

108TH CONGRESS
2D SESSION

S. _____

IN THE SENATE OF THE UNITED STATES

Mr. BAUCUS (for himself and Mr. ROCKEFELLER) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend titles XIX and XXI of the Social Security Act to clarify and ensure that the authority granted to the Secretary of Health and Human Services under section 1115 of that Act is used solely to promote the objectives of the medicaid and State children’s health insurance programs, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Medicaid and CHIP Safety Net Preservation Act of
6 2004”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings; purposes; rule of construction.
- Sec. 3. Clarification that section 1115 authority does not permit a cap on Federal financial participation.
- Sec. 4. Clarification that section 1115 authority does not permit elimination of, or modification limiting, individual entitlement.
- Sec. 5. Clarification that section 1115 authority does not permit elimination or modification of requirements relating to EPSDT services.
- Sec. 6. Clarification that section 1115 authority does not permit elimination or modification of requirements relating to certain safety-net services.
- Sec. 7. Prohibition on use of CHIP funds for health benefits coverage for childless adults.
- Sec. 8. Improvement of the process for the development and approval of medicaid and CHIP demonstration projects.
- Sec. 9. Effective date.

1 **SEC. 2. FINDINGS; PURPOSES; RULE OF CONSTRUCTION.**

2 (a) FINDINGS.—Congress makes the following find-
3 ings:

4 (1) Certain requirements of titles XIX and XXI
5 of the Social Security Act (42 U.S.C. 1396 et seq.,
6 1397aa et seq.) are central to the overall objectives
7 of the medicaid and State children’s health insur-
8 ance programs and are not properly subject to waiv-
9 er, modification, or disregard under the authority of
10 section 1115 of the Social Security Act (42 U.S.C.
11 1315).

12 (2) Some of the requirements of titles XIX and
13 XXI of the Social Security Act that promote the
14 overall objectives of the medicaid and State chil-
15 dren’s health insurance programs have been waived,
16 modified, or otherwise disregarded by the Secretary
17 of Health and Human Services under such section
18 1115, despite the explicit requirement in that section

1 that certain requirements of the medicaid and State
2 children’s health insurance programs only may be
3 waived, modified, or disregarded for the purpose of
4 approving an experimental, pilot, or demonstration
5 project if the waiver, modification, or disregard “is
6 likely to assist in promoting the objectives” of those
7 programs.

8 (b) PURPOSES.—The purposes of this Act are the fol-
9 lowing:

10 (1) To clarify that certain requirements of titles
11 XIX and XXI of the Social Security Act (42 U.S.C.
12 1396 et seq., 1397aa et seq.), which are among
13 those critical to achieving the objectives of the med-
14 icaid and State children’s health insurance pro-
15 grams, may not be waived, modified, or otherwise
16 disregarded by the Secretary of Health and Human
17 Services under the authority of section 1115 of the
18 Social Security Act (42 U.S.C. 1315).

19 (2) To ensure that the authority granted to the
20 Secretary of Health and Human Services under sec-
21 tion 1115 of the Social Security Act (42 U.S.C.
22 1315) with respect to the medicaid and State chil-
23 dren’s health insurance programs for the purpose of
24 approving experimental, pilot, or demonstration
25 projects is not used inappropriately.

1 (c) RULE OF CONSTRUCTION.—Nothing in this Act
2 or the amendments made by this Act shall be construed
3 to—

4 (1) authorize the waiver, modification, or other
5 disregard of any provision of title XIX or XXI of the
6 Social Security Act (42 U.S.C. 1396 et seq., 1397aa
7 et seq.); or

8 (2) imply congressional approval of any dem-
9 onstration project affecting the medicaid program
10 under title XIX of the Social Security Act or the
11 State children’s health insurance program under
12 title XXI of such Act that has been approved by the
13 Secretary of Health and Human Services as of the
14 date of enactment of this Act.

15 **SEC. 3. CLARIFICATION THAT SECTION 1115 AUTHORITY**
16 **DOES NOT PERMIT A CAP ON FEDERAL FI-**
17 **NANCIAL PARTICIPATION.**

18 Title XIX of the Social Security Act is amended by
19 inserting after section 1925 the following:

20 “CLARIFICATIONS OF AUTHORITY UNDER SECTION 1115

21 “SEC. 1926. (a) CLARIFICATION THAT SECTION
22 1115 AUTHORITY DOES NOT PERMIT A CAP ON FEDERAL
23 FINANCIAL PARTICIPATION.—The Secretary may not im-
24 pose or approve under the authority of section 1115 a cap,
25 limitation, or other restriction on payment under section
26 1903(a) to a State for amounts expended as medical as-

1 sistance in accordance with the requirements of this
2 title.”.

3 **SEC. 4. CLARIFICATION THAT SECTION 1115 AUTHORITY**
4 **DOES NOT PERMIT ELIMINATION OF, OR**
5 **MODIFICATION LIMITING, INDIVIDUAL ENTI-**
6 **TLEMENT.**

7 Section 1926 of the Social Security Act, as added by
8 section 3, is amended by adding at the end the following:

9 “(b) CLARIFICATION THAT SECTION 1115 AUTHOR-
10 ITY DOES NOT PERMIT ELIMINATION OF, OR MODIFICA-
11 TION LIMITING, INDIVIDUAL ENTITLEMENT.—The Sec-
12 retary may not approve or impose under the authority of
13 section 1115 an elimination of, or modification limiting,
14 the entitlement (established under section 1902(a),
15 1905(a), or otherwise) of an individual to receive any med-
16 ical assistance for which Federal financial participation is
17 claimed under this title.”.

18 **SEC. 5. CLARIFICATION THAT SECTION 1115 AUTHORITY**
19 **DOES NOT PERMIT ELIMINATION OR MODI-**
20 **FICATION OF REQUIREMENTS RELATING TO**
21 **EPSDT SERVICES.**

22 Section 1926 of the Social Security Act, as added by
23 section 3 and amended by section 4, is amended by adding
24 at the end the following:

1 “(c) CLARIFICATION THAT SECTION 1115 AUTHOR-
2 ITY DOES NOT PERMIT ELIMINATION OR MODIFICATION
3 OF REQUIREMENTS RELATING TO EPSDT SERVICES.—
4 The Secretary may not impose or approve under the au-
5 thority of section 1115 an elimination or modification of
6 the amount, duration, or scope of the services described
7 in section 1905(a)(4)(B) (relating to early and periodic
8 screening, diagnostic, and treatment services (as defined
9 in section 1905(r))) or of the requirements of subpara-
10 graphs (A) through (C) of section 1902(a)(43).”.

11 **SEC. 6. CLARIFICATION THAT SECTION 1115 AUTHORITY**
12 **DOES NOT PERMIT ELIMINATION OR MODI-**
13 **FICATION OF REQUIREMENTS RELATING TO**
14 **CERTAIN SAFETY-NET SERVICES.**

15 Section 1926 of the Social Security Act, as added by
16 section 3 and amended by sections 4 and 5, is amended
17 by adding at the end the following:

18 “(d) CLARIFICATION THAT SECTION 1115 AUTHOR-
19 ITY DOES NOT PERMIT ELIMINATION OR MODIFICATION
20 OF REQUIREMENTS RELATING TO CERTAIN SAFETY-NET
21 SERVICES.—The Secretary may not impose or approve
22 under the authority of section 1115 an elimination or
23 modification of the amount, duration, or scope of the serv-
24 ices described in subparagraphs (B) and (C) of section
25 1905(a)(2) (relating to services provided by a rural health

1 clinic (as defined in section 1905(l)(1)) and services pro-
2 vided by a Federally-qualified health center (as defined in
3 section 1905(l)(2))) or of the requirements of section
4 1902(bb) (relating to payment for such services).”.

5 **SEC. 7. PROHIBITION ON USE OF CHIP FUNDS FOR HEALTH**
6 **BENEFITS COVERAGE FOR CHILDLESS**
7 **ADULTS.**

8 (a) IN GENERAL.—Section 2107 of the Social Secu-
9 rity Act (42 U.S.C. 1397gg) is amended by adding at the
10 end the following:”

11 “(f) LIMITATION OF WAIVER AUTHORITY.—Notwith-
12 standing subsection (e)(2)(A) and section 1115(a), on and
13 after the date of enactment of this subsection, the Sec-
14 retary may not approve a waiver, experimental, pilot, or
15 demonstration project, or an amendment to such a project,
16 that would allow funds made available under this title to
17 be used to provide child health assistance or other health
18 benefits coverage to a nonpregnant childless adult. For
19 purposes of the preceding sentence, a caretaker relative
20 (as such term is defined for purposes of carrying out sec-
21 tion 1931) shall not be considered a childless adult.”.

22 (b) CONFORMING AMENDMENTS.—Section
23 2105(c)(1) of such Act (42 U.S.C. 1397ee(c)(1)) is
24 amended—

1 (1) by inserting “and may not include coverage
2 of a nonpregnant childless adult” after “section
3 2101”); and

4 (2) by adding at the end the following: “For
5 purposes of the preceding sentence, a caretaker rel-
6 ative (as such term is defined for purposes of car-
7 rying out section 1931) shall not be considered a
8 childless adult.”.

9 **SEC. 8. IMPROVEMENT OF THE PROCESS FOR THE DEVEL-**
10 **OPMENT AND APPROVAL OF MEDICAID AND**
11 **CHIP DEMONSTRATION PROJECTS.**

12 Section 1115 of the Social Security Act (42 U.S.C.
13 1315) is amended by inserting after subsection (c) the fol-
14 lowing:

15 “(d) In the case of any experimental, pilot, or dem-
16 onstration project under subsection (a) to assist in pro-
17 moting the objectives of title XIX or XXI in a State that
18 would result in a substantive change in eligibility, enroll-
19 ment, benefits, financing, or cost-sharing (to the extent
20 permitted under section 1916(f)) with respect to a State
21 program under title XIX or XXI (in this subsection re-
22 ferred to as a ‘demonstration project’) the following shall
23 apply:

24 “(1) The Secretary may not approve a proposal
25 for a demonstration project, or for an amendment of

1 a demonstration project, submitted by a State on or
2 after the date of enactment of this subsection, unless
3 the State requesting approval certifies that the State
4 provided reasonable public notice and a reasonable
5 opportunity for receipt and consideration of public
6 comment on the proposal prior to submission of the
7 proposal to the Secretary. Such notice shall
8 include—

9 “(A) the proposal;

10 “(B) the methodologies underlying the pro-
11 posal;

12 “(C) the justifications for the proposal;

13 “(D) the State’s projections regarding the
14 likely effect and impact of the proposal on indi-
15 viduals eligible for assistance and providers or
16 suppliers of items or services under title XIX or
17 XXI (including under any demonstration
18 project conducted in conjunction with either of
19 those titles); and

20 “(E) the State’s assumptions on which the
21 projections described in subparagraph (D) are
22 based.

23 “(2) With respect to any proposal for a dem-
24 onstration project, or for an amendment or exten-
25 sion of a demonstration project, which has not been

1 approved or disapproved by the Secretary as of the
2 date of enactment of this subsection, the Secretary
3 shall—

4 “(A) provide public notice in the Federal
5 Register and on the Internet website of the
6 Centers for Medicare & Medicaid Services of
7 the proposal, any revisions of the proposal, and
8 any conditions for the financing or approval of
9 the proposal;

10 “(B) provide adequate opportunity for
11 public comment on the proposal, any revisions
12 of the proposal, and any such conditions;

13 “(C) approve such proposal, any revisions
14 of the proposal, and any such conditions only if,
15 after consideration of the public comments re-
16 ceived, the Secretary determines that the pro-
17 posal, any revisions of the proposal, and any
18 such conditions are likely to assist in promoting
19 the objectives of title XIX or XXI and identifies
20 in writing the basis for such determination; and

21 “(D) publish on such website all docu-
22 mentation relating to the proposal (including
23 the written determination required under sub-
24 paragraph (C)), any revisions of the proposal,
25 and any such conditions, including if the pro-

1 posals, any revisions of the proposal, and any
2 such conditions are approved—

3 “(i) the final terms and conditions for
4 the demonstration project; and

5 “(ii) a list identifying each provision
6 of title XIX or XXI, and each regulation
7 relating to either such title, with which
8 compliance is waived, modified, or other-
9 wise disregarded or for which costs that
10 would otherwise not be permitted under
11 such title will be allowed.”.

12 **SEC. 9. EFFECTIVE DATE.**

13 (a) IN GENERAL.—Except as provided in subsection
14 (b), the amendments made by sections 3 through 6 shall
15 apply to the approval on or after the date of enactment
16 of this Act of—

17 (1) a waiver, experimental, pilot, or demonstra-
18 tion project under section 1115 of the Social Secu-
19 rity Act (42 U.S.C. 1315); and

20 (2) an amendment or extension of such a
21 project.

22 (b) EXCEPTION.—The amendment made by section
23 5 shall not apply with respect to any extension of approval
24 of a waiver, experimental, pilot, or demonstration project
25 with respect to title XIX of the Social Security Act that

1 was first approved before 1994 and that provides a com-
2 prehensive and preventive child health program under
3 such project that includes screening, diagnosis, and treat-
4 ment of children who have not attained age 21.