

107TH CONGRESS
2^D SESSION

H. R. 5450

To amend title XVIII of the Social Security Act to provide for equitable payments for health care services furnished to Medicare beneficiaries in hospital outpatient departments, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 24, 2002

Mr. SHAW 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

A BILL

To amend title XVIII of the Social Security Act to provide for equitable payments for health care services furnished to Medicare beneficiaries in hospital outpatient departments, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Beneficiary Access to
3 Care Act of 2002”.

4 **SEC. 2. FINDINGS.**

5 The Congress finds and declares that—

6 (1) payments for drugs and biologicals under
7 the Medicare outpatient hospital prospective pay-
8 ment system should be based on all of the costs of
9 delivering outpatient pharmacy therapy (involving
10 the drug or biological) in the outpatient hospital set-
11 ting, including (but not limited to) acquisition costs,
12 and the costs associated with storage, handling,
13 processing, quality control, disposal, and pharmacy
14 overhead should be fully accounted for under such
15 system;

16 (2) the payment rates proposed in Centers for
17 Medicare & Medicaid Services, Medicare Program;
18 Changes to the Hospital Outpatient Prospective
19 Payment System and Calendar Year 2003 Payment
20 Rates; and Changes to Payment Suspension for Uni-
21 fied Cost Report; Proposed Rule, (67 Federal Reg-
22 ister 52092 et seq. (August 9, 2002)) do not fully
23 reflect such costs;

24 (3) the methodology implied by the statute es-
25 tablishing such system and used by the Centers for
26 Medicare & Medicaid Services to estimate acquisition

1 costs is flawed because it derives such estimates
2 from what hospitals charged for individual products
3 on patient bills without appropriate adjustment for
4 hospital charging practices;

5 (4) this methodology substantially underesti-
6 mates the acquisition costs of newer, more expensive
7 drugs and biologicals;

8 (5) the methodology used to develop such rates
9 produces erratic and unreliable results, with—

10 (A) the payment rate for one product in-
11 creasing 700 percent and the rates for many
12 others exceeding 100 percent of their average
13 wholesale price (AWP), and

14 (B) the payment rates for nine drugs and
15 biologicals used in cancer therapy experiencing
16 rate reductions of between 50 and 90 percent;

17 (6) beneficiary access may be jeopardized in the
18 outpatient hospital setting for those drugs and
19 biologicals for which program payments are substan-
20 tially below the costs of delivering them; and

21 (7) the payment rates proposed for most drugs
22 and biologicals under such system for calendar year
23 2003 are less than the payment rates established for
24 them in 2002, with the payment reductions exceed-
25 ing 30 percent in most cases.

1 **SEC. 3. DURATION OF PERIOD FOR WHICH TRANSITIONAL,**
2 **PASS-THROUGH PAYMENTS ARE MADE FOR**
3 **DRUGS AND BIOLOGICALS.**

4 (a) CONTINUATION IF DATA COLLECTED IN 2 TO 3
5 YEAR PERIOD ARE INADEQUATE.—Section 1833(t)(6) of
6 the Social Security Act (42 U.S.C. 1395l(t)(6)) is
7 amended—

8 (1) in subparagraph (C)(i), by striking “The
9 payment” and inserting “Except as provided in sub-
10 paragraph (F), the payment”; and

11 (2) by adding at the end the following:

12 “(F) EXTENSION OF PERIOD OF PAY-
13 MENT.—

14 “(i) IN GENERAL.—Notwithstanding
15 the 3-year limitation specified in subpara-
16 graph (C)(i), in the case of a drug or bio-
17 logical for which additional payments
18 under this paragraph would (but for this
19 subparagraph) cease to be made by reason
20 of such limitation, such additional pay-
21 ments shall continue to be made with re-
22 spect to the drug or biological during the
23 period that begins with the last day of the
24 period of payment under subparagraph
25 (C)(i) and ends on a date specified by the
26 Secretary that is no earlier than January

1 of the first calendar year beginning on or
2 after the date on which the Secretary has
3 met each of the requirements of clause (ii).

4 “(ii) REQUIREMENTS.—The require-
5 ments of this clause are that the
6 Secretary—

7 “(I) engage an appropriate out-
8 side contractor with substantial exper-
9 tise and experience in the method-
10 ology of prospective payment systems
11 to study and report to the Secretary
12 alternatives to the methodology used
13 by the Centers for Medicare & Med-
14 icaid Services for determining the rel-
15 ative weights under paragraphs (2)(C)
16 and (9) so that the relative weights
17 more accurately and equitably reflect
18 the variation in costs among items
19 and services;

20 “(II) make public the report pre-
21 pared under subclause (I) together
22 with the Secretary’s recommendations
23 for changes in the methodology, and
24 provide for a public comment period
25 of at least 90 days on such report;

1 “(III) find and certify that ade-
2 quate data are available reflecting all
3 of the costs of delivering outpatient
4 pharmacy therapy (involving the drug
5 or biological) in the outpatient hos-
6 pital setting, including acquisition,
7 storage, handling, processing, quality
8 control, disposal, and pharmacy over-
9 head costs;

10 “(IV) find and certify that meth-
11 odology used to determine relative
12 payment weights for drugs and
13 biologicals, when used with such data,
14 produces a medicare OPD fee sched-
15 ule payment amount that accurately
16 and equitably reflects such costs;

17 “(V) report such findings to the
18 Congress and release to the public the
19 data used to support such findings;

20 “(VI) publish (on a date that is
21 no earlier than 180 days after the re-
22 quirements of subclause (V) have been
23 met) a notice of proposed rulemaking
24 on a relative payment weight to be
25 used to determine the medicare OPD

1 fee schedule payment amount for the
 2 drug or biological under this sub-
 3 section, with a period for public com-
 4 ment of at least 90 days; and

5 “(VII) taking into account the
 6 comments received during the com-
 7 ment period for such notice, publish a
 8 final rule establishing a relative pay-
 9 ment weight for the drug or biologi-
 10 cal.”.

11 (b) EFFECTIVE DATE.—The amendments made by
 12 subsection (a) shall be effective as if included in the enact-
 13 ment of the Medicare, Medicaid, and SCHIP Balanced
 14 Budget Refinement Act of 1999.

15 **SEC. 4. AMBULATORY PAYMENT CLASSIFICATIONS FOR**
 16 **DRUGS AND BIOLOGICALS AFTER PERIOD OF**
 17 **TRANSITIONAL PASS-THROUGH PAYMENTS.**

18 (a) IN GENERAL.—Section 1833(t)(2) of the Social
 19 Security Act (42 U.S.C. 1395l(t)(2) is amended—

20 (1) by striking “and” at the end of subpara-
 21 graph (F);

22 (2) striking the period at the end of subpara-
 23 graph (G) and inserting “; and”; and

24 (3) by adding at the end the following:

1 “(H) the Secretary shall, in determining
 2 the amount of payment under this subsection
 3 for a drug or biological furnished on or after
 4 the date on which transitional, pass-through
 5 payments under paragraph (6) cease to be
 6 made with respect to the drug or biological—

7 “(i) treat the drug and biological as a
 8 separate group of covered OPD services;
 9 and

10 “(ii) to the greatest extent practicable,
 11 use the same designation for such group as
 12 was used for the group to which the drug
 13 or biological was assigned during the pe-
 14 riod for which transitional, pass-through
 15 payments were made with respect to the
 16 drug or biological.”.

17 (b) EFFECTIVE DATE.—The amendments made by
 18 subsection (a) shall be effective as if included in the enact-
 19 ment of the Medicare, Medicaid, and SCHIP Balanced
 20 Budget Refinement Act of 1999.

21 **SEC. 5. STUDY OF PHARMACY SERVICES USED TO PROVIDE**
 22 **CANCER DRUG THERAPIES IN HOSPITAL**
 23 **OUTPATIENT SETTING.**

24 (a) IN GENERAL.—The Comptroller General of the
 25 United States shall conduct a study of payments under

1 part B of title XVIII of the Social Security Act for phar-
2 macy service costs and related costs that are incurred in
3 acquiring chemotherapy and supportive care drugs and
4 providing these therapies to cancer patients in hospital
5 outpatient departments. The study shall—

6 (1) identify pharmacy costs, including the costs
7 of storage, handling, processing, quality control, dis-
8 posal, compliance with safety protocols and regula-
9 tions, establishing dosage regimens that avoid drug
10 interactions and contraindications, and pharmacy
11 overhead;

12 (2) include a review of the adequacy of the cur-
13 rent payment methodology for pharmacy service
14 costs and related costs; and

15 (3) identify any changes to that methodology
16 that are necessary to ensure recognition of and ap-
17 propriate payment for all of the services and func-
18 tions inherent in the provision of cancer treatment
19 in hospital outpatient settings.

20 (b) REPORT TO CONGRESS.—Not later than 12
21 months after the date of the enactment of this Act, the
22 Comptroller General shall submit to Congress a report on
23 the results of the study under subsection (a), including
24 any recommendations for legislation that is necessary to
25 implement the changes identified under subsection (a)(3).

1 **SEC. 6. LIMIT ON REDUCTIONS FOR TRANSITIONAL, PASS-**
2 **THROUGH PAYMENTS FOR DRUGS AND**
3 **BIOLOGICALS.**

4 Section 1833(t)(6)(E) of the Social Security Act (42
5 U.S.C. 1395l(t)(6)(E)) is amended—

6 (1) in clause (i)—

7 (A) by striking “IN GENERAL.—”and in-
8 serting “YEARS BEFORE 2003.—”;

9 (B) by striking “in a year” and inserting
10 “in a year before 2003”; and

11 (C) by striking “clause (ii))” and inserting
12 “clause (iv))”;

13 (2) by striking clause (ii) and redesignating
14 clause (iii) as clause (ii); and

15 (3) by adding at the end the following:

16 “(iii) YEARS AFTER 2002.—Before the
17 beginning of 2003 and each subsequent
18 year, the Secretary shall estimate the total
19 of the additional payments to be made
20 under this paragraph for covered OPD
21 services furnished in the year (determined
22 without regard to any limitation on the
23 total amount of such payments) and shall
24 adjust the conversion factor established
25 under paragraph (3)(C) for the year by a
26 budget neutrality percentage that, notwith-

standing paragraph (2)(E), does not exceed the lesser of—

“(I) the ratio (expressed as a percentage) of the Secretary’s estimate of such total additional payments for such year to the Secretary’s estimate of the total payments to be made under this subsection for all covered OPD services furnished in that year; or

“(II) the applicable percentage (specified in clause (iv)) for that year.

“(iv) APPLICABLE PERCENTAGE.— For purposes of clauses (i) and (iii), the term ‘applicable percentage’ means—

“(I) for a year (or portion of a year) before 2004, 2.5 percent; and

“(II) for 2004 and each subsequent year, a percentage specified by the Secretary up to (but not to exceed) 2.0 percent.”.

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