

110TH CONGRESS
1ST SESSION

S. 2460

To extend by one year the moratorium on implementation of a rule relating to the Federal-State financial partnership under Medicaid and the State Children's Health Insurance Program and on finalization of a rule regarding graduate medical education under Medicaid and to include a moratorium on the finalization of the outpatient Medicaid rule making similar changes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 12, 2007

Mr. BINGAMAN (for himself, Mrs. DOLE, Mr. DURBIN, Mrs. FEINSTEIN, Ms. STABENOW, Mr. SALAZAR, Mr. KERRY, Mr. BROWN, Mrs. MCCASKILL, Mr. SCHUMER, Mrs. BOXER, Mr. LEVIN, Mr. BAYH, Mr. BURR, Mr. MARTINEZ, Mrs. CLINTON, Mr. PRYOR, Mr. LEAHY, Mrs. LINCOLN, Mrs. HUTCHISON, Mr. CHAMBLISS, Mr. ROCKEFELLER, Mr. ISAKSON, and Mr. BOND) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To extend by one year the moratorium on implementation of a rule relating to the Federal-State financial partnership under Medicaid and the State Children's Health Insurance Program and on finalization of a rule regarding graduate medical education under Medicaid and to include a moratorium on the finalization of the outpatient Medicaid rule making similar changes.

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

1 **SECTION 1. EXTENSION OF MORATORIUM ON IMPLEMEN-**
2 **TATION OF RULE RELATING TO THE FED-**
3 **ERAL-STATE FINANCIAL PARTNERSHIP**
4 **UNDER MEDICAID AND SCHIP AND ON FINAL-**
5 **IZATION OF A RULE RELATING TO THE**
6 **TREATMENT OF GRADUATE MEDICAL EDU-**
7 **CATION UNDER MEDICAID; MORATORIUM ON**
8 **THE FINALIZATION OF THE OUTPATIENT**
9 **MEDICAID RULE MAKING SIMILAR CHANGE.**

10 (a) FINDINGS.—Congress makes the following find-
11 ings:

12 (1) A proposed rule was published on January
13 18, 2007, on pages 2236 through 2248 of volume
14 72, Federal Register, and a rule purporting to final-
15 ize that rule was published on May 29, 2007, on
16 pages 29748 through 29836 of volume 72, Federal
17 Register (relating to parts 433, 447, and 457 of title
18 42, Code of Federal Regulations). This rule would
19 significantly change the Federal-State financial part-
20 nership under the Medicaid and the State Children’s
21 Health Insurance Programs by—

22 (A) imposing a cost limit on payments
23 made under such programs to governmentally
24 operated providers;

25 (B) limiting the permissible sources of the
26 non-Federal shares required under such pro-

1 grams and the types of entities permitted to
2 contribute to such shares; and

3 (C) imposing new requirements on partici-
4 pating providers and States under such pro-
5 grams.

6 (2) A proposed rule was published on May 23,
7 2007, on pages 28930 through 28936 of volume 72,
8 Federal Register (relating to parts 438 and 447 of
9 title 42, Code of Federal Regulations) that would
10 significantly change the scope of permissible pay-
11 ments under Medicaid by removing the ability for
12 States to make payments related to graduate med-
13 ical education.

14 (3) Permitting these rules to take effect would
15 drastically alter the Federal-State financial partner-
16 ship in Medicaid and the State Children's Health In-
17 surance Programs, undermine the discretion tradi-
18 tionally accorded States, and have a negative impact
19 on States, providers, and beneficiaries in the fol-
20 lowing manner:

21 (A) Implementation of the rule regarding
22 the Federal-State financial partnership would
23 force billions of dollars of payment reductions,
24 thus hampering the ability of impacted pro-
25 viders to provide essential services including al-

1 lowing those providers to be ready and available
2 for emergency situations and to provide care to
3 the increasing numbers of uninsured.

4 (B) Implementation of the rule regarding
5 graduate medical education would force billions
6 of dollars in payment reductions to teaching
7 hospitals, thus hampering the ability of those
8 providers to provide essential services including
9 the education of the next generation of medical
10 professionals despite a shortage of medical pro-
11 fessionals.

12 (4) By including a one-year moratorium in the
13 U.S. Troop Readiness, Veterans' Care, Katrina Re-
14 covery, and Iraq Accountability Appropriations Act
15 of 2007, Congress intended to forestall administra-
16 tive action to allow itself time to assess the proposals
17 and consider alternatives that would not negatively
18 impact States, providers, and beneficiaries.

19 (5) After Congressional approval of the morato-
20 rium contained in the U.S. Troop Readiness, Vet-
21 erans' Care, Katrina Recovery, and Iraq Account-
22 ability Appropriations Act of 2007, the Centers for
23 Medicare & Medicaid Services on May 25, 2007,
24 submitted for publication its final rule, which was

1 not significantly different from the January pro-
2 posed regulation.

3 (6) The publication of a final rule in May re-
4 garding the Federal-State financial partnership was
5 not anticipated by Congress and accelerates the neg-
6 ative impact on States, providers, and beneficiaries,
7 thus undermining the intent of the moratorium
8 passed by Congress.

9 (7) The publication of a proposed rule in May
10 regarding graduate medical education was not an-
11 ticipated by Congress and undermines the intent of
12 the moratorium passed by Congress.

13 (8) A proposed rule was published on Sep-
14 tember 28, 2007, on pages 55158 through 55166 of
15 volume 72, Federal Register (relating to parts 440
16 and 447 of title 42, Code of Federal Regulations)
17 that would significantly change the scope of permis-
18 sible payments under Medicaid by redefining out-
19 patient hospital services and dictating methodologies
20 for calculation of the outpatient services upper pay-
21 ment limit.

22 (9) Congress did not anticipate continued
23 changes after the moratorium to reduce State flexi-
24 bility to make adequate Medicaid payments.

1 (10) Expansion and extension of the morato-
2 rium is necessary to effectuate Congressional intent.

3 (b) EXTENSION OF PROHIBITION.—Section
4 7002(a)(1) of the U.S. Troop Readiness, Veterans’ Care,
5 Katrina Recovery, and Iraq Accountability Appropriations
6 Act of 2007 (Public Law 110–28) is amended—

7 (1) by striking “1 year” and inserting “2
8 years”;

9 (2) by inserting “or (D)” after “described in
10 subparagraph (A)” in subparagraph (B);

11 (3) by striking “or” at the end of subparagraph
12 (B);

13 (4) by striking the period at the end of sub-
14 paragraph (C) and inserting “; or”; and

15 (5) by inserting at the end the following:

16 “(D) finalize or otherwise implement provi-
17 sions contained in the proposed rule published
18 on September 28, 2007, on pages 55158
19 through 55166 of volume 72, Federal Register
20 (relating to parts 440 and 447 of title 42, Code
21 of Federal Regulations).”.

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