

**[COMMITTEE PRINT]**

JANUARY 20, 2009

1 **TITLE V—MEDICAID**  
2 **PROVISIONS**

3 **SEC. 5000. TABLE OF CONTENTS OF TITLE.**

4 The table of contents of this title is as follows:

- Sec. 5000. Table of contents of title.
- Sec. 5001. Temporary increase of Medicaid FMAP.
- Sec. 5002. Moratoria on certain regulations.
- Sec. 5003. Transitional Medicaid assistance (TMA).
- Sec. 5004. State eligibility option for family planning services.
- Sec. 5005. Protections for Indians under Medicaid and CHIP.
- Sec. 5006. Consultation on Medicaid and CHIP.

5 **SEC. 5001. TEMPORARY INCREASE OF MEDICAID FMAP.**

6 (a) PERMITTING MAINTENANCE OF FMAP.—Subject  
7 to subsections (e), (f), and (g), if the FMAP determined  
8 without regard to this section for a State for—

9 (1) fiscal year 2009 is less than the FMAP as  
10 so determined for fiscal year 2008, the FMAP for  
11 the State for fiscal year 2008 shall be substituted  
12 for the State’s FMAP for fiscal year 2009, before  
13 the application of this section;

14 (2) fiscal year 2010 is less than the FMAP as  
15 so determined for fiscal year 2008 or fiscal year  
16 2009 (after the application of paragraph (1)), the  
17 greater of such FMAP for the State for fiscal year  
18 2008 or fiscal year 2009 shall be substituted for the

1 State's FMAP for fiscal year 2010, before the appli-  
2 cation of this section; and

3 (3) fiscal year 2011 is less than the FMAP as  
4 so determined for fiscal year 2008, fiscal year 2009  
5 (after the application of paragraph (1)), or fiscal  
6 year 2010 (after the application of paragraph (2)),  
7 the greatest of such FMAP for the State for fiscal  
8 year 2008, fiscal year 2009, or fiscal year 2010 shall  
9 be substituted for the State's FMAP for fiscal year  
10 2011, before the application of this section, but only  
11 for the first calendar quarter in fiscal year 2011.

12 (b) GENERAL 4.9 PERCENTAGE POINT INCREASE.—

13 (1) IN GENERAL.—Subject to subsections (e),  
14 (f), and (g) and paragraph (2), for each State for  
15 calendar quarters during the recession adjustment  
16 period (as defined in subsection (h)(2)), the FMAP  
17 (after the application of subsection (a)) shall be in-  
18 creased (without regard to any limitation otherwise  
19 specified in section 1905(b) of the Social Security  
20 Act) by 4.9 percentage points.

21 (2) SPECIAL ELECTION FOR TERRITORIES.—In  
22 the case of a State that is not one of the 50 States  
23 or the District of Columbia, paragraph (1) shall only  
24 apply if the State makes a one-time election, in a  
25 form and manner specified by the Secretary and for

1 the entire recession adjustment period, to apply the  
2 increase in FMAP under paragraph (1) and a 10  
3 percent increase under subsection (d) instead of ap-  
4 plying a 20 percent increase under subsection (d).

5 (c) ADDITIONAL ADJUSTMENT TO REFLECT IN-  
6 CREASE IN UNEMPLOYMENT.—

7 (1) IN GENERAL.—Subject to subsections (e),  
8 (f), and (g), in the case of a State that is a high  
9 unemployment State (as defined in paragraph (2))  
10 for a calendar quarter during the recession adjust-  
11 ment period, the FMAP (taking into account the ap-  
12 plication of subsections (a) and (b)) for such quarter  
13 shall be further increased by the high unemployment  
14 percentage point adjustment specified in paragraph  
15 (3) for the State for the quarter.

16 (2) HIGH UNEMPLOYMENT STATE.—

17 (A) IN GENERAL.—In this subsection, sub-  
18 ject to subparagraph (B), the term “high unem-  
19 ployment State” means, with respect to a cal-  
20 endar quarter in the recession adjustment pe-  
21 riod, a State that is 1 of the 50 States or the  
22 District of Columbia and for which the State  
23 unemployment increase percentage (as com-  
24 puted under paragraph (5)) for the quarter is  
25 not less than 1.5 percentage points.

1 (B) MAINTENANCE OF STATUS.—If a  
2 State is a high unemployment State for a cal-  
3 endar quarter, it shall remain a high unemploy-  
4 ment State for each subsequent calendar quar-  
5 ter ending before July 1, 2010.

6 (3) HIGH UNEMPLOYMENT PERCENTAGE POINT  
7 ADJUSTMENT.—

8 (A) IN GENERAL.—The high unemploy-  
9 ment percentage point adjustment specified in  
10 this paragraph for a high unemployment State  
11 for a quarter is equal to the product of—

12 (i) the SMAP for such State and  
13 quarter (determined after the application  
14 of subsection (a) and before the application  
15 of subsection (b)); and

16 (ii) subject to subparagraph (B), the  
17 State unemployment reduction factor spec-  
18 ified in paragraph (4) for the State and  
19 quarter.

20 (B) MAINTENANCE OF ADJUSTMENT  
21 LEVEL FOR CERTAIN QUARTERS.—In no case  
22 shall the State unemployment reduction factor  
23 applied under subparagraph (A)(ii) for a State  
24 for a quarter (beginning on or after January 1,  
25 2009, and ending before July 1, 2010) be less

1 than the State unemployment reduction factor  
2 applied to the State for the previous quarter  
3 (taking into account the application of this sub-  
4 paragraph).

5 (4) STATE UNEMPLOYMENT REDUCTION FAC-  
6 TOR.—In the case of a high unemployment State for  
7 which the State unemployment increase percentage  
8 (as computed under paragraph (5)) with respect to  
9 a calendar quarter is—

10 (A) not less than 1.5, but is less than 2.5,  
11 percentage points, the State unemployment re-  
12 duction factor for the State and quarter is 6  
13 percent;

14 (B) not less than 2.5, but is less than 3.5,  
15 percentage points, the State unemployment re-  
16 duction factor for the State and quarter is 12  
17 percent; or

18 (C) not less than 3.5 percentage points,  
19 the State unemployment reduction factor for  
20 the State and quarter is 14 percent.

21 (5) COMPUTATION OF STATE UNEMPLOYMENT  
22 INCREASE PERCENTAGE.—

23 (A) IN GENERAL.—In this subsection, the  
24 “State unemployment increase percentage” for  
25 a State for a calendar quarter is equal to the

1 number of percentage points (if any) by  
2 which—

3 (i) the average monthly unemployment  
4 rate for the State for months in the most  
5 recent previous 3-consecutive-month period  
6 for which data are available, subject to  
7 subparagraph (C); exceeds

8 (ii) the lowest average monthly unem-  
9 ployment rate for the State for any 3-con-  
10 secutive-month period preceding the period  
11 described in clause (i) and beginning on or  
12 after January 1, 2006.

13 (B) AVERAGE MONTHLY UNEMPLOYMENT  
14 RATE DEFINED.—In this paragraph, the term  
15 “average monthly unemployment rate” means  
16 the average of the monthly number unemployed,  
17 divided by the average of the monthly civilian  
18 labor force, seasonally adjusted, as determined  
19 based on the most recent monthly publications  
20 of the Bureau of Labor Statistics of the De-  
21 partment of Labor.

22 (C) SPECIAL RULE.—With respect to—

23 (i) the first 2 calendar quarters of the  
24 recession adjustment period, the most re-  
25 cent previous 3-consecutive-month period

1 described in subparagraph (A)(i) shall be  
2 the 3-consecutive-month period beginning  
3 with October 2008; and

4 (ii) the last 2 calendar quarters of the  
5 recession adjustment period, the most re-  
6 cent previous 3-consecutive-month period  
7 described in such subparagraph shall be  
8 the 3-consecutive-month period beginning  
9 with December 2009.

10 (d) INCREASE IN CAP ON MEDICAID PAYMENTS TO  
11 TERRITORIES.—Subject to subsections (f) and (g) , with  
12 respect to entire fiscal years occurring during the reces-  
13 sion adjustment period and with respect to fiscal years  
14 only a portion of which occurs during such period (and  
15 in proportion to the portion of the fiscal year that occurs  
16 during such period), the amounts otherwise determined for  
17 Puerto Rico, the Virgin Islands, Guam, the Northern Mar-  
18 iana Islands, and American Samoa under subsections (f)  
19 and (g) of section 1108 of the Social Security Act (42  
20 U.S.C. 1308) shall each be increased by 20 percent (or,  
21 in the case of an election under subsection (b)(2), 10 per-  
22 cent).

23 (e) SCOPE OF APPLICATION.—The increases in the  
24 FMAP for a State under this section shall apply for pur-  
25 poses of title XIX of the Social Security Act and—

1           (1) the increases applied under subsections (a),  
2           (b), and (c) shall not apply with respect—

3                   (A) to payments under parts A, B, and D  
4                   of title IV or title XXI of such Act (42 U.S.C.  
5                   601 et seq. and 1397aa et seq.);

6                   (B) to payments under title XIX of such  
7                   Act that are based on the enhanced FMAP de-  
8                   scribed in section 2105(b) of such Act (42  
9                   U.S.C. 1397ee(b)); and

10                   (C) to payments for disproportionate share  
11                   hospital (DSH) payment adjustments under  
12                   section 1923 of such Act (42 U.S.C. 1396r-4);  
13                   and

14           (2) the increase provided under subsection (c)  
15           shall not apply with respect to payments under part  
16           E of title IV of such Act.

17           (f) STATE INELIGIBILITY AND LIMITATION.—

18                   (1) IN GENERAL.—Subject to paragraphs (2)  
19                   and (3), a State is not eligible for an increase in its  
20                   FMAP under subsection (a), (b), or (c), or an in-  
21                   crease in a cap amount under subsection (d), if eligi-  
22                   bility standards, methodologies, or procedures under  
23                   its State plan under title XIX of the Social Security  
24                   Act (including any waiver under such title or under  
25                   section 1115 of such Act (42 U.S.C. 1315)) are



1 more restrictive than the eligibility standards, meth-  
2 odologies, or procedures, respectively, under such  
3 plan (or waiver) as in effect on July 1, 2008.

4 (2) STATE REINSTATEMENT OF ELIGIBILITY  
5 PERMITTED.—Subject to paragraph (3), a State that  
6 has restricted eligibility standards, methodologies, or  
7 procedures under its State plan under title XIX of  
8 the Social Security Act (including any waiver under  
9 such title or under section 1115 of such Act (42  
10 U.S.C. 1315)) after July 1, 2008, is no longer ineli-  
11 gible under paragraph (1) beginning with the first  
12 calendar quarter in which the State has reinstated  
13 eligibility standards, methodologies, or procedures  
14 that are no more restrictive than the eligibility  
15 standards, methodologies, or procedures, respec-  
16 tively, under such plan (or waiver) as in effect on  
17 July 1, 2008.

18 (3) SPECIAL RULES.—A State shall not be in-  
19 eligible under paragraph (1)—

20 (A) before July 1, 2009, on the basis of a  
21 restriction that was applied after July 1, 2008,  
22 and before the date of the enactment of this  
23 Act; or

24 (B) on the basis of a restriction that was  
25 effective under State law as of July 1, 2008,

1 and would have been in effect as of such date,  
2 but for a delay (of not longer than 1 calendar  
3 quarter) in the approval of a request for a new  
4 waiver under section 1115 of such Act with re-  
5 spect to such restriction.

6 (4) STATE'S APPLICATION TOWARD RAINY DAY  
7 FUND.—A State is not eligible for an increase in its  
8 FMAP under subsection (b) or (c), or an increase in  
9 a cap amount under subsection (d), if any amounts  
10 attributable (directly or indirectly) to such increase  
11 are deposited or credited into any reserve or rainy  
12 day fund of the State.

13 (5) RULE OF CONSTRUCTION.—Nothing in  
14 paragraph (1) or (2) shall be construed as affecting  
15 a State's flexibility with respect to benefits offered  
16 under the State Medicaid program under title XIX  
17 of the Social Security Act (42 U.S.C. 1396 et seq.)  
18 (including any waiver under such title or under sec-  
19 tion 1115 of such Act (42 U.S.C. 1315)).

20 (6) NO WAIVER AUTHORITY.—The Secretary  
21 may not waive the application of this subsection or  
22 subsection (g) under section 1115 of the Social Se-  
23 curity Act or otherwise.

24 (g) REQUIREMENT FOR CERTAIN STATES.—In the  
25 case of a State that requires political subdivisions within

1 the State to contribute toward the non-Federal share of  
2 expenditures under the State Medicaid plan required  
3 under section 1902(a)(2) of the Social Security Act (42  
4 U.S.C. 1396a(a)(2)), the State is not eligible for an in-  
5 crease in its FMAP under subsection (a), (b), or (c), or  
6 an increase in a cap amount under subsection (d), if it  
7 requires that such political subdivisions pay a greater per-  
8 centage of the non-Federal share of such expenditures for  
9 quarters during the recession adjustment period, than the  
10 percentage that would have been required by the State  
11 under such plan on September 30, 2008, prior to applica-  
12 tion of this section.

13 (h) DEFINITIONS.—In this section, except as other-  
14 wise provided:

15 (1) FMAP.—The term “FMAP” means the  
16 Federal medical assistance percentage, as defined in  
17 section 1905(b) of the Social Security Act (42  
18 U.S.C. 1396d(b)), as determined without regard to  
19 this section except as otherwise specified.

20 (2) RECESSION ADJUSTMENT PERIOD.—The  
21 term “recession adjustment period” means the pe-  
22 riod beginning on October 1, 2008, and ending on  
23 December 31, 2010.

24 (3) SECRETARY.—The term “Secretary” means  
25 the Secretary of Health and Human Services.

1 (4) SMAP.—The term “SMAP” means, for a  
2 State, 100 percent minus the Federal medical assist-  
3 ance percentage..

4 (5) STATE.—The term “State” has the mean-  
5 ing given such term in section 1101(a)(1) of the So-  
6 cial Security Act (42 U.S.C. 1301(a)(1)) for pur-  
7 poses of title XIX of the Social Security Act (42  
8 U.S.C. 1396 et seq.).

9 (i) SUNSET.—This section shall not apply to items  
10 and services furnished after the end of the recession ad-  
11 justment period.

12 **SEC. 5002. MORATORIA ON CERTAIN REGULATIONS.**

13 (a) EXTENSION OF MORATORIA ON CERTAIN MED-  
14 ICAID REGULATIONS.—The following sections are each  
15 amended by striking “April 1, 2009” and inserting “July  
16 1, 2009”:

17 (1) Section 7002(a)(1) of the U.S. Troop Read-  
18 iness, Veterans’ Care, Katrina Recovery, and Iraq  
19 Accountability Appropriations Act, 2007 (Public  
20 Law 110–28), as amended by section 7001(a)(1) of  
21 the Supplemental Appropriations Act, 2008 (Public  
22 Law 110–252).

23 (2) Section 206 of the Medicare, Medicaid, and  
24 SCHIP Extension Act of 2007 (Public Law 110-  
25 173), as amended by section 7001(a)(2) of the Sup-

1       plemental Appropriations Act, 2008 (Public Law  
2       110–252).

3               (3) Section 7001(a)(3)(A) of the Supplemental  
4       Appropriations Act, 2008 (Public Law 110–252).

5       (b) **ADDITIONAL MEDICAID MORATORIUM.**—Not-  
6 withstanding any other provision of law, with respect to  
7 expenditures for services furnished during the period be-  
8 ginning on December 8, 2008 and ending on June 30,  
9 2009, the Secretary of Health and Human Services shall  
10 not take any action (through promulgation of regulation,  
11 issuance of regulatory guidance, use of Federal payment  
12 audit procedures, or other administrative action, policy, or  
13 practice, including a Medical Assistance Manual trans-  
14 mittal or letter to State Medicaid directors) to implement  
15 the final regulation relating to clarification of the defini-  
16 tion of outpatient hospital facility services under the Med-  
17 icaid program published on November 7, 2008 (73 Federal  
18 Register 66187).

19 **SEC. 5003. TRANSITIONAL MEDICAID ASSISTANCE (TMA).**

20       (a) **18-MONTH EXTENSION.**—

21               (1) **IN GENERAL.**—Sections 1902(e)(1)(B) and  
22       1925(f) of the Social Security Act (42 U.S.C.  
23       1396a(e)(1)(B), 1396r–6(f)) are each amended by  
24       striking “September 30, 2003” and inserting “De-  
25       cember 31, 2010”.

1           (2) EFFECTIVE DATE.—The amendments made  
2           by this subsection shall take effect on July 1, 2009.

3           (b) STATE OPTION OF INITIAL 12-MONTH ELIGI-  
4 BILITY.—Section 1925 of the Social Security Act (42  
5 U.S.C. 1396r–6) is amended—

6           (1) in subsection (a)(1), by inserting “but sub-  
7           ject to paragraph (5)” after “Notwithstanding any  
8           other provision of this title”;

9           (2) by adding at the end of subsection (a) the  
10          following:

11           “(5) OPTION OF 12-MONTH INITIAL ELIGIBILITY  
12          PERIOD.—A State may elect to treat any reference  
13          in this subsection to a 6-month period (or 6 months)  
14          as a reference to a 12-month period (or 12 months).  
15          In the case of such an election, subsection (b) shall  
16          not apply.”; and

17           (3) in subsection (b)(1), by inserting “but sub-  
18          ject to subsection (a)(5)” after “Notwithstanding  
19          any other provision of this title”.

20          (c) REMOVAL OF REQUIREMENT FOR PREVIOUS RE-  
21 CEIPT OF MEDICAL ASSISTANCE.—Section 1925(a)(1) of  
22 such Act (42 U.S.C. 1396r–6(a)(1)), as amended by sub-  
23 section (b)(1), is further amended—

24           (1) by inserting “subparagraph (B) and” before  
25          “paragraph (5)”;

1           (2) by redesignating the matter after “RE-  
2           QUIREMENT.—” as a subparagraph (A) with the  
3           heading “IN GENERAL.—” and with the same inden-  
4           tation as subparagraph (B) (as added by paragraph  
5           (3)); and

6           (3) by adding at the end the following:

7                   “(B) STATE OPTION TO WAIVE REQUIRE-  
8                   MENT FOR 3 MONTHS BEFORE RECEIPT OF  
9                   MEDICAL ASSISTANCE.—A State may, at its op-  
10                  tion, elect also to apply subparagraph (A) in  
11                  the case of a family that was receiving such aid  
12                  for fewer than three months or that had applied  
13                  for and was eligible for such aid for fewer than  
14                  3 months during the 6 immediately preceding  
15                  months described in such subparagraph.”.

16          (d) CMS REPORT ON ENROLLMENT AND PARTICIPA-  
17          TION RATES UNDER TMA.—Section 1925 of such Act (42  
18          U.S.C. 1396r-6), as amended by this section, is further  
19          amended by adding at the end the following new sub-  
20          section:

21                  “(g) COLLECTION AND REPORTING OF PARTICIPA-  
22          TION INFORMATION.—

23                   “(1) COLLECTION OF INFORMATION FROM  
24                  STATES.—Each State shall collect and submit to the  
25                  Secretary (and make publicly available), in a format

1 specified by the Secretary, information on average  
2 monthly enrollment and average monthly participa-  
3 tion rates for adults and children under this section  
4 and of the number and percentage of children who  
5 become ineligible for medical assistance under this  
6 section whose medical assistance is continued under  
7 another eligibility category or who are enrolled under  
8 the State's child health plan under title XXI. Such  
9 information shall be submitted at the same time and  
10 frequency in which other enrollment information  
11 under this title is submitted to the Secretary.

12 “(2) ANNUAL REPORTS TO CONGRESS.—Using  
13 the information submitted under paragraph (1), the  
14 Secretary shall submit to Congress annual reports  
15 concerning enrollment and participation rates de-  
16 scribed in such paragraph.”

17 (e) EFFECTIVE DATE.—The amendments made by  
18 subsections (b) through (d) shall take effect on July 1,  
19 2009.

20 **SEC. 5004. STATE ELIGIBILITY OPTION FOR FAMILY PLAN-**  
21 **NING SERVICES.**

22 (a) COVERAGE AS OPTIONAL CATEGORICALLY  
23 NEEDY GROUP.—

24 (1) IN GENERAL.—Section 1902(a)(10)(A)(ii)  
25 of the Social Security Act (42 U.S.C.



1 1396a(a)(10)(A)(ii)), as amended by section 3003(a)  
2 of the Health Insurance Assistance for the Unem-  
3 ployed Act of 2009, is amended—

4 (A) in subclause (XIX), by striking “or” at  
5 the end;

6 (B) in subclause (XX), by adding “or” at  
7 the end; and

8 (C) by adding at the end the following new  
9 subclause:

10 “(XXI) who are described in subsection (ee)  
11 (relating to individuals who meet certain income  
12 standards);”.

13 (2) GROUP DESCRIBED.—Section 1902 of such  
14 Act (42 U.S.C. 1396a), as amended by section  
15 3003(a) of the Health Insurance Assistance for the  
16 Unemployed Act of 2009, is amended by adding at  
17 the end the following new subsection:

18 “(ee)(1) Individuals described in this subsection are  
19 individuals—

20 “(A) whose income does not exceed an in-  
21 come eligibility level established by the State  
22 that does not exceed the highest income eligi-  
23 bility level established under the State plan  
24 under this title (or under its State child health  
25 plan under title XXI) for pregnant women; and

1           “(B) who are not pregnant.

2           “(2) At the option of a State, individuals de-  
3           scribed in this subsection may include individuals  
4           who, had individuals applied on or before January 1,  
5           2007, would have been made eligible pursuant to the  
6           standards and processes imposed by that State for  
7           benefits described in clause (XV) of the matter fol-  
8           lowing subparagraph (G) of section subsection  
9           (a)(10) pursuant to a waiver granted under section  
10          1115.

11          “(3) At the option of a State, for purposes of  
12          subsection (a)(17)(B), in determining eligibility for  
13          services under this subsection, the State may con-  
14          sider only the income of the applicant or recipient.”.

15          (3) LIMITATION ON BENEFITS.—Section  
16          1902(a)(10) of the Social Security Act (42 U.S.C.  
17          1396a(a)(10)) is amended in the matter following  
18          subparagraph (G)—

19                 (A) by striking “and (XIV)” and inserting  
20                 “(XIV)”; and

21                 (B) by inserting “, and (XV) the medical  
22                 assistance made available to an individual de-  
23                 scribed in subsection (ee) shall be limited to  
24                 family planning services and supplies described  
25                 in section 1905(a)(4)(C) including medical di-

1           agnosis and treatment services that are pro-  
2           vided pursuant to a family planning service in  
3           a family planning setting” after “cervical can-  
4           cer”.

5           (4) CONFORMING AMENDMENTS.—Section  
6           1905(a) of the Social Security Act (42 U.S.C.  
7           1396d(a)), as amended by section 3003(c)(2) of the  
8           Health Insurance Assistance for the Unemployed  
9           Act of 2009, is amended in the matter preceding  
10          paragraph (1)—

11                 (A) in clause (xiii), by striking “or” at the  
12                 end;

13                 (B) in clause (xiv), by adding “or” at the  
14                 end; and

15                 (C) by inserting after clause (xiii) the fol-  
16                 lowing:

17                         “(xv) individuals described in section  
18                         1902(ee),”.

19          (b) PRESUMPTIVE ELIGIBILITY.—

20                 (1) IN GENERAL.—Title XIX of the Social Se-  
21                 curity Act (42 U.S.C. 1396 et seq.) is amended by  
22                 inserting after section 1920B the following:

23                 “PRESUMPTIVE ELIGIBILITY FOR FAMILY PLANNING  
24                                 SERVICES

25                 “SEC. 1920C. (a) STATE OPTION.—State plan ap-  
26                 proved under section 1902 may provide for making med-

1 ical assistance available to an individual described in sec-  
2 tion 1902(ee) (relating to individuals who meet certain in-  
3 come eligibility standard) during a presumptive eligibility  
4 period. In the case of an individual described in section  
5 1902(ee), such medical assistance shall be limited to fam-  
6 ily planning services and supplies described in  
7 1905(a)(4)(C) and, at the State’s option, medical diag-  
8 nosis and treatment services that are provided in conjunc-  
9 tion with a family planning service in a family planning  
10 setting.

11 “(b) DEFINITIONS.—For purposes of this section:

12 “(1) PRESUMPTIVE ELIGIBILITY PERIOD.—The  
13 term ‘presumptive eligibility period’ means, with re-  
14 spect to an individual described in subsection (a),  
15 the period that—

16 “(A) begins with the date on which a  
17 qualified entity determines, on the basis of pre-  
18 liminary information, that the individual is de-  
19 scribed in section 1902(ee); and

20 “(B) ends with (and includes) the earlier  
21 of—

22 “(i) the day on which a determination  
23 is made with respect to the eligibility of  
24 such individual for services under the State  
25 plan; or

1           “(ii) in the case of such an individual  
2           who does not file an application by the last  
3           day of the month following the month dur-  
4           ing which the entity makes the determina-  
5           tion referred to in subparagraph (A), such  
6           last day.

7           “(2) QUALIFIED ENTITY.—

8           “(A) IN GENERAL.—Subject to subpara-  
9           graph (B), the term ‘qualified entity’ means  
10          any entity that—

11           “(i) is eligible for payments under a  
12          State plan approved under this title; and

13           “(ii) is determined by the State agen-  
14          cy to be capable of making determinations  
15          of the type described in paragraph (1)(A).

16          “(B) RULE OF CONSTRUCTION.—Nothing  
17          in this paragraph shall be construed as pre-  
18          venting a State from limiting the classes of en-  
19          tities that may become qualified entities in  
20          order to prevent fraud and abuse.

21          “(c) ADMINISTRATION.—

22           “(1) IN GENERAL.—The State agency shall pro-  
23          vide qualified entities with—

24           “(A) such forms as are necessary for an  
25          application to be made by an individual de-

1           scribed in subsection (a) for medical assistance  
2           under the State plan; and

3                   “(B) information on how to assist such in-  
4           dividuals in completing and filing such forms.

5                   “(2) NOTIFICATION REQUIREMENTS.—A quali-  
6           fied entity that determines under subsection  
7           (b)(1)(A) that an individual described in subsection  
8           (a) is presumptively eligible for medical assistance  
9           under a State plan shall—

10                   “(A) notify the State agency of the deter-  
11           mination within 5 working days after the date  
12           on which determination is made; and

13                   “(B) inform such individual at the time  
14           the determination is made that an application  
15           for medical assistance is required to be made by  
16           not later than the last day of the month fol-  
17           lowing the month during which the determina-  
18           tion is made.

19                   “(3) APPLICATION FOR MEDICAL ASSIST-  
20           ANCE.—In the case of an individual described in  
21           subsection (a) who is determined by a qualified enti-  
22           ty to be presumptively eligible for medical assistance  
23           under a State plan, the individual shall apply for  
24           medical assistance by not later than the last day of

1 the month following the month during which the de-  
2 termination is made.

3 “(d) PAYMENT.—Notwithstanding any other provi-  
4 sion of law, medical assistance that—

5 “(1) is furnished to an individual described in  
6 subsection (a)—

7 “(A) during a presumptive eligibility pe-  
8 riod;

9 “(B) by a entity that is eligible for pay-  
10 ments under the State plan; and

11 “(2) is included in the care and services covered  
12 by the State plan,

13 shall be treated as medical assistance provided by such  
14 plan for purposes of clause (4) of the first sentence of  
15 section 1905(b).”.

16 (2) CONFORMING AMENDMENTS.—

17 (A) Section 1902(a)(47) of the Social Se-  
18 curity Act (42 U.S.C. 1396a(a)(47)) is amend-  
19 ed by inserting before the semicolon at the end  
20 the following: “and provide for making medical  
21 assistance available to individuals described in  
22 subsection (a) of section 1920C during a pre-  
23 sumptive eligibility period in accordance with  
24 such section”.

1 (B) Section 1903(u)(1)(D)(v) of such Act  
2 (42 U.S.C. 1396b(u)(1)(D)(v)) is amended—

3 (i) by striking “or for” and inserting  
4 “for”; and

5 (ii) by inserting before the period the  
6 following: “, or for medical assistance pro-  
7 vided to an individual described in sub-  
8 section (a) of section 1920C during a pre-  
9 sumptive eligibility period under such sec-  
10 tion”.

11 (c) CLARIFICATION OF COVERAGE OF FAMILY PLAN-  
12 NING SERVICES AND SUPPLIES.—Section 1937(b) of the  
13 Social Security Act (42 U.S.C. 1396u–7(b)) is amended  
14 by adding at the end the following:

15 “(5) COVERAGE OF FAMILY PLANNING SERV-  
16 ICES AND SUPPLIES.—Notwithstanding the previous  
17 provisions of this section, a State may not provide  
18 for medical assistance through enrollment of an indi-  
19 vidual with benchmark coverage or benchmark-equiv-  
20 alent coverage under this section unless such cov-  
21 erage includes for any individual described in section  
22 1905(a)(4)(C), medical assistance for family plan-  
23 ning services and supplies in accordance with such  
24 section.”.



1 (d) EFFECTIVE DATE.—The amendments made by  
2 this section take effect on the date of the enactment of  
3 this Act and shall apply to items and services furnished  
4 on or after such date.

5 **SEC. 5005. PROTECTIONS FOR INDIANS UNDER MEDICAID**  
6 **AND CHIP.**

7 (a) PREMIUMS AND COST SHARING PROTECTION  
8 UNDER MEDICAID.—

9 (1) IN GENERAL.—Section 1916 of the Social  
10 Security Act (42 U.S.C. 1396o) is amended—

11 (A) in subsection (a), in the matter pre-  
12 ceding paragraph (1), by striking “and (i)” and  
13 inserting “, (i), and (j)”; and

14 (B) by adding at the end the following new  
15 subsection:

16 “(j) NO PREMIUMS OR COST SHARING FOR INDIANS  
17 FURNISHED ITEMS OR SERVICES DIRECTLY BY INDIAN  
18 HEALTH PROGRAMS OR THROUGH REFERRAL UNDER  
19 CONTRACT HEALTH SERVICES.—

20 “(1) NO COST SHARING FOR ITEMS OR SERV-  
21 ICES FURNISHED TO INDIANS THROUGH INDIAN  
22 HEALTH PROGRAMS.—

23 “(A) IN GENERAL.—No enrollment fee,  
24 premium, or similar charge, and no deduction,  
25 copayment, cost sharing, or similar charge shall

1 be imposed against an Indian who is furnished  
2 an item or service directly by the Indian Health  
3 Service, an Indian Tribe, Tribal Organization,  
4 or Urban Indian Organization or through refer-  
5 ral under contract health services for which  
6 payment may be made under this title.

7 “(B) NO REDUCTION IN AMOUNT OF PAY-  
8 MENT TO INDIAN HEALTH PROVIDERS.—Pay-  
9 ment due under this title to the Indian Health  
10 Service, an Indian Tribe, Tribal Organization,  
11 or Urban Indian Organization, or a health care  
12 provider through referral under contract health  
13 services for the furnishing of an item or service  
14 to an Indian who is eligible for assistance under  
15 such title, may not be reduced by the amount  
16 of any enrollment fee, premium, or similar  
17 charge, or any deduction, copayment, cost shar-  
18 ing, or similar charge that would be due from  
19 the Indian but for the operation of subpara-  
20 graph (A).

21 “(2) RULE OF CONSTRUCTION.—Nothing in  
22 this subsection shall be construed as restricting the  
23 application of any other limitations on the imposi-  
24 tion of premiums or cost sharing that may apply to

1 an individual receiving medical assistance under this  
2 title who is an Indian.”.

3 (2) CONFORMING AMENDMENT.—Section  
4 1916A(b)(3) of such Act (42 U.S.C. 1396o–1(b)(3))  
5 is amended—

6 (A) in subparagraph (A), by adding at the  
7 end the following new clause:

8 “(vi) An Indian who is furnished an  
9 item or service directly by the Indian  
10 Health Service, an Indian Tribe, Tribal  
11 Organization or Urban Indian Organiza-  
12 tion or through referral under contract  
13 health services.”; and

14 (B) in subparagraph (B), by adding at the  
15 end the following new clause:

16 “(ix) Items and services furnished to  
17 an Indian directly by the Indian Health  
18 Service, an Indian Tribe, Tribal Organiza-  
19 tion or Urban Indian Organization or  
20 through referral under contract health  
21 services.”.

22 (3) EFFECTIVE DATE.—The amendments made  
23 by this subsection shall take effect on October 1,  
24 2009.

1 (b) TREATMENT OF CERTAIN PROPERTY FROM RE-  
2 SOURCES FOR MEDICAID AND CHIP ELIGIBILITY.—

3 (1) MEDICAID.—Section 1902 of the Social Se-  
4 curity Act (42 U.S.C. 1396a), as amended by sec-  
5 tion 3003(a) of the Health Insurance Assistance for  
6 the Unemployed Act of 2009 and section 5004, is  
7 amended by adding at the end the following new  
8 subsection:

9 “(ff) Notwithstanding any other requirement of this  
10 title or any other provision of Federal or State law, a State  
11 shall disregard the following property from resources for  
12 purposes of determining the eligibility of an individual who  
13 is an Indian for medical assistance under this title:

14 “(1) Property, including real property and im-  
15 provements, that is held in trust, subject to Federal  
16 restrictions, or otherwise under the supervision of  
17 the Secretary of the Interior, located on a reserva-  
18 tion, including any federally recognized Indian  
19 Tribe’s reservation, pueblo, or colony, including  
20 former reservations in Oklahoma, Alaska Native re-  
21 gions established by the Alaska Native Claims Set-  
22 tlement Act, and Indian allotments on or near a res-  
23 ervation as designated and approved by the Bureau  
24 of Indian Affairs of the Department of the Interior.

1           “(2) For any federally recognized Tribe not de-  
2           scribed in paragraph (1), property located within the  
3           most recent boundaries of a prior Federal reserva-  
4           tion.

5           “(3) Ownership interests in rents, leases, royalti-  
6           ties, or usage rights related to natural resources (in-  
7           cluding extraction of natural resources or harvesting  
8           of timber, other plants and plant products, animals,  
9           fish, and shellfish) resulting from the exercise of fed-  
10          erally protected rights.

11          “(4) Ownership interests in or usage rights to  
12          items not covered by paragraphs (1) through (3)  
13          that have unique religious, spiritual, traditional, or  
14          cultural significance or rights that support subsist-  
15          ence or a traditional lifestyle according to applicable  
16          tribal law or custom.”.

17          (2) APPLICATION TO CHIP.—Section 2107(e)(1)  
18          of such Act (42 U.S.C. 1397gg(e)(1)) is amended by  
19          adding at the end the following new subparagraph:

20                  “(E) Section 1902(ff) (relating to dis-  
21                  regard of certain property for purposes of mak-  
22                  ing eligibility determinations).”.

23          (c) CONTINUATION OF CURRENT LAW PROTECTIONS  
24          OF CERTAIN INDIAN PROPERTY FROM MEDICAID ESTATE

1 RECOVERY.—Section 1917(b)(3) of the Social Security  
2 Act (42 U.S.C. 1396p(b)(3)) is amended—

3 (1) by inserting “(A)” after “(3)”; and

4 (2) by adding at the end the following new sub-  
5 paragraph:

6 “(B) The standards specified by the Sec-  
7 retary under subparagraph (A) shall require  
8 that the procedures established by the State  
9 agency under subparagraph (A) exempt income,  
10 resources, and property that are exempt from  
11 the application of this subsection as of April 1,  
12 2003, under manual instructions issued to carry  
13 out this subsection (as in effect on such date)  
14 because of the Federal responsibility for Indian  
15 Tribes and Alaska Native Villages. Nothing in  
16 this subparagraph shall be construed as pre-  
17 venting the Secretary from providing additional  
18 estate recovery exemptions under this title for  
19 Indians.”.

20 **SEC. 5006. CONSULTATION ON MEDICAID AND CHIP.**

21 (a) IN GENERAL.—Section 1139 of the Social Secu-  
22 rity Act (42 U.S.C. 1320b–9) is amended to read as fol-  
23 lows:

24 “CONSULTATION WITH TRIBAL TECHNICAL ADVISORY  
25 GROUP (TTAG)

26 “SEC. 1139.

1           “The Secretary shall maintain within the Centers for  
2 Medicaid & Medicare Services (CMS) a Tribal Technical  
3 Advisory Group, which was first established in accordance  
4 with requirements of the charter dated September 30,  
5 2003, and the Secretary shall include in such Group a rep-  
6 resentative of the Urban Indian Organizations and the  
7 Service. The representative of the Urban Indian Organiza-  
8 tion shall be deemed to be an elected officer of a tribal  
9 government for purposes of applying section 204(b) of the  
10 Unfunded Mandates Reform Act of 1995 (2 U.S.C.  
11 1534(b)).”.

12           (b) SOLICITATION OF ADVICE UNDER MEDICAID AND  
13 CHIP.—

14           (1) MEDICAID STATE PLAN AMENDMENT.—Sec-  
15 tion 1902(a) of the Social Security Act (42 U.S.C.  
16 1396a(a)) is amended—

17           (A) in paragraph (70), by striking “and”  
18 at the end;

19           (B) in paragraph (71), by striking the pe-  
20 riod at the end and inserting “; and”; and

21           (C) by inserting after paragraph (71), the  
22 following new paragraph:

23           “(72) in the case of any State in which 1 or  
24 more Indian Health Programs or Urban Indian Or-  
25 ganizations furnishes health care services, provide

1 for a process under which the State seeks advice on  
2 a regular, ongoing basis from designees of such In-  
3 dian Health Programs and Urban Indian Organiza-  
4 tions on matters relating to the application of this  
5 title that are likely to have a direct effect on such  
6 Indian Health Programs and Urban Indian Organi-  
7 zations and that—

8 “(A) shall include solicitation of advice  
9 prior to submission of any plan amendments,  
10 waiver requests, and proposals for demonstra-  
11 tion projects likely to have a direct effect on In-  
12 dians, Indian Health Programs, or Urban In-  
13 dian Organizations; and

14 “(B) may include appointment of an advi-  
15 sory committee and of a designee of such In-  
16 dian Health Programs and Urban Indian Orga-  
17 nizations to the medical care advisory com-  
18 mittee advising the State on its State plan  
19 under this title.”.

20 (2) APPLICATION TO CHIP.—Section 2107(e)(1)  
21 of such Act (42 U.S.C. 1397gg(e)(1)), as amended  
22 by section 5005(b), is amended by adding at the end  
23 the following new subparagraph:

24 “(F) Section 1902(a)(72) (relating to re-  
25 quiring certain States to seek advice from des-



1           ignees of Indian Health Programs and Urban  
2           Indian Organizations).”.

3       (c) RULE OF CONSTRUCTION.—Nothing in the  
4 amendments made by this section shall be construed as  
5 superseding existing advisory committees, working groups,  
6 guidance, or other advisory procedures established by the  
7 Secretary of Health and Human Services or by any State  
8 with respect to the provision of health care to Indians.