

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 5613
OFFERED BY MR. DINGELL OF MICHIGAN**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Protecting the Med-
3 icaid Safety Net Act of 2008”.

4 SEC. 2. MORATORIA ON CERTAIN MEDICAID REGULATIONS.

5 (a) EXTENSION OF CERTAIN MORATORIA IN PUBLIC
6 LAW 110–28.—Section 7002(a)(1) of the U.S. Troop
7 Readiness, Veterans’ Care, Katrina Recovery, and Iraq
8 Accountability Appropriations Act, 2007 (Public Law
9 110–28) is amended—

10 (1) by striking “prior to the date that is 1 year
11 after the date of enactment of this Act” and insert-
12 ing “prior to April 1, 2009”;

13 (2) in subparagraph (A), by inserting after
14 “Federal Regulations)” the following: “or in the
15 final regulation, relating to such parts, published on
16 May 29, 2007 (72 Federal Register 29748)”;

17 (3) in subparagraph (C), by adding at the end
18 the following: “, including the proposed regulation

1 published on May 23, 2007 (72 Federal Register
2 28930)”.

3 (b) EXTENSION OF CERTAIN MORATORIA IN PUBLIC
4 LAW 110–173.—Section 206 of the Medicare, Medicaid,
5 and SCHIP Extension Act of 2007 (Public Law 110–173)
6 is amended—

7 (1) by striking “June 30, 2008” and inserting
8 “April 1, 2009”;

9 (2) by inserting “, including the proposed regu-
10 lation published on August 13, 2007 (72 Federal
11 Register 45201),” after “rehabilitation services”;
12 and

13 (3) by inserting “, including the final regulation
14 published on December 28, 2007 (72 Federal Reg-
15 ister 73635),” after “school-based transportation”.

16 (c) ADDITIONAL MORATORIA.—

17 (1) IN GENERAL.—Notwithstanding any other
18 provision of law, the Secretary of Health and
19 Human Services shall not, prior to April 1, 2009,
20 take any action (through promulgation of regulation,
21 issuance of regulatory guidance, use of Federal pay-
22 ment audit procedures, or other administrative ac-
23 tion, policy, or practice, including a Medical Assist-
24 ance Manual transmittal or letter to State Medicaid
25 directors) to impose any restrictions relating to a

1 provision described in subparagraph (A), (B), or (C)
2 of paragraph (2) if such restrictions are more re-
3 strictive in any aspect than those applied to the re-
4 spective provision as of the date specified in para-
5 graph (3) for such provision.

6 (2) PROVISIONS DESCRIBED.—

7 (A) PORTION OF INTERIM FINAL REGULA-
8 TION RELATING TO MEDICAID TREATMENT OF
9 OPTIONAL CASE MANAGEMENT SERVICES.—

10 (i) IN GENERAL.—Subject to clause
11 (ii), the provision described in this sub-
12 paragraph is the interim final regulation
13 relating to optional State plan case man-
14 agement services under the Medicaid pro-
15 gram published on December 4, 2007 (72
16 Federal Register 68077) in its entirety.

17 (ii) EXCEPTION.—The provision de-
18 scribed in this subparagraph does not in-
19 clude the portion of such regulation as re-
20 lates directly to implementing section
21 1915(g)(2)(A)(ii) of the Social Security
22 Act, as amended by section 6052 of the
23 Deficit Reduction Act of 2005 (Public Law
24 109–171), through the definition of case
25 management services and targeted case

1 management services contained in pro-
2 posed section 440.169 of title 42, Code of
3 Federal Regulations, but only to the extent
4 that such portion is not more restrictive
5 than the policies set forth in the Dear
6 State Medicaid Director letter on case
7 management issued on January 19, 2001
8 (SMDL #01-013), and with respect to
9 community transition case management,
10 the Dear State Medicaid Director letter
11 issued on July 25, 2000 (Olmstead Update
12 3).

13 (B) PROPOSED REGULATION RELATING TO
14 REDEFINITION OF MEDICAID OUTPATIENT HOS-
15 PITAL SERVICES.—The provision described in
16 this subparagraph is the proposed regulation re-
17 lating to clarification of outpatient clinic and
18 hospital facility services definition and upper
19 payment limit under the Medicaid program
20 published on September 28, 2007 (72 Federal
21 Register 55158) in its entirety.

22 (C) PORTION OF PROPOSED REGULATION
23 RELATING TO MEDICAID ALLOWABLE PROVIDER
24 TAXES.—

1 (i) IN GENERAL.—Subject to clause
2 (ii), the provision described in this sub-
3 paragraph is the final regulation relating
4 to health-care-related taxes under the Med-
5 icaid program published on February 22,
6 2008 (73 Federal Register 9685) in its en-
7 tirety.

8 (ii) EXCEPTION.—The provision de-
9 scribed in this subparagraph does not in-
10 clude the portions of such regulation as re-
11 late to the following:

12 (I) REDUCTION IN THRESH-
13 OLD.—The reduction from 6 percent
14 to 5.5 percent in the threshold applied
15 under section 433.68(f)(3)(i) of title
16 42, Code of Federal Regulations, for
17 determining whether or not there is
18 an indirect guarantee to hold a tax-
19 payer harmless, as required to carry
20 out section 1903(w)(4)(C)(ii) of the
21 Social Security Act, as added by sec-
22 tion 403 of the Medicare Improvement
23 and Extension Act of 2006 (division
24 B of Public Law 109–432).

1 (II) CHANGE IN DEFINITION OF
2 MANAGED CARE.—The change in the
3 definition of managed care as pro-
4 posed in the revision of section
5 433.56(a)(8) of title 42, Code of Fed-
6 eral Regulations, as required to carry
7 out section 1903(w)(7)(A)(viii) of the
8 Social Security Act, as amended by
9 section 6051 of the Deficit Reduction
10 Act of 2005 (Public Law 109–171).

11 (3) DATE SPECIFIED.—The date specified in
12 this paragraph for the provision described in—

13 (A) subparagraph (A) of paragraph (2) is
14 December 3, 2007;

15 (B) subparagraph (B) of such paragraph is
16 September 27, 2007; or

17 (C) subparagraph (C) of such paragraph is
18 February 21, 2008.

19 **SEC. 3. FUNDS TO REDUCE MEDICAID FRAUD AND ABUSE.**

20 (a) IN GENERAL.—For purposes of reducing fraud
21 and abuse in the Medicaid program under title XIX of
22 the Social Security Act, there is appropriated to the Sec-
23 retary of Health and Human Services, out of any money
24 in the Treasury not otherwise appropriated, \$25,000,000,
25 for each fiscal year (beginning with fiscal year 2009).

1 Amounts appropriated under this section shall remain
2 available for expenditure until expended and shall be in
3 addition to any other amounts appropriated or made avail-
4 able to the Secretary for such purposes with respect to
5 the Medicaid program.

6 (b) ANNUAL REPORT.—Not later than September 30
7 of 2009 and of each subsequent year, the Secretary of
8 Health and Human Services shall submit to the Com-
9 mittee on Energy and Commerce of the House of Rep-
10 resentatives and the Committee on Finance of the Senate
11 a report on the activities (and the results of such activi-
12 ties) funded under subsection (a) to reduce waste, fraud,
13 and abuse in the Medicaid program under title XIX of
14 the Social Security Act during the previous 12 month pe-
15 riod, including the amount of funds appropriated under
16 such subsection (a) for each such activity and an estimate
17 of the savings to the Medicaid program resulting from
18 each such activity.

19 **SEC. 4. STUDY AND REPORTS TO CONGRESS.**

20 (a) SECRETARIAL REPORT IDENTIFYING PROB-
21 LEMS.—Not later than July 1, 2008, the Secretary of
22 Health and Human Services shall submit to the Com-
23 mittee on Energy and Commerce of the House of Rep-
24 resentatives and the Committee on Finance of the Senate
25 a report that—

1 (1) outlines the specific problems the Medicaid
2 regulations referred to in the amendments made by
3 subsections (a) and (b) of section 2 and in the provi-
4 sions described in subsection (c)(2) of such section
5 were intended to address;

6 (2) detailing how these regulations were de-
7 signed to address these specific problems; and

8 (3) cites the legal authority for such regula-
9 tions.

10 (b) INDEPENDENT COMPREHENSIVE STUDY AND RE-
11 PORT.—

12 (1) IN GENERAL.—Not later than July 1, 2008,
13 the Secretary of Health and Human Services shall
14 enter into a contract with an independent organiza-
15 tion for the purpose of—

16 (A) producing a comprehensive report on
17 the prevalence of the problems outlined in the
18 report submitted under subsection (a);

19 (B) identifying strategies in existence to
20 address these problems; and

21 (C) assessing the impact of each regulation
22 referred to in such subsection on each State
23 and the District of Columbia.

24 (2) DEADLINE.—The report under paragraph
25 (1) shall be submitted to the Committee on Energy

1 and Commerce of the House of Representatives and
2 the Committee on Finance of the Senate not later
3 than March 1, 2009.

4 (3) COOPERATION OF STATES.—If the Sec-
5 retary of Health and Human Services determines
6 that a State or the District of Columbia has not co-
7 operated with the independent organization for pur-
8 poses of the report under this subsection, the Sec-
9 retary shall reduce the amount paid to the State or
10 District under section 1903(a) of the Social Security
11 Act (42 U.S.C. 1396b(a)) by \$25,000 for each day
12 on which the Secretary determines such State or
13 District has not so cooperated. Such reduction shall
14 be made through a process that permits the State or
15 District to challenge the Secretary's determination.

16 (c) FUNDING.—

17 (1) IN GENERAL.—Out of any money in the
18 Treasury of the United States not otherwise appro-
19 priated, there are appropriated to the Secretary
20 without further appropriation, \$5,000,000 to carry
21 out this section.

22 (2) AVAILABILITY; AMOUNTS IN ADDITION TO
23 OTHER AMOUNTS APPROPRIATED FOR SUCH ACTIVI-
24 TIES.—Amounts appropriated pursuant to para-
25 graph (1) shall—

1 (A) remain available until expended; and
2 (B) be in addition to any other amounts
3 appropriated or made available to the Secretary
4 of Health and Human Services with respect to
5 the Medicaid program.

6 **SEC. 5. ASSET VERIFICATION THROUGH ACCESS TO INFOR-**
7 **MATION HELD BY FINANCIAL INSTITUTIONS.**

8 (a) ADDITION OF AUTHORITY.—Title XIX of the So-
9 cial Security Act is amended by inserting after section
10 1939 the following new section:

11 “ASSET VERIFICATION THROUGH ACCESS TO
12 INFORMATION HELD BY FINANCIAL INSTITUTIONS

13 “SEC. 1940. (a) IMPLEMENTATION.—

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

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

22 “(A) submit not later a deadline specified
23 by the Secretary consistent with paragraph (3),
24 a State plan amendment under this title that
25 describes how the State intends to implement
26 the asset verification program; and

1 “(B) provide for implementation of such
2 program for eligibility determinations and rede-
3 terminations made on or after 6 months after
4 the deadline established for submittal of such
5 plan amendment.

6 “(3) PHASE-IN.—

7 “(A) IN GENERAL.—

8 “(i) IMPLEMENTATION IN CURRENT
9 ASSET VERIFICATION DEMO STATES.—The
10 Secretary shall require those States speci-
11 fied in subparagraph (C) (to which an
12 asset verification program has been applied
13 before the date of the enactment of this
14 section) to implement an asset verification
15 program under this subsection by the end
16 of fiscal year 2009.

17 “(ii) IMPLEMENTATION IN OTHER
18 STATES.—The Secretary shall require
19 other States to submit and implement an
20 asset verification program under this sub-
21 section in such manner as is designed to
22 result in the application of such programs,
23 in the aggregate for all such other States,
24 to enrollment of the following percentage
25 of enrollees, in the aggregate for all such

1 other States, by the end of the fiscal year
2 involved:

3 “(I) 12.5 percent by the end of
4 fiscal year 2009.

5 “(II) 25 percent by the end of
6 fiscal year 2010.

7 “(III) 50 percent by the end of
8 fiscal year 2011.

9 “(IV) 75 percent by the end of
10 fiscal year 2012.

11 “(V) 100 percent by the end of
12 fiscal year 2013.

13 “(B) CONSIDERATION.—In selecting States
14 under subparagraph (A)(ii), the Secretary shall
15 consult with the States involved and take into
16 account the feasibility of implementing asset
17 verification programs in each such State.

18 “(C) STATES SPECIFIED.—The States
19 specified in this subparagraph are California,
20 New York, and New Jersey.

21 “(D) CONSTRUCTION.—Nothing in sub-
22 paragraph (A)(ii) shall be construed as pre-
23 venting a State from requesting, and the Sec-
24 retary approving, the implementation of an
25 asset verification program in advance of the

1 deadline otherwise established under such sub-
2 paragraph.

3 “(4) EXEMPTION OF TERRITORIES.—This sec-
4 tion shall only apply to the 50 States and the Dis-
5 trict of Columbia.

6 “(b) ASSET VERIFICATION PROGRAM.—

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

10 “(A) requires each applicant for, or recipi-
11 ent of, medical assistance under the State plan
12 under this title on the basis of being aged,
13 blind, or disabled to provide authorization by
14 such applicant or recipient (and any other per-
15 son whose resources are material to the deter-
16 mination of the eligibility of the applicant or re-
17 cipient for such assistance) for the State to ob-
18 tain (subject to the cost reimbursement require-
19 ments of section 1115(a) of the Right to Finan-
20 cial Privacy Act but at no cost to the applicant
21 or recipient) from any financial institution
22 (within the meaning of section 1101(1) of such
23 Act) any financial record (within the meaning
24 of section 1101(2) of such Act) held by the in-
25 stitution with respect to the applicant or recipi-

1 ent (and such other person, as applicable),
2 whenever the State determines the record is
3 needed in connection with a determination with
4 respect to such eligibility for (or the amount or
5 extent of) such medical assistance; and

6 “(B) uses the authorization provided under
7 subparagraph (A) to verify the financial re-
8 sources of such applicant or recipient (and such
9 other person, as applicable), in order to deter-
10 mine or redetermine the eligibility of such appli-
11 cant or recipient for medical assistance under
12 the State plan.

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

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

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

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

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

7 “(d) TREATMENT OF RIGHT TO FINANCIAL PRIVACY
8 ACT REQUIREMENTS.—

9 “(1) An authorization obtained by the State
10 under subsection (b)(1) shall be considered to meet
11 the requirements of the Right to Financial Privacy
12 Act for purposes of section 1103(a) of such Act, and
13 need not be furnished to the financial institution,
14 notwithstanding section 1104(a) of such Act.

15 “(2) The certification requirements of section
16 1103(b) of the Right to Financial Privacy Act shall
17 not apply to requests by the State pursuant to an
18 authorization provided under subsection (b)(1).

19 “(3) A request by the State pursuant to an au-
20 thorization provided under subsection (b)(1) is
21 deemed to meet the requirements of section
22 1104(a)(3) of the Right to Financial Privacy Act
23 and of section 1102 of such Act, relating to a rea-
24 sonable description of financial records.

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

5 “(f) REFUSAL OR REVOCATION OF AUTHORIZA-
6 TION.—If an applicant for, or recipient of, medical assist-
7 ance under the State plan under this title (or such other
8 person described in subsection (b)(1), as applicable) re-
9 fuses to provide, or revokes, any authorization made by
10 the applicant or recipient (or such other person, as appli-
11 cable) under subsection (b)(1)(A) for the State to obtain
12 from any financial institution any financial record, the
13 State may, on that basis, determine that the applicant or
14 recipient is ineligible for medical assistance.

15 “(g) USE OF CONTRACTOR.—For purposes of imple-
16 menting an asset verification program under this section,
17 a State may select and enter into a contract with a public
18 or private entity meeting such criteria and qualifications
19 as the State determines appropriate. In carrying out ac-
20 tivities under such contract, such an entity shall be subject
21 to the same requirements and limitations on use and dis-
22 closure of information as would apply if the State were
23 to carry out such activities directly.

24 “(h) TECHNICAL ASSISTANCE.—The Secretary shall
25 provide States with technical assistance to aid in imple-

1 mentation of an asset verification program under this sec-
2 tion.

3 “(i) REPORTS.—A State implementing an asset
4 verification program under this section shall furnish to the
5 Secretary such reports concerning the program, at such
6 times, in such format, and containing such information
7 as the Secretary determines appropriate.

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

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

16 (1) in paragraph (69) by striking “and” at the
17 end;

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

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

22 “(71) provide that the State will implement an
23 asset verification program as required under section
24 1940.”.

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

4 (1) in paragraph (22) by striking “or” at the
5 end;

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

8 (3) by adding after paragraph (23) the fol-
9 lowing new paragraph:

10 “(24) if a State is required to implement an
11 asset verification program under section 1940 and
12 fails to implement such program in accordance with
13 such section, with respect to amounts expended by
14 such State for medical assistance for individuals
15 subject to asset verification under such section, un-
16 less—

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

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

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

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

7 **SEC. 6. ADJUSTMENT TO PAQI FUND.**

8 Section 1848(l)(2) of the Social Security Act (42
9 U.S.C. 1395w-4(l)(2)), as amended by section 101(a)(2)
10 of the Medicare, Medicaid, and SCHIP Extension Act of
11 2007 (Public Law 110-173), is amended—

12 (1) in subparagraph (A)(i)—

13 (A) in subclause (III), by striking
14 “\$4,960,000,000” and inserting
15 “\$3,790,000,000”; and

16 (B) by adding at the end the following new
17 subclause:

18 “(IV) For expenditures during
19 2014, an amount equal to
20 \$3,690,000,000.”;

21 (2) in subparagraph (A)(ii), by adding at the
22 end the following new subclause:

23 “(IV) 2014.—The amount avail-
24 able for expenditures during 2014
25 shall only be available for an adjust-

1 ment to the update of the conversion
2 factor under subsection (d) for that
3 year.”; and

4 (3) in subparagraph (B)—

5 (A) in clause (ii), by striking “and” at the
6 end;

7 (B) in clause (iii), by striking the period at
8 the end and inserting “; and”; and

9 (C) by adding at the end the following new
10 clause:

11 “(iv) 2014 for payment with respect
12 to physicians’ services furnished during
13 2014.”.