

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ``Economic Recovery in Health Care Act of 2008''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) State and local governments are an integral part of our national economic engine. They provide health care and a wealth of social services to millions of Americans, particularly when the economy is weak.

(2) During the last economic downturn, the number of uninsured Americans would have been millions more if Medicaid and the State Children's Health Insurance Program (CHIP) had not responded to the twin challenges of an economic downturn and a sharp drop-off in private health insurance coverage.

(3) In the last year, our unemployment rate has increased to 5.0 percent with nearly 900,000 more Americans without jobs. Because the majority of Americans get their health insurance through their jobs, the loss of a job often results in a simultaneous loss of health insurance coverage.

(4) Medicaid fills the gap for working families when they lose access to private coverage. For every 1 percent increase in the unemployment rate, Medicaid enrollment increases by 2,000,000 to 3,000,000 people.

(5) States experience enormous budget pressures when the economy slows. By law, 49 States are required to balance their budgets and, in times of economic downturn, this task becomes significantly more difficult.

(6) According to the National Governors Association, 18 States already face budget shortfalls totaling \$14,000,000,000 in 2008, and 21 States project shortfalls totaling more than \$32,000,000,000 in 2009. If the current downturn follows the path of most recessions, between 35 and 40 States will face severe budget shortfalls in 2009.

(7) A critical factor in helping States sustain Medicaid enrollment during the last economic downturn was the \$20,000,000,000 in State fiscal relief that Congress enacted in 2003.

(8) Not only should Congress enact a similar State fiscal relief provision in 2008, but Congress should also delay the implementation of administrative regulations that would reduce Federal Medicaid matching payments at a time when States need greater Federal resources.

(9) There is no question that health care is economic stimulus.

(10) Keeping Medicaid and CHIP whole shores up the safety net for vulnerable working families. People who are able to get the health services they need are more likely to be able to continue working and contribute to the economy as it recovers.

(11) Leading economists have found that targeted State aid would generate increased economic activity of \$1.36 for each dollar of cost. The increase in Federal dollars to States generates business activity, jobs, and wages that States would not otherwise see.

SEC. 3. PRESERVING ACCESS TO MEDICAID AND CHIP DURING AN ECONOMIC DOWNTURN.

(a) *Prohibition.*--Effective on the date of enactment of this Act, notwithstanding any other provision of law, the Secretary of Health and Human Services shall not finalize, implement, enforce, or otherwise take any action to give effect to the following administrative actions (or to any administrative actions relating to the same subject matters that are similar to the following administrative actions or that reflect the same or similar policies set forth in the following administrative actions) prior to April 1, 2009:

(1) The proposed and final rule entitled "Medicaid Program; Health-Care Related Taxes", published, respectively, on March 23, 2007, on pages 13726 through 13734 of volume 72, Federal Register, and on February 22, 2008, on pages 9685 through 9699 of volume 73, Federal Register, with the exception of the proposed amendments to sections 433.56(a)(8) and 433.68(f)(3)(i) of title 42, Code of Federal Relations.

(2) The proposed rule entitled "Medicaid Program; Graduate Medical Education", published on May 23, 2007, on pages 28930 through 28936 of volume 72, Federal Register.

(3) The State Health Official Letter 07-001, dated August 17, 2007, issued by the Director of the Center for Medicaid and State Operations in the Centers for Medicare & Medicaid Services regarding certain requirements under the State Children's Health Insurance Program (CHIP) relating to the prevention of the substitution of health benefits coverage for children (commonly referred to as "crowd-out") and the enforcement of medical support orders. Any change made on or after August 17, 2007, to a Medicaid or CHIP State plan or waiver to implement, conform to, or otherwise adhere to the requirements or policies in such letter shall not apply prior to April 1, 2009.

(4) The proposed rule entitled "Medicaid Program; Clarification of Outpatient Clinic and Hospital Facility Services definition and Upper Payment Limit", published on September 28, 2007, on pages 55158 through 55166 of volume 72, Federal Register.

(5) The interim final rule entitled "Medicaid Program; Optional State Plan Case Management Services", published on December 4, 2007, on pages 68077 through 68093 of volume 72, Federal Register.

(6) The proposed rule entitled "Revisions to Procedures for the Departmental Appeals Board and Other Departmental Hearings", published on December 28, 2007, on pages 73708 through 73720 of volume 72, Federal Register.

(b) *Extension of Prior Moratoria.*--

(1) **MORATORIUM RELATING TO THE COST LIMIT FOR PROVIDERS OPERATED BY UNITS OF GOVERNMENT AND PROVISIONS TO ENSURE THE INTEGRITY OF FEDERAL-STATE FINANCIAL PARTNERSHIP.**--Section 7002(a)(1) of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007 (Public Law 110-28) is amended by striking ``the date that is 1 year after the date of enactment of this Act'' and inserting ``April 1, 2009''.

(2) **MORATORIA RELATING TO REHABILITATION SERVICES, SCHOOL-BASED ADMINISTRATION AND SCHOOL-BASED TRANSPORTATION.**--Section 206 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (Public Law 110-173) is amended by striking ``June 30, 2008'' and inserting ``April 1, 2009''.

SEC. 4. TEMPORARY, TARGETED STATE FISCAL RELIEF.

(a) *Definitions.*--In this section:

(1) **ROUND ONE QUALIFYING STATE.**--

(A) **IN GENERAL.**--Subject to subparagraph (B), the term ``Round One Qualifying State'' means with respect to a State that is 1 of the 50 States or the District of Columbia, a State that has 1 of 28 highest averages of the State rankings for each of the following 3 qualifying criteria, based on the most recent data available as of April 1, 2008:

(i) **REDUCTION IN EMPLOYMENT.**--The year-to-year reduction in total employment, based on the average total employment for the State or District in the 3 most recent months compared to the average total employment for the State or District in the same months a year earlier, as determined based on the most recent monthly publications of the Current Employer Statistics Survey of the Bureau of Labor Statistics.

(ii) **INCREASE IN FOOD STAMPS PARTICIPATION.**--The year-to-year increase in food stamps participation, based on average monthly participation for the State or District in the 3 most recent months compared to the average monthly participation for the State or District in the same months a year earlier, as determined based on the most recent monthly publications of Food and Nutrition Service Data of the Department of Agriculture.

(iii) **INCREASE IN THE FORECLOSURE RATE.**--The year-to-year increase in the foreclosure rate for the State or District, based on the foreclosure rate for the State or District for the most recent quarter compared to the same quarter a year earlier, as determined by the Mortgage Bankers Association's National Delinquency Survey, as published in most recent report entitled, ``Recent Foreclosure Trends Report for all States''.

(B) **COMMONWEALTHS AND TERRITORIES INCLUDED.**--Such term includes a commonwealth or territory specified in paragraph (4).

(2) **ROUND TWO QUALIFYING STATE.**--The term ``Round Two Qualifying State'' means a State that is 1 of the 50 States or the District of Columbia and that--

(A) has 1 of 38 highest averages of the State rankings for the 3 qualifying criteria identified in clauses (i), (ii), and (iii) of paragraph (1)(A), based on the most recent data available as of October 1, 2008; and

(B) is not a Round One Qualifying State.

(3) **FMAP.**--The term "FMAP" means the Federal medical assistance percentage, as defined in section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)).

(4) **STATE.**--The term "State" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa.

(b) *Assistance for Round One Qualifying States.*--

(1) **TEMPORARY INCREASE OF MEDICAID FMAP.**--

(A) **PERMITTING MAINTENANCE OF FISCAL YEAR 2007 FMAP FOR LAST 2 CALENDAR QUARTERS OF FISCAL YEAR 2008.**--Subject to subparagraphs (E), (F), (G), and (H), if the FMAP determined without regard to this paragraph for a Round One Qualifying State for fiscal year 2008 is less than the FMAP as so determined for fiscal year 2007, the FMAP for the State for fiscal year 2007 shall be substituted for the State's FMAP for the third and fourth calendar quarters of fiscal year 2008, before the application of this paragraph.

(B) **PERMITTING MAINTENANCE OF FISCAL YEAR 2008 FMAP FOR FIRST 3 QUARTERS OF FISCAL YEAR 2009.**--Subject to subparagraphs (E), (F), (G), and (H), if the FMAP determined without regard to this paragraph for a Round One Qualifying State for fiscal year 2009 is less than the FMAP as so determined for fiscal year 2008, the FMAP for the State for fiscal year 2008 shall be substituted for the State's FMAP for the first, second, and third calendar quarters of fiscal year 2009, before the application of this paragraph.

(C) **GENERAL 1.667 PERCENTAGE POINTS INCREASE FOR LAST 2 CALENDAR QUARTERS OF FISCAL YEAR 2008 AND FIRST 3 CALENDAR QUARTERS OF FISCAL YEAR 2009.**--Subject to subparagraphs (E), (F), (G), and (H), for each Round One Qualifying State for the third and fourth calendar quarters of fiscal year 2008 and for the first, second, and third calendar quarters of fiscal year 2009, the FMAP (taking into account the application of subparagraphs (A) and (B)) shall be increased by 1.667 percentage points.

(D) **INCREASE IN CAP ON MEDICAID PAYMENTS TO TERRITORIES.**--Subject to subparagraphs (E), (F), (G), and (H), with respect to the third and fourth calendar quarters of fiscal year 2008 and the first, second, and third calendar quarters of fiscal year 2009, the amounts otherwise determined for the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa under subsections (f) and (g) of section 1108 of the Social Security Act (42 U.S.C. 1308) shall each be increased by an amount equal to 3.334 percent of such amounts.

(E) **SCOPE OF APPLICATION.**--The increases in the FMAP for a Round One Qualifying State and the increases in the cap amounts under subparagraph (D) under this paragraph

shall apply only for purposes of title XIX of the Social Security Act and shall not apply with respect to--

(i) disproportionate share hospital payments described in section 1923 of such Act (42 U.S.C. 1396r-4);

(ii) payments under title IV or XXI of such Act (42 U.S.C. 601 et seq. and 1397aa et seq.); or

(iii) any payments under XIX of such Act that are based on the enhanced FMAP described in section 2105(b) of such Act (42 U.S.C. 1397ee(b)).

(F) STATE ELIGIBILITY.--

(i) **IN GENERAL.--**Subject to clause (ii), a Round One Qualifying State is eligible for an increase in its FMAP under subparagraph (C) or an increase in a cap amount under subparagraph (D) only if the eligibility under its State plan under title XIX of the Social Security Act (including any waiver under such title or under section 1115 of such Act (42 U.S.C. 1315)) is no more restrictive than the eligibility under such plan (or waiver) as in effect on December 31, 2007.

(ii) **STATE REINSTATEMENT OF ELIGIBILITY PERMITTED.--**A Round One Qualifying State that has restricted eligibility under its State plan under title XIX of the Social Security Act (including any waiver under such title or under section 1115 of such Act (42 U.S.C. 1315)) after December 31, 2007, is eligible for an increase in its FMAP under subparagraph (C) or an increase in a cap amount under subparagraph (D) in the first calendar quarter (and subsequent calendar quarters) in which the State has reinstated eligibility that is no more restrictive than the eligibility under such plan (or waiver) as in effect on December 31, 2007.

(iii) **RULE OF CONSTRUCTION.--**Nothing in clause (i) or (ii) shall be construed as affecting a Round One Qualifying State's flexibility with respect to benefits offered under the State medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) (including any waiver under such title or under section 1115 of such Act (42 U.S.C. 1315)).

(G) REQUIREMENT FOR CERTAIN STATES.--In the case of a Round One Qualifying State that requires political subdivisions within the State to contribute toward the non-Federal share of expenditures under the State Medicaid plan required under section 1902(a)(2) of the Social Security Act (42 U.S.C. 1396a(a)(2)), the Round One Qualifying State shall not require that such political subdivisions pay a greater percentage of the non-Federal share of such expenditures for the third and fourth calendar quarters of fiscal year 2008 and the first, second, and third calendar quarters of fiscal year 2009, than the percentage that would have been required by the State under such plan on December 31, 2007.

(H) REQUIREMENTS.--A Round One Qualifying State--

(i) may not use the additional Federal funds paid to the State as a result of this paragraph for purposes of increasing any reserve or rainy day fund maintained by the State; and

(ii) shall expend the additional Federal funds paid to the State as a result of this paragraph within 1 year of the date on which the State receives such funds.

(2) TARGETED GRANTS TO ROUND ONE QUALIFYING STATES.--

(A) **APPROPRIATION.--**There is authorized to be appropriated and is appropriated for making payments to Round One Qualifying States under this paragraph--

(i) \$2,500,000,000 for fiscal year 2008; and

(ii) \$2,500,000,000 for fiscal year 2009.

(B) PAYMENTS.--

(i) **FISCAL YEAR 2008.--**From the amount appropriated under subparagraph (A)(i) for fiscal year 2008, the Secretary of the Treasury shall, not later than the later of the date that is 45 days after the date of enactment of

this Act or the date that a Round One Qualifying State provides the certification required by subparagraph (E) for fiscal year 2008, pay each such State the amount determined for the State for fiscal year 2008 under subparagraph (C).

(ii) **FISCAL YEAR 2009.--**From the amount appropriated under subparagraph (A)(ii) for fiscal year 2009, the Secretary of the Treasury shall, not later than the later of October 1, 2008, or the date that a Round One Qualifying State provides the certification required by subparagraph (E) for fiscal year 2009, pay each such State the amount determined for the State for fiscal year 2009 under subparagraph (C).

(C) PAYMENTS BASED ON POPULATION.--

(i) **IN GENERAL.--**Subject to clause (ii), the amount appropriated under subparagraph (A) for each of fiscal years 2008 and 2009 shall be used to pay each Round One Qualifying State an amount equal to the relative population proportion amount described in clause (iii) for such fiscal year.

(ii) MINIMUM PAYMENT.--

(I) **IN GENERAL.--**No Round One Qualifying State shall receive a payment under this paragraph for a fiscal year that is less than--

(aa) in the case of a Round One Qualifying State that is 1 of the 50 States or the District of Columbia, 1/2 of 1 percent of the amount appropriated for such fiscal year under subsection (a); and

(bb) in the case of the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or American Samoa, \1/10\ of 1 percent of the amount appropriated for such fiscal year under subsection (a).

(II) PRO RATA ADJUSTMENTS.--The Secretary of the Treasury shall adjust on a pro

rata basis the amount of the payments to Round One Qualifying States determined under this paragraph without regard to this subclause to the extent necessary to comply with the requirements of subclause (I).

(iii) **RELATIVE POPULATION PROPORTION AMOUNT.**--The relative population proportion amount described in this clause is the product of--

(I) the amount described in subparagraph (A) for a fiscal year; and

(II) the relative State population proportion (as defined in clause (iv)).

(iv) **RELATIVE STATE POPULATION PROPORTION DEFINED.**--For purposes of clause (iii)(II), the term "relative State population proportion" means, with respect to a Round One Qualifying State, the amount equal to the quotient of--

(I) the population of the State (as reported in the most recent decennial census); and

(II) the total population of all such States (as reported in the most recent decennial census).

(D) **USE OF PAYMENT.**--

(i) **IN GENERAL.**--Subject to clause (ii), a Round One Qualifying State shall use the funds provided under a payment made under this paragraph for a fiscal year to--

(I) provide essential government services;

(II) cover the costs to the State of complying with any Federal intergovernmental mandate (as defined in section 421(5) of the Congressional Budget Act of 1974) to the extent that the mandate applies to the State, and the Federal Government has not provided funds to cover the costs; or

(III) compensate for a decline in Federal funding to the State.

(ii) **REQUIREMENTS.**--A Round One Qualifying State--

(I) may only use funds provided under a payment made under this paragraph for types of expenditures permitted under the most recently approved budget for the State;

(II) may not use the additional Federal funds paid to the State as a result of this paragraph for purposes of increasing any reserve or rainy day fund maintained by the State; and

(III) shall expend the additional Federal funds paid to the State as a result of this paragraph within 1 year of the date on which the State receives such funds.

(E) **CERTIFICATION.**--In order to receive a payment under this section for a fiscal year, a Round One Qualifying State shall provide the Secretary of the Treasury with a certification

that the State's proposed uses of the funds are consistent with subparagraph (D).

(c) *Assistance for Round Two Qualifying States.*--

(1) **TEMPORARY INCREASE OF MEDICAID FMAP.**--

(A) **PERMITTING MAINTENANCE OF FISCAL YEAR 2008 FMAP FOR FIRST 3 QUARTERS OF FISCAL YEAR 2009.**--Subject to subparagraph (C), if the FMAP determined without regard to this paragraph for a Round Two Qualifying State for fiscal year 2009 is less than the FMAP as so determined for fiscal year 2008, the FMAP for the State for fiscal year 2008 shall be substituted for the State's FMAP for the first, second, and third calendar quarters of fiscal year 2009, before the application of this paragraph.

(B) **GENERAL 1.667 PERCENTAGE POINTS INCREASE FOR FIRST 3 CALENDAR QUARTERS OF FISCAL YEAR 2009.**--Subject to subparagraph (C), for each Round Two Qualifying State for the first, second, and third calendar quarters of fiscal year 2009, the FMAP (taking into account the application of subparagraph (A)) shall be increased by 1.667 percentage points.

(C) **APPLICATION OF REQUIREMENTS FOR ROUND ONE QUALIFYING STATES.**--Subparagraphs (E), (F), (G), and (H) of subsection (b)(1) apply to a Round Two Qualifying State receiving an increase in its FMAP under subparagraph (B) in the same manner as such subparagraphs apply to a Round One Qualifying State under such subsection.

(2) **TARGETED GRANTS TO ROUND TWO QUALIFYING STATES.**--

(A) **APPROPRIATION.**--There is authorized to be appropriated and is appropriated for making payments to Round Two Qualifying States under this paragraph, \$1,000,000,000 for fiscal year 2009.

(B) **PAYMENTS.**--From the amount appropriated under subparagraph (A) for fiscal year 2009, the Secretary of the Treasury shall, not later than the later of October 1, 2008, or the date that a Round Two Qualifying State provides the certification required by subparagraph (E) of subsection (b)(2) for fiscal year 2009, pay each such State the amount determined for the State for fiscal year 2009 under subparagraph (C).

(C) **PAYMENTS BASED ON POPULATION.**--

(i) **IN GENERAL.**--Subject to clause (ii), the amount appropriated under subparagraph (A) for fiscal year 2009 shall be used to pay each Round Two Qualifying State an amount equal to the relative population proportion amount described in clause (iii) for such fiscal year.

(ii) **MINIMUM PAYMENT.**--

(I) **IN GENERAL.**--No Round Two Qualifying State shall receive a payment under this paragraph for fiscal year 2009 that is less than 1/2 of 1 percent of the amount appropriated for such fiscal year under subsection (a).

(II) **PRO RATA ADJUSTMENTS.**--The Secretary of the Treasury shall adjust on a pro rata basis the amount of the payments to Round Two Qualifying States determined under this paragraph without regard to this subclause to the extent necessary to comply with the requirements of subclause (I).

(iii) **RELATIVE POPULATION PROPORTION AMOUNT.**--The relative population proportion amount described in this clause is the product of--

(I) the amount described in subparagraph (A) for a fiscal year; and

(II) the relative State population proportion (as defined in clause (iv)).

(iv) **RELATIVE STATE POPULATION PROPORTION DEFINED.**--For purposes of clause (iii)(II), the term "relative State population proportion" means, with respect to a Round Two Qualifying State, the amount equal to the quotient of--

(I) the population of the State (as reported in the most recent decennial census); and

(II) the total population of all such States (as reported in the most recent decennial census).

(D) **APPLICATION OF REQUIREMENTS FOR ROUND ONE QUALIFYING STATES.**--Subparagraphs (D) and (E) of subsection (b)(2) apply to a Round Two Qualifying State receiving a payment under subparagraph (B) in the same manner as such subparagraphs apply to a Round One Qualifying State under such subsection.

(d) *Repeal.*--Effective as of October 1, 2009, this section is repealed.