

109TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

To provide for the establishment of a Bipartisan Commission on Medicaid.

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IN THE SENATE OF THE UNITED STATES

Mr. SMITH (for himself, Mr. BINGAMAN, Ms. SNOWE, Mr. JEFFORDS, Mr. SANTORUM, Mr. KERRY, Mr. DEWINE, Mr. DURBIN, and Mr. CHAFEE) introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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**A BILL**

To provide for the establishment of a Bipartisan Commission on Medicaid.

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 “Bipartisan Commission  
5 on Medicaid Act of 2005”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

8 (1) The medicaid program under title XIX of  
9 the Social Security Act (42 U.S.C. 1396 et seq.) (in  
10 this Act referred to as “Medicaid”) provides essen-

1        tial health care and long-term care coverage to low-  
2        income children, pregnant women and families, indi-  
3        viduals with disabilities, and senior citizens consti-  
4        tuting 1 in 6 Americans.

5            (2) State participation in Medicaid is voluntary,  
6        and all States have elected to participate, admin-  
7        istering the program within broad Federal guide-  
8        lines.

9            (3) The Federal Government matches the costs  
10       of delivering covered services by participating pro-  
11       viders to individuals entitled to benefits that are in-  
12       curred by State Medicaid programs at rates ranging  
13       from 50 percent to 77 percent, depending upon a  
14       State's per capita income.

15           (4) Medicaid pays for health care services for  
16       over  $\frac{1}{4}$  of America's children, including children who  
17       live in poverty.

18           (5) Medicaid is America's largest single pur-  
19       chaser of maternity care, paying for over  $\frac{1}{3}$  of all  
20       the births in the Nation each year.

21           (6) Although low-income children and their par-  
22       ents make up  $\frac{3}{4}$  of the recipients of benefits under  
23       Medicaid, they account for only 30 percent of Med-  
24       icaid spending.

1           (7) Medicaid is America's single largest pur-  
2           chaser of nursing home services and other long-term  
3           care, covering the majority of nursing home resi-  
4           dents.

5           (8) Medicaid is an essential supplement to the  
6           medicare program under title XVIII of the Social  
7           Security Act (42 U.S.C. 1395 et seq.) (in this Act  
8           referred to as "Medicare") for over 6,000,000 low-  
9           income elderly and disabled Medicare beneficiaries,  
10          assisting them with their Medicare premiums and  
11          co-insurance and, in most cases, the costs of nursing  
12          home care that Medicare does not cover.

13          (9) The elderly and individuals with disabilities  
14          comprise 1/4 of the recipients of benefits under Med-  
15          icaid and 70 percent of Medicaid spending on serv-  
16          ices.

17          (10) States will be required, beginning in 2006,  
18          to contribute billions of dollars to the Federal Gov-  
19          ernment to help finance the Medicare prescription  
20          drug benefit established under part D of title XVIII  
21          of the Social Security Act.

22          (11) Medicaid pays for personal care and other  
23          supportive services necessary to enable individuals  
24          with disabilities to remain in the community, to  
25          work, and to maintain independence.

1           (12) Medicaid is the single largest source of  
2 revenue for the Nation's safety net hospitals and  
3 health centers and is critical to the ability of these  
4 providers to continue to serve medicaid enrollees and  
5 uninsured Americans.

6           (13) Medicaid is the single largest Federal  
7 grant-in-aid program to the States, accounting for  
8 over 40 percent of all Federal grants to States.

9           (14) Medicaid serves a major role in ensuring  
10 that the number of Americans without health insur-  
11 ance, approximately 45,000,000, is not substantially  
12 higher.

13           (15) Medicaid finances services for many spe-  
14 cial health care needs populations, providing health  
15 care for 55 percent of all individuals living with  
16 HIV/AIDS and 60 percent of all public mental  
17 health care for people with severe mental illnesses.

18           (16) Medicaid's multiple roles present financial  
19 challenges for Federal, and State governments that  
20 warrant a comprehensive review in light of the in-  
21 creasing number of uninsured Americans and the in-  
22 creasing number of low-income Americans in need of  
23 long-term care services.

1 **SEC. 3. BIPARTISAN COMMISSION ON MEDICAID.**

2 (a) ESTABLISHMENT.—There is established a com-  
3 mission to be known as the Bipartisan Commission on  
4 Medicaid (in this section referred to as the “Commis-  
5 sion”). The Commission shall locate its headquarters in  
6 the District of Columbia.

7 (b) MEMBERSHIP.—

8 (1) APPOINTMENT.—The Commission shall be  
9 composed of 23 members to be appointed as follows:

10 (A) One member shall be appointed by the  
11 President.

12 (B) Three members shall be appointed by  
13 the majority leader of the Senate of whom—

14 (i) one shall be a Member or former  
15 Member of Congress;

16 (ii) one shall be an advocate for popu-  
17 lations who are served by Medicaid; and

18 (iii) one shall be a health care pro-  
19 vider that provides a disproportionate  
20 share of care to recipients of benefits  
21 under Medicaid or a representative of an  
22 organization that represent such providers.

23 (C) Three members shall be appointed by  
24 the minority leader of the Senate of whom—

25 (i) one shall be a Member or former  
26 Member of Congress;

1 (ii) one shall be an advocate for popu-  
2 lations who are served by Medicaid; and

3 (iii) one shall be a health care pro-  
4 vider that provides a disproportionate  
5 share of care to recipients of benefits  
6 under Medicaid or a representative of an  
7 organization that represent such providers.

8 (D) Three members shall be appointed by  
9 the Speaker of the House of Representatives of  
10 whom—

11 (i) one shall be a Member or former  
12 Member of Congress;

13 (ii) one shall be an advocate for popu-  
14 lations who are served by Medicaid; and

15 (iii) one shall be a health care pro-  
16 vider that provides a disproportionate  
17 share of care to recipients of benefits  
18 under Medicaid or a representative of an  
19 organization that represent such providers.

20 (E) Three members shall be appointed by  
21 the minority leader of the House of Representa-  
22 tives of whom—

23 (i) one shall be a Member or former  
24 Member of Congress;

1 (ii) one shall be an advocate for popu-  
2 lations who are served by Medicaid; and

3 (iii) one shall be a health care pro-  
4 vider that provides a disproportionate  
5 share of care to recipients of benefits  
6 under Medicaid or a representative of an  
7 organization that represent such providers.

8 (F) Two members shall be appointed by  
9 the National Governors Association and shall be  
10 chief executive officers of a State who are not  
11 of the same political party.

12 (G) Two members shall be appointed by  
13 the National Conference of State Legislatures  
14 and shall be members of a State legislature who  
15 are not of the same political party.

16 (H) Two members shall be appointed by  
17 the National Association of State Medicaid Di-  
18 rectors and shall be chief officials responsible  
19 for administering Medicaid in a State who are  
20 not of the same political party.

21 (I) Two members shall be appointed by the  
22 National Association of Counties and shall be  
23 officials of a local government involved in Med-  
24 icaid financing or that directly provides medical  
25 services to Medicaid beneficiaries and uninsured

1 individuals who are not of the same political  
2 party.

3 (J) Two members shall be appointed by  
4 the Comptroller General of the United States  
5 and shall be health policy experts with special  
6 expertise regarding Medicaid or the populations  
7 served by Medicaid who are not of the same po-  
8 litical party.

9 (2) QUALIFICATIONS.—The members of the  
10 Commission appointed under paragraph (1), shall  
11 reflect—

12 (A) a broad geographic representation; and

13 (B) a balance between urban and rural  
14 representation.

15 (3) DEADLINE FOR APPOINTMENT.—Members  
16 of the Commission shall be appointed by not later  
17 than the 60th day after the date of enactment of  
18 this Act.

19 (c) DUTIES OF COMMISSION.—

20 (1) IN GENERAL.—The Commission shall—

21 (A) review and make recommendations  
22 with respect to each of Medicaid's major func-  
23 tional responsibilities, including being—

1 (i) a source of coverage for low-income  
2 children, pregnant women, and some par-  
3 ents;

4 (ii) a payer for a complex range of  
5 acute and long-term care services for the  
6 frail elderly and individuals with disabil-  
7 ities, including the medically needy;

8 (iii) the source of wrap-around cov-  
9 erage or assistance for low-income seniors  
10 and individuals with disabilities on Medi-  
11 care, including coverage of additional bene-  
12 fits and assistance with Medicare pre-  
13 miums and copayments; and

14 (iv) the primary source of funding to  
15 safety net providers that serve both Med-  
16 icaid patients and the 45,000,000 unin-  
17 sured;

18 (B) review and make recommendations for  
19 a clearer delineation of—

20 (i) the Federal and State roles and re-  
21 sponsibilities under Medicaid; and

22 (ii) the interaction of Medicaid with  
23 Medicare and other Federal health pro-  
24 grams;

1 (C) review and identify issues that either  
2 threaten or could improve the long-term finan-  
3 cial condition of Medicaid, including forth-  
4 coming demographic changes, Federal and  
5 State revenue options, private sector health cov-  
6 erage, and health care information;

7 (D) review the Federal matching payments  
8 and requirements under Medicaid, and issues  
9 related to such payments and requirements, and  
10 make recommendations on how to make such  
11 payments more equitable with respect to the  
12 populations served and the States, and on how  
13 to improve the program's responsiveness to  
14 changes in economic conditions;

15 (E) review and make recommendations  
16 with respect to health care for individuals du-  
17 ally eligible for both Medicare and Medicaid, in-  
18 cluding issues related to Federal, State, pro-  
19 vider, and beneficiary responsibilities, coordina-  
20 tion, and outcomes;

21 (F) review research and data with respect  
22 to health disparities for populations served by  
23 Medicaid, particularly with respect to individ-  
24 uals with disabilities or special health care  
25 needs, and make recommendations on how to

1 improve health quality, coordination of services  
2 and providers, and access to health care for vul-  
3 nerable populations, including the implementa-  
4 tion of managed care protections for Medicaid  
5 enrollees with special health care needs;

6 (G) review Federal and State policies for  
7 enrollment (including enrollment sites), income  
8 eligibility (including methodology and length of  
9 eligibility periods), outreach, and documentation  
10 with respect to Medicaid and Medicare and  
11 make recommendations on how to simplify such  
12 policies and improve enrollment and retention  
13 in such programs and coordination with other  
14 Federal and State programs to improve service  
15 delivery and coverage;

16 (H) review the operation and effectiveness  
17 of Medicaid premium assistance programs, in-  
18 cluding the payment of premiums under section  
19 1906(a)(3) of the Social Security Act (42  
20 U.S.C. 1396e(a)(3)) and payment waivers  
21 under section 1115 of such Act (42 U.S.C.  
22 1315), and the adequacy of covered benefits, af-  
23 fordability of cost-sharing and premiums, and  
24 access to care under such programs;

1 (I) review and make recommendations re-  
2 garding payment policies under Medicaid, in-  
3 cluding the adequacy of such policies with re-  
4 spect to—

5 (i) managed care plans (including  
6 payment policies for single benefit man-  
7 aged care arrangements, such as managed  
8 behavioral health and dental care);

9 (ii) providers in managed care, fee-  
10 for-service, long-term care, and primary  
11 care case management settings; and

12 (iii) measures to assure and reward  
13 quality and access to care for Medicaid en-  
14 rollees;

15 (J) review how Medicare payment policies  
16 impact Medicaid and make recommendations on  
17 ways to address specific payment problems that  
18 such policies may create in service delivery to  
19 populations typically not covered by Medicare,  
20 such as children and pregnant women;

21 (K) review payments to safety net pro-  
22 viders, including a review of—

23 (i) the adjustments to payments under  
24 Medicaid—

1 (I) under section 1923 of the So-  
2 cial Security Act (42 U.S.C. 1396r-4)  
3 for inpatient hospital services fur-  
4 nished by disproportionate share hos-  
5 pitals; and

6 (II) under section 1902(bb) of  
7 such Act (42 U.S.C. 1396a(bb)) for  
8 payments to Federally-qualified health  
9 centers and rural health clinics; and

10 (ii) other payments that impact the  
11 capacity of the health care safety net to  
12 care for uninsured individuals, recipients of  
13 benefits under Medicaid, and other vulner-  
14 able populations;

15 (L) review interstate payment, enrollment,  
16 access, and quality concerns with respect to re-  
17 cipients of benefits under Medicaid that are  
18 served by interstate providers, and make rec-  
19 ommendations on ways to improve interstate  
20 health care delivery;

21 (M) review and make recommendations  
22 with respect to financing and other issues im-  
23 pacting Commonwealth and territorial programs  
24 as compared to other States; and

1 (N) review and make recommendations on  
2 such other matters related to Medicaid as the  
3 Commission deems appropriate.

4 (2) ANALYSIS OF EFFECT OF EACH REC-  
5 OMMENDATION.—Each recommendation required  
6 under paragraph (1) shall include an analysis of the  
7 effect of the recommendation under Medicaid and, if  
8 applicable, Medicare and other Federal health pro-  
9 grams, on—

10 (A) Federal and State expenditures;

11 (B) provider payment rates;

12 (C) beneficiary out-of-pocket expenditures;

13 (D) beneficiary access to covered items and  
14 services; and

15 (E) coverage of items and services.

16 (3) EXPERT ADVICE.—The Comptroller General  
17 of the United States and the Director of the Con-  
18 gressional Research Service shall advise the Commis-  
19 sion on the methodology to be used in identifying  
20 problems and analyzing potential solutions in ac-  
21 cordance with the duties of the Commission de-  
22 scribed in paragraph (1).

23 (d) GENERAL ADMINISTRATIVE PROVISIONS.—

1           (1) TERMS OF APPOINTMENT.—The members  
2 of the Commission shall be appointed for the life of  
3 the Commission.

4           (2) VACANCIES.—A vacancy on the Commission  
5 shall be filled, not later than 30 days after the date  
6 on which the Commission is given notice of the va-  
7 cancy, in the same manner in which the original ap-  
8 pointment was made.

9           (3) CHAIRPERSON AND VICE CHAIRPERSON.—  
10 The Commission shall designate 2 of its members to  
11 serve as the chairperson and vice chairperson of the  
12 Commission.

13           (4) MEETINGS.—The Commission shall meet at  
14 the call of the chairperson of the Commission.

15           (5) QUORUM.—Twelve members of the Commis-  
16 sion shall constitute a quorum for purposes of vot-  
17 ing, but a lesser number of members may meet and  
18 hold hearings.

19           (6) COMPENSATION AND EXPENSES.—

20           (A) COMPENSATION.—Except as provided  
21 in subparagraph (B), members of the Commis-  
22 sion shall receive no additional pay, allowances,  
23 or benefits by reason of their service on the  
24 Commission.

1           (B) EXPENSES.—While away from their  
2 homes or regular places of business in the per-  
3 formance of services for the Commission, mem-  
4 bers of the Commission shall be allowed travel  
5 expenses, including per diem in lieu of subsist-  
6 ence, at rates authorized for employees of agen-  
7 cies under subchapter I of chapter 57 of title 5,  
8 United States Code.

9           (7) ETHICAL DISCLOSURE.—The Comptroller  
10 General of the United States shall establish and im-  
11 plement a system for public disclosure of financial  
12 and other potential conflicts of interest by members  
13 of the Commission.

14           (e) STAFF AND SUPPORT SERVICES.—

15           (1) EXECUTIVE DIRECTOR.—The chairperson  
16 and vice-chair shall appoint an executive director of  
17 the Commission.

18           (2) STAFF.—With the approval of the Commis-  
19 sion, the executive director may appoint such per-  
20 sonnel as the executive director determines to be ap-  
21 propriate.

22           (3) APPLICABILITY OF CIVIL SERVICE LAW;  
23 ETC.—The executive director and staff of the Com-  
24 mission shall be appointed without regard to the  
25 provisions of title 5, United States Code, governing

1 appointment in the competitive service, and shall be  
2 paid without regard to chapter 51 and subchapter  
3 III of chapter 53 of title 5, United States Code, re-  
4 lating to classification of positions and General  
5 Schedule pay rates, except that the rate of pay for  
6 the executive director and other personnel may not  
7 exceed the rate payable for level V of the Executive  
8 Schedule under section 5316 of such title.

9 (4) EXPERTS AND CONSULTANTS.—With the  
10 approval of the Commission, the executive director  
11 may procure temporary and intermittent services  
12 under section 3109(b) of title 5, United States Code.

13 (5) FEDERAL AGENCIES.—

14 (A) STAFF OF OTHER FEDERAL AGEN-  
15 CIES.—Upon the request of the Commission,  
16 the head of any Federal agency may detail,  
17 without reimbursement, any of the personnel of  
18 such agency to the Commission to assist in car-  
19 rying out the duties of the Commission. Any  
20 such detail shall not interrupt or otherwise af-  
21 fect the civil service status or privileges of the  
22 Federal employee.

23 (B) TECHNICAL ASSISTANCE.—Upon the  
24 request of the Commission, the head of a Fed-  
25 eral agency shall provide such technical assist-

1           ance to the Commission as the Commission de-  
2           termines to be necessary to carry out its duties.

3           (6) OTHER RESOURCES.—The Commission  
4           shall have reasonable access to materials, resources,  
5           statistical data, and other information from the Li-  
6           brary of Congress and agencies and elected rep-  
7           resentatives of the executive and legislative branches  
8           of the Federal Government. The chairperson or vice-  
9           chair of the Commission shall make requests for  
10          such access in writing when necessary.

11          (7) GAO SERVICES.—

12                (A) PHYSICAL FACILITIES.—The Adminis-  
13                trator of General Services shall locate suitable  
14                office space for the operation of the Commis-  
15                sion. The facilities shall serve as the head-  
16                quarters of the Commission and shall include  
17                all necessary equipment and incidentals re-  
18                quired for the proper functioning of the Com-  
19                mission.

20                (B) ADMINISTRATIVE SUPPORT SERV-  
21                ICES.—Upon the request of the Commission,  
22                the Administrator of General Services shall pro-  
23                vide to the Commission, on a reimbursable  
24                basis, such administrative support services as  
25                the Commission may request.

1 (f) POWERS OF THE COMMISSION.—

2 (1) HEARINGS.—The Commission shall conduct  
3 public hearings or forums at the discretion of the  
4 Commission, at any time and place the Commission  
5 is able to secure facilities and witnesses, for the pur-  
6 pose of carrying out the duties of the Commission.

7 (2) STUDIES OR INVESTIGATIONS.—Upon the  
8 request of the Commission, the Comptroller General  
9 of the United States, the Medicare Payment Advi-  
10 sory Commission, or the Director of the Congres-  
11 sional Research Service shall conduct such studies or  
12 investigations as the Commission determines to be  
13 necessary to carry out its duties.

14 (3) COST ESTIMATES.—The Director of the  
15 Congressional Budget Office, the Chief Actuary of  
16 the Centers for Medicare & Medicaid Services, the  
17 Medicare Payment Advisory Commission, or all  
18 three, shall provide to the Commission, upon the re-  
19 quest of the Commission and without reimburse-  
20 ment, such cost estimates as the Commission deter-  
21 mines to be necessary to carry out its duties.

22 (4) GIFTS.—The Commission may accept, use,  
23 and dispose of gifts or donations of services or prop-  
24 erty.

1           (5) **MAILS.**—The Commission may use the  
2 United States mails in the same manner and under  
3 the same conditions as Federal agencies.

4           (g) **REPORT.**—

5           (1) **IN GENERAL.**—Not later than 14 months  
6 after the date of enactment of this Act, the Commis-  
7 sion shall prepare and submit a report that contains  
8 a detailed statement of the recommendations, find-  
9 ings, and conclusions of the Commission (as deter-  
10 mined in accordance with paragraph (3)) to each of  
11 the following:

12                   (A) The President.

13                   (B) The Committee on Finance of the Sen-  
14 ate.

15                   (C) The Committee on Energy and Com-  
16 merce of the House of Representatives.

17                   (D) The chief executive officer of each  
18 State.

19           (2) **AVAILABILITY.**—The report shall be made  
20 available to the public.

21           (3) **RECOMMENDATIONS, FINDINGS, AND CON-**  
22 **CLUSIONS.**—The recommendations, findings, and  
23 conclusions of the Commission shall be included in  
24 the report under paragraph (1) only if—

1 (A) each member of the Commission has  
2 had an opportunity to vote on such rec-  
3 ommendation, finding, or conclusion;

4 (B) the results of the vote are printed in  
5 the report, including a record of how each mem-  
6 ber voted; and

7 (C) at least 14 of the 23 members of the  
8 Commission voted in favor of such rec-  
9 ommendation, finding, or conclusion.

10 (h) AUTHORIZATION OF APPROPRIATIONS.—There is  
11 authorized to be appropriated to the Commission such  
12 sums as may be necessary to carry out this section.

13 (i) DEFINITION OF STATE.—In this Act, the term  
14 “State” has the meaning given such term for purposes of  
15 title XIX of the Social Security Act (42 U.S.C. 1396 et  
16 seq.).

17 (j) TERMINATION.—The Commission shall terminate  
18 on the date that is 30 days after the date on which the  
19 Commission submits the report under subsection (g) to the  
20 President, Congress, and the chief executive officer of each  
21 State.