

MEDICARE MODERNIZATION AND PRESCRIPTION DRUG  
ACT OF 2002 (SECTION 901: NATIONAL BIPARTISAN COM-  
MISSION ON THE FUTURE OF MEDICAID)

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JUNE 26, 2002.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed

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Mr. TAUZIN, from the Committee on Energy and Commerce,  
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 4961]

The Committee on Energy and Commerce, to whom was referred  
the bill (H.R. 4961) to establish a National Bipartisan Commission  
on the Future of Medicaid, having considered the same, report fa-  
vorably thereon without amendment and recommend that the bill  
do pass.

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#### PURPOSE AND SUMMARY

The purpose of H.R. 4961, to establish a National Bipartisan Commission on the Future of Medicaid, is to analyze the financial problems currently facing the Medicaid program, identify both causes and consequences of increasing Medicaid costs, and make recommendations for resolving these problems. The Commission will focus particularly on promoting enhanced efficiencies through the utilization of competitive, private enterprise models and analyzing the impact of impending demographic changes on the Medicaid program.

#### BACKGROUND AND NEED FOR LEGISLATION

Medicaid is a joint state and federal program that provides health care coverage for 44 million Americans. Last year, total Medicaid expenditures were approximately \$245 billion and they are projected to increase by 13.4 percent for fiscal year 2002.

As a result of soaring Medicaid costs, coupled with declining tax revenues, many states are facing serious budgetary crises. Approximately 40 states are currently facing budget shortfalls that cumulatively are estimated to be between \$40 and \$50 billion. In addition, 28 states are experiencing shortfalls totaling \$7.1 billion in their Medicaid budgets.

Medicaid also faces serious problems due to demographic changes. As the overall population continues to age, it is expected that Medicaid will see dramatic increases in spending for pharmaceuticals as well as the number of recipients who are eligible for long-term nursing care.

#### HEARINGS

The Committee on Energy and Commerce has not held hearings on the legislation.

#### COMMITTEE CONSIDERATION

On Wednesday, June 19, 2002, the Full Committee met in open markup session and favorably ordered reported a Committee Print on Medicaid, Public Health, and Other Health Provisions by a roll-call vote of 29 yeas and 20 nays, without amendment, a quorum being present. Chairman Tauzin then introduced H.R. 4961 to reflect the Committee's action.

#### COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The following are the recorded votes taken on the motion by Mr. Tauzin to order H.R. 4961 reported to the House, and on amendments offered to the measure, including the names of those members voting for and against.

**COMMITTEE ON ENERGY AND COMMERCE -- 107TH CONGRESS**  
**ROLL CALL VOTE # 29**

**BILL:** H.R. 4691, Medicaid, Public Health, and Other Health Provisions.

**AMENDMENT:** An amendment offered by Mr. Waxman, No. 1, on the National Commission on Preserving and Strengthening Medicaid.

**DISPOSITION:** NOT AGREED TO, by a roll call vote of 22 yeas to 26 nays, and 1 present.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Tauzin		X		Mr. Dingell	X		
Mr. Bilirakis		X		Mr. Waxman	X		
Mr. Barton		X		Mr. Markey	X		
Mr. Upton		X		Mr. Hall		X	
Mr. Stearns				Mr. Boucher			
Mr. Gillmor		X		Mr. Towns	X		
Mr. Greenwood		X		Mr. Pallone	X		
Mr. Cox		X		Mr. Brown	X		
Mr. Deal				Mr. Gordon			
Mr. Burr			X	Mr. Deutsch	X		
Mr. Whitfield		X		Mr. Rush	X		
Mr. Ganske		X		Ms. Eshoo	X		
Mr. Norwood				Mr. Stupak	X		
Mrs. Cubin		X		Mr. Engel	X		
Mr. Shimkus		X		Mr. Sawyer	X		
Mrs. Wilson		X		Mr. Wynn	X		
Mr. Shadegg		X		Mr. Green	X		
Mr. Pickering		X		Ms. McCarthy	X		
Mr. Fossella		X		Mr. Strickland	X		
Mr. Blunt				Ms. DeGette	X		
Mr. Davis		X		Mr. Barrett	X		
Mr. Bryant		X		Mr. Luther	X		
Mr. Ehrlich		X		Ms. Capps	X		
Mr. Buyer		X		Mr. Doyle	X		
Mr. Radanovich				Mr. John	X		
Mr. Bass		X		Ms. Harman			
Mr. Pitts		X					
Ms. Bono		X					
Mr. Walden		X					
Mr. Terry		X					
Mr. Fletcher		X					

**COMMITTEE ON ENERGY AND COMMERCE -- 107TH CONGRESS**  
**ROLL CALL VOTE # 30**

**BILL:** H.R. 4691, Medicaid, Public Health, and Other Health Provisions.

**MOTION:** Motion by Mr. Tauzin to order H.R. 4691 reported to the House.

**DISPOSITION:** **AGREED TO**, by a roll call vote of 29 yeas to 20 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Tauzin	X			Mr. Dingell		X	
Mr. Bilirakis	X			Mr. Waxman		X	
Mr. Barton	X			Mr. Markey		X	
Mr. Upton	X			Mr. Hall	X		
Mr. Stearns	X			Mr. Boucher			
Mr. Gillmor	X			Mr. Towns		X	
Mr. Greenwood	X			Mr. Pallone		X	
Mr. Cox	X			Mr. Brown		X	
Mr. Deal				Mr. Gordon		X	
Mr. Burr	X			Mr. Deutsch		X	
Mr. Whitfield	X			Mr. Rush			
Mr. Ganske	X			Ms. Eshoo		X	
Mr. Norwood				Mr. Stupak		X	
Mrs. Cubin	X			Mr. Engel		X	
Mr. Shimkus	X			Mr. Sawyer		X	
Mrs. Wilson	X			Mr. Wynn			
Mr. Shadegg	X			Mr. Green			
Mr. Pickering	X			Ms. McCarthy		X	
Mr. Fossella	X			Mr. Strickland		X	
Mr. Blunt	X			Ms. DeGette		X	
Mr. Davis	X			Mr. Barrett		X	
Mr. Bryant	X			Mr. Luther		X	
Mr. Ehrlich	X			Ms. Capps		X	
Mr. Buyer	X			Mr. Doyle		X	
Mr. Radanovich				Mr. John		X	
Mr. Bass	X			Ms. Harman			
Mr. Pitts	X						
Ms. Bono	X						
Mr. Walden	X						
Mr. Terry	X						
Mr. Fletcher	X						

#### COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has not held oversight or legislative hearings on this legislation.

#### STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

H.R. 4961 creates a bipartisan Commission that will analyze the financial issues currently facing the Medicaid program, make recommendations regarding necessary structural reforms and aid in developing a bipartisan consensus in support of reform to ensure the continuing viability of the program.

#### NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 4961, to establish a National Bipartisan Commission on the Future of Medicaid, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

#### COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974, which is included in the report to accompany H.R. 4984.

#### CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974 is included in the report to accompany H.R. 4984.

#### FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act. The estimate is included in the report to accompany H.R. 4984.

#### ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

#### APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

#### SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

##### *Section 901. National Bipartisan Commission of the Future of Medicaid*

Section 901 establishes the National Bipartisan Commission on the Future of Medicaid. The duties of the Commission will be to analyze the long-term financial condition of the Medicaid program, identify causes and consequences of increasing Medicaid costs, analyze policies to ensure the financial integrity of the Medicaid program and the provision of appropriate benefits under such a program, and make recommendations to promote enhanced efficiencies and for establishing the appropriate balance between benefits, payments, state and federal contributions, and recipient cost-sharing obligations. The Commission will also make recommendations on the impact of promoting increased utilization of competitive, private enterprise models and the financing of prescription drug benefits currently covered under state Medicaid programs. The Commission will also analyze the impact of impending demographic changes on Medicaid benefits, including long term care, and make recommendations about how best to divide state and federal responsibilities for funding these benefits.

This section states that the Commission will be composed of 17 members. The ability to select appointees will be divided among the President, the Senate Majority and Minority leaders, the Speaker of the House and the House Minority leader. The President, Senate Majority Leader, and Speaker of the House of Representatives will jointly appoint the Chairman of the Commission. Members of the Commission must be appointed by December 1, 2002. Additionally, the Chairman will appoint an Executive Director of the Commission, who may appoint such staff as is considered appropriate.

The Commission may hold hearings, request GAO reports, obtain CBO and CMS Actuary cost estimates, and obtain any information directly from any Federal agency that is necessary to carry out its duties.

Finally, this section states that by March 1, 2004, the Commission shall submit a report to the President and Congress that will contain the recommendations, findings, and conclusions of the Commission.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

This legislation does not amend any existing Federal statute.

## DISSENTING VIEWS

H.R. 4961 establishes a Commission to study Medicaid, modeled after the National Bipartisan Commission on the Future of Medicare. That former Commission was designed from the start to provide a predetermined result: privatize Medicare.

We do not wish to see a Medicare Commission process repeated, and for this reason offered an amendment in Committee to improve upon the politicized structure and mission statement of the Commission in the Republican bill.

This amendment diversified the membership of the Commission to include individuals with disabilities, low-income elderly or pregnant women—populations for whom Medicaid plays a critical role. This amendment also added provider representation to the Commission. Each year Congress gives additional payments to Medicare providers, but almost never turns its attention to Medicaid. This is a serious problem, one that many members hear about frequently at home.

The General Accounting Office (GAO) in a September 2001 report wrote, “Nationally, low Medicaid physician fees and participation have been long-standing areas of concern. In a recent national survey, pediatricians cited low fees as one of the most important factors in their decision to limit participation.”

As an example, New York only relatively recently increased fees for physician office visits from \$7 to \$30—the first such increase in 30 years. As we recognize from the concern voiced over physician reimbursement in Medicare, cuts in payment or inappropriately low payment translate directly into problems with access to care for beneficiaries. This same problem exists in Medicaid, only worse.

GAO also found in its September 2001 report that in the four states visited, “Medicaid fees were consistently lower than Medicare fees for the same preventive services . . . .” Adding provider representation to this Commission—nursing homes, hospitals, federally qualified health centers and physicians—will enable us to elevate this discussion about adequacy of payments and access to a level of attention it deserves.

The Commission is also flawed because its mission statement is unbalanced. The Republican bill has the Commission study virtually only cost containment, without looking at improvements in quality and access. To be balanced, any Commission studying Medicaid should also examine ensuring beneficiary access to the program, improving reimbursement to providers, protecting patients’ rights in managed care, improving patient safety in nursing homes, and improving provision of mental health and dental services.

We do need to look into the Medicaid program and we should take on this responsibility first in this Committee. Medicaid is a health insurance program of critical importance in this country. It covers as many people as the Medicare program; providing health

insurance to more than one in seven Americans or about 40 million people. We can certainly make improvements in the program such as adding coverage of low-income legal immigrant families or improving provider reimbursement. This Committee has passed a number of such improvements in the past few years—giving states new coverage options for women with breast or cervical cancer or working disabled.

We do not believe that a program of such importance to so many should be victimized by a Commission set to provide a predetermined result. Instead, we should ensure that the appropriate parties are represented on the Commission and that critical subjects like provider payment and beneficiary access to care get the consideration they deserve. The Commission created in the Republican bill does neither, so we oppose it.

JOHN D. DINGELL.  
 SHERROD BROWN.  
 HENRY A. WAXMAN.  
 RICK BOUCHER.  
 EDOLPHUS TOWNS.  
 GENE GREEN.  
 FRANK PALLONE, Jr.  
 MIKE DOYLE.  
 KAREN MCCARTHY.  
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 ELIOT L. ENGEL.  
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