

111TH CONGRESS  
1ST SESSION

# H. R. 1850

To amend titles V, XVIII, and XIX of the Social Security Act to promote tobacco use cessation under the Medicare Program, the Medicaid Program, and the maternal and child health program.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 1, 2009

Ms. DEGETTE (for herself and Mr. PLATTS) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend titles V, XVIII, and XIX of the Social Security Act to promote tobacco use cessation under the Medicare Program, the Medicaid Program, and the maternal and child health program.

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 “Quit Smoking for Life  
5 Act of 2009”.

1 **SEC. 2. COVERAGE OF COUNSELING FOR CESSATION OF**  
2 **TOBACCO USE UNDER THE MEDICARE PRO-**  
3 **GRAM.**

4 (a) **COVERAGE.**—Section 1861(s)(2) of the Social Se-  
5 curity Act (42 U.S.C. 1395x(s)(2)) is amended—

6 (1) in subparagraph (DD), by striking “and” at  
7 the end;

8 (2) in subparagraph (EE), by adding “and” at  
9 the end; and

10 (3) by adding at the end the following new sub-  
11 paragraph:

12 “(FF) counseling for cessation of tobacco use  
13 (as defined in section 1861(hhh));”.

14 (b) **SERVICES DESCRIBED.**—Section 1861 of such  
15 Act (42 U.S.C. 1395x) is further amended by adding at  
16 the end the following new subsection:

17 “(hhh) **COUNSELING FOR CESSATION OF TOBACCO**  
18 **USE.**—(1) Subject to paragraph (2), the term ‘counseling  
19 for cessation of tobacco use’ means diagnostic, therapy,  
20 and counseling services for cessation of tobacco use, for  
21 individuals who use tobacco products or are being treated  
22 for tobacco use, furnished—

23 “(A) by or under the supervision of a physician;

24 or

25 “(B) by any other health care professional  
26 who—

1           “(i) is legally authorized to furnish such  
2           services under State law (or the State regu-  
3           latory mechanism provided by State law) of the  
4           State in which the services are furnished; and

5           “(ii) is authorized to receive payment for  
6           other services under this title or is designated  
7           by the Secretary for this purpose.

8           “(2) Such term is limited to—

9           “(A) services that are included in the most cur-  
10          rent clinical practice guidelines on treating tobacco  
11          use and dependence issued by the Public Health  
12          Service; and

13          “(B) such other services that the Secretary rec-  
14          ognizes to be effective.”.

15          (c) PAYMENT; ELIMINATION OF DEDUCTIBLE.—

16               (1) PAYMENT.—Section 1833(a)(1) of such Act  
17               (42 U.S.C. 1395l(a)(1)) is amended—

18                       (A) by striking “and” before “(W)”;

19                       (B) by inserting before the semicolon at  
20                       the end the following: “, and (X) with respect  
21                       to counseling for cessation of tobacco use (as  
22                       defined in section 1861(hhh)), the amount paid  
23                       shall be 80 percent of the lesser of the actual  
24                       charge for the service or the amount determined

1 by a fee schedule established by the Secretary  
2 for purposes of this clause”.

3 (2) ELIMINATION OF DEDUCTIBLE.—The first  
4 sentence of section 1833(b) of such Act (42 U.S.C.  
5 1395l(b)) is amended—

6 (A) by striking “and” before “(9)”; and

7 (B) by inserting before the period the fol-  
8 lowing: “, and (10) such deductible shall not  
9 apply with respect to counseling for cessation of  
10 tobacco use (as defined in section 1861(hhh))”.

11 (d) EFFECTIVE DATE.—The amendments made by  
12 this section shall apply to services furnished on or after  
13 January 1 of the first calendar year that begins at least  
14 6 months after the date of the enactment of this Act.

15 **SEC. 3. COVERAGE OF TOBACCO CESSATION**  
16 **PHARMACOTHERAPY UNDER THE MEDICARE**  
17 **PROGRAM.**

18 (a) INCLUSION OF TOBACCO CESSATION AGENTS AS  
19 COVERED DRUGS.—Section 1860D–2(e)(1) of the Social  
20 Security Act (42 U.S.C. 1395w–102(e)(1)) is amended—

21 (1) in subparagraph (A), by striking “or” after  
22 the semicolon at the end;

23 (2) in subparagraph (B), by striking the comma  
24 at the end and inserting “; or”; and

1           (3) by inserting after subparagraph (B) the fol-  
2           lowing new subparagraph:

3                   “(C) any agent approved by the Food and  
4           Drug Administration for purposes of promoting,  
5           and when used to promote, tobacco use ces-  
6           sation that may be dispensed without a pre-  
7           scription (commonly referred to as an ‘over-the-  
8           counter’ drug), but only if such an agent is pre-  
9           scribed by a physician (or other person author-  
10          ized to prescribe under State law),”.

11          (b) ESTABLISHMENT OF CATEGORIES AND CLASSES  
12          CONSISTING OF TOBACCO CESSATION AGENTS.—Section  
13          1860D–4(b)(3)(C) of the Social Security Act (42 U.S.C.  
14          1395w–104(b)(3)(C)) is amended by adding at the end the  
15          following new clause:

16                   “(iv) CATEGORIES AND CLASSES OF  
17          TOBACCO CESSATION AGENTS.—There  
18          shall be a therapeutic category or class of  
19          covered part D drugs consisting of agents  
20          approved by the Food and Drug Adminis-  
21          tration for cessation of tobacco use. Such  
22          category or class shall include tobacco ces-  
23          sation agents described in subparagraphs  
24          (A) and (C) of section 1860D–2(e)(1).”.

1 **SEC. 4. COVERAGE OF COUNSELING AND MEDICATION FOR**  
2 **CESSATION OF TOBACCO USE UNDER THE**  
3 **MEDICAID PROGRAM.**

4 (a) DROPPING EXCEPTION FROM MEDICAID PRE-  
5 SCRIPTION DRUG COVERAGE FOR TOBACCO USE CES-  
6 SATION MEDICATIONS.—

7 (1) IN GENERAL.—Section 1927(d)(2) of the  
8 Social Security Act (42 U.S.C. 1396r–8(d)(2)) is  
9 amended—

10 (A) by striking subparagraph (E);

11 (B) by redesignating subparagraph (F)  
12 through (K) as subparagraphs (E) through (J),  
13 respectively; and

14 (C) in subparagraph (F), as so redesign-  
15 ated, by inserting before the period at the end  
16 the following: “, other than agents approved by  
17 the Food and Drug Administration for purposes  
18 of promoting, and when used to promote, to-  
19 bacco use cessation (regardless, for purposes of  
20 this title only, of whether such agents may be  
21 dispensed only upon prescription or may be dis-  
22 pensed without a prescription (commonly re-  
23 ferred to as an ‘over-the-counter’ drug), but  
24 only if such an agent is prescribed by a physi-  
25 cian (or other person authorized to prescribe  
26 under State law))”.

1           (2) CONFORMING AMENDMENT.—Section  
2           1860D–2(e)(2)(A) of the Social Security Act (42  
3           U.S.C. 1395w–102(e)(2)(A)) is amended by striking  
4           “, other than subparagraph (E) of such section (re-  
5           lating to smoking cessation agents),”.

6           (b) REQUIRING COVERAGE OF TOBACCO USE CES-  
7           SATION COUNSELING.—Section 1905(a)(4) of such Act  
8           (42 U.S.C. 1396d(a)(4)) is amended—

9           (1) by striking “and” before “(C)”; and

10           (2) by adding at the end the following: “, and  
11           (D) counseling for cessation of tobacco use (as de-  
12           fined in section 1861(hhh));”.

13           (c) TREATMENT OF TOBACCO CESSATION SERVICES  
14           AND MEDICATIONS AS SERVICES RELATED TO PREG-  
15           NANCY.—Section 1905 of such Act is amended by adding  
16           at the end the following new subsection:

17           “(y) Services described in subsection (a)(4)(D) shall  
18           be treated as services related to pregnancy with respect  
19           to women during pregnancy (and during the 60-day period  
20           beginning on the last day of the pregnancy).”.

21           (d) EFFECTIVE DATE.—The amendments made by  
22           this section shall apply to items and services furnished on  
23           or after January 1 of the first calendar year that begins  
24           at least 6 months after the date of the enactment of this  
25           Act.

1 **SEC. 5. PROMOTING CESSATION OF TOBACCO USE UNDER**  
2 **THE MATERNAL AND CHILD HEALTH PRO-**  
3 **GRAM.**

4 (a) QUALITY MATERNAL AND CHILD HEALTH SERV-  
5 ICES INCLUDES TOBACCO USE CESSATION COUNSELING  
6 AND MEDICATIONS.—Section 501 of the Social Security  
7 Act (42 U.S.C. 701) is amended by adding at the end the  
8 following new subsection:

9 “(d) For purposes of this title, counseling for ces-  
10 sation of tobacco use (as defined in section 1861(hhh)),  
11 drugs and biologicals used to promote tobacco use ces-  
12 sation (regardless of whether such drugs or biologicals  
13 may be dispensed only upon prescription or may be dis-  
14 pensed without a prescription (commonly referred to as  
15 an ‘over-the-counter’ drug), but only if such a drug or bio-  
16 logical is prescribed by a physician (or other person au-  
17 thorized to prescribe under State law)), and the inclusion  
18 of antitobacco messages in health promotion counseling  
19 shall be considered to be part of quality maternal and child  
20 health services.”.

21 (b) EFFECTIVE DATE.—The amendment made by  
22 subsection (a) shall take effect on the date of the enact-  
23 ment of this Act.

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