

111TH CONGRESS
1ST SESSION

S. 326

To amend title XXI of the Social Security Act to reauthorize the State Children’s Health Insurance Program through fiscal year 2013, and for other purposes

IN THE SENATE OF THE UNITED STATES

JANUARY 26, 2009

Mr. MCCONNELL (for himself, Mr. KYL, Mr. VITTER, Mr. CHAMBLISS, Mr. BUNNING, Mr. GREGG, Mr. COBURN, Mr. BURR, Mr. ISAKSON, Mr. GRAHAM, Mr. INHOFE, Mr. CORNYN, Mr. BROWNBACK, Mr. COCHRAN, Mr. ENSIGN, Mr. THUNE, Mr. DEMINT, Mr. BENNETT, and Mr. BARRASSO) 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 reauthorize the State Children’s Health Insurance Program through fiscal year 2013, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Kids First Act”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Reauthorization through fiscal year 2013.
- Sec. 3. Allotments for the 50 States and the District of Columbia based on expenditures and numbers of low-income children.
- Sec. 4. Limitations on matching rates for populations other than low-income children or pregnant women covered through a section 1115 waiver.
- Sec. 5. Prohibition on new section 1115 waivers for coverage of adults other than pregnant women.
- Sec. 6. Standardization of determination of family income for targeted low-income children under title XXI and optional targeted low-income children under title XIX.
- Sec. 7. Grants for outreach and enrollment.
- Sec. 8. Improved State option for offering premium assistance for coverage of children through private plans under SCHIP and Medicaid.
- Sec. 9. Treatment of unborn children.
- Sec. 10. 50 percent matching rate for all Medicaid administrative costs.
- Sec. 11. Reduction in payments for Medicaid administrative costs to prevent duplication of such payments under TANF.
- Sec. 12. Elimination of waiver of certain Medicaid provider tax provisions.
- Sec. 13. Elimination of special payments for certain public hospitals.
- Sec. 14. Effective date; coordination of funding for fiscal year 2009.

1 SEC. 2. REAUTHORIZATION THROUGH FISCAL YEAR 2013.

2 (a) INCREASE IN NATIONAL ALLOTMENT.—Section
 3 2104 of the Social Security Act (42 U.S.C. 1397dd(a))
 4 is amended—

5 (1) in subsection (a)—

6 (A) by striking “and” at the end of para-
 7 graph (10);

8 (B) in paragraph (11)—

9 (i) by striking “each of fiscal years
 10 2008 and 2009” and inserting “fiscal year
 11 2008”; and

12 (ii) by striking the period at the end
 13 and inserting a semicolon; and

14 (C) by adding at the end the following new
 15 paragraphs:

1 “(12) for fiscal year 2009, \$7,780,000,000;
2 “(13) for fiscal year 2010, \$8,044,000,000;
3 “(14) for fiscal year 2011, \$8,568,000,000;
4 “(15) for fiscal year 2012, \$9,032,000,000; and
5 “(16) for fiscal year 2013, \$9,505,000,000.”;

6 and

7 (2) in subsection (c)(4)(B), by striking “2009”
8 and inserting “2008, \$62,000,000 for fiscal year
9 2009, \$64,000,000 for fiscal year 2010,
10 \$68,000,000 for fiscal year 2011, \$72,000,000 for
11 fiscal year 2012, and \$75,000,000 for fiscal year
12 2013”.

13 (b) REPEAL OF LIMITATION ON AVAILABILITY OF
14 FUNDING FOR FISCAL YEARS 2008 AND 2009.—Section
15 201 of the Medicare, Medicaid, and SCHIP Extension Act
16 of 2007 (Public Law 110–173) is amended—

17 (1) in subsection (a), by striking paragraph (2)
18 and redesignating paragraphs (3) and (4), as para-
19 graphs (2) and (3) respectively; and

20 (2) in subsection (b), by striking paragraph (2).

1 **SEC. 3. ALLOTMENTS FOR THE 50 STATES AND THE DIS-**
 2 **TRICT OF COLUMBIA BASED ON EXPENDI-**
 3 **TURES AND NUMBERS OF LOW-INCOME CHIL-**
 4 **DREN.**

5 (a) IN GENERAL.—Section 2104 of the Social Secu-
 6 rity Act (42 U.S.C. 1397dd) is amended by adding at the
 7 end the following new subsection:

8 “(m) DETERMINATION OF ALLOTMENTS FOR THE 50
 9 STATES AND THE DISTRICT OF COLUMBIA FOR FISCAL
 10 YEARS 2009 THROUGH 2013.—

11 “(1) IN GENERAL.—Notwithstanding the pre-
 12 ceding provisions of this subsection and subject to
 13 paragraph (3), the Secretary shall allot to each sub-
 14 section (b) State for each of fiscal years 2009
 15 through 2013, the amount determined for the fiscal
 16 year that is equal to the product of—

17 “(A) the amount available for allotment
 18 under subsection (a) for the fiscal year, reduced
 19 by the amount of allotments made under sub-
 20 section (c) (determined without regard to para-
 21 graph (4) thereof) for the fiscal year; and

22 “(B) the sum of the State allotment fac-
 23 tors determined under paragraph (2) with re-
 24 spect to the State and weighted in accordance
 25 with subparagraph (B) of that paragraph for
 26 the fiscal year.

1 “(2) STATE ALLOTMENT FACTORS.—

2 “(A) IN GENERAL.—For purposes of para-
3 graph (1)(B), the State allotment factors are
4 the following:

5 “(i) The ratio of the projected expend-
6 itures for targeted low-income children
7 under the State child health plan and preg-
8 nant women under a waiver of such plan
9 for the fiscal year to the sum of such pro-
10 jected expenditures for all States for the
11 fiscal year, multiplied by the applicable
12 percentage weight assigned under subpara-
13 graph (B).

14 “(ii) The ratio of the number of low-
15 income children who have not attained age
16 19 with no health insurance coverage in
17 the State, as determined by the Secretary
18 on the basis of the arithmetic average of
19 the number of such children for the 3 most
20 recent Annual Social and Economic Sup-
21 plements to the Current Population Survey
22 of the Bureau of the Census available be-
23 fore the beginning of the calendar year be-
24 fore such fiscal year begins, to the sum of
25 the number of such children determined

1 for all States for such fiscal year, multi-
2 plied by the applicable percentage weight
3 assigned under subparagraph (B).

4 “(iii) The ratio of the projected ex-
5 penditures for targeted low-income children
6 under the State child health plan and preg-
7 nant women under a waiver of such plan
8 for the preceding fiscal year to the sum of
9 such projected expenditures for all States
10 for such preceding fiscal year, multiplied
11 by the applicable percentage weight as-
12 signed under subparagraph (B).

13 “(iv) The ratio of the actual expendi-
14 tures for targeted low-income children
15 under the State child health plan and preg-
16 nant women under a waiver of such plan
17 for the second preceding fiscal year to the
18 sum of such actual expenditures for all
19 States for such second preceding fiscal
20 year, multiplied by the applicable percent-
21 age weight assigned under subparagraph
22 (B).

23 “(B) ASSIGNMENT OF WEIGHTS.—For
24 each of fiscal years 2009 through 2013, the fol-
25 lowing percentage weights shall be applied to

1 the ratios determined under subparagraph (A)
 2 for each such fiscal year:

3 “(i) 40 percent for the ratio deter-
 4 mined under subparagraph (A)(i).

5 “(ii) 5 percent for the ratio deter-
 6 mined under subparagraph (A)(ii).

7 “(iii) 50 percent for the ratio deter-
 8 mined under subparagraph (A)(iii).

9 “(iv) 5 percent for the ratio deter-
 10 mined under subparagraph (A)(iv).

11 “(C) DETERMINATION OF PROJECTED AND
 12 ACTUAL EXPENDITURES.—For purposes of sub-
 13 paragraph (A):

14 “(i) PROJECTED EXPENDITURES.—
 15 The projected expenditures described in
 16 clauses (i) and (iii) of such subparagraph
 17 with respect to a fiscal year shall be deter-
 18 mined on the basis of amounts reported by
 19 States to the Secretary on the May 15th
 20 submission of Form CMS–37 and Form
 21 CMS–21B submitted not later than June
 22 30th of the fiscal year preceding such year.

23 “(ii) ACTUAL EXPENDITURES.—The
 24 actual expenditures described in clause (iv)
 25 of such subparagraph with respect to a

1 second preceding fiscal year shall be deter-
 2 mined on the basis of amounts reported by
 3 States to the Secretary on Form CMS-64
 4 and Form CMS-21 submitted not later
 5 than November 30 of the preceding fiscal
 6 year.”.

7 (b) 2-YEAR AVAILABILITY OF ALLOTMENTS; EX-
 8 PENDITURES COUNTED AGAINST OLDEST ALLOT-
 9 MENTS.—Section 2104(e) of the Social Security Act (42
 10 U.S.C. 1397dd(e)) is amended to read as follows:

11 “(e) AVAILABILITY OF AMOUNTS ALLOTTED.—

12 “(1) IN GENERAL.—Except as provided in the
 13 succeeding paragraphs of this subsection, amounts
 14 allotted to a State pursuant to this section—

15 “(A) for each of fiscal years 1998 through
 16 2008, shall remain available for expenditure by
 17 the State through the end of the second suc-
 18 ceeding fiscal year; and

19 “(B) for each of fiscal years 2009 through
 20 2013, shall remain available for expenditure by
 21 the State only through the end of the fiscal
 22 year succeeding the fiscal year for which such
 23 amounts are allotted.

24 “(2) ELIMINATION OF REDISTRIBUTION OF AL-
 25 LOTMENTS NOT EXPENDED WITHIN 3 YEARS.—Not-

1 withstanding subsection (f), amounts allotted to a
2 State under this section for fiscal years beginning
3 with fiscal year 2009 that remain unexpended as of
4 the end of the fiscal year succeeding the fiscal year
5 for which the amounts are allotted shall not be re-
6 distributed to other States and shall revert to the
7 Treasury on October 1 of the third succeeding fiscal
8 year.

9 “(3) RULE FOR COUNTING EXPENDITURES
10 AGAINST FISCAL YEAR ALLOTMENTS.—Expenditures
11 under the State child health plan made on or after
12 April 1, 2009, shall be counted against allotments
13 for the earliest fiscal year for which funds are avail-
14 able for expenditure under this subsection.”.

15 (c) CONFORMING AMENDMENTS.—

16 (1) Section 2104(b)(1) of the Social Security
17 Act (42 U.S.C. 1397dd(b)(1)) is amended by strik-
18 ing “subsection (d)” and inserting “the succeeding
19 subsections of this section”.

20 (2) Section 2104(f) of such Act (42 U.S.C.
21 1397dd(f)) is amended by striking “The” and in-
22 serting “Subject to subsection (e)(2), the”.

1 **SEC. 4. LIMITATIONS ON MATCHING RATES FOR POPU-**
2 **LATIONS OTHER THAN LOW-INCOME CHIL-**
3 **DREN OR PREGNANT WOMEN COVERED**
4 **THROUGH A SECTION 1115 WAIVER.**

5 (a) **LIMITATION ON PAYMENTS.**—Section 2105(c) of
6 the Social Security Act (42 U.S.C. 1397ee(c)) is amended
7 by adding at the end the following new paragraph:

8 “(8) **LIMITATIONS ON MATCHING RATE FOR**
9 **POPULATIONS OTHER THAN TARGETED LOW-INCOME**
10 **CHILDREN OR PREGNANT WOMEN COVERED**
11 **THROUGH A SECTION 1115 WAIVER.**—For child
12 health assistance or health benefits coverage fur-
13 nished in any fiscal year beginning with fiscal year
14 2010:

15 “(A) **FMAP APPLIED TO PAYMENTS FOR**
16 **COVERAGE OF CHILDREN OR PREGNANT WOMEN**
17 **COVERED THROUGH A SECTION 1115 WAIVER**
18 **ENROLLED IN THE STATE CHILD HEALTH PLAN**
19 **ON THE DATE OF ENACTMENT OF THE KIDS**
20 **FIRST ACT AND WHOSE GROSS FAMILY INCOME**
21 **IS DETERMINED TO EXCEED THE INCOME ELI-**
22 **GIBILITY LEVEL SPECIFIED FOR A TARGETED**
23 **LOW-INCOME CHILD.**—Notwithstanding sub-
24 sections (b)(1)(B) and (d) of section 2110, in
25 the case of any individual described in sub-
26 section (c) of section 105 of the Kids First Act

1 who the State elects to continue to provide child
2 health assistance for under the State child
3 health plan in accordance with the requirements
4 of such subsection, the Federal medical assist-
5 ance percentage (as determined under section
6 1905(b) without regard to clause (4) of such
7 section) shall be substituted for the enhanced
8 FMAP under subsection (a)(1) with respect to
9 such assistance.

10 “(B) FMAP APPLIED TO PAYMENTS ONLY
11 FOR NONPREGNANT CHILDLESS ADULTS AND
12 PARENTS AND CARETAKER RELATIVES EN-
13 ROLLED UNDER A SECTION 1115 WAIVER ON
14 THE DATE OF ENACTMENT OF THE KIDS FIRST
15 ACT.—The Federal medical assistance percent-
16 age (as determined under section 1905(b) with-
17 out regard to clause (4) of such section) shall
18 be substituted for the enhanced FMAP under
19 subsection (a)(1) with respect to payments for
20 child health assistance or health benefits cov-
21 erage provided under the State child health
22 plan for any of the following:

23 “(i) PARENTS OR CARETAKER REL-
24 ATIVES ENROLLED UNDER A WAIVER ON
25 THE DATE OF ENACTMENT OF THE KIDS

1 FIRST ACT.—A nonpregnant parent or a
2 nonpregnant caretaker relative of a tar-
3 geted low-income child who is enrolled in
4 the State child health plan under a waiver,
5 experimental, pilot, or demonstration
6 project on the date of enactment of the
7 Kids First Act and whose family income
8 does not exceed the income eligibility ap-
9 plied under such waiver with respect to
10 that population on such date.

11 “(ii) NONPREGNANT CHILDLess
12 ADULTS ENROLLED UNDER A WAIVER ON
13 SUCH DATE.—A nonpregnant childless
14 adult enrolled in the State child health
15 plan under a waiver, experimental, pilot, or
16 demonstration project described in section
17 6102(c)(3) of the Deficit Reduction Act of
18 2005 (42 U.S.C. 1397gg note) on the date
19 of enactment of the Kids First Act and
20 whose family income does not exceed the
21 income eligibility applied under such waiv-
22 er with respect to that population on such
23 date.

24 “(iii) NO REPLACEMENT ENROLL-
25 EES.—Nothing in clauses (i) or (ii) shall

1 be construed as authorizing a State to pro-
2 vide child health assistance or health bene-
3 fits coverage under a waiver described in
4 either such clause to a nonpregnant parent
5 or a nonpregnant caretaker relative of a
6 targeted low-income child, or a nonpreg-
7 nant childless adult, who is not enrolled
8 under the waiver on the date of enactment
9 of the Kids First Act.

10 “(C) NO FEDERAL PAYMENT FOR ANY
11 NEW NONPREGNANT ADULT ENROLLEES OR
12 FOR SUCH ENROLLEES WHO NO LONGER SAT-
13 ISFY INCOME ELIGIBILITY REQUIREMENTS.—
14 Payment shall not be made under this section
15 for child health assistance or other health bene-
16 fits coverage provided under the State child
17 health plan or under a waiver under section
18 1115 for any of the following:

19 “(i) PARENTS OR CARETAKER REL-
20 ATIVES UNDER A SECTION 1115 WAIVER
21 APPROVED AFTER THE DATE OF ENACT-
22 MENT OF THE KIDS FIRST ACT.—A non-
23 pregnant parent or a nonpregnant care-
24 taker relative of a targeted low-income
25 child under a waiver, experimental, pilot,

1 or demonstration project that is approved
2 on or after the date of enactment of the
3 Kids First Act.

4 “(ii) PARENTS, CARETAKER REL-
5 ATIVES, AND NONPREGNANT CHILDLESS
6 ADULTS WHOSE FAMILY INCOME EXCEEDS
7 THE INCOME ELIGIBILITY LEVEL SPECI-
8 FIED UNDER A SECTION 1115 WAIVER AP-
9 PROVED PRIOR TO THE KIDS FIRST ACT.—
10 Any nonpregnant parent or a nonpregnant
11 caretaker relative of a targeted low-income
12 child whose family income exceeds the in-
13 come eligibility level referred to in subpara-
14 graph (B)(i), and any nonpregnant child-
15 less adult whose family income exceeds the
16 income eligibility level referred to in sub-
17 paragraph (B)(ii).

18 “(iii) NONPREGNANT CHILDLESS
19 ADULTS, PARENTS, OR CARETAKER REL-
20 ATIVES NOT ENROLLED UNDER A SECTION
21 1115 WAIVER ON THE DATE OF ENACT-
22 MENT OF THE KIDS FIRST ACT.—Any non-
23 pregnant parent or a nonpregnant care-
24 taker relative of a targeted low-income
25 child who is not enrolled in the State child

1 health plan under a section 1115 waiver,
2 experimental, pilot, or demonstration
3 project referred to in subparagraph (B)(i)
4 on the date of enactment of the Kids First
5 Act, and any nonpregnant childless adult
6 who is not enrolled in the State child
7 health plan under a section 1115 waiver,
8 experimental, pilot, or demonstration
9 project referred to in subparagraph
10 (B)(ii)(I) on such date.

11 “(D) DEFINITION OF CARETAKER REL-
12 ATIVE.—In this subparagraph, the term ‘care-
13 taker relative’ has the meaning given that term
14 for purposes of carrying out section 1931.

15 “(E) RULE OF CONSTRUCTION.—Nothing
16 in this paragraph shall be construed as imply-
17 ing that payments for coverage of populations
18 for which the Federal medical assistance per-
19 centage (as so determined) is to be substituted
20 for the enhanced FMAP under subsection
21 (a)(1) in accordance with this paragraph are to
22 be made from funds other than the allotments
23 determined for a State under section 2104.”.

24 (b) CONFORMING AMENDMENT.—Section 2105(a)(1)
25 of the Social Security Act (42 U.S.C. 1397dd(a)(1)) is

1 “(3) The Secretary may not approve, extend,
2 renew, or amend a waiver, experimental, pilot, or
3 demonstration project with respect to a State after
4 the date of enactment of the Kids First Act that
5 would waive or modify the requirements of section
6 2105(c)(8).”.

7 (b) CLARIFICATION OF AUTHORITY FOR COVERAGE
8 OF PREGNANT WOMEN.—Section 2106 of the Social Secu-
9 rity Act (42 U.S.C. 1397ff) is amended by adding at the
10 end the following new subsection:

11 “(f) NO AUTHORITY TO COVER PREGNANT WOMEN
12 THROUGH STATE PLAN.—For purposes of this title, a
13 State may provide assistance to a pregnant woman under
14 the State child health plan only—

15 “(1) by virtue of a waiver under section 1115;
16 or

17 “(2) through the application of sections 457.10,
18 457.350(b)(2), 457.622(c)(5), and 457.626(a)(3) of
19 title 42, Code of Federal Regulations (as in effect on
20 the date of enactment of the Kids First Act).”.

21 (c) ASSURANCE OF NOTICE TO AFFECTED ENROLL-
22 EES.—The Secretary of Health and Human Services shall
23 establish procedures to ensure that States provide ade-
24 quate public notice for parents, caretaker relatives, and
25 nonpregnant childless adults whose eligibility for child

1 health assistance or health benefits coverage under a waiver
 2 er under section 1115 of the Social Security Act will be
 3 terminated as a result of the amendments made by sub-
 4 section (a), and that States otherwise adhere to regula-
 5 tions of the Secretary relating to procedures for termi-
 6 nating waivers under section 1115 of the Social Security
 7 Act.

8 **SEC. 6. STANDARDIZATION OF DETERMINATION OF FAMILY**
 9 **INCOME FOR TARGETED LOW-INCOME CHIL-**
 10 **DREN UNDER TITLE XXI AND OPTIONAL TAR-**
 11 **GETED LOW-INCOME CHILDREN UNDER**
 12 **TITLE XIX.**

13 (a) ELIGIBILITY BASED ON GROSS INCOME.—

14 (1) IN GENERAL.—Section 2110 of the Social
 15 Security Act (42 U.S.C. 1397jj) is amended—

16 (A) in subsection (b)(1)(A), by inserting
 17 “in accordance with subsection (d)” after
 18 “State plan”; and

19 (B) by adding at the end the following new
 20 subsection:

21 “(d) STANDARDIZATION OF DETERMINATION OF
 22 FAMILY INCOME.—A State shall determine family income
 23 for purposes of determining income eligibility for child
 24 health assistance or other health benefits coverage under
 25 the State child health plan (or under a waiver of such plan

1 under section 1115) solely on the basis of the gross income
2 (as defined by the Secretary) of the family.”.

3 (2) PROHIBITION ON WAIVER OF REQUIRE-
4 MENTS.—Section 2107(f) (42 U.S.C. 1397gg(f)), as
5 amended by section 5(a), is amended by adding at
6 the end the following new paragraph:

7 “(4) The Secretary may not approve a waiver,
8 experimental, pilot, or demonstration project with re-
9 spect to a State after the date of enactment of the
10 Kids First Act that would waive or modify the re-
11 quirements of section 2110(d) (relating to deter-
12 mining income eligibility on the basis of gross in-
13 come) and regulations promulgated to carry out
14 such requirements.”.

15 (b) REGULATIONS.—Not later than 90 days after the
16 date of enactment of this Act, the Secretary of Health and
17 Human Services shall promulgate interim final regulations
18 defining gross income for purposes of section 2110(d) of
19 the Social Security Act, as added by subsection (a).

20 (c) APPLICATION TO CURRENT ENROLLEES.—The
21 interim final regulations promulgated under subsection (b)
22 shall not be used to determine the income eligibility of any
23 individual enrolled in a State child health plan under title
24 XXI of the Social Security Act on the date of enactment
25 of this Act before the date on which such eligibility of the

1 individual is required to be redetermined under the plan
2 as in effect on such date. In the case of any individual
3 enrolled in such plan on such date who, solely as a result
4 of the application of subsection (d) of section 2110 of the
5 Social Security Act (as added by subsection (a)) and the
6 regulations promulgated under subsection (b), is deter-
7 mined to be ineligible for child health assistance under the
8 State child health plan, a State may elect, subject to sub-
9 stitution of the Federal medical assistance percentage for
10 the enhanced FMAP under section 2105(c)(8)(A) of the
11 Social Security Act (as added by section 4(a)), to continue
12 to provide the individual with such assistance for so long
13 as the individual otherwise would be eligible for such as-
14 sistance and the individual's family income, if determined
15 under the income and resource standards and methodolo-
16 gies applicable under the State child health plan on Sep-
17 tember 30, 2008, would not exceed the income eligibility
18 level applicable to the individual under the State child
19 health plan.

20 **SEC. 7. GRANTS FOR OUTREACH AND ENROLLMENT.**

21 (a) GRANTS.—Title XXI of the Social Security Act
22 (42 U.S.C. 1397aa et seq.) is amended by adding at the
23 end the following:

1 **“SEC. 2111. GRANTS TO IMPROVE OUTREACH AND ENROLL-**
2 **MENT.**

3 “(a) OUTREACH AND ENROLLMENT GRANTS; NA-
4 TIONAL CAMPAIGN.—

5 “(1) IN GENERAL.—From the amounts appro-
6 priated for a fiscal year under subsection (f), subject
7 to paragraph (2), the Secretary shall award grants
8 to eligible entities to conduct outreach and enroll-
9 ment efforts that are designed to increase the enroll-
10 ment and participation of eligible children under this
11 title and title XIX.

12 “(2) 10 PERCENT SET ASIDE FOR NATIONAL
13 ENROLLMENT CAMPAIGN.—An amount equal to 10
14 percent of such amounts for the fiscal year shall be
15 used by the Secretary for expenditures during the
16 fiscal year to carry out a national enrollment cam-
17 paign in accordance with subsection (g).

18 “(b) AWARD OF GRANTS.—

19 “(1) PRIORITY FOR AWARDING.—

20 “(A) IN GENERAL.—In awarding grants
21 under subsection (a), the Secretary shall give
22 priority to eligible entities that—

23 “(i) propose to target geographic
24 areas with high rates of—

1 “(I) eligible but unenrolled chil-
2 dren, including such children who re-
3 side in rural areas; or

4 “(II) racial and ethnic minorities
5 and health disparity populations, in-
6 cluding those proposals that address
7 cultural and linguistic barriers to en-
8 rollment; and

9 “(ii) submit the most demonstrable
10 evidence required under paragraphs (1)
11 and (2) of subsection (c).

12 “(B) 10 PERCENT SET ASIDE FOR OUT-
13 REACH TO INDIAN CHILDREN.—An amount
14 equal to 10 percent of the funds appropriated
15 under subsection (f) for a fiscal year shall be
16 used by the Secretary to award grants to In-
17 dian Health Service providers and urban Indian
18 organizations receiving funds under title V of
19 the Indian Health Care Improvement Act (25
20 U.S.C. 1651 et seq.) for outreach to, and en-
21 rollment of, children who are Indians.

22 “(2) 2-YEAR AVAILABILITY.—A grant awarded
23 under this section for a fiscal year shall remain
24 available for expenditure through the end of the suc-
25 ceeding fiscal year.

1 “(c) APPLICATION.—An eligible entity that desires to
2 receive a grant under subsection (a) shall submit an appli-
3 cation to the Secretary in such form and manner, and con-
4 taining such information, as the Secretary may decide.
5 Such application shall include—

6 “(1) evidence demonstrating that the entity in-
7 cludes members who have access to, and credibility
8 with, ethnic or low-income populations in the com-
9 munities in which activities funded under the grant
10 are to be conducted;

11 “(2) evidence demonstrating that the entity has
12 the ability to address barriers to enrollment, such as
13 lack of awareness of eligibility, stigma concerns and
14 punitive fears associated with receipt of benefits,
15 and other cultural barriers to applying for and re-
16 ceiving child health assistance or medical assistance;

17 “(3) specific quality or outcomes performance
18 measures to evaluate the effectiveness of activities
19 funded by a grant awarded under this section; and

20 “(4) an assurance that the eligible entity
21 shall—

22 “(A) conduct an assessment of the effec-
23 tiveness of such activities against the perform-
24 ance measures;

1 “(B) cooperate with the collection and re-
2 porting of enrollment data and other informa-
3 tion in order for the Secretary to conduct such
4 assessments; and

5 “(C) in the case of an eligible entity that
6 is not the State, provide the State with enroll-
7 ment data and other information as necessary
8 for the State to make necessary projections of
9 eligible children and pregnant women.

10 “(d) SUPPLEMENT, NOT SUPPLANT.—Federal funds
11 awarded under this section shall be used to supplement,
12 not supplant, non-Federal funds that are otherwise avail-
13 able for activities funded under this section.

14 “(e) DEFINITIONS.—In this section:

15 “(1) ELIGIBLE ENTITY.—The term ‘eligible en-
16 tity’ means any of the following:

17 “(A) A State with an approved child health
18 plan under this title.

19 “(B) A local government.

20 “(C) An Indian tribe or tribal consortium,
21 a tribal organization, an urban Indian organiza-
22 tion receiving funds under title V of the Indian
23 Health Care Improvement Act (25 U.S.C. 1651
24 et seq.), or an Indian Health Service provider.

1 “(D) A Federal health safety net organiza-
2 tion.

3 “(E) A State, national, local, or commu-
4 nity-based public or nonprofit private organiza-
5 tion.

6 “(F) A faith-based organization or con-
7 sortia, to the extent that a grant awarded to
8 such an entity is consistent with the require-
9 ments of section 1955 of the Public Health
10 Service Act (42 U.S.C. 300x-65) relating to a
11 grant award to non-governmental entities.

12 “(G) An elementary or secondary school.

13 “(H) A national, local, or community-based
14 public or nonprofit private organization, includ-
15 ing organizations that use community health
16 workers or community-based doula programs.

17 “(2) FEDERAL HEALTH SAFETY NET ORGANI-
18 ZATION.—The term ‘Federal health safety net orga-
19 nization’ means—

20 “(A) a federally-qualified health center (as
21 defined in section 1905(l)(2)(B));

22 “(B) a hospital defined as a dispro-
23 portionate share hospital for purposes of section
24 1923;

1 “(C) a covered entity described in section
2 340B(a)(4) of the Public Health Service Act
3 (42 U.S.C. 256b(a)(4)); and

4 “(D) any other entity or consortium that
5 serves children under a federally funded pro-
6 gram, including the special supplemental nutri-
7 tion program for women, infants, and children
8 (WIC) established under section 17 of the Child
9 Nutrition Act of 1966 (42 U.S.C. 1786), the
10 head start and early head start programs under
11 the Head Start Act (42 U.S.C. 9801 et seq.),
12 the school lunch program established under the
13 Richard B. Russell National School Lunch Act,
14 and an elementary or secondary school.

15 “(3) INDIANS; INDIAN TRIBE; TRIBAL ORGANI-
16 ZATION; URBAN INDIAN ORGANIZATION.—The terms
17 ‘Indian’, ‘Indian tribe’, ‘tribal organization’, and
18 ‘urban Indian organization’ have the meanings given
19 such terms in section 4 of the Indian Health Care
20 Improvement Act (25 U.S.C. 1603).

21 “(4) COMMUNITY HEALTH WORKER.—The term
22 ‘community health worker’ means an individual who
23 promotes health or nutrition within the community
24 in which the individual resides—

1 “(A) by serving as a liaison between com-
2 munities and health care agencies;

3 “(B) by providing guidance and social as-
4 sistance to community residents;

5 “(C) by enhancing community residents’
6 ability to effectively communicate with health
7 care providers;

8 “(D) by providing culturally and linguis-
9 tically appropriate health or nutrition edu-
10 cation;

11 “(E) by advocating for individual and com-
12 munity health or nutrition needs; and

13 “(F) by providing referral and followup
14 services.

15 “(f) APPROPRIATION.—

16 “(1) IN GENERAL.—There is appropriated, out
17 of any money in the Treasury not otherwise appro-
18 priated, for the purpose of awarding grants under
19 this section—

20 “(A) \$100,000,000 for each of fiscal years
21 2009 and 2010;

22 “(B) \$75,000,000 for each of fiscal years
23 2011 and 2012; and

24 “(C) \$50,000,000 for fiscal year 2013.

1 “(2) GRANTS IN ADDITION TO OTHER AMOUNTS
2 PAID.—Amounts appropriated and paid under the
3 authority of this section shall be in addition to
4 amounts appropriated under section 2104 and paid
5 to States in accordance with section 2105, including
6 with respect to expenditures for outreach activities
7 in accordance with subsections (a)(1)(D)(iii) and
8 (e)(2)(C) of that section.

9 “(g) NATIONAL ENROLLMENT CAMPAIGN.—From
10 the amounts made available under subsection (a)(2) for
11 a fiscal year, the Secretary shall develop and implement
12 a national enrollment campaign to improve the enrollment
13 of underserved child populations in the programs estab-
14 lished under this title and title XIX. Such campaign may
15 include—

16 “(1) the establishment of partnerships with the
17 Secretary of Education and the Secretary of Agri-
18 culture to develop national campaigns to link the eli-
19 gibility and enrollment systems for the assistance
20 programs each Secretary administers that often
21 serve the same children;

22 “(2) the integration of information about the
23 programs established under this title and title XIX
24 in public health awareness campaigns administered
25 by the Secretary;

1 “(3) increased financial and technical support
2 for enrollment hotlines maintained by the Secretary
3 to ensure that all States participate in such hotlines;

4 “(4) the establishment of joint public awareness
5 outreach initiatives with the Secretary of Education
6 and the Secretary of Labor regarding the impor-
7 tance of health insurance to building strong commu-
8 nities and the economy;

9 “(5) the development of special outreach mate-
10 rials for Native Americans or for individuals with
11 limited English proficiency; and

12 “(6) such other outreach initiatives as the Sec-
13 retary determines would increase public awareness of
14 the programs under this title and title XIX.”.

15 (b) NONAPPLICATION OF ADMINISTRATIVE EXPENDI-
16 TURES CAP.—Section 2105(c)(2) of the Social Security
17 Act (42 U.S.C. 1397ee(c)(2)) is amended by adding at the
18 end the following:

19 “(C) NONAPPLICATION TO EXPENDITURES
20 FOR OUTREACH AND ENROLLMENT.—The limi-
21 tation under subparagraph (A) shall not apply
22 with respect to expenditures for outreach activi-
23 ties under section 2102(c)(1), or for enrollment
24 activities, for children eligible for child health
25 assistance under the State child health plan or

1 medical assistance under the State plan under
2 title XIX.”.

3 **SEC. 8. IMPROVED STATE OPTION FOR OFFERING PRE-**
4 **MIUM ASSISTANCE FOR COVERAGE OF CHIL-**
5 **DREN THROUGH PRIVATE PLANS UNDER**
6 **SCHIP AND MEDICAID.**

7 (a) IN GENERAL.—Section 2105(c) of the Social Se-
8 curity Act (42 U.S.C. 1397ee(c)), as amended by section
9 4(a) is amended by adding at the end the following:

10 “(9) ADDITIONAL STATE OPTION FOR OFFER-
11 ING PREMIUM ASSISTANCE.—

12 “(A) IN GENERAL.—Subject to the suc-
13 ceeding provisions of this paragraph, a State
14 may elect to offer a premium assistance subsidy
15 (as defined in subparagraph (C)) for qualified
16 coverage (as defined in subparagraph (B)) to
17 all targeted low-income children who are eligible
18 for child health assistance under the plan and
19 have access to such coverage in accordance with
20 the requirements of this paragraph.

21 “(B) QUALIFIED COVERAGE.—In this
22 paragraph, the term ‘qualified coverage’ means
23 the following:

24 “(i) QUALIFIED EMPLOYER SPON-
25 SORED COVERAGE.—

1 “(I) IN GENERAL.—A group
2 health plan or health insurance cov-
3 erage offered through an employer
4 that is—

5 “(aa) substantially equiva-
6 lent to the benefits coverage in a
7 benchmark benefit package de-
8 scribed in section 2103(b) or
9 benchmark-equivalent coverage
10 that meets the requirements of
11 section 2103(a)(2);

12 “(bb) made similarly avail-
13 able to all of the employer’s em-
14 ployees and for which the em-
15 ployer makes a contribution to
16 the premium that is not less for
17 employees receiving a premium
18 assistance subsidy under any op-
19 tion available under the State
20 child health plan under this title
21 or the State plan under title XIX
22 to provide such assistance than
23 the employer contribution pro-
24 vided for all other employees; and

1 “(cc) cost-effective, as deter-
2 mined under subclause (II).

3 “(II) COST-EFFECTIVENESS.—A
4 group health plan or health insurance
5 coverage offered through an employer
6 shall be considered to be cost-effective
7 if—

8 “(aa) the marginal premium
9 cost to purchase family coverage
10 through the employer is less than
11 the State cost of providing child
12 health assistance through the
13 State child health plan for all the
14 children in the family who are
15 targeted low-income children; or

16 “(bb) the marginal premium
17 cost between individual coverage
18 and purchasing family coverage
19 through the employer is not
20 greater than 175 percent of the
21 cost to the State to provide child
22 health assistance through the
23 State child health plan for a tar-
24 geted low-income child.

1 “(ii) QUALIFIED NON-GROUP COV-
2 ERAGE.—Health insurance coverage of-
3 fered to individuals in the non-group
4 health insurance market that is substan-
5 tially equivalent to the benefits coverage in
6 a benchmark benefit package described in
7 section 2103(b) or benchmark-equivalent
8 coverage that meets the requirements of
9 section 2103(a)(2).

10 “(iii) HIGH DEDUCTIBLE HEALTH
11 PLAN.—A high deductible health plan (as
12 defined in section 223(c)(2) of the Internal
13 Revenue Code of 1986) purchased through
14 a health savings account (as defined under
15 section 223(d) of such Code).

16 “(C) PREMIUM ASSISTANCE SUBSIDY.—

17 “(i) IN GENERAL.—In this paragraph,
18 the term ‘premium assistance subsidy’
19 means, with respect to a targeted low-in-
20 come child, the amount equal to the dif-
21 ference between the employee contribution
22 required for enrollment only of the em-
23 ployee under qualified employer sponsored
24 coverage and the employee contribution re-
25 quired for enrollment of the employee and

1 the child in such coverage, less any appli-
2 cable premium cost-sharing applied under
3 the State child health plan, subject to the
4 annual aggregate cost-sharing limit applied
5 under section 2103(e)(3)(B).

6 “(ii) STATE PAYMENT OPTION.—Sub-
7 ject to clause (iii), a State may provide a
8 premium assistance subsidy directly to an
9 employer or as reimbursement to an em-
10 ployee for out-of-pocket expenditures.

11 “(iii) REQUIREMENT FOR DIRECT
12 PAYMENT TO EMPLOYEE.—A State shall
13 not pay a premium assistance subsidy di-
14 rectly to the employee, unless the State has
15 established procedures to ensure that the
16 targeted low-income child on whose behalf
17 such payments are made are actually en-
18 rolled in the qualified employer sponsored
19 coverage.

20 “(iv) TREATMENT AS CHILD HEALTH
21 ASSISTANCE.—Expenditures for the provi-
22 sion of premium assistance subsidies shall
23 be considered child health assistance de-
24 scribed in paragraph (1)(C) of subsection

1 (a) for purposes of making payments
2 under that subsection.

3 “(v) STATE OPTION TO REQUIRE AC-
4 CEPTANCE OF SUBSIDY.—A State may
5 condition the provision of child health as-
6 sistance under the State child health plan
7 for a targeted low-income child on the re-
8 ceipt of a premium assistance subsidy for
9 enrollment in qualified employer sponsored
10 coverage if the State determines the provi-
11 sion of such a subsidy to be more cost-ef-
12 fective in accordance with subparagraph
13 (B)(ii).

14 “(vi) NOT TREATED AS INCOME.—
15 Notwithstanding any other provision of
16 law, a premium assistance subsidy pro-
17 vided in accordance with this paragraph
18 shall not be treated as income to the child
19 or the parent of the child for whom such
20 subsidy is provided.

21 “(D) NO REQUIREMENT TO PROVIDE SUP-
22 PLEMENTAL COVERAGE FOR BENEFITS AND AD-
23 DITIONAL COST-SHARING PROTECTION PRO-
24 VIDED UNDER THE STATE CHILD HEALTH
25 PLAN.—

1 “(i) IN GENERAL.—A State that
2 elects the option to provide a premium as-
3 sistance subsidy under this paragraph shall
4 not be required to provide a targeted low-
5 income child enrolled in qualified employer
6 sponsored coverage with supplemental cov-
7 erage for items or services that are not
8 covered, or are only partially covered,
9 under the qualified employer sponsored
10 coverage or cost-sharing protection other
11 than the protection required under section
12 2103(e)(3)(B).

13 “(ii) NOTICE OF COST-SHARING RE-
14 QUIREMENTS.—A State shall provide a tar-
15 geted low-income child or the parent of
16 such a child (as appropriate) who is pro-
17 vided with a premium assistance subsidy in
18 accordance with this paragraph with notice
19 of the cost-sharing requirements and limi-
20 tations imposed under the qualified em-
21 ployer sponsored coverage in which the
22 child is enrolled upon the enrollment of the
23 child in such coverage and annually there-
24 after.

1 “(iii) RECORD KEEPING REQUIRE-
2 MENTS.—A State may require a parent of
3 a targeted low-income child that is enrolled
4 in qualified employer-sponsored coverage to
5 bear the responsibility for keeping track of
6 out-of-pocket expenditures incurred for
7 cost-sharing imposed under such coverage
8 and to notify the State when the limit on
9 such expenditures imposed under section
10 2103(e)(3)(B) has been reached for a year
11 from the effective date of enrollment for
12 such year.

13 “(iv) STATE OPTION FOR REIMBURSE-
14 MENT.—A State may retroactively reim-
15 burse a parent of a targeted low-income
16 child for out-of-pocket expenditures in-
17 curred after reaching the 5 percent cost-
18 sharing limitation imposed under section
19 2103(e)(3)(B) for a year.

20 “(E) 6-MONTH WAITING PERIOD RE-
21 QUIRED.—A State shall impose at least a 6-
22 month waiting period from the time an indi-
23 vidual is enrolled in private health insurance
24 prior to the provision of a premium assistance

1 subsidy for a targeted low-income child in ac-
2 cordance with this paragraph.

3 “(F) NON APPLICATION OF WAITING PE-
4 RIOD FOR ENROLLMENT IN THE STATE MED-
5 ICAID PLAN OR THE STATE CHILD HEALTH
6 PLAN.—A targeted low-income child provided a
7 premium assistance subsidy in accordance with
8 this paragraph who loses eligibility for such
9 subsidy shall not be treated as having been en-
10 rolled in private health insurance coverage for
11 purposes of applying any waiting period im-
12 posed under the State child health plan or the
13 State plan under title XIX for the enrollment of
14 the child under such plan.

15 “(G) ASSURANCE OF SPECIAL ENROLL-
16 MENT PERIOD UNDER GROUP HEALTH PLANS
17 IN CASE OF ELIGIBILITY FOR PREMIUM SUB-
18 SIDY ASSISTANCE.—No payment shall be made
19 under subsection (a) for amounts expended for
20 the provision of premium assistance subsidies
21 under this paragraph unless a State provides
22 assurances to the Secretary that the State has
23 in effect laws requiring a group health plan, a
24 health insurance issuer offering group health
25 insurance coverage in connection with a group

1 health plan, and a self-funded health plan, to
2 permit an employee who is eligible, but not en-
3 rolled, for coverage under the terms of the plan
4 (or a child of such an employee if the child is
5 eligible, but not enrolled, for coverage under
6 such terms) to enroll for coverage under the
7 terms of the plan if the employee’s child be-
8 comes eligible for a premium assistance subsidy
9 under this paragraph.

10 “(H) NO EFFECT ON PREVIOUSLY AP-
11 PROVED PREMIUM ASSISTANCE PROGRAMS.—
12 Nothing in this paragraph shall be construed as
13 limiting the authority of a State to offer pre-
14 mium assistance under section 1906, a waiver
15 described in paragraph (2)(B) or (3), a waiver
16 approved under section 1115, or other authority
17 in effect on February 1, 2009.

18 “(I) NOTICE OF AVAILABILITY.—A State
19 shall—

20 “(i) include on any application or en-
21 rollment form for child health assistance a
22 notice of the availability of premium assist-
23 ance subsidies for the enrollment of tar-
24 geted low-income children in qualified em-
25 ployer sponsored coverage;

1 “(ii) provide, as part of the applica-
2 tion and enrollment process under the
3 State child health plan, information de-
4 scribing the availability of such subsidies
5 and how to elect to obtain such a subsidy;
6 and

7 “(iii) establish such other procedures
8 as the State determines necessary to en-
9 sure that parents are informed of the
10 availability of such subsidies under the
11 State child health plan.”.

12 (b) APPLICATION TO MEDICAID.—Section 1906 of
13 the Social Security Act (42 U.S.C. 1396e) is amended by
14 inserting after subsection (c) the following:

15 “(d) The provisions of section 2105(c)(9) shall apply
16 to a child who is eligible for medical assistance under the
17 State plan in the same manner as such provisions apply
18 to a targeted low-income child under a State child health
19 plan under title XXI. Section 1902(a)(34) shall not apply
20 to a child who is provided a premium assistance subsidy
21 under the State plan in accordance with the preceding sen-
22 tence.”.

23 **SEC. 9. TREATMENT OF UNBORN CHILDREN.**

24 (a) CODIFICATION OF CURRENT REGULATIONS.—
25 Section 2110(c)(1) of the Social Security Act (42 U.S.C.

1 1397jj(c)(1)) is amended by striking the period at the end
2 and inserting the following: “, and includes, at the option
3 of a State, an unborn child. For purposes of the previous
4 sentence, the term ‘unborn child’ means a member of the
5 species *Homo sapiens*, at any stage of development, who
6 is carried in the womb.”.

7 (b) CLARIFICATIONS REGARDING COVERAGE OF
8 MOTHERS.—Section 2103 (42 U.S.C. 1397cc) is amended
9 by adding at the end the following new subsection:

10 “(g) CLARIFICATIONS REGARDING AUTHORITY TO
11 PROVIDE POSTPARTUM SERVICES AND MATERNAL
12 HEALTH CARE.—Any State that provides child health as-
13 sistance to an unborn child under the option described in
14 section 2110(c)(1) may—

15 “(1) continue to provide such assistance to the
16 mother, as well as postpartum services, through the
17 end of the month in which the 60-day period (begin-
18 ning on the last day of pregnancy) ends; and

19 “(2) in the interest of the child to be born, have
20 flexibility in defining and providing services to ben-
21 efit either the mother or unborn child consistent
22 with the health of both.”.

1 **SEC. 10. 50 PERCENT MATCHING RATE FOR ALL MEDICAID**
2 **ADMINISTRATIVE COSTS.**

3 Section 1903(a) of the Social Security Act (42 U.S.C.
4 1396b(a)) is amended—

5 (1) by striking paragraph (2);

6 (2) by redesignating paragraph (3)(E) as para-
7 graph (2) and re-locating and indenting it appro-
8 priately;

9 (3) in paragraph (2), as so redesignated, by re-
10 designating clauses (i) and (ii) as subparagraphs (A)
11 and (B), and indenting them appropriately;

12 (4) by striking paragraphs (3) and (4);

13 (5) in paragraph (5), by striking “which are at-
14 tributable to the offering, arranging, and fur-
15 nishing” and inserting “which are for the medical
16 assistance costs of furnishing”;

17 (6) by striking paragraph (6);

18 (7) in paragraph (7), by striking “subject to
19 section 1919(g)(3)(B),”; and

20 (8) by redesignating paragraphs (5) and (7) as
21 paragraphs (3) and (4), respectively.

22 **SEC. 11. REDUCTION IN PAYMENTS FOR MEDICAID ADMIN-**
23 **ISTRATIVE COSTS TO PREVENT DUPLICATION**
24 **OF SUCH PAYMENTS UNDER TANF.**

25 Section 1903 of the Social Security Act (42 U.S.C.
26 1396b) is amended—

1 **SEC. 13. ELIMINATION OF SPECIAL PAYMENTS FOR CER-**
2 **TAIN PUBLIC HOSPITALS.**

3 Effective October 1, 2009, subsection (d) of section
4 701 of the Medicare, Medicaid, and SCHIP Benefits Im-
5 provement and Protection Act of 2000, as enacted into
6 law by section 1(a)(6) of Public Law 106–554 (42 U.S.C.
7 1396r–4 note), is repealed.

8 **SEC. 14. EFFECTIVE DATE; COORDINATION OF FUNDING**
9 **FOR FISCAL YEAR 2009.**

10 (a) **IN GENERAL.**—Unless otherwise specified, sub-
11 ject to subsection (b), the amendments made by this Act
12 shall take effect on the date of enactment of this Act.

13 (b) **DELAY IF STATE LEGISLATION REQUIRED.**—In
14 the case of a State child health plan under title XXI of
15 the Social Security Act or a waiver of such plan under
16 section 1115 of such Act which the Secretary of Health
17 and Human Services determines requires State legislation
18 (other than legislation appropriating funds) in order for
19 the plan or waiver to meet the additional requirements im-
20 posed by the amendments made by this Act, the State
21 child health plan or waiver shall not be regarded as failing
22 to comply with the requirements of such title XXI solely
23 on the basis of its failure to meet such additional require-
24 ments before the first day of the first calendar quarter
25 beginning after the close of the first regular session of the
26 State legislature that begins after the date of the enact-

1 ment of this Act. For purposes of the previous sentence,
2 in the case of a State that has a 2-year legislative session,
3 each year of such session shall be deemed to be a separate
4 regular session of the State legislature.

5 (c) COORDINATION OF FUNDING FOR FISCAL YEAR
6 2009.—Notwithstanding any other provision of law, inso-
7 far as funds have been appropriated under section
8 2104(a)(11) of the Social Security Act, as amended by
9 section 201(a) of Public Law 110–173 and in effect on
10 January 1, 2009, to provide allotments to States under
11 title XXI of the Social Security Act for fiscal year 2009—

12 (1) any amounts that are so appropriated that
13 are not so allotted and obligated before the date of
14 the enactment of this Act are rescinded; and

15 (2) any amount provided for allotments under
16 title XXI of such Act to a State under the amend-
17 ments made by this Act for such fiscal year shall be
18 reduced by the amount of such appropriations so al-
19 lotted and obligated before such date.

○