

111TH CONGRESS
1ST SESSION

S. 1060

To comprehensively prevent, treat, and decrease overweight and obesity in our Nation's populations.

IN THE SENATE OF THE UNITED STATES

MAY 18, 2009

Mr. BINGAMAN introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To comprehensively prevent, treat, and decrease overweight and obesity in our Nation's populations.

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 "Obesity Prevention,
5 Treatment, and Research Act of 2009".

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) In 2001, the United States Surgeon Gen-
9 eral released the Call to Action to Prevent and De-

1 crease Overweight and Obesity to bring attention to
2 the public health problems related to obesity.

3 (2) Since the Surgeon General's call to action,
4 the problems of obesity and overweight have become
5 epidemic, occurring in all ages, ethnicities and races,
6 and individuals in every State.

7 (3) The United States now has the highest
8 prevalence of obesity among the developed nations,
9 according to 2006 data by the Organisation for Eco-
10 nomic Co-operation and Development. The preva-
11 lence of obesity in the United States (34 percent) is
12 more than twice the average for other developed na-
13 tions (13 percent). The closest nation in prevalence
14 of obesity is the United Kingdom (24 percent) which
15 is over 25 percent less than the United States.

16 (4) The National Health and Nutrition Exam-
17 ination Survey in 2006 estimated that 32 percent of
18 children and adolescents aged 2 to 19 and an alarm-
19 ing 66 percent of adults are overweight or obese.

20 (5) More than 30 percent of young people in
21 grades 9 through 12 do not regularly engage in vig-
22 orous intensity physical activity, while almost 40
23 percent of adults are sedentary and 70 percent re-
24 port getting less than 20 minutes of regular physical
25 activity per day.

1 (6) The Institute of Medicine, in their 2005
2 publication “Preventing Childhood Obesity: Health
3 in the Balance”, reported that over the last 3 dec-
4 ades, the rate of childhood obesity has tripled for
5 children aged 6 to 11 years, and doubled for chil-
6 dren aged 2 to 5 years old and in adolescents aged
7 12 to 19 years old. In 2004, approximately
8 9,000,000 children over 6 years of age were obese.
9 Only 2 percent of children eat a healthy diet con-
10 sistent with Federal nutrition guidelines.

11 (7) For children born in 2000, it is estimated
12 the lifetime risk of being diagnosed with type 2 dia-
13 betes is 40 percent for females and 30 percent for
14 males.

15 (8) Overweight and obesity disproportionately
16 affect minority populations and women. According to
17 the 2006 Behavioral Risk Factor Surveillance Sys-
18 tem of the Centers for the Disease Control and Pre-
19 vention, 61 percent of adults in the United States
20 are overweight or obese.

21 (9) The Centers for the Disease Control and
22 Prevention estimates the annual expenditures related
23 to overweight and obesity in the United States to be
24 \$117,000,000,000 in 2001 and rising rapidly.

1 (10) The Centers for the Disease Control and
2 Prevention estimates that the increase in the num-
3 ber of overweight and obese Americans between
4 1987 and 2001 resulted in a 27 percent increase in
5 per capita health costs, and that as many as
6 112,000 deaths per year are associated with obesity.

7 (11) Being overweight or obese increases the
8 risk of chronic diseases including diabetes, heart dis-
9 ease, stroke, certain cancers, arthritis, and other
10 health problems.

11 (12) According to the National Institute of Dia-
12 betes and Digestive and Kidney Diseases, individuals
13 who are obese have a 50 to 100 percent increased
14 risk of premature death.

15 (13) Healthy People 2010 goals identify over-
16 weight and obesity as 1 of the Nation's leading
17 health problems and include objectives for increasing
18 the proportion of adults who are at a healthy weight,
19 reducing the proportion of adults who are obese, and
20 reducing the proportion of children and adolescents
21 who are overweight or obese.

22 (14) Another Healthy People 2010 goal is to
23 eliminate health disparities among different seg-
24 ments of the population. Obesity is a health problem

1 that disproportionately impacts medically underserved
2 populations.

3 (15) Food and beverage advertisers are esti-
4 mated to spend \$10,000,000 to \$12,000,000,000 per
5 year to target children and youth.

6 (16) The United States spends less than 2 per-
7 cent of its annual health expenditures on prevention.

8 (17) Employer health promotion investments
9 net a return of \$3 for every \$1 invested.

10 (18) High-energy dense and low-nutrient dense
11 foods represent 30 percent of American's total cal-
12 orie intake. Fast food company menus are twice the
13 energy density of recommended healthful diets.

14 (19) Research suggests that individuals eat too
15 much high-energy dense foods without feeling full
16 because the brain's pathways that regulate hunger
17 and influence normal food intake are not triggered
18 by these foods.

19 (20) Packaging, product placement, and high-
20 energy dense food content manipulation contribute
21 to the overweight and obesity epidemic in the United
22 States.

23 (21) Such marketing and content manipulation
24 techniques have been used by other industries to en-
25 courage consumption at the expense of health. To

1 help individuals make healthy choices, education and
 2 information must be available with clear, consistent,
 3 and accurate labeling.

4 **TITLE I—OBESITY TREATMENT,**
 5 **PREVENTION, AND REDUCTION**

6 **SEC. 101. UNITED STATES COUNCIL ON OVERWEIGHT-OBE-**
 7 **SITY PREVENTION.**

8 Part P of title III of the Public Health Service Act
 9 (42 U.S.C. 280g et seq.) is amended by—

10 (1) redesignating section 399R (as inserted by
 11 section 2 of Public Law 110–373) as section 399S;

12 (2) redesignating section 399R (as inserted by
 13 section 3 of Public Law 110–374) as section 399T;
 14 and

15 (3) adding at the end the following:

16 **“SEC. 399U. UNITED STATES COUNCIL ON OVERWEIGHT-**
 17 **OBESITY PREVENTION.**

18 “(a) ESTABLISHMENT.—The Secretary shall convene
 19 a United States Council on Overweight-Obesity Prevention
 20 (referred to in this section as ‘USCO–OP’).

21 “(b) MEMBERSHIP.—

22 “(1) IN GENERAL.—USCO–OP shall be com-
 23 posed of 20 members, which shall consist of—

24 “(A) the Secretary;

1 “(B) the Secretary (or his or her designee)

2 of—

3 “(i) the Department of Agriculture;

4 “(ii) the Department of Education;

5 “(iii) the Department of Housing and

6 Urban Development;

7 “(iv) the Department of the Interior

8 “(v) the Federal Trade Commission;

9 “(vi) the Department of Transpor-
10 tation; and

11 “(vii) any other Federal agency that
12 the Secretary of Health and Human Serv-
13 ices determines appropriate;

14 “(C) the Chairman (or his or her designee)
15 of the Federal Communications Commission;

16 “(D) the Director (or his or her designee)
17 of the Centers for Disease Control and Preven-
18 tion, the National Institutes of Health, and the
19 Agency for Healthcare Research and Quality;

20 “(E) the Administrator of the Centers for
21 Medicare and Medicaid Services (or his or her
22 designee);

23 “(F) the Commissioner of Food and Drugs
24 (or his or her designee); and

1 “(G) a minimum of 5 representatives, ap-
2 pointed by the Secretary, of expert organiza-
3 tions such as public health associations, key
4 healthcare provider groups, planning and devel-
5 opment organizations, education associations,
6 advocacy groups, relevant industries, State and
7 local leadership, and other entities as deter-
8 mined appropriate by the Secretary.

9 “(2) APPOINTMENTS.—The Secretary shall ac-
10 cept nominations for representation on USCO–OP
11 through public comment before the initial appoint-
12 ment of members of USCO–OP under paragraph
13 (1)(G), and on a regular basis for open positions
14 thereafter, but not less than every 2 years.

15 “(3) CHAIRPERSON.—The chairperson of
16 USCO–OP shall be—

17 “(A) an individual appointed by the Presi-
18 dent; and

19 “(B) until the date that an individual is
20 appointed under subparagraph (A), the Sec-
21 retary.

22 “(c) MEETINGS.—

23 “(1) IN GENERAL.—USCO–OP shall meet—

1 “(A) not later than 180 days after the date
2 of enactment of the Obesity Prevention, Treat-
3 ment, and Research Act of 2009; and

4 “(B) at the call of the chairperson there-
5 after, but in no case less often than 2 times per
6 year.

7 “(2) MEETINGS OF FEDERAL AGENCIES.—The
8 representatives of the Federal agencies on USCO–
9 OP shall meet on a regular basis, as determined by
10 the Secretary, to develop strategies to coordinate
11 budgets and discuss other issues that are not other-
12 wise permitted to be discussed in a public forum.
13 The purpose of such meetings shall be to allow more
14 rapid interagency strategic planning and interven-
15 tion implementation to address the overweight and
16 obesity epidemic.

17 “(d) DUTIES OF USCO–OP.—USCO–OP shall—

18 “(1) develop strategies to comprehensively pre-
19 vent, treat, and reduce overweight and obesity;

20 “(2) coordinate interagency cooperation and ac-
21 tion related to the prevention, treatment, and reduc-
22 tion of overweight and obesity in the United States;

23 “(3) identify best practices in communities to
24 address overweight and obesity;

1 “(4) work with appropriate entities to evaluate
2 the effectiveness of obesity and overweight interven-
3 tions;

4 “(5) update the National Institutes of Health
5 1998 ‘Clinical Guidelines on the Identification, Eval-
6 uation, and Treatment of Overweight and Obesity in
7 Adults: The Evidence Report’ and include sections
8 on childhood obesity in such updated report;

9 “(6) conduct ongoing surveillance and moni-
10 toring using tools such as the National Health and
11 Nutrition Examination Survey and the Behavioral
12 Risk Factor Surveillance System and assure ade-
13 quate and consistent funding to support data collec-
14 tion and analysis to inform policy;

15 “(7) make recommendations to coordinate
16 budgets, grant and pilot programs, policies, and pro-
17 grams across Federal agencies to cohesively address
18 overweight and obesity, including with respect to the
19 grant programs carried out under sections 306(n),
20 399V, and 1904(a)(1)(H);

21 “(8) make recommendations to update and im-
22 prove the daily physical activity requirements for
23 students under the Elementary and Secondary Edu-
24 cation Act of 1965 (20 U.S.C. 6301 et seq.) and in-
25 clude recommendations about physical activities that

1 families can do together, and involving parents in
2 these activities;

3 “(9) make recommendations about coverage for
4 obesity-related services and for an early and periodic
5 screening, diagnostic, and treatment services pro-
6 gram under the State Children’s Health Insurance
7 Program established under title XXI of the Social
8 Security Act;

9 “(10) make recommendations for obesity-re-
10 lated information, including height, weight, and body
11 mass index, to be included in electronic health
12 records for the purpose of ongoing surveillance and
13 monitoring; and

14 “(11) provide guidelines for childhood obesity
15 health care related treatment under the early and
16 periodic screening, diagnostic, and treatment serv-
17 ices program under the Medicaid program estab-
18 lished under title XIX of the Social Security Act and
19 otherwise described in section 2103(e)(5) of such
20 Act.

21 “(e) REPORT.—Not later than 18 months after the
22 date of enactment of the Obesity Prevention, Treatment,
23 and Research Act of 2009, and on an annual basis there-
24 after, USCO–OP shall submit to the President and to the
25 relevant committees of Congress, a report that—

1 “(1) summarizes the activities and efforts of
2 USCO–OP under this section to coordinate inter-
3 agency prevention, treatment, and reduction of obe-
4 sity and overweight, including a detailed strategic
5 plan with recommendations for each Federal agency;

6 “(2) evaluates the effectiveness of these coordi-
7 nated interventions and conducts interim assess-
8 ments and reporting of health outcomes, achieve-
9 ment of milestones, and implementation of strategic
10 plan goals starting with the second report, and year-
11 ly thereafter; and

12 “(3) makes recommendations for the following
13 year’s strategic plan based on data and findings
14 from the previous year.

15 “(f) TECHNICAL ASSISTANCE.—The Department of
16 Health and Human Services may provide technical assist-
17 ance to USCO–OP to carry out the activities under this
18 section.

19 “(g) PERMANENCE OF COMMITTEE.—Section 14 of
20 the Federal Advisory Committee Act (5 U.S.C. App.) shall
21 not apply to USCO–OP.”.

1 **SEC. 102. GRANTS AND DEMONSTRATION PROGRAMS TO**
 2 **PROMOTE POSITIVE HEALTH BEHAVIORS IN**
 3 **POPULATIONS DISPROPORTIONATELY AF-**
 4 **FECTED BY OBESITY AND OVERWEIGHT.**

5 Part P of title III of the Public Health Service Act
 6 (42 U.S.C. 280g et seq.), as amended by section 101, is
 7 amended by adding at the end the following:

8 **“SEC. 399V. GRANTS AND DEMONSTRATION PROGRAMS TO**
 9 **PROMOTE POSITIVE HEALTH BEHAVIORS IN**
 10 **POPULATIONS DISPROPORTIONATELY AF-**
 11 **FECTED BY OBESITY AND OVERWEIGHT.**

12 “(a) **ELIGIBLE ENTITY.**—For purposes of this sec-
 13 tion, the term ‘eligible entity’ means—

14 “(1) a city, county, Indian tribe, tribal organi-
 15 zation, territory, or State;

16 “(2) a local, tribal, or State educational agency;

17 “(3) a Federal medical facility, including a fed-
 18 erally qualified health center (as defined in section
 19 1861(aa)(4) of the Social Security Act), an Indian
 20 Health Service hospital or clinic, any health facility
 21 or program operated by or pursuant to a contractor
 22 grant from the Indian Health Service, an Indian
 23 Health Service entity, an urban Indian center, an
 24 Indian tribal clinic, a health care for the homeless
 25 center, a rural health center, migrant health center,
 26 and any other Federal medical facility;

1 “(4) any entity meeting the criteria for medical
2 home under section 204 of the Tax Relief and
3 Health Care Act of 2006 (Public Law 109–432);

4 “(5) a nonprofit organization (such as an aca-
5 demic health center or community health center);

6 “(6) a health department;

7 “(7) any licensed or certified health provider;

8 “(8) an accredited university or college;

9 “(9) a community-based organization;

10 “(10) a local city planning agency; and

11 “(11) any other entity determined appropriate
12 by the Secretary.

13 “(b) APPLICATION.—An eligible entity that desires a
14 grant under this section shall submit an application at
15 such time, in such manner, and containing such informa-
16 tion as the Secretary may require, including a plan for
17 the use of funds that may be awarded and an evaluation
18 of any training that will be provided under such grant.

19 “(c) GRANT DEMONSTRATION AND PILOT PRO-
20 GRAM.—

21 “(1) IN GENERAL.—The Secretary, acting
22 through the Director of the Centers for Disease
23 Control and Prevention, and in consultation with the
24 United States Council on Overweight-Obesity Pre-
25 vention under section 399U, shall establish and

1 evaluate a grant demonstration and pilot program
2 for entities to—

3 “(A) prevent, treat, or otherwise reduce
4 overweight and obesity;

5 “(B) increase the number of children and
6 adults who safely walk or bike to school or
7 work;

8 “(C) increase the availability and afford-
9 ability of fresh fruits and vegetables in the com-
10 munity;

11 “(D) expand safe and accessible walking
12 paths and recreational facilities to encourage
13 physical activity, and other interventions to cre-
14 ate healthy communities;

15 “(E) create advertising, social marketing,
16 and public health campaigns promoting
17 healthier food choices, increased physical activ-
18 ity, and healthier lifestyles targeted to individ-
19 uals and to families;

20 “(F) promote increased rates and duration
21 of breast-feeding; and

22 “(G) increase worksite and employer pro-
23 motion of and involvement in community initia-
24 tives that prevent, treat, or otherwise reduce
25 overweight and obesity.

1 “(2) SPECIAL PRIORITY.—Special priority will
2 be given to grant proposals that target communities
3 or populations disproportionately affected by over-
4 weight or obesity, including Native Americans, other
5 minorities, and women.

6 “(d) GRANTS TO PROMOTE POSITIVE HEALTH BE-
7 HAVIORS IN POPULATIONS DISPROPORTIONATELY AF-
8 FECTED BY OBESITY AND OVERWEIGHT.—

9 “(1) IN GENERAL.—The Secretary, acting
10 through the Director of the Centers for Disease
11 Control and Prevention, may award grants to eligi-
12 ble entities to promote health behaviors for women
13 and children in target populations, especially racial
14 and ethnic minority populations in medically under-
15 served communities.

16 “(2) USE OF FUNDS.—An award under this
17 section shall be used to carry out any of the fol-
18 lowing:

19 “(A) To educate, promote, prevent, treat
20 and determine best practices in overweight and
21 obese populations.

22 “(B) To address behavioral risk factors in-
23 cluding sedentary lifestyle, poor nutrition, being
24 overweight or obese, and use of tobacco, alcohol
25 or other substances that increase the risk of

1 morbidity and mortality. Special priority will be
2 given to grant applications that—

3 “(i) propose interventions that ad-
4 dress embedded levels of influence on be-
5 havior, including the individual, family,
6 peers, community and society; and

7 “(ii) utilize techniques that promote
8 community involvement in the design and
9 implementation of interventions including
10 community diagnosis and community-based
11 participatory research.

12 “(C) To develop and implement interven-
13 tions to promote a balance of energy consump-
14 tion and expenditure, to attain healthier weight,
15 prevent obesity, and reduce morbidity and mor-
16 tality associated with overweight and obesity.

17 “(D)(i) To train primary care physicians
18 and other licensed or certified health profes-
19 sionals on how to identify, treat, and prevent
20 obesity or eating disorders and aid individuals
21 who are overweight, obese, or who suffer from
22 eating disorders.

23 “(ii) To use evidence-based findings or rec-
24 ommendations that pertain to the prevention
25 and treatment of obesity, being overweight, and

1 eating disorders to conduct educational con-
2 ferences, including Internet-based courses and
3 teleconferences, on—

4 “(I) how to treat or prevent obesity,
5 being overweight, and eating disorders;

6 “(II) the link between obesity, being
7 overweight, eating disorders and related se-
8 rious and chronic medical conditions;

9 “(III) how to discuss varied strategies
10 with patients from at-risk and diverse pop-
11 ulations to promote positive behavior
12 change and healthy lifestyles to avoid obe-
13 sity, being overweight, and eating dis-
14 orders;

15 “(IV) how to identify overweight,
16 obese, individuals with eating disorders,
17 and those who are at risk for obesity and
18 being overweight or suffer from eating dis-
19 orders and, therefore, at risk for related
20 serious and chronic medical conditions; and

21 “(V) how to conduct a comprehensive
22 assessment of individual and familial
23 health risk factors and evaluate the effec-
24 tiveness of the training provided by such

1 entity in increasing knowledge and chang-
2 ing attitudes and behaviors of trainees.

3 “(iii) In awarding a grant to carry out an
4 activity under this subparagraph, preference
5 shall be given to an entity described in sub-
6 section (a)(4).

7 “(e) REPORTING TO CONGRESS.—Not later than 3
8 years after the date of enactment of this section, the Di-
9 rector of the Centers for Disease Control and Prevention
10 shall submit to the Secretary and Congress a report con-
11 cerning the result of the activities conducted through the
12 grants awarded under this section.

13 “(f) AUTHORIZATION OF APPROPRIATIONS.—There
14 are authorized to be appropriated to carry out this section,
15 \$50,000,000 for fiscal year 2010, and such sums as may
16 be necessary for each of fiscal years 2011 through 2013.”.

17 **SEC. 103. NATIONAL CENTER FOR HEALTH STATISTICS.**

18 Section 306 of the Public Health Service Act (42
19 U.S.C. 242k) is amended—

20 (1) in subsection (m)(4)(B), by striking “sub-
21 section (n)” each place it appears and inserting
22 “subsection (o)”;

23 (2) by redesignating subsection (n) as sub-
24 section (o); and

1 (3) by inserting after subsection (m) the fol-
2 lowing:

3 “(n)(1) The Secretary, acting through the Center,
4 may provide for the—

5 “(A) collection of data for determining the fit-
6 ness levels and energy expenditure of adults, chil-
7 dren, and youth; and

8 “(B) analysis of data collected as part of the
9 National Health and Nutrition Examination Survey
10 and other data sources.

11 “(2) In carrying out paragraph (1), the Secretary,
12 acting through the Center, may make grants to States,
13 public entities, and nonprofit entities.

14 “(3) The Secretary, acting through the Center, may
15 provide technical assistance, standards, and methodologies
16 to grantees supported by this subsection in order to maxi-
17 mize the data quality and comparability with other stud-
18 ies.”.

19 **SEC. 104. HEALTH DISPARITIES REPORT.**

20 Not later than 18 months after the date of enactment
21 of this Act, and annually thereafter, the Director of the
22 Agency for Healthcare Research and Quality shall review
23 all research that results from the activities carried out
24 under this Act (and the amendments made by this Act)
25 and determine if particular information may be important

1 to the report on health disparities required by section
2 903(c)(3) of the Public Health Service Act (42 U.S.C.
3 299a-1(c)(3)).

4 **SEC. 105. PREVENTIVE HEALTH SERVICES BLOCK GRANT.**

5 Section 1904(a)(1) of the Public Health Service Act
6 (42 U.S.C. 300w-3(a)(1)) is amended by adding at the
7 end the following:

8 “(H) Activities and community education pro-
9 grams designed to address and prevent overweight,
10 obesity, and eating disorders through effective pro-
11 grams to promote healthy eating, and exercise habits
12 and behaviors.”.

13 **SEC. 106. REPORT ON OBESITY AND EATING DISORDERS**
14 **RESEARCH.**

15 (a) IN GENERAL.—Not later than 1 year after the
16 date of enactment of this Act, the Secretary of Health and
17 Human Services shall submit to the Committee on Health,
18 Education, Labor, and Pensions of the Senate and the
19 Committee on Energy and Commerce of the House of
20 Representatives a report on research conducted on causes
21 and health implications (including mental health implica-
22 tions) of being overweight, obesity, and eating disorders.

23 (b) CONTENT.—The report described in subsection
24 (a) shall contain—

1 (1) descriptions on the status of relevant, cur-
2 rent, ongoing research being conducted in the De-
3 partment of Health and Human Services including
4 research at the National Institutes of Health, the
5 Centers for Disease Control and Prevention, the
6 Agency for Healthcare Research and Quality, the
7 Health Resources and Services Administration, and
8 other offices and agencies;

9 (2) information about what these studies have
10 shown regarding the causes, prevention, and treat-
11 ment of, being overweight, obesity, and eating dis-
12 orders; and

13 (3) recommendations on further research that
14 is needed, including research among diverse popu-
15 lations, the plan of the Department of Health and
16 Human Services for conducting such research, and
17 how current knowledge can be disseminated.

18 **TITLE II—FOOD AND BEVERAGE**
19 **LABELING FOR HEALTHY**
20 **CHOICES**

21 **SEC. 201. FOOD AND BEVERAGE LABELING FOR HEALTHY**
22 **CHOICES.**

23 (a) USCO–OP.—In this section, the term “USCO–
24 OP” means the United States Council on Overweight-Obe-

1 sity Prevention under section 399U of the Public Health
2 Service Act (as added by section 101).

3 (b) REFORM OF FOOD AND BEVERAGE LABELING.—
4 The Secretary of Health and Human Services and the Sec-
5 retary of Agriculture, in consultation with the USCO–OP,
6 shall, through regulation or other appropriate action, up-
7 date and reform Federal oversight of food and beverage
8 labeling. Such reform shall include improving the trans-
9 parency of such labeling with regard to nutritional and
10 caloric value of food and beverages.

11 **TITLE III—HEALTHY CHOICES**
12 **FOOD AND BEVERAGE PRO-**
13 **GRAMS**

14 **SEC. 301. FRESH FRUIT AND VEGETABLE PROGRAM.**

15 Section 19(i) of the Richard B. Russell National
16 School Lunch Act (42 U.S.C. 1769a(i)) is amended—

17 (1) by redesignating paragraphs (3) through
18 (7) as paragraphs (4) through (8); and

19 (2) by inserting after paragraph (2) the fol-
20 lowing:

21 “(3) ADDITIONAL MANDATORY FUNDING.—

22 “(A) IN GENERAL.—Out of any funds in
23 the Treasury not otherwise appropriated, the
24 Secretary of the Treasury shall transfer to the
25 Secretary of Agriculture to carry out and ex-

1 pand the program under this section, to remain
2 available until expended—

3 “(i) on October 1, 2009, \$80,000,000;

4 “(ii) on July 1, 2010, \$130,000,000;

5 “(iii) on July 1, 2011, \$202,000,000;

6 “(iv) on July 1, 2012, \$300,000,000;

7 and

8 “(v) on July 1, 2013, and on each
9 July 1 thereafter, the amount made avail-
10 able for the previous fiscal year, as ad-
11 justed under subparagraph (B).

12 “(B) ADJUSTMENT.—On July 1, 2013,
13 and on each July 1 thereafter the amount made
14 available under subparagraph (A)(v) shall be
15 calculated by adjusting the amount made avail-
16 able for the previous fiscal year to reflect
17 changes in the Consumer Price Index of the
18 Bureau of Labor Statistics for fresh fruits and
19 vegetables, with the adjustment—

20 “(i) rounded down to the nearest dol-
21 lar increment; and

22 “(ii) based on the unrounded amounts
23 for the preceding 12-month period.

24 “(C) ALLOCATION.—Funds made available
25 under this paragraph shall be allocated among

1 the States and the District of Columbia in the
 2 same manner as funds made available under
 3 paragraph (1).”.

4 **TITLE IV—AMENDMENTS TO THE**
 5 **SOCIAL SECURITY ACT**

6 **SEC. 401. COVERAGE OF EVIDENCE-BASED PREVENTIVE**
 7 **SERVICES UNDER MEDICARE, MEDICAID, AND**
 8 **SCHIP.**

9 (a) **MEDICARE.**—Section 1861(ddd) of the Social Se-
 10 curity Act, as added by section 101 of the Medicare Im-
 11 provements for Patients and Providers Act of 2008, is
 12 amended—

13 (1) in paragraph (2), by striking “paragraph
 14 (1)” and inserting “paragraphs (1) and (3)”; and

15 (2) by adding at the end the following new
 16 paragraph:

17 “(3) The term ‘additional preventive services’
 18 includes any evidence-based preventive services
 19 which the Secretary has determined are reasonable
 20 and necessary, including, as so determined, smoking
 21 cessation and prevention services, diet and exercise
 22 counseling, and healthy weight and obesity coun-
 23 seling.”.

24 (b) **STATE OPTION TO PROVIDE MEDICAL ASSIST-**
 25 **ANCE FOR EVIDENCE-BASED PREVENTIVE SERVICES.**—

1 (1) IN GENERAL.—Section 1905 of the Social
2 Security Act (42 U.S.C. 1396d) is amended—

3 (A) in subsection (a)—

4 (i) in paragraph (27), by striking
5 “and” at the end;

6 (ii) by redesignating paragraph (28)
7 as paragraph (29); and

8 (iii) by inserting after paragraph (27)
9 the following:

10 “(28) evidence-based preventive services de-
11 scribed in subsection (y); and”; and

12 (B) by adding at the end the following:

13 “(y) For purposes of subsection (a)(28), evidence-
14 based preventive services described in this subsection are
15 any preventive services which the Secretary has deter-
16 mined are reasonable and necessary through the process
17 for making national coverage determinations (as defined
18 in section 1869(f)(1)(B)) under title XVIII, including, as
19 so determined, smoking cessation and prevention services,
20 diet and exercise counseling, and healthy weight and obe-
21 sity counseling.”.

22 (2) CONFORMING AMENDMENT.—Section
23 1902(a)(10)(C)(iv) of such Act is amended by in-
24 serting “, and (28)” after “(24)”.

1 (c) STATE OPTION TO PROVIDE CHILD HEALTH AS-
 2 SISTANCE FOR EVIDENCE-BASED PREVENTIVE SERV-
 3 ICES.—Section 2110(a) of the Social Security Act (42
 4 U.S.C. 1397jj(a)) is amended—

5 (1) by redesignating paragraph (28) as para-
 6 graph (29); and

7 (2) by inserting after paragraph (27) the fol-
 8 lowing:

9 “(28) Evidence-based preventive services de-
 10 scribed in section 1905(y).”.

11 **SEC. 402. COVERAGE OF MEDICAL NUTRITION COUNSELING**
 12 **UNDER MEDICARE, MEDICAID, AND SCHIP.**

13 (a) MEDICARE COVERAGE OF MEDICAL NUTRITION
 14 THERAPY SERVICES FOR PEOPLE WITH PRE-DIABE-
 15 TES.—Section 1861(s)(2)(V) of the Social Security Act
 16 (42 U.S.C. 1395x(s)(2)(V)) is amended by inserting after
 17 “beneficiary with diabetes” the following “, pre-diabetes
 18 or its risk factors (including hypertension, dyslipidemia,
 19 obesity, or overweight),”.

20 (b) STATE OPTION TO PROVIDE MEDICAL ASSIST-
 21 ANCE FOR MEDICAL THERAPY SERVICES.—

22 (1) IN GENERAL.—Section 1905(a) of the So-
 23 cial Security Act (42 U.S.C. 1396d), as amended by
 24 section 401(b), is amended—

1 (A) in paragraph (28), by striking “and”
2 at the end;

3 (B) by redesignating paragraph (29) as
4 paragraph (30); and

5 (C) by inserting after paragraph (28) the
6 following:

7 “(29) medical nutrition therapy services (as de-
8 fined in section 1861(vv)(1)) for individuals with
9 pre-diabetes or obesity, or who are overweight (as
10 defined by the Secretary); and”.

11 (2) CONFORMING AMENDMENT.—Section
12 1902(a)(10)(C)(iv) of such Act, as amended by sec-
13 tion 401(b)(2), is amended by striking “and (28)”
14 and inserting “(28), and (29)”.

15 (c) STATE OPTION TO PROVIDE CHILD HEALTH AS-
16 SISTANCE FOR MEDICAL NUTRITION THERAPY SERV-
17 ICES.—Section 2110(a) of the Social Security Act (42
18 U.S.C. 1397jj(a)), as amended by section 401(c), is
19 amended—

20 (1) by redesignating paragraph (29) as para-
21 graph (30); and

22 (2) by inserting after paragraph (28) the fol-
23 lowing:

24 “(29) Medical nutrition therapy services (as de-
25 fined in section 1861(vv)(1)) for individuals with

1 pre-diabetes or obesity, or who are overweight (as
2 defined by the Secretary).”.

3 **SEC. 403. AUTHORIZING EXPANSION OF MEDICARE COV-**
4 **ERAGE OF MEDICAL NUTRITION THERAPY**
5 **SERVICES.**

6 (a) AUTHORIZING EXPANDED ELIGIBLE POPU-
7 LATION.—Section 1861(s)(2)(V) of the Social Security
8 Act (42 U.S.C. 1395x(s)(2)(V)), as amended by section
9 402, is amended—

10 (1) by redesignating clauses (i) through (iii) as
11 subclauses (I) through (III), respectively, and in-
12 denting each such clause an additional 2 ems;

13 (2) by striking “in the case of a beneficiary
14 with diabetes, pre-diabetes or its risk factors (includ-
15 ing hypertension, dyslipidemia, obesity, overweight),
16 or a renal disease who—” and inserting “in the case
17 of a beneficiary—

18 “(i) with diabetes, pre-diabetes or its risk
19 factors (including hypertension, dyslipidemia,
20 obesity, overweight), or a renal disease
21 who—”;

22 (3) by adding “or” at the end of subclause (III)
23 of clause (i), as so redesignated; and

24 (4) by adding at the end the following new
25 clause:

1 “(ii) who is not described in clause (i) but
2 who has another disease, condition, or disorder
3 for which the Secretary has made a national
4 coverage determination (as defined in section
5 1869(f)(1)(B)) for the coverage of such serv-
6 ices;”.

7 (b) COVERAGE OF SERVICES FURNISHED BY PHYSI-
8 CIANS.—Section 1861(vv)(1) of the Social Security Act
9 (42 U.S.C. 1395x(vv)(1)) is amended by inserting “or
10 which are furnished by a physician” before the period at
11 the end.

12 (c) NATIONAL COVERAGE DETERMINATION PROC-
13 ESS.—In making a national coverage determination de-
14 scribed in section 1861(s)(2)(V)(ii) of the Social Security
15 Act, as added by subsection (a)(4), the Secretary of
16 Health and Human Services, acting through the Adminis-
17 trator of the Centers for Medicare & Medicaid Services,
18 shall—

19 (1) consult with dietetic and nutrition profes-
20 sional organizations in determining appropriate pro-
21 tocols for coverage of medical nutrition therapy serv-
22 ices for individuals with different diseases, condi-
23 tions, and disorders; and

24 (2) consider the degree to which medical nutri-
25 tion therapy interventions prevent or help prevent

1 the onset or progression of more serious diseases,
2 conditions, or disorders.

3 **SEC. 404. CLARIFICATION OF EPSDT INCLUSION OF PRE-**
4 **VENTION, SCREENING, AND TREATMENT**
5 **SERVICES FOR OBESITY AND OVERWEIGHT;**
6 **SCHIP COVERAGE.**

7 (a) IN GENERAL.—Section 1905(r)(5) of the Social
8 Security Act (42 U.S.C. 1396d(r)(5)) is amended by in-
9 serting “, including weight and BMI measurement and
10 monitoring, as well as appropriate treatment services (in-
11 cluding but not limited to) medical nutrition therapy serv-
12 ices (as defined in section 1861(vv)(1)), physical therapy
13 or exercise training, and behavioral health counseling,
14 based on recommendations of the United States Council
15 on Overweight-Obesity Prevention under section 399U of
16 the Public Health Service Act and such other expert rec-
17 ommendations and studies as determined by the Sec-
18 retary” before the period.

19 (b) SCHIP.—

20 (1) REQUIRED COVERAGE.—Section 2103 (42
21 U.S.C. 1397cc) is amended—

22 (A) in subsection (a), in the matter pre-
23 ceding paragraph (1), by striking “and (7)”
24 and inserting “(7), and (9)”; and

25 (B) in subsection (c)—

1 (i) by redesignating paragraph (7) as
2 paragraph (9); and

3 (ii) by inserting after paragraph (6),
4 the following:

5 “(7) PREVENTION, SCREENING, AND TREAT-
6 MENT SERVICES FOR OBESITY AND OVERWEIGHT.—
7 The child health assistance provided to a targeted
8 low-income child shall include coverage of weight
9 and BMI measurement and monitoring, as well as
10 appropriate treatment services (including but not
11 limited to) medical nutrition therapy services (as de-
12 fined in section 1861(vv)(1)), physical therapy or ex-
13 ercise training, and behavioral health counseling,
14 based on recommendations of the United States
15 Council on Overweight-Obesity Prevention under
16 section 399U of the Public Health Service Act and
17 such other expert recommendations and studies as
18 determined by the Secretary.”.

19 (2) CONFORMING AMENDMENT.—Section
20 2102(a)(7)(B) (42 U.S.C. 1397bb(c)(2)) is amended
21 by striking “section 2103(c)(5)” and inserting
22 “paragraphs (5) and (7) of section 2103(c)”.

1 **SEC. 405. INCLUSION OF PREVENTIVE SERVICES IN QUAL-**
2 **ITY MATERNAL AND CHILD HEALTH SERV-**
3 **ICES.**

4 Section 501(b) of the Social Security Act (42 U.S.C.
5 701(b)) is amended by adding at the end the following
6 new paragraph:

7 “(5) The term ‘quality maternal and child
8 health services’ includes the following:

9 “(A) Evidence-based preventive services
10 described in section 1905(y).

11 “(B) Medical nutrition counseling for indi-
12 viduals with pre-diabetes or obesity, or who are
13 overweight (as defined by the Secretary).

14 “(C) Weight and BMI measurement and
15 monitoring, as well as appropriate treatment
16 services (including but not limited to) medical
17 nutrition therapy services (as defined in section
18 1861(vv)(1)), physical therapy or exercise train-
19 ing, and behavioral health counseling, based on
20 recommendations of the United States Council
21 on Overweight-Obesity Prevention under section
22 399U of the Public Health Service Act and
23 such other expert recommendations and studies
24 as determined by the Secretary.”.

1 **SEC. 406. CHILDHOOD OBESITY INFORMATION, GUIDE-**
2 **LINES, AND REPORTING.**

3 The Secretary of Health and Human Services, acting
4 through the Administrator of the Centers for Medicare
5 and Medicaid Services, shall—

6 (1) not later than 18 months after the date of
7 the enactment of this Act, provide the State agencies
8 responsible for administering the State plan ap-
9 proved under title XIX of the Social Security Act
10 (42 U.S.C. 1396 et seq.) and the State child health
11 plan approved under title XXI of the Social Security
12 Act (42 U.S.C. 1397aa et seq.) with relevant data,
13 information, and recommendations, as the Adminis-
14 trator deems appropriate, regarding the risks associ-
15 ated with childhood obesity and the importance of
16 identifying at-risk children for treatment;

17 (2) not later than 18 months after the date of
18 the enactment of this Act, issue guidelines, or amend
19 existing guidelines, concerning the development of
20 pediatric obesity prevention programs for at-risk
21 populations through the use of managed care tech-
22 niques, integrated service delivery models, disease
23 management programs, and other methods that the
24 Administrator deems appropriate;

1 (3) provide for the annual reporting by such
2 State agencies of the number of children enrolled in
3 a State Medicaid or child health plan that are—

4 (A) screened for overweight or obesity; and

5 (B) identified as at-risk for overweight or
6 obesity and have been provided with appro-
7 priate medical follow-up services or counseling;
8 and

9 (4) prepare and submit an annual report to
10 Congress on the percentage of children enrolled in a
11 State Medicaid or child health plan that are
12 screened for overweight or obesity and, for those
13 identified as at-risk, receive appropriate medical fol-
14 low-up services or counseling.

15 **SEC. 407. EFFECTIVE DATE.**

16 (a) IN GENERAL.—Except as provided in subsection
17 (b), this title, and the amendments made under this title,
18 take effect on October 1, 2010.

19 (b) EXTENSION OF EFFECTIVE DATE FOR STATE
20 LAW AMENDMENT.—In the case of a State plan under
21 title XIX or XXI of the Social Security Act (42 U.S.C.
22 1396 et seq., 1397aa et seq.) which the Secretary of
23 Health and Human Services determines requires State
24 legislation in order for the plan to meet the additional re-
25 quirements imposed by the amendments made by this sec-

1 tion, the State plan shall not be regarded as failing to
2 comply with the requirements of such title solely on the
3 basis of its failure to meet these additional requirements
4 before the first day of the first calendar quarter beginning
5 after the close of the first regular session of the State leg-
6 islature that begins after the date of enactment of this
7 Act. For purposes of the previous sentence, in the case
8 of a State that has a 2-year legislative session, each year
9 of the session is considered to be a separate regular ses-
10 sion of the State legislature.

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