

111<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 770

To amend titles V, XVIII, and XIX of the Social Security Act to promote cessation of tobacco use under the Medicare program, the Medicaid program, and the maternal and child health services block grant program.

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## IN THE SENATE OF THE UNITED STATES

APRIL 1, 2009

Mr. DURBIN (for himself and Mr. KENNEDY) introduced the following bill;  
which was read twice and referred to the Committee on Finance

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## A BILL

To amend titles V, XVIII, and XIX of the Social Security Act to promote cessation of tobacco use under the Medicare program, the Medicaid program, and the maternal and child health services block grant program.

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 “Medicare, Medicaid,  
5       and MCH Tobacco Cessation Promotion Act of 2009”.

1 **SEC. 2. MEDICARE COVERAGE OF COUNSELING FOR CES-**  
 2 **SATION OF TOBACCO USE.**

3 (a) **COVERAGE.**—Section 1861(s)(2) of the Social Se-  
 4 curity Act (42 U.S.C. 1395x(s)(2)), as amended by section  
 5 152(b) of the Medicare Improvements for Patients and  
 6 Providers Act of 2008 (Public Law 110–275), is amend-  
 7 ed—

8 (1) in subparagraph (DD), by striking “and” at  
 9 the end;

10 (2) in subparagraph (EE), by inserting “and”  
 11 at the end; and

12 (3) by adding at the end the following new sub-  
 13 paragraph:

14 “(FF) counseling for cessation of tobacco use  
 15 (as defined in subsection (hhh));”.

16 (b) **SERVICES DESCRIBED.**—Section 1861 of the So-  
 17 cial Security Act (42 U.S.C. 1395x), as so amended, is  
 18 amended by adding at the end the following new sub-  
 19 section:

20 “(hhh) **COUNSELING FOR CESSATION OF TOBACCO**  
 21 **USE.**—(1)(A) Subject to subparagraph (B), the term  
 22 ‘counseling for cessation of tobacco use’ means diagnostic,  
 23 therapy, and counseling services for cessation of tobacco  
 24 use for individuals who use tobacco products or who are  
 25 being treated for tobacco use which are furnished—

26 “(i) by or under the supervision of a physician;

1           “(ii) by a practitioner described in clause (i),  
2           (iii), (iv), (v), or (vi) of section 1842(b)(18)(C); or

3           “(iii) by a licensed tobacco cessation counselor  
4           (as defined in paragraph (2)).

5           “(B) Such term is limited to—

6           “(i) services recommended in ‘Treating Tobacco  
7           Use and Dependence: A Clinical Practice Guideline’,  
8           published by the Public Health Service in May 2008,  
9           or any subsequent modification of such Guideline;  
10          and

11          “(ii) such other services that the Secretary rec-  
12          ognizes to be effective.

13          “(2) In this subsection, the term ‘licensed tobacco  
14          cessation counselor’ means a tobacco cessation counselor  
15          who—

16               “(A) is licensed as such by the State (or in a  
17               State which does not license tobacco cessation coun-  
18               selors as such, is legally authorized to perform the  
19               services of a tobacco cessation counselor in the juris-  
20               diction in which the counselor performs such serv-  
21               ices); and

22               “(B) meets uniform minimum standards relat-  
23               ing to basic knowledge, qualification training, con-  
24               tinuing education, and documentation that are es-

1        established by the Secretary for purposes of this sub-  
2        section.”.

3        (c) PAYMENT AND ELIMINATION OF COST-SHARING  
4 FOR COUNSELING FOR CESSATION OF TOBACCO USE.—

5            (1) PAYMENT AND ELIMINATION OF COINSUR-  
6 ANCE.—Section 1833(a)(1) of the Social Security  
7 Act (42 U.S.C. 1395l(a)(1)) is amended—

8            (A) by striking “and” before “(W)”; and

9            (B) by inserting before the semicolon at  
10 the end the following: “, and (X) with respect  
11 to counseling for cessation of tobacco use (as  
12 defined in section 1861(hhh)), the amount paid  
13 shall be 100 percent of the lesser of the actual  
14 charge for the service or the amount determined  
15 by a fee schedule established by the Secretary  
16 for purposes of this subparagraph”.

17            (2) ELIMINATION OF COINSURANCE IN OUT-  
18 PATIENT HOSPITAL SETTINGS.—

19            (A) EXCLUSION FROM OPD FEE SCHED-  
20 ULE.—Section 1833(t)(1)(B)(iv) of the Social  
21 Security Act (42 U.S.C. 1395l(t)(1)(B)(iv)) is  
22 amended by striking “and diagnostic mammog-  
23 raphy” and inserting “, diagnostic mammog-  
24 raphy, or counseling for cessation of tobacco  
25 use (as defined in section 1861(hhh))”.

1 (B) CONFORMING AMENDMENTS.—Section  
2 1833(a)(2) of the Social Security Act (42  
3 U.S.C. 1395l(a)(2)) is amended—

4 (i) in subparagraph (F), by striking  
5 “and” after the semicolon at the end;

6 (ii) in subparagraph (G)(ii), by strik-  
7 ing the comma at the end and inserting “;  
8 and”; and

9 (iii) by inserting after subparagraph  
10 (G)(ii) the following new subparagraph:

11 “(H) with respect to counseling for ces-  
12 sation of tobacco use (as defined in section  
13 1861(hhh)) furnished by an outpatient depart-  
14 ment of a hospital, the amount determined  
15 under paragraph (1)(X),”.

16 (3) ELIMINATION OF DEDUCTIBLE.—The first  
17 sentence of section 1833(b) of the Social Security  
18 Act (42 U.S.C. 1395l(b)) is amended—

19 (A) by striking “and” before “(9)”; and

20 (B) by inserting before the period the fol-  
21 lowing: “, and (10) such deductible shall not  
22 apply with respect to counseling for cessation of  
23 tobacco use (as defined in section 1861(hhh))”.

24 (d) APPLICATION OF LIMITS ON BILLING.—Section  
25 1842(b)(18)(C) of the Social Security Act (42 U.S.C.

1 1395u(b)(18)(C)) is amended by adding at the end the  
2 following new clause:

3 “(vii) A licensed tobacco cessation counselor (as  
4 defined in section 1861(hhh)(2)).”.

5 (e) INCLUSION AS PART OF INITIAL PREVENTIVE  
6 PHYSICAL EXAMINATION.—Section 1861(ww)(2) of the  
7 Social Security Act (42 U.S.C. 1395x(ww)(2)) is amended  
8 by adding at the end the following new subparagraph:

9 “(O) Counseling for cessation of tobacco use (as  
10 defined in subsection (hhh)).”.

11 (f) EFFECTIVE DATE.—The amendments made by  
12 this section shall apply to services furnished on or after  
13 the date that is 1 year after the date of enactment of this  
14 Act.

15 **SEC. 3. MEDICARE COVERAGE OF TOBACCO CESSATION**  
16 **PHARMACOTHERAPY.**

17 (a) INCLUSION OF TOBACCO CESSATION AGENTS AS  
18 COVERED DRUGS.—Section 1860D–2(e)(1) of the Social  
19 Security Act (42 U.S.C. 1395w–102(e)(1)) is amended—

20 (1) in subparagraph (A), by striking “or” after  
21 the semicolon at the end;

22 (2) in subparagraph (B), by striking the comma  
23 at the end and inserting “; or”; and

24 (3) by inserting after subparagraph (B) the fol-  
25 lowing new subparagraph:

1           “(C) any agent approved by the Food and  
2           Drug Administration for purposes of promoting,  
3           and when used to promote, tobacco cessation  
4           that may be dispensed without a prescription  
5           (commonly referred to as an ‘over-the-counter’  
6           drug), but only if such an agent is prescribed  
7           by a physician (or other person authorized to  
8           prescribe under State law),”.

9           (b) ESTABLISHMENT OF CATEGORIES AND CLASSES  
10          CONSISTING OF TOBACCO CESSATION AGENTS.—Section  
11          1860D–4(b)(3)(C) of the Social Security Act (42 U.S.C.  
12          1395w–104(b)(3)(C)) is amended by adding at the end the  
13          following new clause:

14                           “(iv) CATEGORIES AND CLASSES OF  
15                           TOBACCO CESSATION AGENTS.—There  
16                           shall be a therapeutic category or class of  
17                           covered part D drugs consisting of agents  
18                           approved by the Food and Drug Adminis-  
19                           tration for cessation of tobacco use. Such  
20                           category or class shall include tobacco ces-  
21                           sation agents described in subparagraphs  
22                           (A) and (C) of section 1860D–2(e)(1).”.

23           (c) CONFORMING AMENDMENT.—Section 1860D–  
24          2(e)(2)(A) of the Social Security Act (42 U.S.C. 1395w–  
25          102(e)(2)(A)), as amended by section 175 of the Medicare

1 Improvements for Patients and Providers Act of 2008  
2 (Public Law 110–275), is amended by striking “, other  
3 than subparagraph (E) of such section (relating to smok-  
4 ing cessation agents),”.

5 **SEC. 4. PROMOTING CESSATION OF TOBACCO USE UNDER**  
6 **THE MEDICAID PROGRAM.**

7 (a) **COVERAGE OF TOBACCO CESSATION COUN-**  
8 **SELING SERVICES.—**

9 (1) **IN GENERAL.—**Section 1905(a) of the So-  
10 cial Security Act (42 U.S.C. 1396d(a)) is amend-  
11 ed—

12 (A) in paragraph (27), by striking “and”  
13 after the semicolon at the end;

14 (B) in paragraph (28), by striking the  
15 comma at the end and inserting “; and”; and

16 (C) by inserting after paragraph (28) the  
17 following new paragraph:

18 “(29) at the option of the State, counseling for  
19 cessation of tobacco use (as defined in section  
20 1861(hhh)),”.

21 (2) **CONFORMING AMENDMENT.—**Section  
22 1902(a)(10)(C)(iv) of the Social Security Act (42  
23 U.S.C. 1396a(a)(10)(C)(iv)) is amended by inserting  
24 “or (29)” after “(24)”.

1 (b) ELIMINATION OF OPTIONAL EXCLUSION FROM  
2 MEDICAID PRESCRIPTION DRUG COVERAGE FOR TO-  
3 BACCO CESSATION MEDICATIONS.—Section 1927(d)(2) of  
4 the Social Security Act (42 U.S.C. 1396r–8(d)(2)) is  
5 amended—

6 (1) by striking subparagraph (E);

7 (2) by redesignating subparagraphs (F)  
8 through (K) as subparagraphs (E) through (J), re-  
9 spectively; and

10 (3) in subparagraph (F) (as redesignated by  
11 paragraph (2)), by inserting before the period at the  
12 end the following: “, other than agents approved by  
13 the Food and Drug Administration for purposes of  
14 promoting, and when used to promote, tobacco ces-  
15 sation”.

16 (c) REMOVAL OF COST-SHARING FOR TOBACCO CES-  
17 SATION COUNSELING SERVICES AND MEDICATIONS.—  
18 Subsections (a)(2) and (b)(2) of section 1916 of the Social  
19 Security Act (42 U.S.C. 1396o) are each amended—

20 (1) in subparagraph (D), by striking “or” after  
21 the comma at the end;

22 (2) in subparagraph (E), by striking “; and”  
23 and inserting “, or”; and

24 (3) by adding at the end the following new sub-  
25 paragraph:

1           “(F)(i) counseling for cessation of tobacco  
2 use described in section 1905(a)(29); or

3           “(ii) covered outpatient drugs (as defined  
4 in paragraph (2) of section 1927(k), and in-  
5 cluding nonprescription drugs described in  
6 paragraph (4) of such section) that are pre-  
7 scribed for purposes of promoting, and when  
8 used to promote, tobacco cessation; and”.

9           (d) INCREASED FMAP FOR TOBACCO CESSATION  
10 COUNSELING SERVICES AND MEDICATIONS.—The first  
11 sentence of section 1905(b) of the Social Security Act (42  
12 U.S.C. 1396d(b)) is amended—

13           (1) by striking “and” before “(4)”; and

14           (2) by inserting before the period the following:  
15           “, and (5) for purposes of this title, the Federal  
16 medical assistance percentage shall be 80 percent  
17 with respect to amounts expended as medical assist-  
18 ance for counseling for cessation of tobacco use de-  
19 scribed in subsection (a)(29) and for covered out-  
20 patient drugs (as defined in paragraph (2) of section  
21 1927(k), and including nonprescription drugs de-  
22 scribed in paragraph (4) of such section) that are  
23 prescribed for purposes of promoting, and when used  
24 to promote, tobacco cessation”.

1 (e) EFFECTIVE DATE.—The amendments made by  
 2 this section shall apply to services furnished on or after  
 3 the date that is 1 year after the date of enactment of this  
 4 Act.

5 **SEC. 5. PROMOTING CESSATION OF TOBACCO USE UNDER**  
 6 **THE MATERNAL AND CHILD HEALTH SERV-**  
 7 **ICES BLOCK GRANT PROGRAM.**

8 (a) QUALITY MATERNAL AND CHILD HEALTH SERV-  
 9 ICES INCLUDES TOBACCO CESSATION COUNSELING AND  
 10 MEDICATIONS.—Section 501 of the Social Security Act  
 11 (42 U.S.C. 701) is amended by adding at the end the fol-  
 12 lowing new subsection:

13 “(d) For purposes of this title, quality maternal and  
 14 child health services include the following:

15 “(1) Counseling for cessation of tobacco use (as  
 16 defined in section 1861(hhh)).

17 “(2) The encouragement of the prescribing and  
 18 use of agents approved by the Food and Drug Ad-  
 19 ministration for purposes of tobacco cessation.

20 “(3) The inclusion of messages that discourage  
 21 tobacco use in health promotion counseling.”.

22 (b) EFFECTIVE DATE.—The amendment made by  
 23 subsection (a) shall take effect on the date that is 1 year  
 24 after the date of enactment of this Act.

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