote increased rates and duration of breast-feeding; and

"(G) increase worksite and employer promotion of and involvement in community initiatives that prevent, treat, or otherwise reduce overweight and obesity.

''(2) SPECIAL PRIORITY.—Special priority will be given to grant proposals that target communities or populations disproportionately affected by overweight or obesity, including Native Americans, other minorities, and women.

''(d) GRANTS TO PROMOTE POSITIVE HEALTH BEHAVIORS IN POPULATIONS DISPROPORTIONATELY AFFECTED BY OBESITY AND OVERWEIGHT.—

''(1) IN GENERAL.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention, may award grants to eligible entities to promote health behaviors for women and children in target populations, especially racial and ethnic minority populations in medically underserved communities.

''(2) USE OF FUNDS.—An award under this section shall be used to carry out any of the following:

''(A) To educate, promote, prevent, treat and determine best practices in overweight and obese populations.

''(B) To address behavioral risk factors including sedentary lifestyle, poor nutrition, being overweight or obese, and use of tobacco, alcohol or other substances that increase the risk of

morbidity and mortality. Special priority will be given to grant applications that—

"(i) propose interventions that address embedded levels of influence on behavior, including the individual, family, peers, community and society; and

"(ii) utilize techniques that promote community involvement in the design and implementation of interventions including community diagnosis and community-based participatory research.

"(C) To develop and implement interventions to promote a balance of energy consumption and expenditure, to attain healthier weight, prevent obesity, and reduce morbidity and mortality associated with overweight and obesity.

"(D)(i) To train primary care physicians and other licensed or certified health professionals on how to identify, treat, and prevent obesity or eating disorders and aid individuals who are overweight, obese, or who suffer from eating disorders.

"(ii) To use evidence-based findings or recommendations that pertain to the prevention and treatment of obesity, being overweight, and

eating disorders to conduct educational conferences, including Internet-based courses and teleconferences, on—

''(I) how to treat or prevent obesity, being overweight, and eating disorders;

''(II) the link between obesity, being overweight, eating disorders and related serious and chronic medical conditions;

''(III) how to discuss varied strategies with patients from at-risk and diverse populations to promote positive behavior change and healthy lifestyles to avoid obesity, being overweight, and eating disorders;

''(IV) how to identify overweight, obese, individuals with eating disorders, and those who are at risk for obesity and being overweight or suffer from eating disorders and, therefore, at risk for related serious and chronic medical conditions; and

''(V) how to conduct a comprehensive assessment of individual and familial health risk factors and evaluate the effectiveness of the training provided by such

entity in increasing knowledge and changing attitudes and behaviors of trainees.

''(iii) In awarding a grant to carry out an activity under this subparagraph, preference shall be given to an entity described in subsection (a)(4).

''(e) REPORTING TO CONGRESS.—Not later than 3 years after the date of enactment of this section, the Director of the Centers for Disease Control and Prevention shall submit to the Secretary and Congress a report concerning the result of the activities conducted through the grants awarded under this section.

''(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, $50,000,000 for fiscal year 2010, and such sums as may be necessary for each of fiscal years 2011 through 2013.''.

SEC. 103. NATIONAL CENTER FOR HEALTH STATISTICS.

Section 306 of the Public Health Service Act (42 U.S.C. 242k) is amended—

(1) in subsection (m)(4)(B), by striking ''subsection (n)'' each place it appears and inserting ''subsection (o)'';

(2) by redesignating subsection (n) as subsection (o); and

(3) by inserting after subsection (m) the following:

''(n)(1) The Secretary, acting through the Center, may provide for the—

''(A) collection of data for determining the fitness levels and energy expenditure of adults, children, and youth; and

''(B) analysis of data collected as part of the National Health and Nutrition Examination Survey and other data sources.

''(2) In carrying out paragraph (1), the Secretary, acting through the Center, may make grants to States, public entities, and nonprofit entities.

''(3) The Secretary, acting through the Center, may provide technical assistance, standards, and methodologies to grantees supported by this subsection in order to maximize the data quality and comparability with other studies.''.

SEC. 104. HEALTH DISPARITIES REPORT.

Not later than 18 months after the date of enactment of this Act, and annually thereafter, the Director of the Agency for Healthcare Research and Quality shall review all research that results from the activities carried out under this Act (and the amendments made by this Act) and determine if particular information may be important

to the report on health disparities required by section 903(c)(3) of the Public Health Service Act (42 U.S.C. 299a–1(c)(3)).

SEC. 105. PREVENTIVE HEALTH SERVICES BLOCK GRANT.

Section 1904(a)(1) of the Public Health Service Act (42 U.S.C. 300w–3(a)(1)) is amended by adding at the end the following:

''(H) Activities and community education programs designed to address and prevent overweight, obesity, and eating disorders through effective programs to promote healthy eating, and exercise habits and behaviors.''.

SEC. 106. REPORT ON OBESITY AND EATING DISORDERS RESEARCH.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary of Health and Human Services shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives a report on research conducted on causes and health implications (including mental health implications) of being overweight, obesity, and eating disorders.

(b) CONTENT.—The report described in subsection (a) shall contain—

(1) descriptions on the status of relevant, current, ongoing research being conducted in the Department of Health and Human Services including research at the National Institutes of Health, the Centers for Disease Control and Prevention, the Agency for Healthcare Research and Quality, the Health Resources and Services Administration, and other offices and agencies;

(2) information about what these studies have shown regarding the causes, prevention, and treatment of, being overweight, obesity, and eating disorders; and

(3) recommendations on further research that is needed, including research among diverse populations, the plan of the Department of Health and Human Services for conducting such research, and how current knowledge can be disseminated.

TITLE II—FOOD AND BEVERAGE LABELING FOR HEALTHY CHOICES

SEC. 201. FOOD AND BEVERAGE LABELING FOR HEALTHY CHOICES.

(a) USCO–OP.—In this section, the term ''USCO–OP'' means the United States Council on Overweight-Obe-

sity Prevention under section 399U of the Public Health Service Act (as added by section 101).

(b) REFORM OF FOOD AND BEVERAGE LABELING.—The Secretary of Health and Human Services and the Secretary of Agriculture, in consultation with the USCO–OP, shall, through regulation or other appropriate action, update and reform Federal oversight of food and beverage labeling. Such reform shall include improving the transparency of such labeling with regard to nutritional and caloric value of food and beverages.

TITLE III—HEALTHY CHOICES FOOD AND BEVERAGE PROGRAMS

SEC. 301. FRESH FRUIT AND VEGETABLE PROGRAM.

Section 19(i) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769a(i)) is amended—

(1) by redesignating paragraphs (3) through (7) as paragraphs (4) through (8); and

(2) by inserting after paragraph (2) the following:

''(3) ADDITIONAL MANDATORY FUNDING.—

''(A) IN GENERAL.—Out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary of Agriculture to carry out and ex-

pand the program under this section, to remain available until expended—

"(i) on October 1, 2009, $80,000,000;

"(ii) on July 1, 2010, $130,000,000;

"(iii) on July 1, 2011, $202,000,000;

"(iv) on July 1, 2012, $300,000,000; and

"(v) on July 1, 2013, and on each July 1 thereafter, the amount made available for the previous fiscal year, as adjusted under subparagraph (B).

"(B) ADJUSTMENT.—On July 1, 2013, and on each July 1 thereafter the amount made available under subparagraph (A)(v) shall be calculated by adjusting the amount made available for the previous fiscal year to reflect changes in the Consumer Price Index of the Bureau of Labor Statistics for fresh fruits and vegetables, with the adjustment—

"(i) rounded down to the nearest dollar increment; and

"(ii) based on the unrounded amounts for the preceding 12-month period.

"(C) ALLOCATION.—Funds made available under this paragraph shall be allocated among

the States and the District of Columbia in the same manner as funds made available under paragraph (1).''.

TITLE IV—AMENDMENTS TO THE SOCIAL SECURITY ACT

SEC. 401. COVERAGE OF EVIDENCE-BASED PREVENTIVE SERVICES UNDER MEDICARE, MEDICAID, AND SCHIP.

(a) MEDICARE.—Section 1861(ddd) of the Social Security Act, as added by section 101 of the Medicare Improvements for Patients and Providers Act of 2008, is amended—

(1) in paragraph (2), by striking ''paragraph (1)'' and inserting ''paragraphs (1) and (3)''; and

(2) by adding at the end the following new paragraph:

''(3) The term 'additional preventive services' includes any evidence-based preventive services which the Secretary has determined are reasonable and necessary, including, as so determined, smoking cessation and prevention services, diet and exercise counseling, and healthy weight and obesity counseling.''.

(b) STATE OPTION TO PROVIDE MEDICAL ASSISTANCE FOR EVIDENCE-BASED PREVENTIVE SERVICES.—

(1) IN GENERAL.—Section 1905 of the Social Security Act (42 U.S.C. 1396d) is amended—

(A) in subsection (a)—

(i) in paragraph (27), by striking ''and'' at the end;

(ii) by redesignating paragraph (28) as paragraph (29); and

(iii) by inserting after paragraph (27) the following:

''(28) evidence-based preventive services described in subsection (y); and''; and

(B) by adding at the end the following:

''(y) For purposes of subsection (a)(28), evidence-based preventive services described in this subsection are any preventive services which the Secretary has determined are reasonable and necessary through the process for making national coverage determinations (as defined in section 1869(f)(1)(B)) under title XVIII, including, as so determined, smoking cessation and prevention services, diet and exercise counseling, and healthy weight and obesity counseling.''.

(2) CONFORMING AMENDMENT.—Section 1902(a)(10)(C)(iv) of such Act is amended by inserting '', and (28)'' after ''(24)''.

(c) STATE OPTION TO PROVIDE CHILD HEALTH ASSISTANCE FOR EVIDENCE-BASED PREVENTIVE SERVICES.—Section 2110(a) of the Social Security Act (42 U.S.C. 1397jj(a)) is amended—

(1) by redesignating paragraph (28) as paragraph (29); and

(2) by inserting after paragraph (27) the following:

''(28) Evidence-based preventive services described in section 1905(y).''.

SEC. 402. COVERAGE OF MEDICAL NUTRITION COUNSELING UNDER MEDICARE, MEDICAID, AND SCHIP.

(a) MEDICARE COVERAGE OF MEDICAL NUTRITION THERAPY SERVICES FOR PEOPLE WITH PRE-DIABETES.—Section 1861(s)(2)(V) of the Social Security Act (42 U.S.C. 1395x(s)(2)(V)) is amended by inserting after ''beneficiary with diabetes'' the following '', pre-diabetes or its risk factors (including hypertension, dyslipidemia, obesity, or overweight),''.

(b) STATE OPTION TO PROVIDE MEDICAL ASSISTANCE FOR MEDICAL THERAPY SERVICES.—

(1) IN GENERAL.—Section 1905(a) of the Social Security Act (42 U.S.C. 1396d), as amended by section 401(b), is amended—

(A) in paragraph (28), by striking ''and'' at the end;

(B) by redesignating paragraph (29) as paragraph (30); and

(C) by inserting after paragraph (28) the following:

''(29) medical nutrition therapy services (as defined in section 1861(vv)(1)) for individuals with pre-diabetes or obesity, or who are overweight (as defined by the Secretary); and''.

(2) CONFORMING AMENDMENT.—Section 1902(a)(10)(C)(iv) of such Act, as amended by section 401(b)(2), is amended by striking ''and (28)'' and inserting ''(28), and (29)''.

(c) STATE OPTION TO PROVIDE CHILD HEALTH ASSISTANCE FOR MEDICAL NUTRITION THERAPY SERVICES.—Section 2110(a) of the Social Security Act (42 U.S.C. 1397jj(a)), as amended by section 401(c), is amended—

(1) by redesignating paragraph (29) as paragraph (30); and

(2) by inserting after paragraph (28) the following:

''(29) Medical nutrition therapy services (as defined in section 1861(vv)(1)) for individuals with

pre-diabetes or obesity, or who are overweight (as defined by the Secretary).''.

SEC. 403. AUTHORIZING EXPANSION OF MEDICARE COVERAGE OF MEDICAL NUTRITION THERAPY SERVICES.

(a) AUTHORIZING EXPANDED ELIGIBLE POPULATION.—Section 1861(s)(2)(V) of the Social Security Act (42 U.S.C. 1395x(s)(2)(V)), as amended by section 402, is amended—

(1) by redesignating clauses (i) through (iii) as subclauses (I) through (III), respectively, and indenting each such clause an additional 2 ems;

(2) by striking ''in the case of a beneficiary with diabetes, pre-diabetes or its risk factors (including hypertension, dyslipidemia, obesity, overweight), or a renal disease who—'' and inserting ''in the case of a beneficiary—

''(i) with diabetes, pre-diabetes or its risk factors (including hypertension, dyslipidemia, obesity, overweight), or a renal disease who—'';

(3) by adding ''or'' at the end of subclause (III) of clause (i), as so redesignated; and

(4) by adding at the end the following new clause:

''(ii) who is not described in clause (i) but who has another disease, condition, or disorder for which the Secretary has made a national coverage determination (as defined in section 1869(f)(1)(B)) for the coverage of such services;''.

(b) COVERAGE OF SERVICES FURNISHED BY PHYSICIANS.—Section 1861(vv)(1) of the Social Security Act (42 U.S.C. 1395x(vv)(1)) is amended by inserting ''or which are furnished by a physician'' before the period at the end.

(c) NATIONAL COVERAGE DETERMINATION PROCESS.—In making a national coverage determination described in section 1861(s)(2)(V)(ii) of the Social Security Act, as added by subsection (a)(4), the Secretary of Health and Human Services, acting through the Administrator of the Centers for Medicare & Medicaid Services, shall—

(1) consult with dietetic and nutrition professional organizations in determining appropriate protocols for coverage of medical nutrition therapy services for individuals with different diseases, conditions, and disorders; and

(2) consider the degree to which medical nutrition therapy interventions prevent or help prevent

the onset or progression of more serious diseases, conditions, or disorders.

SEC. 404. CLARIFICATION OF EPSDT INCLUSION OF PREVENTION, SCREENING, AND TREATMENT SERVICES FOR OBESITY AND OVERWEIGHT; SCHIP COVERAGE.

(a) IN GENERAL.—Section 1905(r)(5) of the Social Security Act (42 U.S.C. 1396d(r)(5)) is amended by inserting ", including weight and BMI measurement and monitoring, as well as appropriate treatment services (including but not limited to) medical nutrition therapy services (as defined in section 1861(vv)(1)), physical therapy or exercise training, and behavioral health counseling, based on recommendations of the United States Council on Overweight-Obesity Prevention under section 399U of the Public Health Service Act and such other expert recommendations and studies as determined by the Secretary'' before the period.

(b) SCHIP.—

(1) REQUIRED COVERAGE.—Section 2103 (42 U.S.C. 1397cc) is amended—

(A) in subsection (a), in the matter preceding paragraph (1), by striking ''and (7)'' and inserting ''(7), and (9)''; and

(B) in subsection (c)—

(i) by redesignating paragraph (7) as paragraph (9); and

(ii) by inserting after paragraph (6), the following:

''(7) PREVENTION, SCREENING, AND TREATMENT SERVICES FOR OBESITY AND OVERWEIGHT.—The child health assistance provided to a targeted low-income child shall include coverage of weight and BMI measurement and monitoring, as well as appropriate treatment services (including but not limited to) medical nutrition therapy services (as defined in section 1861(vv)(1)), physical therapy or exercise training, and behavioral health counseling, based on recommendations of the United States Council on Overweight-Obesity Prevention under section 399U of the Public Health Service Act and such other expert recommendations and studies as determined by the Secretary.''.

(2) CONFORMING AMENDMENT.—Section 2102(a)(7)(B) (42 U.S.C. 1397bb(c)(2)) is amended by striking ''section 2103(c)(5)'' and inserting ''paragraphs (5) and (7) of section 2103(c)''.

SEC. 405. INCLUSION OF PREVENTIVE SERVICES IN QUALITY MATERNAL AND CHILD HEALTH SERVICES.

Section 501(b) of the Social Security Act (42 U.S.C. 701(b)) is amended by adding at the end the following new paragraph:

''(5) The term 'quality maternal and child health services' includes the following:

''(A) Evidence-based preventive services described in section 1905(y).

''(B) Medical nutrition counseling for individuals with pre-diabetes or obesity, or who are overweight (as defined by the Secretary).

''(C) Weight and BMI measurement and monitoring, as well as appropriate treatment services (including but not limited to) medical nutrition therapy services (as defined in section 1861(vv)(1)), physical therapy or exercise training, and behavioral health counseling, based on recommendations of the United States Council on Overweight-Obesity Prevention under section 399U of the Public Health Service Act and such other expert recommendations and studies as determined by the Secretary.''.

SEC. 406. CHILDHOOD OBESITY INFORMATION, GUIDELINES, AND REPORTING.

The Secretary of Health and Human Services, acting through the Administrator of the Centers for Medicare and Medicaid Services, shall—

(1) not later than 18 months after the date of the enactment of this Act, provide the State agencies responsible for administering the State plan approved under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) and the State child health plan approved under title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.) with relevant data, information, and recommendations, as the Administrator deems appropriate, regarding the risks associated with childhood obesity and the importance of identifying at-risk children for treatment;

(2) not later than 18 months after the date of the enactment of this Act, issue guidelines, or amend existing guidelines, concerning the development of pediatric obesity prevention programs for at-risk populations through the use of managed care techniques, integrated service delivery models, disease management programs, and other methods that the Administrator deems appropriate;

(3) provide for the annual reporting by such State agencies of the number of children enrolled in a State Medicaid or child health plan that are—

(A) screened for overweight or obesity; and

(B) identified as at-risk for overweight or obesity and have been provided with appropriate medical follow-up services or counseling; and

(4) prepare and submit an annual report to Congress on the percentage of children enrolled in a State Medicaid or child health plan that are screened for overweight or obesity and, for those identified as at-risk, receive appropriate medical follow-up services or counseling.

SEC. 407. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), this title, and the amendments made under this title, take effect on October 1, 2010.

(b) EXTENSION OF EFFECTIVE DATE FOR STATE LAW AMENDMENT.—In the case of a State plan under title XIX or XXI of the Social Security Act (42 U.S.C. 1396 et seq., 1397aa et seq.) which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by this sec-

tion, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of the session is considered to be a separate regular session of the State legislature.

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