

107TH CONGRESS  
2D SESSION

# S. 2547

To amend title XVIII of the Social Security Act to provide for fair payments under the medicare hospital outpatient department prospective payment system.

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## IN THE SENATE OF THE UNITED STATES

MAY 22, 2002

Mr. BINGAMAN (for himself and Ms. SNOWE) introduced the following bill;  
which was read twice and referred to the Committee on Finance

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## A BILL

To amend title XVIII of the Social Security Act to provide for fair payments under the medicare hospital outpatient department prospective payment system.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Medicare Hospital Outpatient Department Fair Payment  
6 Act of 2002”.

7 (b) TABLE OF CONTENTS.—The table of contents of  
8 this Act is as follows:

Sec. 1. Short title; table of contents.

- Sec. 2. Ensuring adequate OPD fee schedule amounts for clinic and emergency visits.
- Sec. 3. Limitation of pro rata reductions to pass-through payments.
- Sec. 4. Clarifying application of OPD fee schedule increase factor.
- Sec. 5. Limitation on budget neutrality adjustment for annual revisions to system components.
- Sec. 6. Outlier payments.
- Sec. 7. Adjustment to limit decline in payment.
- Sec. 8. Special increase in certain relative payment weights.
- Sec. 9. Permanent extension of provider-based status.

1 **SEC. 2. ENSURING ADEQUATE OPD FEE SCHEDULE**  
 2 **AMOUNTS FOR CLINIC AND EMERGENCY VIS-**  
 3 **ITS.**

4 (a) IN GENERAL.—Section 1833(t) of the Social Se-  
 5 curity Act (42 U.S.C. 1395l(t)) is amended—

6 (1) in paragraph (3)(C)(ii)—

7 (A) by striking “paragraph (8)(B)” and  
 8 inserting “paragraphs (11)(B) and (13)(A)(i)”;  
 9 and

10 (B) by striking “clause (iii)” and inserting  
 11 “clause (iv)”;

12 (2) in paragraph (3)(C)(iii), by inserting “,  
 13 paragraph (11)(B), or paragraph (13)(B)” after  
 14 “this subparagraph”;

15 (3) in paragraph (3)(D)—

16 (A) in clause (i), by striking “conversion  
 17 factor computed under subparagraph (C) for  
 18 the year” and inserting “applicable conversion  
 19 factor computed under subparagraph (C), para-

1 graph (11)(B), or paragraph (13)(B) for the  
 2 year (or portion thereof)”; and

3 (B) in clause (ii), by inserting “, para-  
 4 graph (9)(A), or paragraph (13)(C)” after  
 5 “paragraph (2)(C)”;

6 (4) in paragraph (9), by striking subparagraph  
 7 (B) and inserting the following new subparagraph:

8 “(B) BUDGET NEUTRALITY ADJUST-  
 9 MENT.—

10 “(i) IN GENERAL.—If the Secretary  
 11 makes revisions under subparagraph (A),  
 12 then the revisions for a year may not cause  
 13 the estimated amount of expenditures  
 14 under this part for the year to increase or  
 15 decrease from the estimated amount of ex-  
 16 penditures under this part (including ex-  
 17 penditures attributable to the special rules  
 18 specified in paragraph (13)) that would  
 19 have been made if the revisions had not  
 20 been made.

21 “(ii) EXEMPTION FROM REDUC-  
 22 TION.—The relative payment weights de-  
 23 termined under paragraph (13)(C) and the  
 24 conversion factor computed under para-  
 25 graph (13)(B) shall not be reduced by any

1 budget neutrality adjustment made pursu-  
 2 ant to this subparagraph.”; and

3 (5) by redesignating paragraph (13) as para-  
 4 graph (14) and by inserting after paragraph (12)  
 5 the following new paragraph:

6 “(13) SPECIAL RULES FOR CALCULATING MEDI-  
 7 CARE OPD FEE SCHEDULE AMOUNT FOR CLINIC AND  
 8 EMERGENCY VISITS.—

9 “(A) IN GENERAL.—In computing the  
 10 medicare OPD fee schedule amount under para-  
 11 graph (3)(D) for covered OPD services that are  
 12 furnished on or after April 1, 2002, and classi-  
 13 fied within a group established or revised under  
 14 paragraph (2)(B) or (9)(A), respectively, for  
 15 clinic or emergency visits (as described in sub-  
 16 paragraph (D)), the Secretary shall—

17 “(i) substitute for the conversion fac-  
 18 tor calculated under paragraph (3)(C) the  
 19 conversion factor calculated under sub-  
 20 paragraph (B); and

21 “(ii) substitute for the relative pay-  
 22 ment weight established or revised under  
 23 paragraph (2)(C) or (9)(A), respectively,  
 24 the relative payment weight determined  
 25 under subparagraph (C) for such group.

1 “(B) CALCULATION OF CONVERSION FAC-  
2 TOR.—For purposes of subparagraph (A)(i), the  
3 conversion factor calculated under this subpara-  
4 graph is—

5 “(i) for services furnished on or after  
6 April 1, 2002, and before January 1,  
7 2003, an amount equal to 112.82 percent  
8 of the conversion factor specified for such  
9 period in the final rule published on March  
10 1, 2002 (67 Fed. Reg. 9556 et seq.; enti-  
11 tled ‘Medicare Program; Correction of Cer-  
12 tain Calendar Year 2002 Payment Rates  
13 Under the Hospital Outpatient Prospective  
14 Payment System and the Pro Rata Reduc-  
15 tion on Transitional Pass-Through Pay-  
16 ments; Correction of Technical and Typo-  
17 graphical Errors’) and not taking into ac-  
18 count any subsequent amendments to such  
19 final rule; and

20 “(ii) for services furnished in a year  
21 beginning after December 31, 2002, the  
22 conversion factor computed under this sub-  
23 paragraph for the previous year (or in the  
24 case of 2003, for the previous 9 months)  
25 increased by the OPD fee schedule in-

crease factor specified under paragraph  
(3)(C)(iv) for the year involved.

“(C) DETERMINATION OF RELATIVE PAY-  
MENT WEIGHTS.—For purposes of subpara-  
graph (A)(ii), the relative payment weight de-  
termined under this subparagraph for a covered  
OPD service that is classified within such a  
group is—

“(i) for services furnished on or after  
April 1, 2002, and before January 1,  
2003, the relative payment weight specified  
for such group for such period in Adden-  
dum A of the final rule published on  
March 1, 2002 (67 Fed. Reg. 9556 et seq.;  
entitled ‘Medicare Program; Correction of  
Certain Calendar Year 2002 Payment  
Rates Under the Hospital Outpatient Pro-  
spective Payment System and the Pro  
Rata Reduction on Transitional Pass-  
Through Payments; Correction of Tech-  
nical and Typographical Errors’) and not  
taking into account any subsequent  
amendments to such final rule; and

“(ii) for services furnished in a year  
beginning on or after January 1, 2003—

1 “(I) for ambulatory patient clas-  
 2 sification group 0601 (relating to mid-  
 3 level clinic visits), or a successor to  
 4 such group, the relative payment  
 5 weight specified for such group in the  
 6 final rule referred to in clause (i); and

7 “(II) other ambulatory patient  
 8 classification groups described in sub-  
 9 paragraph (D), the relative payment  
 10 weight established or revised under  
 11 paragraph (2)(C) or (9)(A), respec-  
 12 tively, for such group for such year  
 13 (but without regard to any budget  
 14 neutrality adjustment under para-  
 15 graph (9)(B)).

16 “(D) GROUPS FOR CLINIC AND EMER-  
 17 GENCY VISITS.—For purposes of this para-  
 18 graph, the groups established or revised under  
 19 paragraph (2)(B) or (9)(A), respectively, for  
 20 clinic and emergency visits are ambulatory pa-  
 21 tient classification groups 0600, 0601, 0602,  
 22 0610, 0611, and 0612 as defined for purposes  
 23 of the final rule referred to in subparagraph  
 24 (C)(i) (and any successors to such groups).”.

1 (b) LIMITATION ON SECRETARIAL AUTHORITY.—

2 Notwithstanding section 1833(t) of the Social Security  
3 Act (42 U.S.C. 1395l(t)), the Secretary of Health and  
4 Human Services may not make any adjustment under—

5 (1) paragraph (2)(F), (3)(C)(iii), (9)(B), or  
6 (9)(C) of section 1833(t) of the Social Security Act  
7 (42 U.S.C. 1395l(t)); or

8 (2) any other provision of such section;

9 to ensure that the amendments made by subsection (a)  
10 do not cause the estimated amount of expenditures under  
11 part B of title XVIII of such Act (42 U.S.C. 1395j et  
12 seq.) to exceed the estimated amount of expenditures that  
13 would have been made under such part but for such  
14 amendments.

15 (c) PERIODIC LUMP-SUM RETROACTIVE PAY-  
16 MENTS.—The Secretary of Health and Human Services  
17 shall, not later than 60 days after the date of enactment  
18 of this Act (and at least every 90 days thereafter until  
19 the amendments made by subsection (a) are imple-  
20 mented)—

21 (1) estimate, for each hospital furnishing serv-  
22 ices for which payment may be made under section  
23 1833(t) of the Social Security Act (42 U.S.C.  
24 1395l(t)) on or after April 1, 2002—



1 (A) the total amount of additional pay-  
 2 ments under such section that would have been  
 3 made to such hospital as of the date of such es-  
 4 timate if such amendments had been imple-  
 5 mented as of such date; and

6 (B) the total amount of additional pay-  
 7 ments under such section that have actually  
 8 been made to such hospital as of the date of  
 9 such estimate (including any amounts paid pur-  
 10 suant to this subsection); and

11 (2) make a lump-sum payment to such hospital  
 12 equal to the amount by which the amount estimated  
 13 under paragraph (1)(A) exceeds the amount esti-  
 14 mated under paragraph (1)(B).

15 **SEC. 3. LIMITATION OF PRO RATA REDUCTIONS TO PASS-**  
 16 **THROUGH PAYMENTS.**

17 (a) IN GENERAL.—Section 1833(t)(6)(E) of the So-  
 18 cial Security Act (42 U.S.C. 1395l(t)(6)(E)) is amended—

19 (1) in clause (i), by striking “The total” and in-  
 20 serting “Subject to clause (iv), the total”;

21 (2) in clause (iii), by striking “If the Secretary”  
 22 and inserting “Subject to clause (iv), if the Sec-  
 23 retary”; and

24 (3) by adding at the end the following new  
 25 clause:

1                   “(iv) LIMITATION ON PRO RATA RE-  
 2                   DUCTIONS.—Notwithstanding clauses (i),  
 3                   (ii), and (iii), the Secretary may not reduce  
 4                   the additional payments that would other-  
 5                   wise be made under this paragraph (but  
 6                   for this subparagraph) for items and serv-  
 7                   ices furnished on or after April 1, 2002, by  
 8                   a percentage that exceeds 20.0 percent.”.

9           (b) PERIODIC LUMP-SUM RETROACTIVE PAY-  
 10       MENTS.—The Secretary of Health and Human Services  
 11       shall, not later than 60 days after the date of enactment  
 12       of this Act (and at least every 90 days thereafter until  
 13       clause (iv) of section 1833(t)(6)(E) of the Social Security  
 14       Act (as added by subsection (a)(3)) is implemented)—

15               (1) estimate, for each hospital furnishing serv-  
 16       ices for which payment may be made under section  
 17       1833(t) of the Social Security Act (42 U.S.C.  
 18       1395l(t)) on or after April 1, 2002—

19               (A) the total amount of additional pay-  
 20       ments under paragraph (6) of such section that  
 21       would have been made to such hospital as of  
 22       the date of such estimate if such clause had  
 23       been implemented as of such date; and

24               (B) the total amount of additional pay-  
 25       ments under such paragraph that have actually

1           been made to such hospital as of the date of  
 2           such estimate (including any amounts paid pur-  
 3           suant to this subsection); and

4           (2) make a lump-sum payment to such hospital  
 5           equal to the amount by which the amount estimated  
 6           under paragraph (1)(A) exceeds the amount esti-  
 7           mated under paragraph (1)(B).

8   **SEC. 4. CLARIFYING APPLICATION OF OPD FEE SCHEDULE**  
 9                           **INCREASE FACTOR.**

10          Section 1833(t)(3)(C)(iv) of the Social Security Act  
 11   (42 U.S.C. 1395l(t)(3)(C)(iv)) is amended by adding at  
 12   the end the following new sentence: “Effective for years  
 13   beginning with 2002, the OPD fee schedule increase factor  
 14   for a year shall take effect on January 1 of such year,  
 15   and nothing in this subsection shall be construed as au-  
 16   thorizing the Secretary to delay the date on which such  
 17   increase factor takes effect by reason of any delay in im-  
 18   plementing the revisions authorized by paragraph (9)(A)  
 19   for such year or for any other reason.”.

20   **SEC. 5. LIMITATION ON BUDGET NEUTRALITY ADJUST-**  
 21                           **MENT FOR ANNUAL REVISIONS TO SYSTEM**  
 22                           **COMPONENTS.**

23          Section 1833(t)(9)(B) of the Social Security Act (42  
 24   U.S.C. 1395l(t)(9)(B)), as amended by section 2(a)(4), is  
 25   amended—

1 (1) in clause (i), by striking “If the Secretary”  
 2 and inserting “Subject to clause (iii), if the Sec-  
 3 retary”; and

4 (2) by adding at the end the following new  
 5 clause:

6 “(iii) LIMITATION ON ADJUSTMENT.—  
 7 For years after 2001, the budget neu-  
 8 trality adjustment under this subparagraph  
 9 may not reduce the payments that would  
 10 otherwise be made under this part but for  
 11 this subparagraph by more than 2.0 per-  
 12 cent.”.

13 **SEC. 6. OUTLIER PAYMENTS.**

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

16 (1) in subparagraph (C)—

17 (A) in clause (i), by striking “exceed the  
 18 applicable” and inserting “exceed a percentage  
 19 specified by the Secretary that is not less than  
 20 the applicable minimum percentage or greater  
 21 than the applicable maximum”; and

22 (B) by striking clause (ii) and inserting the  
 23 following new clause:

24 “(ii) APPLICABLE PERCENTAGES.—

25 For purposes of clause (i)—

1 “(I) the term ‘applicable min-  
 2 imum percentage’ for a year means  
 3 zero percent for years before 2003  
 4 and 2.0 percent for years after 2002;  
 5 and

6 “(II) the term ‘applicable max-  
 7 imum percentage’ for a year means  
 8 2.5 percent for years before 2003 and  
 9 3.0 percent for years after 2002.”;  
 10 and

11 (2) in subparagraph (D)—

12 (A) in the heading, by striking “TRANSI-  
 13 TIONAL AUTHORITY” and inserting “FLEXI-  
 14 BILITY”; and

15 (B) in the matter preceding clause (i), by  
 16 striking “for covered OPD services furnished  
 17 before January 1, 2002,”.

18 **SEC. 7. ADJUSTMENT TO LIMIT DECLINE IN PAYMENT.**

19 Section 1833(t)(7) of the Social Security Act (42  
 20 U.S.C. 1395l(t)(7)) is amended—

21 (1) in the heading, by striking “TRANSITIONAL  
 22 ADJUSTMENT” and inserting “ADJUSTMENT”;

23 (2) in subparagraph (A)—

24 (A) in the heading, by striking “BEFORE  
 25 2002” and inserting “IN GENERAL”;

1 (B) in the matter preceding clause (i)—

2 (i) by striking “subparagraph (D)”

3 and inserting “subparagraph (B)”;

4 (ii) by striking “furnished before Jan-

5 uary 1, 2002,”; and

6 (iii) by striking “subparagraph (E)”

7 and inserting “subparagraph (C)”;

8 (C) in clause (i), by striking “subpara-

9 graph (F)” and inserting “subparagraph (D)”;

10 (3) by striking subparagraph (D) and inserting

11 the following new subparagraph:

12 “(D) HOLD HARMLESS PROVISIONS.—

13 “(i) CANCER, CHILDREN’S, AND

14 SMALL RURAL HOSPITALS.—In the case of

15 a hospital that is described in clause (iii)

16 or (v) of section 1886(d)(1)(B) or is lo-

17 cated in a rural area and has not more

18 than 100 beds, for covered OPD services—

19 “(I) that are furnished on or

20 after the date on which payment is

21 first made under this subsection; and

22 “(II) for which the PPS amount

23 is less than the pre-BBA amount (or

24 for services furnished on or after Jan-

25 uary 1, 2002, is less than the greater

1 of the pre-BBA amount or the reason-  
2 able costs incurred in furnishing such  
3 services),

4 the amount of payment under this sub-  
5 section shall be increased by the amount of  
6 such difference.

7 “(ii) EYE AND EAR HOSPITALS.—In  
8 the case of a hospital or unit described in  
9 subsection (i)(4), for covered OPD  
10 services—

11 “(I) that are furnished on or  
12 after January 1, 2002; and

13 “(II) for which the PPS amount  
14 is less than the greater of the base  
15 year amount (which for purposes of  
16 this subparagraph shall be determined  
17 in the same manner as the pre-BBA  
18 amount under subparagraph (D), ex-  
19 cept that clause (ii)(I) of such sub-  
20 paragraph shall be applied by sub-  
21 stituting ‘2001’ for ‘1996’) or the rea-  
22 sonable costs incurred in furnishing  
23 such services,

1           the amount of payment under this sub-  
 2           section shall be increased by the amount of  
 3           such difference.”;

4           (4) in subparagraph (F)(ii)(I), by striking  
 5           “subparagraph (E)” and inserting “subparagraph  
 6           (C)”;

7           (5) by striking subparagraphs (B) and (C) and  
 8           redesignating subparagraphs (D), (E), (F), (G),  
 9           (H), and (I) as subparagraphs (B), (C), (D), (E),  
 10          (F), and (G), respectively.

11 **SEC. 8. SPECIAL INCREASE IN CERTAIN RELATIVE PAY-**  
 12 **MENT WEIGHTS.**

13          Section 1833(t) of the Social Security Act (42 U.S.C.  
 14          1395l(t)) is amended—

15           (1) in paragraph (3)(D)(ii), as amended by sec-  
 16           tion 2(a)(3)(B), by striking “or paragraph (13)(C)”  
 17           and inserting “paragraph (13)(C), or paragraph  
 18           (14)”;

19           (2) in paragraph (9)(B)(i), as amended by sec-  
 20           tion 2(a)(4), by inserting “determined without re-  
 21           gard to expenditures made by reason of the adjust-  
 22           ments required by paragraph (14)” after “para-  
 23           graph (13)”;



(3) in paragraph (12)(C), by striking “paragraph (6)” and inserting “paragraph (9) (including adjustments authorized by paragraph (14))”; and

(4) by redesignating paragraph (14) (as redesignated by section 2(a)(5)) as paragraph (15) and by inserting after paragraph (13) the following new paragraph:

“(14) REQUIREMENT TO INCREASE RELATIVE PAYMENT WEIGHTS IN CERTAIN CIRCUMSTANCES.—

“(A) IN GENERAL.—Notwithstanding the methodologies specified for determining relative payment weights described in paragraphs (2)(C) and (9)(A), for years beginning with 2002, the Secretary shall, as part of the revisions required by paragraph (9)(A), increase the relative payment weight for any group established or revised under paragraph (2)(C) or (9)(A), respectively, above the weight that would otherwise apply to such group under this subsection if the Secretary determines that such an increase is necessary to ensure that the medicare OPD fee schedule amount for the group for the year is not less than 90 percent of the median costs for services classified within the group.

1           “(B) PRIORITIES.—For purposes of pro-  
2           viding for increases under subparagraph (A),  
3           the Secretary shall give priority first to preven-  
4           tive services, second to cancer services, third to  
5           services for which the medicare OPD fee sched-  
6           ule amount that would otherwise apply is less  
7           the payment level under this title for such serv-  
8           ices in other settings, and fourth to other serv-  
9           ices.

10           “(C) DATA.—The Secretary may base in-  
11           creases under subparagraph (A) on data from  
12           any source and is not limited to data appro-  
13           priate for estimating the costs incurred by hos-  
14           pitals in furnishing such services.

15           “(D) AGGREGATE EXPENDITURES.—Not-  
16           withstanding the application of the percentage  
17           specified under subparagraph (A), the Secretary  
18           shall provide for increases under such subpara-  
19           graph for each year so that the estimated  
20           amount of additional expenditures attributable  
21           to adjustments under such subparagraph is not  
22           less than \$1,000,000,000 in such year.”.

1 **SEC. 9. PERMANENT EXTENSION OF PROVIDER-BASED STA-**  
2 **TUS.**

3 Paragraphs (1) and (2) of section 404(a) of the Medi-  
4 care, Medicaid, and SCHIP Benefits Improvement and  
5 Protection Act of 2000 (113 Stat. 2763A–506), as en-  
6 acted into law by section 1(a)(6) of Public Law 106–554,  
7 are each amended by striking “until October 1, 2002”.

○