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(Original Signature of Member)

115TH CONGRESS  
2D SESSION

**H. R.** \_\_\_\_\_

To amend title XIX of the Social Security Act to provide States with the option of providing coordinated care for children with complex medical conditions through a health home, and for other purposes.

\_\_\_\_\_  
IN THE HOUSE OF REPRESENTATIVES

M. \_\_\_\_\_ introduced the following bill; which was referred to the  
Committee on \_\_\_\_\_

\_\_\_\_\_  
**A BILL**

To amend title XIX of the Social Security Act to provide States with the option of providing coordinated care for children with complex medical conditions through a health home, and for other purposes.

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 “Improving Medicaid  
5 Programs and Opportunities for Eligible Beneficiaries  
6 Act” or the “IMPROVE Act”.

1                                   **TITLE I—ACE KIDS**  
2   **SEC. 101. STATE OPTION TO PROVIDE COORDINATED CARE**  
3                                   **THROUGH A HEALTH HOME FOR CHILDREN**  
4                                   **WITH MEDICALLY COMPLEX CONDITIONS.**

5           Title XIX of the Social Security Act (42 U.S.C. 1396  
6 et seq.) is amended by inserting after section 1945 the  
7 following new section:

8   **“SEC. 1945A. STATE OPTION TO PROVIDE COORDINATED**  
9                                   **CARE THROUGH A HEALTH HOME FOR CHIL-**  
10                                  **DREN WITH MEDICALLY COMPLEX CONDI-**  
11                                  **TIONS.**

12           “(a) IN GENERAL.—Notwithstanding section  
13 1902(a)(1) (relating to statewideness) and section  
14 1902(a)(10)(B) (relating to comparability), beginning Oc-  
15 tober 1, 2022, a State, at its option as a State plan  
16 amendment, may provide for medical assistance under this  
17 title to children with medically complex conditions who  
18 choose to enroll in a health home under this section by  
19 selecting a designated provider, a team of health care pro-  
20 fessionals operating with such a provider, or a health team  
21 as the child’s health home for purposes of providing the  
22 child with health home services.

23           “(b) HEALTH HOME QUALIFICATION STANDARDS.—  
24 The Secretary shall establish standards for qualification  
25 as a health home for purposes of this section. Such stand-

1 ards shall include requiring designated providers, teams  
2 of health care professionals operating with such providers,  
3 and health teams to demonstrate to the State the ability  
4 to do the following:

5           “(1) Coordinate prompt care for children with  
6 medically complex conditions, including access to pe-  
7 diatric emergency services at all times.

8           “(2) Develop an individualized comprehensive  
9 pediatric family-centered care plan for children with  
10 medically complex conditions that accommodates pa-  
11 tient preferences.

12           “(3) Work in a culturally and linguistically ap-  
13 propriate manner with the family of a child with  
14 medically complex conditions to develop and incor-  
15 porate into such child’s care plan, in a manner con-  
16 sistent with the needs of the child and the choices  
17 of the child’s family, ongoing home care, community-  
18 based pediatric primary care, pediatric inpatient  
19 care, social support services, and local hospital pedi-  
20 atric emergency care.

21           “(4) Coordinate access to—

22                   “(A) subspecialized pediatric services and  
23 programs for children with medically complex  
24 conditions, including the most intensive diag-

1            nostic, treatment, and critical care levels as  
2            medically necessary; and

3            “(B) palliative services if the State pro-  
4            vides such services under the State plan (or a  
5            waiver of such plan).

6            “(5) Coordinate care for children with medically  
7            complex conditions with out-of-State providers fur-  
8            nishing care to such children to the maximum extent  
9            practicable for the families of such children and  
10          where medically necessary, in accordance with guid-  
11          ance issued under subsection (e)(1) and section  
12          431.52 of title 42, Code of Federal Regulations.

13          “(6) Collect and report information under sub-  
14          section (g)(1).

15          “(c) PAYMENTS.—

16          “(1) IN GENERAL.—A State shall provide a des-  
17          ignated provider, a team of health care professionals  
18          operating with such a provider, or a health team  
19          with payments for the provision of health home serv-  
20          ices to each child with medically complex conditions  
21          that selects such provider, team of health care pro-  
22          fessionals, or health team as the child’s health home.  
23          Payments made to a designated provider, a team of  
24          health care professionals operating with such a pro-  
25          vider, or a health team for such services shall be

1 treated as medical assistance for purposes of section  
2 1903(a), except that, during the first 2 fiscal year  
3 quarters that the State plan amendment is in effect,  
4 the Federal medical assistance percentage applicable  
5 to such payments shall be increased by 15 percent-  
6 age points, but in no case may exceed 90 percent.

7 “(2) METHODOLOGY.—

8 “(A) IN GENERAL.—The State shall speci-  
9 fy in the State plan amendment the method-  
10 ology the State will use for determining pay-  
11 ment for the provision of health home services.  
12 Such methodology for determining payment—

13 “(i) may be tiered to reflect, with re-  
14 spect to each child with medically complex  
15 conditions provided such services by a des-  
16 ignated provider, a team of health care  
17 professionals operating with such a pro-  
18 vider, or a health team, the severity or  
19 number of each such child’s chronic condi-  
20 tions, life-threatening illnesses, disabilities,  
21 or rare diseases, or the specific capabilities  
22 of the provider, team of health care profes-  
23 sionals, or health team; and

24 “(ii) shall be established consistent  
25 with section 1902(a)(30)(A).

1           “(B) ALTERNATE MODELS OF PAYMENT.—

2           The methodology for determining payment for  
3           provision of health home services under this  
4           section shall not be limited to a per-member  
5           per-month basis and may provide (as proposed  
6           by the State and subject to approval by the  
7           Secretary) for alternate models of payment.

8           “(3) PLANNING GRANTS.—

9           “(A) IN GENERAL.—Beginning October 1,  
10          2022, the Secretary may award planning grants  
11          to States for purposes of developing a State  
12          plan amendment under this section. A planning  
13          grant awarded to a State under this paragraph  
14          shall remain available until expended.

15          “(B) STATE CONTRIBUTION.—A State  
16          awarded a planning grant shall contribute an  
17          amount equal to the State percentage deter-  
18          mined under section 1905(b) (without regard to  
19          section 5001 of Public Law 111–5) for each fis-  
20          cal year for which the grant is awarded.

21          “(C) LIMITATION.—The total amount of  
22          payments made to States under this paragraph  
23          shall not exceed \$5,000,000.

24          “(d) COORDINATING CARE.—

1           “(1) HOSPITAL NOTIFICATION.—A State with a  
2           State plan amendment approved under this section  
3           shall require each hospital that is a participating  
4           provider under the State plan (or a waiver of such  
5           plan) to establish procedures for, in the case of a  
6           child with medically complex conditions who is en-  
7           rolled in a health home pursuant to this section and  
8           seeks treatment in the emergency department of  
9           such hospital, notifying the health home of such  
10          child of such treatment.

11          “(2) EDUCATION WITH RESPECT TO AVAIL-  
12          ABILITY OF HEALTH HOME SERVICES.—In order for  
13          a State plan amendment to be approved under this  
14          section, a State shall include in the State plan  
15          amendment a description of the State’s process for  
16          educating providers participating in the State plan  
17          (or a waiver of such plan) on the availability of  
18          health home services for children with medically  
19          complex conditions, including the process by which  
20          such providers can refer such children to a des-  
21          ignated provider, team of health care professionals  
22          operating such a provider, or health team for the  
23          purpose of establishing a health home through which  
24          such children may receive such services.

1           “(3) FAMILY EDUCATION.—In order for a State  
2           plan amendment to be approved under this section,  
3           a State shall include in the State plan amendment  
4           a description of the State’s process for educating  
5           families with children eligible to receive health home  
6           services pursuant to this section of the availability of  
7           such services. Such process shall include the partici-  
8           pation of family-to-family entities or other public or  
9           private organizations or entities who provide out-  
10          reach and information on the availability of health  
11          care items and services to families of individuals eli-  
12          gible to receive medical assistance under the State  
13          plan (or a waiver of such plan).

14          “(4) MENTAL HEALTH COORDINATION.—A  
15          State with a State plan amendment approved under  
16          this section shall consult and coordinate, as appro-  
17          priate, with the Secretary in addressing issues re-  
18          garding the prevention and treatment of mental ill-  
19          ness and substance use among children with medi-  
20          cally complex conditions receiving health home serv-  
21          ices under this section.

22          “(e) GUIDANCE ON COORDINATING CARE FROM  
23          OUT-OF-STATE PROVIDERS.—

24                 “(1) IN GENERAL.—Not later than October 1,  
25                 2020, the Secretary shall issue (and update as the



1 Secretary determines necessary) guidance to State  
2 Medicaid directors on—

3 “(A) best practices for using out-of-State  
4 providers to provide care to children with medi-  
5 cally complex conditions;

6 “(B) coordinating care for such children  
7 provided by such out-of-State providers (includ-  
8 ing when provided in emergency and non-emer-  
9 gency situations);

10 “(C) reducing barriers for such children  
11 receiving care from such providers in a timely  
12 fashion; and

13 “(D) processes for screening and enrolling  
14 such providers in the respective State plan (or  
15 a waiver of such plan), including efforts to  
16 streamline such processes or reduce the burden  
17 of such processes on such providers.

18 “(2) STAKEHOLDER INPUT.—In carrying out  
19 paragraph (1), the Secretary shall issue a request  
20 for information to seek input from children with  
21 medically complex conditions and their families,  
22 States, providers (including children’s hospitals, hos-  
23 pitals, pediatricians, and other providers), managed  
24 care plans, children’s health groups, family and ben-  
25 eficiary advocates, and other stakeholders with re-

1       spect to coordinating the care for such children pro-  
2       vided by out-of-State providers.

3       “(f) MONITORING.—A State shall include in the State  
4 plan amendment—

5           “(1) a methodology for tracking avoidable hos-  
6       pital readmissions and calculating savings that re-  
7       sult from improved care coordination and manage-  
8       ment under this section;

9           “(2) a proposal for use of health information  
10       technology in providing health home services under  
11       this section and improving service delivery and co-  
12       ordination across the care continuum (including the  
13       use of wireless patient technology to improve coordi-  
14       nation and management of care and patient adher-  
15       ence to recommendations made by their provider);  
16       and

17           “(3) a methodology for tracking prompt and  
18       timely access to medically necessary care for children  
19       with medically complex conditions from out-of-State  
20       providers.

21       “(g) DATA COLLECTION.—

22           “(1) PROVIDER REPORTING REQUIREMENTS.—  
23       In order to receive payments from a State under  
24       subsection (c), a designated provider, a team of  
25       health care professionals operating with such a pro-

1 vider, or a health team shall report to the State, at  
2 such time and in such form and manner as may be  
3 required by the State, the following information:

4 “(A) With respect to each such provider,  
5 team of health care professionals, or health  
6 team, the name, National Provider Identifica-  
7 tion number, address, and specific health care  
8 services offered to be provided to children with  
9 medically complex conditions who have selected  
10 such provider, team of health care profes-  
11 sionals, or health team as the health home of  
12 such children.

13 “(B) Information on all applicable meas-  
14 ures for determining the quality of health home  
15 services provided by such provider, team of  
16 health care professionals, or health team, in-  
17 cluding, to the extent applicable, child health  
18 quality measures and measures for centers of  
19 excellence for children with complex needs de-  
20 veloped under this title, title XXI, and section  
21 1139A.

22 “(C) Such other information as the Sec-  
23 retary shall specify in guidance.

24 When appropriate and feasible, such provider, team  
25 of health care professionals, or health team, as the

1 case may be, shall use health information technology  
2 in providing the State with such information.

3 “(2) STATE REPORTING REQUIREMENTS.—

4 “(A) COMPREHENSIVE REPORT.—A State  
5 with a State plan amendment approved under  
6 this section shall report to the Secretary (and,  
7 upon request, to the Medicaid and CHIP Pay-  
8 ment and Access Commission), at such time  
9 and in such form and manner determined by  
10 the Secretary to be reasonable and minimally  
11 burdensome, the following information:

12 “(i) Information reported under para-  
13 graph (1).

14 “(ii) The number of children with  
15 medically complex conditions who have se-  
16 lected a health home pursuant to this sec-  
17 tion.

18 “(iii) The nature, number, and preva-  
19 lence of chronic conditions, life-threatening  
20 illnesses, disabilities, or rare diseases that  
21 such children have.

22 “(iv) The type of delivery systems and  
23 payment models used to provide services to  
24 such children under this section.

1           “(v) The number and characteristics  
2           of designated providers, teams of health  
3           care professionals operating with such pro-  
4           viders, and health teams selected as health  
5           homes pursuant to this section, including  
6           the number and characteristics of out-of-  
7           State providers, teams of health care pro-  
8           fessionals operating with such providers,  
9           and health teams who have provided health  
10          care items and services to such children.

11          “(vi) The extent to which such chil-  
12          dren receive health care items and services  
13          under the State plan.

14          “(vii) Quality measures developed spe-  
15          cifically with respect to health care items  
16          and services provided to children with  
17          medically complex conditions.

18          “(B) REPORT ON BEST PRACTICES.—Not  
19          later than 90 days after a State has a State  
20          plan amendment approved under this section,  
21          such State shall submit to the Secretary, and  
22          make publicly available on the appropriate  
23          State website, a report on how the State is im-  
24          plementing guidance issued under subsection

1 (e)(1), including through any best practices  
2 adopted by the State.

3 “(h) RULE OF CONSTRUCTION.—Nothing in this sec-  
4 tion may be construed—

5 “(1) to require a child with medically complex  
6 conditions to enroll in a health home under this sec-  
7 tion;

8 “(2) to limit the choice of a child with medically  
9 complex conditions in selecting a designated pro-  
10 vider, team of health care professionals operating  
11 with such a provider, or health team that meets the  
12 health home qualification standards established  
13 under subsection (b) as the child’s health home; or

14 “(3) to reduce or otherwise modify—

15 “(A) the entitlement of children with medi-  
16 cally complex conditions to early and periodic  
17 screening, diagnostic, and treatment services  
18 (as defined in section 1905(r)); or

19 “(B) the informing, providing, arranging,  
20 and reporting requirements of a State under  
21 section 1902(a)(43).

22 “(i) DEFINITIONS.—In this section:

23 “(1) CHILD WITH MEDICALLY COMPLEX CONDI-  
24 TIONS.—

1           “(A) IN GENERAL.—Subject to subpara-  
2 graph (B), the term ‘child with medically com-  
3 plex conditions’ means an individual under 21  
4 years of age who—

5           “(i) is eligible for medical assistance  
6 under the State plan (or under a waiver of  
7 such plan); and

8           “(ii) has at least—

9           “(I) one or more chronic condi-  
10 tions that cumulatively affect three or  
11 more organ systems and severely re-  
12 duces cognitive or physical functioning  
13 (such as the ability to eat, drink, or  
14 breathe independently) and that also  
15 requires the use of medication, dura-  
16 ble medical equipment, therapy, sur-  
17 gery, or other treatments; or

18           “(II) one life-limiting illness or  
19 rare pediatric disease (as defined in  
20 section 529(a)(3) of the Federal  
21 Food, Drug, and Cosmetic Act (21  
22 U.S.C. 360ff(a)(3))).

23           “(B) RULE OF CONSTRUCTION.—Nothing  
24 in this paragraph shall prevent the Secretary  
25 from establishing higher levels as to the number

1 or severity of chronic, life threatening illnesses,  
2 disabilities, rare diseases or mental health con-  
3 ditions for purposes of determining eligibility  
4 for receipt of health home services under this  
5 section.

6 “(2) CHRONIC CONDITION.—The term ‘chronic  
7 condition’ means a serious, long-term physical, men-  
8 tal, or developmental disability or disease, including  
9 the following:

10 “(A) Cerebral palsy.

11 “(B) Cystic fibrosis.

12 “(C) HIV/AIDS.

13 “(D) Blood diseases, such as anemia or  
14 sickle cell disease.

15 “(E) Muscular dystrophy.

16 “(F) Spina bifida.

17 “(G) Epilepsy.

18 “(H) Severe autism spectrum disorder.

19 “(I) Serious emotional disturbance or seri-  
20 ous mental health illness.

21 “(3) HEALTH HOME.—The term ‘health home’  
22 means a designated provider (including a provider  
23 that operates in coordination with a team of health  
24 care professionals) or a health team selected by a



1 child with medically complex conditions (or the fam-  
2 ily of such child) to provide health home services.

3 “(4) HEALTH HOME SERVICES.—

4 “(A) IN GENERAL.—The term ‘health  
5 home services’ means comprehensive and timely  
6 high-quality services described in subparagraph  
7 (B) that are provided by a designated provider,  
8 a team of health care professionals operating  
9 with such a provider, or a health team.

10 “(B) SERVICES DESCRIBED.—The services  
11 described in this subparagraph shall include—

12 “(i) comprehensive care management;

13 “(ii) care coordination, health pro-  
14 motion, and providing access to the full  
15 range of pediatric specialty and sub-  
16 specialty medical services, including serv-  
17 ices from out-of-State providers, as medi-  
18 cally necessary;

19 “(iii) comprehensive transitional care,  
20 including appropriate follow-up, from inpa-  
21 tient to other settings;

22 “(iv) patient and family support (in-  
23 cluding authorized representatives);

24 “(v) referrals to community and social  
25 support services, if relevant; and

1                   “(vi) use of health information tech-  
2                   nology to link services, as feasible and ap-  
3                   propriate.

4                   “(5) DESIGNATED PROVIDER.—The term ‘des-  
5                   ignated provider’ means a physician (including a pe-  
6                   diatrician or a pediatric specialty or subspecialty  
7                   provider), children’s hospital, clinical practice or  
8                   clinical group practice, prepaid inpatient health plan  
9                   or prepaid ambulatory health plan (as defined by the  
10                  Secretary), rural clinic, community health center,  
11                  community mental health center, home health agen-  
12                  cy, or any other entity or provider that is deter-  
13                  mined by the State and approved by the Secretary  
14                  to be qualified to be a health home for children with  
15                  medically complex conditions on the basis of docu-  
16                  mentation evidencing that the entity has the sys-  
17                  tems, expertise, and infrastructure in place to pro-  
18                  vide health home services. Such term may include  
19                  providers who are employed by, or affiliated with, a  
20                  children’s hospital.

21                  “(6) TEAM OF HEALTH CARE PROFES-  
22                  SIONALS.—The term ‘team of health care profes-  
23                  sionals’ means a team of health care professionals  
24                  (as described in the State plan amendment under  
25                  this section) that may—

1 “(A) include—

2 “(i) physicians and other profes-  
3 sionals, such as pediatricians or pediatric  
4 specialty or subspecialty providers, nurse  
5 care coordinators, dietitians, nutritionists,  
6 social workers, behavioral health profes-  
7 sionals, physical therapists, occupational  
8 therapists, speech pathologists, nurses, in-  
9 dividuals with experience in medical sup-  
10 portive technologies, or any professionals  
11 determined to be appropriate by the State  
12 and approved by the Secretary;

13 “(ii) an entity or individual who is  
14 designated to coordinate such a team; and

15 “(iii) community health workers,  
16 translators, and other individuals with cul-  
17 turally-appropriate expertise; and

18 “(B) be freestanding, virtual, or based at  
19 a children’s hospital, hospital, community  
20 health center, community mental health center,  
21 rural clinic, clinical practice or clinical group  
22 practice, academic health center, or any entity  
23 determined to be appropriate by the State and  
24 approved by the Secretary.



1           “(3) SPECIAL RULE FOR FY 2019.—Funds ap-  
2           propriated under paragraph (1)(F) shall be made  
3           available for grants to States only if such States  
4           have an approved MFP demonstration project under  
5           this section as of December 31, 2018.”.

6           (b) FUNDING FOR QUALITY ASSURANCE AND IM-  
7           PROVEMENT; TECHNICAL ASSISTANCE; OVERSIGHT.—  
8           Section 6071(f) of the Deficit Reduction Act of 2005 (42  
9           U.S.C. 1396a note) is amended by striking paragraph (2)  
10          and inserting the following:

11           “(2) FUNDING.—From the amounts appro-  
12          priated under subsection (h)(1)(F) for fiscal year  
13          2019, \$500,000 shall be available to the Secretary  
14          for such fiscal year to carry out this subsection.”.

15          (c) TECHNICAL AMENDMENT.—Section 6071(b) of  
16          the Deficit Reduction Act of 2005 (42 U.S.C. 1396a note)  
17          is amended by adding at the end the following:

18           “(10) SECRETARY.—The term ‘Secretary’  
19          means the Secretary of Health and Human Serv-  
20          ices.”.

1 **SEC. 202. EXTENSION OF PROTECTION FOR MEDICAID RE-**  
2 **CIPIENTS OF HOME AND COMMUNITY-BASED**  
3 **SERVICES AGAINST SPOUSAL IMPOVERISH-**  
4 **MENT.**

5 (a) IN GENERAL.—Section 2404 of Public Law 111–  
6 148 (42 U.S.C. 1396r–5 note) is amended by striking “the  
7 5-year period that begins on January 1, 2014,” and in-  
8 serting “the period beginning on January 1, 2014, and  
9 ending on March 31, 2019,”.

10 (b) RULE OF CONSTRUCTION.—

11 (1) PROTECTING STATE SPOUSAL INCOME AND  
12 ASSET DISREGARD FLEXIBILITY UNDER WAIVERS  
13 AND PLAN AMENDMENTS.—Nothing in section 2404  
14 of Public Law 111–148 (42 U.S.C. 1396r–5 note) or  
15 section 1924 of the Social Security Act (42 U.S.C.  
16 1396r–5) shall be construed as prohibiting a State  
17 from disregarding an individual’s spousal income  
18 and assets under a State waiver or plan amendment  
19 described in paragraph (2) for purposes of making  
20 determinations of eligibility for home and commu-  
21 nity-based services or home and community-based  
22 attendant services and supports under such waiver  
23 or plan amendment.

24 (2) STATE WAIVER OR PLAN AMENDMENT DE-  
25 SCRIBED.—A State waiver or plan amendment de-  
26 scribed in this paragraph is any of the following:

1 (A) A waiver or plan amendment to pro-  
2 vide medical assistance for home and commu-  
3 nity-based services under a waiver or plan  
4 amendment under subsection (c), (d), or (i) of  
5 section 1915 of the Social Security Act (42  
6 U.S.C. 1396n) or under section 1115 of such  
7 Act (42 U.S.C. 1315).

8 (B) A plan amendment to provide medical  
9 assistance for home and community-based serv-  
10 ices for individuals by reason of being deter-  
11 mined eligible under section 1902(a)(10)(C) of  
12 such Act (42 U.S.C. 1396a(a)(10)(C)) or by  
13 reason of section 1902(f) of such Act (42  
14 U.S.C. 1396a(f)) or otherwise on the basis of a  
15 reduction of income based on costs incurred for  
16 medical or other remedial care under which the  
17 State disregarded the income and assets of the  
18 individual's spouse in determining the initial  
19 and ongoing financial eligibility of an individual  
20 for such services in place of the spousal impov-  
21 erishment provisions applied under section 1924  
22 of such Act (42 U.S.C. 1396r-5).

23 (C) A plan amendment to provide medical  
24 assistance for home and community-based at-

1           tendant services and supports under section  
2           1915(k) of such Act (42 U.S.C. 1396n(k)).

3 **SEC. 203. REDUCTION IN FMAP AFTER 2020 FOR STATES**  
4 **WITHOUT ASSET VERIFICATION PROGRAM.**

5           Section 1940 of the Social Security Act (42 U.S.C.  
6 1396w) is amended by adding at the end the following  
7 new subsection:

8           “(k) REDUCTION IN FMAP AFTER 2020 FOR NON-  
9 COMPLIANT STATES.—

10           “(1) IN GENERAL.—With respect to a calendar  
11 quarter beginning on or after January 1, 2021, the  
12 Federal medical assistance percentage otherwise de-  
13 termined under section 1905(b) for a non-compliant  
14 State shall be reduced—

15           “(A) for calendar quarters in 2021 and  
16 2022, by 0.12 percentage points;

17           “(B) for calendar quarters in 2023, by  
18 0.25 percentage points;

19           “(C) for calendar quarters in 2024, by  
20 0.35 percentage points; and

21           “(D) for calendar quarters in 2025 and  
22 each year thereafter, by 0.5 percentage points.

23           “(2) NON-COMPLIANT STATE DEFINED.—For  
24 purposes of this subsection, the term ‘non-compliant  
25 State’ means a State—



1           “(A) that is one of the 50 States or the  
2           District of Columbia;

3           “(B) with respect to which the Secretary  
4           has not approved a State plan amendment sub-  
5           mitted under subsection (a)(2); and

6           “(C) that is not operating, on an ongoing  
7           basis, an asset verification program in accord-  
8           ance with this section.”.

9   **SEC. 204. DENIAL OF FFP FOR CERTAIN EXPENDITURES RE-**  
10           **LATING TO VACUUM ERECTION SYSTEMS**  
11           **AND PENILE PROSTHETIC IMPLANTS.**

12           (a) IN GENERAL.—Section 1903(i) of the Social Se-  
13           curity Act (42 U.S.C. 1396b(i)) is amended by inserting  
14           after paragraph (11) the following:

15           “(12) with respect to any amounts expended  
16           for—

17           “(A) a vacuum erection system that is not  
18           medically necessary; or

19           “(B) the insertion, repair, or removal and  
20           replacement of a penile prosthetic implant (un-  
21           less such insertion, repair, or removal and re-  
22           placement is medically necessary); or”.

23           (b) EFFECTIVE DATE.—The amendment made by  
24           subsection (a) shall apply with respect to items and serv-  
25           ices furnished on or after January 1, 2019.

1 **SEC. 205. MEDICAID IMPROVEMENT FUND.**

2 Section 1941(b)(1) of the Social Security Act (42  
3 U.S.C. 1396w-1(b)(1)) is amended by striking  
4 “\$31,000,000” and inserting “\$9,000,000”.

5 **SEC. 206. PREVENTING THE MISCLASSIFICATION OF DRUGS**  
6 **UNDER THE MEDICAID DRUG REBATE PRO-**  
7 **GRAM.**

8 (a) APPLICATION OF CIVIL MONEY PENALTY FOR  
9 MISCLASSIFICATION OF COVERED OUTPATIENT  
10 DRUGS.—

11 (1) IN GENERAL.—Section 1927(b)(3) of the  
12 Social Security Act (42 U.S.C. 1396r-8(b)(3)) is  
13 amended—

14 (A) in the paragraph heading, by inserting  
15 “AND DRUG PRODUCT” after “PRICE”;

16 (B) in subparagraph (A)—

17 (i) in clause (ii), by striking “; and”  
18 at the end and inserting a semicolon;

19 (ii) in clause (iii), by striking the pe-  
20 riod at the end and inserting a semicolon;

21 (iii) in clause (iv), by striking the  
22 semicolon at the end and inserting “;  
23 and”; and

24 (iv) by inserting after clause (iv) the  
25 following new clause:

1 “(v) not later than 30 days after the  
2 last day of each month of a rebate period  
3 under the agreement, such drug product  
4 information as the Secretary shall require  
5 for each of the manufacturer’s covered out-  
6 patient drugs.”;

7 (C) in subparagraph (C)—

8 (i) in clause (ii), by inserting “, in-  
9 cluding information related to drug pric-  
10 ing, drug product information, and data  
11 related to drug pricing or drug product in-  
12 formation,” after “provides false informa-  
13 tion”; and

14 (ii) by adding at the end the following  
15 new clauses:

16 “(iii) MISCLASSIFIED OR  
17 MISREPORTED INFORMATION.—

18 “(I) IN GENERAL.—Any manu-  
19 facturer with an agreement under this  
20 section that knowingly (as defined in  
21 section 1003.110 of title 42, Code of  
22 Federal Regulations (or any successor  
23 regulation)) misclassifies a covered  
24 outpatient drug, such as by knowingly  
25 submitting incorrect drug category in-

1 formation, is subject to a civil money  
2 penalty for each covered outpatient  
3 drug that is misclassified in an  
4 amount not to exceed 2 times the  
5 amount of the difference, as deter-  
6 mined by the Secretary, between—

7 “(aa) the total amount of  
8 rebates that the manufacturer  
9 paid with respect to the drug to  
10 all States for all rebate periods  
11 during which the drug was  
12 misclassified; and

13 “(bb) the total amount of  
14 rebates that the manufacturer  
15 would have been required to pay,  
16 as determined by the Secretary,  
17 with respect to the drug to all  
18 States for all rebate periods dur-  
19 ing which the drug was  
20 misclassified if the drug had been  
21 correctly classified.

22 “(II) OTHER PENALTIES AND  
23 RECOVERY OF UNDERPAID RE-  
24 BATES.—The civil money penalties de-  
25 scribed in subclause (I) are in addi-

1                   tion to other penalties as may be pre-  
2                   scribed by law and any other recovery  
3                   of the underlying underpayment for  
4                   rebates due under this section or the  
5                   terms of the rebate agreement as de-  
6                   termined by the Secretary.

7                   “(iv) INCREASING OVERSIGHT AND  
8                   ENFORCEMENT.—Each year the Secretary  
9                   shall retain, in addition to any amount re-  
10                  tained by the Secretary to recoup inves-  
11                  tigation and litigation costs related to the  
12                  enforcement of the civil money penalties  
13                  under this subparagraph and subsection  
14                  (c)(4)(B)(ii)(III), an amount equal to 25  
15                  percent of the total amount of civil money  
16                  penalties collected under this subparagraph  
17                  and subsection (c)(4)(B)(ii)(III) for the  
18                  year, and such retained amount shall be  
19                  available to the Secretary, without further  
20                  appropriation and until expended, for ac-  
21                  tivities related to the oversight and en-  
22                  forcement of this section and agreements  
23                  under this section, including—

24                                   “(I) improving drug data report-  
25                                   ing systems;

1                   “(II) evaluating and ensuring  
2                   manufacturer compliance with rebate  
3                   obligations; and

4                   “(III) oversight and enforcement  
5                   related to ensuring that manufactur-  
6                   ers accurately and fully report drug  
7                   information, including data related to  
8                   drug classification.”; and

9                   (iii) in subparagraph (D)—

10                   (I) in clause (iv), by striking “,  
11                   and” and inserting a comma;

12                   (II) in clause (v), by striking  
13                   “subsection (f).” and inserting “sub-  
14                   section (f), and”; and

15                   (III) by inserting after clause (v)  
16                   the following new clause:

17                   “(vi) in the case of categories of drug  
18                   product or classification information that  
19                   were not considered confidential by the  
20                   Secretary on the day before the date of the  
21                   enactment of the IMPROVE Act.”.

22                   (2) TECHNICAL AMENDMENTS.—

23                   (A) Section 1903(i)(10) of the Social Secu-  
24                   rity Act (42 U.S.C. 1396b(i)(10)) is amended—

25                   (i) in subparagraph (C)—

1 (I) by adjusting the left margin  
2 so as to align with the left margin of  
3 subparagraph (B); and

4 (II) by striking “, and” and in-  
5 serting a semicolon;

6 (ii) in subparagraph (D), by striking  
7 “; or” and inserting “; and”; and

8 (iii) by adding at the end the fol-  
9 lowing new subparagraph:

10 “(E) with respect to any amount expended  
11 for a covered outpatient drug for which a sus-  
12 pension under section 1927(c)(4)(B)(ii)(II) is in  
13 effect; or”.

14 (B) Section 1927(b)(3)(C)(ii) of the Social  
15 Security Act (42 U.S.C. 1396r-8(b)(3)(C)(ii))  
16 is amended by striking “subsections (a) and  
17 (b)” and inserting “subsections (a), (b), (f)(3),  
18 and (f)(4)”.

19 (b) RECOVERY OF UNPAID REBATE AMOUNTS DUE  
20 TO MISCLASSIFICATION OF COVERED OUTPATIENT  
21 DRUGS.—

22 (1) IN GENERAL.—Section 1927(c) of the So-  
23 cial Security Act (42 U.S.C. 1396r-8(c)) is amended  
24 by adding at the end the following new paragraph:

1           “(4) RECOVERY OF UNPAID REBATE AMOUNTS  
2           DUE TO MISCLASSIFICATION OF COVERED OUT-  
3           PATIENT DRUGS.—

4                   “(A) IN GENERAL.—If the Secretary deter-  
5                   mines that a manufacturer with an agreement  
6                   under this section paid a lower per-unit rebate  
7                   amount to a State for a rebate period as a re-  
8                   sult of the misclassification by the manufac-  
9                   turer of a covered outpatient drug (without re-  
10                  gard to whether the manufacturer knowingly  
11                  made the misclassification or should have  
12                  known that the misclassification would be  
13                  made) than the per-unit rebate amount that the  
14                  manufacturer would have paid to the State if  
15                  the drug had been correctly classified, the man-  
16                  ufacturer shall pay to the State an amount  
17                  equal to the product of—

18                           “(i) the difference between—

19                                   “(I) the per-unit rebate amount  
20                                   paid to the State for the period; and

21                                   “(II) the per-unit rebate amount  
22                                   that the manufacturer would have  
23                                   paid to the State for the period, as  
24                                   determined by the Secretary, if the  
25                                   drug had been correctly classified; and



1                   “(ii) the total units of the drug paid  
2                   for under the State plan in the period.

3                   “(B)     AUTHORITY     TO     CORRECT  
4                   MISCLASSIFICATIONS.—

5                   “(i) IN GENERAL.—If the Secretary  
6                   determines that a manufacturer with an  
7                   agreement under this section has  
8                   misclassified a covered outpatient drug  
9                   (without regard to whether the manufac-  
10                  turer knowingly made the misclassification  
11                  or should have known that the  
12                  misclassification would be made), the Sec-  
13                  retary shall notify the manufacturer of the  
14                  misclassification and require the manufac-  
15                  turer to correct the misclassification in a  
16                  timely manner.

17                  “(ii) ENFORCEMENT.—If, after receiv-  
18                  ing notice of a misclassification from the  
19                  Secretary under clause (i), a manufacturer  
20                  fails to correct the misclassification by  
21                  such time as the Secretary shall require,  
22                  until the manufacturer makes such correc-  
23                  tion, the Secretary may—

24                                 “(I) correct the misclassification  
25                                 on behalf of the manufacturer;

1                   “(II) suspend the misclassified  
2 drug and the drug’s status as a cov-  
3 ered outpatient drug under the manu-  
4 facturer’s national rebate agreement;  
5 or

6                   “(III) impose a civil money pen-  
7 alty (which shall be in addition to any  
8 other recovery or penalty which may  
9 be available under this section or any  
10 other provision of law) for each rebate  
11 period during which the drug is  
12 misclassified not to exceed an amount  
13 equal to the product of—

14                   “(aa) the total number of  
15 units of each dosage form and  
16 strength of such misclassified  
17 drug paid for under any State  
18 plan during such a rebate period;  
19 and

20                   “(bb) 23.1 percent of the av-  
21 erage manufacturer price for the  
22 dosage form and strength of such  
23 misclassified drug.

24                   “(C) REPORTING AND TRANSPARENCY.—

1                   “(i) IN GENERAL.—The Secretary  
2                   shall submit a report to Congress on at  
3                   least an annual basis that includes infor-  
4                   mation on the covered outpatient drugs  
5                   that have been identified as misclassified,  
6                   the steps taken to reclassify such drugs,  
7                   the actions the Secretary has taken to en-  
8                   sure the payment of any rebate amounts  
9                   which were unpaid as a result of such  
10                  misclassification, and a disclosure of ex-  
11                  penditures from the fund created in sub-  
12                  section (b)(3)(C)(iv), including an account-  
13                  ing of how such funds have been allocated  
14                  and spent in accordance with such sub-  
15                  section.

16                  “(ii) PUBLIC ACCESS.—The Secretary  
17                  shall make the information contained in  
18                  the report required under clause (i) avail-  
19                  able to the public on a timely basis.

20                  “(D) OTHER PENALTIES AND ACTIONS.—  
21                  Actions taken and penalties imposed under this  
22                  paragraph shall be in addition to other remedies  
23                  available to the Secretary including terminating  
24                  the manufacturer’s rebate agreement for non-  
25                  compliance with the terms of such agreement

1           and shall not exempt a manufacturer from, or  
2           preclude the Secretary from pursuing, any civil  
3           money penalty under this title or title XI, or  
4           any other penalty or action as may be pre-  
5           scribed by law.”.

6           (2) OFFSET OF RECOVERED AMOUNTS AGAINST  
7           MEDICAL ASSISTANCE.—Section 1927(b)(1)(B) of  
8           the Social Security Act (42 U.S.C. 1396r–  
9           8(b)(1)(B)) is amended by inserting “, including  
10          amounts received by a State under subsection  
11          (c)(4),” after “in any quarter”.

12          (c)        CLARIFYING           DEFINITIONS.—Section  
13          1927(k)(7)(A) of the Social Security Act (42 U.S.C.  
14          1396r–8(k)(7)(A)) is amended—

15               (1) by striking “an original new drug applica-  
16               tion” and inserting “a new drug application” each  
17               place it appears;

18               (2) in clause (i), by inserting “but including a  
19               drug product approved for marketing as a non-pre-  
20               scription drug that is regarded as a covered out-  
21               patient drug under paragraph (4)” after “drug de-  
22               scribed in paragraph (5)”;

23               (3) in clause (ii), by striking “was originally  
24               marketed” and inserting “is marketed”; and

25               (4) in clause (iv)—

1 (A) by inserting “, including a drug prod-  
2 uct approved for marketing as a non-prescrip-  
3 tion drug that is regarded as a covered out-  
4 patient drug under paragraph (4),” after “cov-  
5 ered outpatient drug”; and

6 (B) by adding at the end the following new  
7 sentence: “Such term also includes a covered  
8 outpatient drug that is a biological product li-  
9 censed, produced, or distributed under a bio-  
10 logics license application approved by the Food  
11 and Drug Administration.”.

12 (d) EXCLUSION OF MANUFACTURERS FOR KNOWING  
13 MISCLASSIFICATION OF COVERED OUTPATIENT  
14 DRUGS.—Section 1128(b) of the Social Security Act (42  
15 U.S.C. 1320a–7(b)) is amended by adding at the end the  
16 following new paragraph:

17 “(17) KNOWINGLY MISCLASSIFYING COVERED  
18 OUTPATIENT DRUGS.—Any manufacturer or officer,  
19 director, agent, or managing employee of such man-  
20 ufacturer that knowingly misclassifies a covered out-  
21 patient drug under an agreement under section  
22 1927, knowingly fails to correct such  
23 misclassification, or knowingly provides false infor-  
24 mation related to drug pricing, drug product infor-

1 mation, or data related to drug pricing or drug  
2 product information.”.

3 (e) EFFECTIVE DATE.—The amendments made by  
4 this section shall take effect on the date of the enactment  
5 of this Act, and shall apply to covered outpatient drugs  
6 supplied by manufacturers under agreements under sec-  
7 tion 1927 of the Social Security Act (42 U.S.C. 1396r-  
8 8) on or after such date.

### 9 **TITLE III—MEDICARE**

#### 10 **SEC. 301. EXCLUSION OF COMPLEX REHABILITATIVE MAN-** 11 **UAL WHEELCHAIRS FROM MEDICARE COM-** 12 **PETITIVE ACQUISITION PROGRAM; NON-AP-** 13 **PLICATION OF MEDICARE FEE-SCHEDULE** 14 **ADJUSTMENTS FOR CERTAIN WHEELCHAIR** 15 **ACCESSORIES AND CUSHIONS.**

16 (a) EXCLUSION OF COMPLEX REHABILITATIVE MAN-  
17 UAL WHEELCHAIRS FROM COMPETITIVE ACQUISITION  
18 PROGRAM.—Section 1847(a)(2)(A) of the Social Security  
19 Act (42 U.S.C. 1395w-3(a)(2)(A)) is amended—

20 (1) by inserting “, complex rehabilitative man-  
21 ual wheelchairs (as determined by the Secretary),  
22 and certain manual wheelchairs (identified, as of Oc-  
23 tober 1, 2018, by HCPCS codes E1235, E1236,  
24 E1237, E1238, and K0008 or any successor to such  
25 codes)” after “group 3 or higher”; and

1           (2) by striking “such wheelchairs” and insert-  
2           ing “such complex rehabilitative power wheelchairs,  
3           complex rehabilitative manual wheelchairs, and cer-  
4           tain manual wheelchairs”.

5           (b) NON-APPLICATION OF MEDICARE FEE SCHED-  
6           ULE ADJUSTMENTS FOR WHEELCHAIR ACCESSORIES AND  
7           SEAT AND BACK CUSHIONS WHEN FURNISHED IN CON-  
8           NECTION WITH COMPLEX REHABILITATIVE MANUAL  
9           WHEELCHAIRS.—

10           (1) IN GENERAL.—Notwithstanding any other  
11           provision of law, the Secretary of Health and  
12           Human Services shall not, during the period begin-  
13           ning on January 1, 2019, and ending on June 30,  
14           2020, use information on the payment determined  
15           under the competitive acquisition programs under  
16           section 1847 of the Social Security Act (42 U.S.C.  
17           1395w-3) to adjust the payment amount that would  
18           otherwise be recognized under section  
19           1834(a)(1)(B)(ii) of such Act (42 U.S.C.  
20           1395m(a)(1)(B)(ii)) for wheelchair accessories (in-  
21           cluding seating systems) and seat and back cushions  
22           when furnished in connection with complex rehabili-  
23           tative manual wheelchairs (as determined by the  
24           Secretary), and certain manual wheelchairs (identi-  
25           fied, as of October 1, 2018, by HCPCS codes

1 E1235, E1236, E1237, E1238, and K0008 or any  
2 successor to such codes).

3 (2) IMPLEMENTATION.—Notwithstanding any  
4 other provision of law, the Secretary may implement  
5 this subsection by program instruction or otherwise.