

107TH CONGRESS
2D SESSION

S. 2555

To amend title XVIII of the Social Security Act to enhance beneficiary access to quality health care services under the medicare program.

IN THE SENATE OF THE UNITED STATES

MAY 23, 2002

Mr. BAUCUS introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend title XVIII of the Social Security Act to enhance beneficiary access to quality health care services under the medicare 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Revitalizing Underserved Rural Areas and Localities
6 (RURAL) 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.

TITLE I—HOSPITAL PROVISIONS

- Sec. 101. Equalizing urban and rural standardized payment amounts under the medicare inpatient hospital prospective payment system.
- Sec. 102. Full market basket increase in 2003 for medicare hospitals in rural and small urban areas.
- Sec. 103. Medicare inpatient payment adjustment for low-volume hospitals.
- Sec. 104. Adjustment to medicare wage index.
- Sec. 105. Coverage of critical access hospital costs for certain emergency room on-call providers.
- Sec. 106. Elimination of 35-mile requirement for cost reimbursement of ambulance services furnished by critical access hospitals under the medicare program.
- Sec. 107. Treatment of ambulance services furnished by small rural hospitals.
- Sec. 108. Treatment of certain clinical diagnostic laboratory tests furnished by a critical access hospital service.
- Sec. 109. Requirement that States awarded certain medicare rural grants consult with the State hospital association and rural hospitals on the most appropriate ways to use such grants.
- Sec. 110. GAO study and report on treating critical access hospital employees as employees of the United States for purposes of the Federal Tort Claims Act.

TITLE II—OTHER PROVISIONS

- Sec. 201. Accelerating the rate of reduction of beneficiary copayment liability under the medicare hospital outpatient department prospective payment system.
- Sec. 202. Physician fee schedule wage index revision.
- Sec. 203. Temporary increase for home health services furnished in a frontier or rural area.
- Sec. 204. Improvements to the medicare incentive payment program.
- Sec. 205. Ensuring appropriate coverage of air ambulance services under ambulance fee schedule.
- Sec. 206. Provider access to review of local coverage determinations and right to petition for local coverage determinations.

1 **TITLE I—HOSPITAL PROVISIONS**

2 **SEC. 101. EQUALIZING URBAN AND RURAL STANDARDIZED** 3 **PAYMENT AMOUNTS UNDER THE MEDICARE** 4 **INPATIENT HOSPITAL PROSPECTIVE PAY-** 5 **MENT SYSTEM.**

6 (a) IN GENERAL.—Section 1886(d)(3)(A) of the So-
7 cial Security Act (42 U.S.C. 1395ww(d)(3)(A)) is
8 amended—

9 (1) in clause (iv)—

1 (A) by inserting “and ending on or before
2 September 30, 2003,” after “October 1,
3 1995,”; and

4 (B) by striking “and for hospitals” and in-
5 serting “and, subject to clause (v), for hos-
6 pitals”; and

7 (2) by redesignating clauses (v) and (vi) as
8 clauses (vii) and (viii), respectively, and inserting
9 after clause (iv) the following new clauses:

10 “(v) For discharges occurring in the fiscal year
11 beginning on October 1, 2002, the operating stand-
12 ardized amount for hospitals located in areas other
13 than a large urban area shall be equal to the oper-
14 ating standardized amount, as determined under
15 clause (iv), applicable to such discharges for hos-
16 pitals located in a large urban area.

17 “(vi) For discharges occurring in a fiscal year
18 beginning on or after October 1, 2003, the Secretary
19 shall compute an operating standardized amount for
20 hospitals located in all areas within the United
21 States equal to the operating standardized amount
22 computed under clause (v) or this clause for the pre-
23 vious fiscal year increased by the applicable percent-
24 age increase under subsection (b)(3)(B)(i) for the
25 fiscal year involved.”.

1 (b) CONFORMING AMENDMENTS.—

2 (1) COMPUTING DRG-SPECIFIC RATES.—Section
3 1886(d)(3)(D) of the Social Security Act (42 U.S.C.
4 1395ww(d)(3)(D)) is amended—

5 (A) in the heading, by striking “IN DIF-
6 FERENT AREAS”;

7 (B) in the matter preceding clause (i), by
8 striking “each of which is”;

9 (C) in clause (i)—

10 (i) in the matter preceding subclause
11 (I), by inserting “for fiscal years before fis-
12 cal year 2003,” before “for hospitals”; and

13 (ii) in subclause (II), by striking
14 “and” after the semicolon at the end;

15 (D) in clause (ii)—

16 (i) in the matter preceding subclause
17 (I), by inserting “for fiscal years before fis-
18 cal year 2003,” before “for hospitals”; and

19 (ii) in subclause (II), by striking the
20 period at the end and inserting “; and”;
21 and

22 (E) by adding at the end the following new
23 clause:

“(iii) for a fiscal year beginning after fiscal year 2002, for hospitals located in all areas, to the product of—

“(I) the applicable operating standardized amount (computed under subparagraph (A)), reduced under subparagraph (B), and adjusted or reduced under subparagraph (C) for the fiscal year; and

“(II) the weighting factor (determined under paragraph (4)(B)) for that diagnosis-related group.”.

(2) TECHNICAL CONFORMING SUNSET.—Section 1886(d)(3) of the Social Security Act (42 U.S.C. 1395ww(d)(3)) is amended—

(A) in the matter preceding subparagraph (A), by inserting “, for fiscal years before fiscal year 1997,” before “a regional adjusted DRG prospective payment rate”; and

(B) in subparagraph (D), in the matter preceding clause (i), by inserting “, for fiscal years before fiscal year 1997,” before “a regional DRG prospective payment rate for each region,”.

1 **SEC. 102. FULL MARKET BASKET INCREASE IN 2003 FOR**
 2 **MEDICARE HOSPITALS IN RURAL AND SMALL**
 3 **URBAN AREAS.**

4 Section 1886(b)(3)(B)(i)(XVIII) of the Social Secu-
 5 rity Act (42 U.S.C. 1395ww(b)(3)(B)(i)(XVIII)) is
 6 amended to read as follows:

7 “(XVIII) for fiscal year 2003, the market bas-
 8 ket percentage increase minus 0.55 percentage
 9 points for hospitals located in a large urban area
 10 and the market basket percentage increase for hos-
 11 pitals located in an area other than a large urban
 12 area, and”.

13 **SEC. 103. MEDICARE INPATIENT PAYMENT ADJUSTMENT**
 14 **FOR LOW-VOLUME HOSPITALS.**

15 (a) IN GENERAL.—Section 1886(d) of the Social Se-
 16 curity Act (42 U.S.C. 1395ww(d)) is amended by adding
 17 at the end the following new paragraph:

18 “(12) PAYMENT ADJUSTMENT FOR LOW-VOLUME
 19 HOSPITALS.—

20 “(A) PAYMENT ADJUSTMENT.—

21 “(i) IN GENERAL.—Notwithstanding any
 22 other provision of this section, for each cost re-
 23 porting period (beginning with the cost report-
 24 ing period that begins in fiscal year 2003), the
 25 Secretary shall provide for an additional pay-
 26 ment amount to each low-volume hospital (as

defined in clause (iii)) for discharges occurring during that cost reporting period to increase the amount paid to such hospital under this section for such discharges by the applicable percentage increase determined under clause (ii).

“(ii) APPLICABLE PERCENTAGE INCREASE.—The Secretary shall determine a percentage increase applicable under this paragraph that ensures that—

“(I) no percentage increase in payments under this paragraph exceeds 25 percent of the amount of payment that would otherwise be made to a low-volume hospital under this section for each discharge (but for this paragraph);

“(II) low-volume hospitals that have the lowest number of discharges during a cost reporting period receive the highest percentage increase in payments due to the application of this paragraph; and

“(III) the percentage increase in payments due to the application of this paragraph is reduced as the number of discharges per cost reporting period increases.

1 “(iii) LOW-VOLUME HOSPITAL DEFINED.—

2 For purposes of this paragraph, the term ‘low-
3 volume hospital’ means, for a cost reporting pe-
4 riod, a subsection (d) hospital (as defined in
5 paragraph (1)(B)) other than a critical access
6 hospital (as defined in section 1861(mm)(1))
7 that—

8 “(I) the Secretary determines had an
9 average of less than 800 discharges (deter-
10 mined with respect to all patients and not
11 just individuals receiving benefits under
12 this title) during the 3 most recent cost re-
13 porting periods for which data are avail-
14 able that precede the cost reporting period
15 to which this paragraph applies; and

16 “(II) is located at least 15 miles from
17 a similar hospital (or is deemed by the
18 Secretary to be so located by reason of
19 such factors as the Secretary determines
20 appropriate, including the time required
21 for an individual to travel to the nearest
22 alternative source of appropriate inpatient
23 care (taking into account the location of
24 such alternative source of inpatient care

1 and any weather or travel conditions that
 2 may affect such travel time)).

3 “(B) PROHIBITING CERTAIN REDUCTIONS.—
 4 Notwithstanding subsection (e), the Secretary shall
 5 not reduce the payment amounts under this section
 6 to offset the increase in payments resulting from the
 7 application of subparagraph (A).”.

8 (b) TECHNICAL AMENDMENT.—Section 1886(d) of
 9 the Social Security Act (42 U.S.C. 1395ww(d)) is amend-
 10 ed by moving the indentation of paragraph (11), and sub-
 11 paragraphs (A) through (D) of such paragraph, 2 ems to
 12 the left.

13 **SEC. 104. ADJUSTMENT TO MEDICARE WAGE INDEX.**

14 (a) IN GENERAL.—Section 1886(d)(3)(E) of the So-
 15 cial Security Act (42 U.S.C. 1395ww(d)(3)(E)) is
 16 amended—

17 (1) by striking “WAGE LEVELS.—The Sec-
 18 retary” and inserting “WAGE LEVELS.—

19 “(i) IN GENERAL.—Except as provided in
 20 clause (ii), the Secretary”; and

21 (2) by adding at the end the following new
 22 clause:

23 “(ii) ALTERNATIVE PROPORTION TO BE AD-
 24 JUSTED.—The Secretary shall substitute for the pro-
 25 portion described in the first sentence of clause (i),

1 if such substitution would result in a greater total
 2 payment to the hospital, the following:

3 “(I) For cost reporting periods beginning
 4 in 2003, 69 percent.

5 “(II) For cost reporting periods beginning
 6 in 2004, 66 percent.

7 “(III) For cost reporting periods beginning
 8 in 2005 or any subsequent fiscal year, 63 per-
 9 cent.”.

10 (b) MEDPAC STUDY AND REPORT.—

11 (1) STUDY.—The Medicare Payment Advisory
 12 Commission shall—

13 (A) conduct a study of the methodology
 14 used to determine the proportion of hospitals’
 15 costs attributable to wages and wage-related
 16 costs (as determined under section
 17 1886(d)(3)(E) of the Social Security Act (42
 18 U.S.C. 1395ww(d)(3)(E)), as amended by sub-
 19 section (a)), which is used to adjust payments
 20 under such section, in order to determine
 21 whether such methodology is appropriate; and

22 (B) if the Commission determines that
 23 such methodology is not appropriate, develop
 24 recommendations on the establishment of a
 25 methodology to be used by the Secretary of

1 Health and Human Services to determine the
 2 appropriate portion of hospitals' costs which are
 3 attributable to wages and wage-related for pur-
 4 poses of adjusting payments under such section.

5 (2) REPORT.—Not later than 1 year after the
 6 date of enactment of this Act, the Commission shall
 7 submit to Congress a report on the study conducted
 8 under paragraph (1) together with any recommenda-
 9 tion developed under paragraph (1)(B).

10 **SEC. 105. COVERAGE OF CRITICAL ACCESS HOSPITAL**
 11 **COSTS FOR CERTAIN EMERGENCY ROOM ON-**
 12 **CALL PROVIDERS.**

13 (a) IN GENERAL.—Section 1834(g)(5) of the Social
 14 Security Act (42 U.S.C. 1395m(g)(5)) is amended—

15 (1) in the heading—

16 (A) by inserting “CERTAIN” before “EMER-
 17 GENCY”; and

18 (B) by striking “PHYSICIANS” and insert-
 19 ing “PROVIDERS”;

20 (2) by striking “emergency room physicians”
 21 and inserting “emergency room physicians, physician
 22 assistants, nurse practitioners, and clinical nurse
 23 specialists”; and

24 (3) by striking “physicians’ services” and in-
 25 serting “services covered under this title”.

1 (b) EFFECTIVE DATE.—The amendments made by
 2 subsection (a) shall apply to costs incurred on or after the
 3 date of enactment of this Act.

4 **SEC. 106. ELIMINATION OF 35-MILE REQUIREMENT FOR**
 5 **COST REIMBURSEMENT OF AMBULANCE**
 6 **SERVICES FURNISHED BY CRITICAL ACCESS**
 7 **HOSPITALS UNDER THE MEDICARE PRO-**
 8 **GRAM.**

9 (a) ELIMINATION.—

10 (1) IN GENERAL.—Paragraph (8) of section
 11 1834(l) of the Social Security Act (42 U.S.C.
 12 1395m(l)), as added by section 205(a) of the Medi-
 13 care, Medicaid, and SCHIP Benefits Improvement
 14 and Protection Act of 2000 (114 Stat. 2763A–482),
 15 as enacted into law by section 1(a)(6) of Public Law
 16 106–554, is amended—

17 (A) in subparagraph (B), by striking the
 18 comma at the end and inserting a period; and

19 (B) by striking “but only if” and all that
 20 follows.

21 (2) EFFECTIVE DATE.—The amendments made
 22 by paragraph (1) shall apply to services furnished on
 23 or after the date of enactment of this Act.

24 (b) TECHNICAL AMENDMENT.—

1 (1) IN GENERAL.—Paragraph (8) of section
 2 1834(l) of the Social Security Act (42 U.S.C.
 3 1395m(l)), as added by section 221(a) of the Medi-
 4 care, Medicaid, and SCHIP Benefits Improvement
 5 and Protection Act of 2000 (114 Stat. 2763A–486),
 6 as enacted into law by section 1(a)(6) of Public Law
 7 106–554, is redesignated as paragraph (10).

8 (2) EFFECTIVE DATE.—The amendment made
 9 by paragraph (1) shall take effect as if included in
 10 the enactment of such section 221(a).

11 **SEC. 107. TREATMENT OF AMBULANCE SERVICES FUR-**
 12 **NISHED BY SMALL RURAL HOSPITALS.**

13 (a) IN GENERAL.—Section 1834(l) of the Social Se-
 14 curity Act (42 U.S.C. 1395m(l)), as amended by section
 15 106(b)(1), is amended by inserting after paragraph (8)
 16 the following new paragraph:

17 “(9) SERVICES FURNISHED BY SMALL RURAL
 18 HOSPITALS.—Notwithstanding any other provision
 19 of this subsection, the Secretary shall pay the rea-
 20 sonable costs incurred in furnishing ambulance serv-
 21 ices if such services are furnished—

22 “(A) by a hospital (other than a critical
 23 access hospital) that is located in a rural area
 24 and that has not more than 25 beds, or

1 “(B) by an entity that is owned and oper-
 2 ated by such a hospital.”.

3 (b) CONFORMING AMENDMENT.—Section
 4 1833(a)(1)(R) of the Social Security Act (42 U.S.C.
 5 1395l(a)(1)(R)) is amended—

6 (1) by striking “and” before “(ii)” and insert-
 7 ing a comma; and

8 (2) by inserting before the comma at the end
 9 the following: “, and (iii) with respect to ambulance
 10 services described in section 1834(l)(9), the amounts
 11 paid shall be 80 percent of the lesser of the actual
 12 charge for the services or the amount determined
 13 under such section”.

14 (c) EFFECTIVE DATE.—The amendments made by
 15 this section shall apply to services furnished on or after
 16 the date of enactment of this Act.

17 **SEC. 108. TREATMENT OF CERTAIN CLINICAL DIAGNOSTIC**
 18 **LABORATORY TESTS FURNISHED BY A CRIT-**
 19 **ICAL ACCESS HOSPITAL SERVICE.**

20 (a) IN GENERAL.—Section 1834(g) of the Social Se-
 21 curity Act (42 U.S.C. 1395m(g)) is amended—

22 (1) by redesignating paragraph (5), as amended
 23 by section 105(a), as paragraph (6); and

24 (2) by inserting after paragraph (4) the fol-
 25 lowing new paragraph:

1 “(5) TREATMENT OF CERTAIN CLINICAL DIAG-
 2 NOSTIC LABORATORY TESTS FURNISHED BY A CRIT-
 3 ICAL ACCESS HOSPITAL.—Notwithstanding any other
 4 provision of this title, any clinical diagnostic labora-
 5 tory test covered under this part that is furnished by
 6 a critical access hospital, regardless of whether such
 7 test was requested by such hospital or by a provider
 8 not affiliated with such hospital, shall be—

9 “(A) considered to be an outpatient critical
 10 access hospital service; and

11 “(B) reimbursed on the basis described in
 12 this subsection.”.

13 (b) EFFECTIVE DATE.—The amendments made by
 14 subsection (a) shall apply to payments for tests furnished
 15 on or after the date of enactment of this Act.

16 **SEC. 109. REQUIREMENT THAT STATES AWARDED CERTAIN**
 17 **MEDICARE RURAL GRANTS CONSULT WITH**
 18 **THE STATE HOSPITAL ASSOCIATION AND**
 19 **RURAL HOSPITALS ON THE MOST APPRO-**
 20 **PRIATE WAYS TO USE SUCH GRANTS.**

21 (a) REQUIRED CONSULTATION.—Section 1820(g) of
 22 the Social Security Act (42 U.S.C. 1395i–4(g)) is amend-
 23 ed by adding at the end the following new paragraph:

24 “(4) REQUIRED CONSULTATION FOR STATES
 25 AWARDED GRANTS.—A State awarded a grant under

1 paragraph (1) or (2) shall consult with the hospital
 2 association of such State and rural hospitals located
 3 in such State on the most appropriate ways to use
 4 the funds under such grant.”.

5 (b) EFFECTIVE DATE.—The amendment made by
 6 subsection (a) shall take effect on the date of enactment
 7 of this Act and shall apply to grants awarded on or after
 8 such date and to grants awarded prior to such date to
 9 the extent that funds under such grants have not been
 10 obligated as of such date.

11 **SEC. 110. GAO STUDY AND REPORT ON TREATING CRITICAL**
 12 **ACCESS HOSPITAL EMPLOYEES AS EMPLOY-**
 13 **EES OF THE UNITED STATES FOR PURPOSES**
 14 **OF THE FEDERAL TORT CLAIMS ACT.**

15 (a) STUDY.—The Comptroller General of the United
 16 States shall conduct a study on the feasibility and advis-
 17 ability of treating employees of a critical access hospital
 18 (as defined in section 1861(mm)(1) of the Social Security
 19 Act (42 U.S.C. 1395x(mm)(1))) as employees of the gov-
 20 ernment (as defined in section 2671 of chapter 171 of title
 21 28, United States Code) for purposes of such chapter
 22 (commonly known as the Federal Tort Claims Act), and
 23 on the related issue of the liability of the critical access
 24 hospital with respect to the acts of such employees.

1 (b) REPORT.—Not later than 1 year after the date
 2 of enactment of this Act, the Comptroller General shall
 3 submit to Congress a report on the study conducted under
 4 subsection (a) together with such recommendations as the
 5 Comptroller General determines to be appropriate.

6 **TITLE II—OTHER PROVISIONS**

7 **SEC. 201. ACCELERATING THE RATE OF REDUCTION OF** 8 **BENEFICIARY COPAYMENT LIABILITY UNDER** 9 **THE MEDICARE HOSPITAL OUTPATIENT DE-** 10 **PARTMENT PROSPECTIVE PAYMENT SYSTEM.**

11 Section 1833(t)(8)(C)(ii) of the Social Security Act
 12 (42 U.S.C. 1395l(t)(8)(C)(ii)) is amended—

13 (1) in subclause (V), by striking “and there-
 14 after”; and

15 (2) by adding at the end the following new sub-
 16 clauses:

17 “(VI) For procedures performed
 18 in 2007, 35 percent.

19 “(VII) For procedures performed
 20 in 2008, 30 percent.

21 “(VIII) For procedures per-
 22 formed in 2009, 25 percent.

23 “(IX) For procedures performed
 24 in 2010 and thereafter, 20 percent.”.

1 **SEC. 202. PHYSICIAN FEE SCHEDULE WAGE INDEX REVI-**
 2 **SION.**

3 Section 1848(e)(1) of the Social Security Act (42
 4 U.S.C. 1395w-4(e)(1)) is amended—

5 (1) in subparagraph (A), by striking “(B) and
 6 (C)” and inserting “(B), (C), and (D)” in the mat-
 7 ter preceding clause (i);

8 (2) by redesignating subparagraph (D) as sub-
 9 paragraph (E); and

10 (3) by inserting after subparagraph (C) the fol-
 11 lowing new subparagraph:

12 “(D) FLOOR FOR WORK GEOGRAPHIC INDI-
 13 CES.—

14 “(i) IN GENERAL.—Notwithstanding
 15 the work geographic index otherwise cal-
 16 culated under subparagraph (A)(iii) (after
 17 the application of the second sentence of
 18 subparagraph (C)), no such index applied
 19 for payment under this section shall be less
 20 than—

21 “(I) 0.976 for services furnished
 22 during 2003;

23 “(II) 0.987 for services furnished
 24 during 2004;

25 “(III) 0.995 for services fur-
 26 nished during 2005; and

1 “(IV) 1.000 for services fur-
 2 nished during 2006 and subsequent
 3 years.

4 “(ii) EXEMPTION FROM LIMITATION
 5 ON ANNUAL ADJUSTMENTS.—The increase
 6 in expenditures attributable to clause (i)
 7 shall not be taken into account in applying
 8 subsection (c)(2)(B)(ii)(II).”.

9 **SEC. 203. TEMPORARY INCREASE FOR HOME HEALTH**
 10 **SERVICES FURNISHED IN A FRONTIER OR**
 11 **RURAL AREA.**

12 (a) 3-YEAR INCREASE BEGINNING APRIL 1, 2003.—

13 (1) FRONTIER AREAS.—

14 (A) IN GENERAL.—In the case of home
 15 health services furnished in a frontier area on
 16 or after April 1, 2003, and before April 1,
 17 2006, the Secretary of Health and Human
 18 Services shall increase the payment amount
 19 otherwise made under section 1895 of the So-
 20 cial Security Act (42 U.S.C. 1395fff) for such
 21 services by 20 percent.

22 (B) FRONTIER AREA DEFINED.—For pur-
 23 poses of this section, the term “frontier area”
 24 means a county in which the population density
 25 is less than 7 persons per square mile.

1 (2) RURAL AREAS THAT ARE NOT FRONTIER
2 AREAS.—In the case of home health services fur-
3 nished in a rural area (as defined in section
4 1886(d)(2)(D) of the Social Security Act (42 U.S.C.
5 1395ww(d)(2)(D))) that is not a frontier area (as
6 defined in paragraph (1)(B)) on or after April 1,
7 2003, and before April 1, 2006, the Secretary of
8 Health and Human Services shall increase the pay-
9 ment amount otherwise made under section 1895 of
10 such Act (42 U.S.C. 1395fff) for such services by
11 10 percent.

12 (b) WAIVING BUDGET NEUTRALITY.—The Secretary
13 shall not reduce the standard prospective payment amount
14 (or amounts) under section 1895 of the Social Security
15 Act (42 U.S.C. 1395fff) applicable to home health services
16 furnished during a period to offset the increase in pay-
17 ments resulting from the application of paragraphs (1)
18 and (2) of subsection (a).

19 (c) CLARIFICATION OF APPLICATION OF IN-
20 CREASES.—The payment increase provided under para-
21 graphs (1) and (2) of subsection (a) for the period begin-
22 ning on April 1, 2003, and ending on March 31, 2006,
23 shall not apply to episodes and visits ending after such
24 period, and shall not be taken into account in calculating

1 the payment amounts applicable for episodes and visits oc-
 2 ccurring after such period.

3 (d) TECHNICAL AMENDMENT TO BIPA.—Section
 4 547(c)(2) of the Medicare, Medicaid, and SCHIP Benefits
 5 Improvement and Protection Act of 2000 (114 Stat.
 6 2763A–553), as enacted into law by section 1(a)(6) of
 7 Public Law 106–554, is amended by striking “September
 8 30, 2002” and inserting “March 31, 2003”.

9 **SEC. 204. IMPROVEMENTS TO THE MEDICARE INCENTIVE**
 10 **PAYMENT PROGRAM.**

11 (a) PROCEDURES FOR THE SECRETARY, AND NOT
 12 PHYSICIANS, TO DETERMINE WHEN BONUS PAYMENTS
 13 SHOULD BE MADE.—Section 1833(m) of the Social Secu-
 14 rity Act (42 U.S.C. 1395l(m)) is amended—

15 (1) by inserting “(1)” after “(m)”; and

16 (2) by adding at the end the following new
 17 paragraph:

18 “(2) The Secretary shall establish procedures under
 19 which the Secretary, and not the physician furnishing the
 20 service, is responsible for determining when a payment is
 21 required to be made under paragraph (1).”.

22 (b) EDUCATIONAL PROGRAM.—The Secretary of
 23 Health and Human Services shall establish and implement
 24 an ongoing educational program to provide education to
 25 physicians under the medicare program on the medicare

1 incentive payment program under section 1833(m) of the
2 Social Security Act (42 U.S.C. 1395l(m)).

3 (c) ONGOING STUDY AND ANNUAL REPORT ON THE
4 MEDICARE INCENTIVE PAYMENT PROGRAM.—

5 (1) ONGOING STUDY.—The Secretary of Health
6 and Human Services shall conduct an ongoing study
7 on the medicare incentive payment program under
8 section 1833(m) of the Social Security Act (42
9 U.S.C. 1395l(m)). Such study shall focus on wheth-
10 er such program increases the access of medicare
11 beneficiaries, who reside in an area that is des-
12 ignated as a health professional shortage area
13 (under section 332(a)(1)(A) of the Public Health
14 Service Act (42 U.S.C. 254e(a)(1)(A))), to physi-
15 cians' services under the medicare program.

16 (2) ANNUAL REPORTS.—Not later than 1 year
17 after the date of enactment of this Act, and annually
18 thereafter, the Secretary of Health and Human
19 Services shall submit to Congress a report on the
20 study conducted under paragraph (1) together with
21 recommendations for such legislation and adminis-
22 trative actions as the Secretary considers appro-
23 priate.

1 **SEC. 205. ENSURING APPROPRIATE COVERAGE OF AIR AM-**
 2 **BULANCE SERVICES UNDER AMBULANCE FEE**
 3 **SCHEDULE.**

4 (a) COVERAGE.—Section 1834(l) of the Social Secu-
 5 rity Act (42 U.S.C. 1395m(l)), as amended by section
 6 106(b)(1), is amended by adding at the end the following
 7 new paragraph:

8 “(11) ENSURING APPROPRIATE COVERAGE OF
 9 AIR AMBULANCE SERVICES.—

10 “(A) IN GENERAL.—The regulations de-
 11 scribed in section 1861(s)(7) shall ensure that
 12 air ambulance services (as defined in subpara-
 13 graph (C)) are reimbursed under this sub-
 14 section at the air ambulance rate if the air am-
 15 bulance service—

16 “(i) is medically necessary based on
 17 the health condition of the individual being
 18 transported at or immediately prior to the
 19 time of the transport; and

20 “(ii) complies with equipment and
 21 crew requirements established by the Sec-
 22 retary.

23 “(B) MEDICALLY NECESSARY.—An air
 24 ambulance service shall be considered to be
 25 medically necessary for purposes of subpara-
 26 graph (A)(i) if such service is requested—

1 “(i) by a physician or a hospital in ac-
2 cordance with the physician’s or hospital’s
3 responsibilities under section 1867 (com-
4 monly known as the Emergency Medical
5 Treatment and Active Labor Act);

6 “(ii) as a result of a protocol estab-
7 lished by a State or regional emergency
8 medical service (EMS) agency;

9 “(iii) by a physician, nurse practi-
10 tioner, physician assistant, registered
11 nurse, or emergency medical responder
12 who reasonably determines that the pa-
13 tient’s condition is such that the time
14 needed to transport the individual by land
15 or the lack of an appropriate ground am-
16 bulance, significantly increases the medical
17 risks for the individual; or

18 “(iv) by a Federal or State agency to
19 relocate patients following a natural dis-
20 aster, an act of war, or a terrorist attack.

21 “(C) AIR AMBULANCE SERVICES DE-
22 FINED.—For purposes of this paragraph, the
23 term ‘air ambulance service’ means fixed wing
24 and rotary wing air ambulance services.”.

1 (b) CONFORMING AMENDMENT.—Section 1861(s)(7)
 2 of the Social Security Act (42 U.S.C. 1395x(s)(7)) is
 3 amended by inserting “, subject to section 1834(l)(11),”
 4 after “but”.

5 (c) EFFECTIVE DATE.—The amendments made by
 6 this section shall apply to services furnished on or after
 7 the date of enactment of this Act.

8 **SEC. 206. PROVIDER ACCESS TO REVIEW OF LOCAL COV-**
 9 **ERAGE DETERMINATIONS AND RIGHT TO PE-**
 10 **TITION FOR LOCAL COVERAGE DETERMINA-**
 11 **TIONS.**

12 (a) PROVIDER ACCESS TO REVIEW OF LOCAL COV-
 13 ERAGE DETERMINATIONS.—Section 1869(f)(5) of the So-
 14 cial Security Act (42 U.S.C. 1395ff(f)(5)), as added by
 15 section 522 of the Medicare, Medicaid, and SCHIP Bene-
 16 fits Improvement and Protection Act of 2000 (114 Stat.
 17 2763A–543), as enacted into law by section 1(a)(6) of
 18 Public Law 106–554, is amended to read as follows:

19 “(5) AGGRIEVED PARTY DEFINED.—In this sec-
 20 tion, the term ‘aggrieved party’ means—

21 “(A) with respect to a national coverage
 22 determination, an individual entitled to benefits
 23 under part A, or enrolled under part B, or both,
 24 who is in need of the items or services that are
 25 the subject of the coverage determination; and

1 “(B) with respect to a local coverage
2 determination—

3 “(i) an individual who is entitled to
4 benefits under part A, or enrolled under
5 part B, or both, who is adversely affected
6 by such a determination; or

7 “(ii) a provider of services, physician,
8 practitioner, or supplier that is adversely
9 affected by such a determination.”.

10 (b) CLARIFICATION OF LOCAL COVERAGE DETER-
11 MINATION DEFINITION.—Section 1869(f)(2)(B) of the So-
12 cial Security Act (42 U.S.C. 1395ff(f)(2)(B)), as added
13 by section 522 of the Medicare, Medicaid, and SCHIP
14 Benefits Improvement and Protection Act of 2000 (114
15 Stat. 2763A–543), as enacted into law by section 1(a)(6)
16 of Public Law 106–554, is amended by inserting “, includ-
17 ing, where appropriate, the specific criteria relating to the
18 coverage of an item or service” before the period at the
19 end.

20 (c) PETITION FOR LOCAL COVERAGE DETERMINA-
21 TIONS BY PROVIDERS.—Section 1869 of the Social Secu-
22 rity Act (42 U.S.C. 1395ff), as added by section 522 of
23 the Medicare, Medicaid, and SCHIP Benefits Improve-
24 ment and Protection Act of 2000 (114 Stat. 2763A–543),
25 as enacted into law by section 1(a)(6) of Public Law 106–

1 554, is amended by adding at the end the following new
 2 subsection:

3 “(g) PETITION FOR LOCAL COVERAGE DETERMINA-
 4 TIONS BY PROVIDERS.—

5 “(1) ESTABLISHMENT OF PETITION PROC-
 6 ESS.—The Secretary shall establish a process under
 7 which any provider of services, physician, practi-
 8 tioner, or supplier may file a provider local coverage
 9 determination petition in accordance with the suc-
 10 ceeding provisions of this subsection.

11 “(2) PROVIDER LOCAL COVERAGE DETERMINA-
 12 TION PETITION DEFINED.—In this subsection, the
 13 term ‘provider local coverage determination petition’
 14 means a petition, filed with the Secretary, at such
 15 time and in such form and manner as the Secretary
 16 may specify, requesting that the Secretary, pursuant
 17 to paragraph (4)(A), require a fiscal intermediary or
 18 a carrier to make or revise a local coverage deter-
 19 mination under this section with respect to an item
 20 or service.

21 “(3) SECRETARIAL DETERMINATION.—Under
 22 the process established under paragraph (1), by not
 23 later than 30 days after the date on which a pro-
 24 vider local coverage determination petition is filed

1 under paragraph (1), the Secretary shall determine
2 whether such petition establishes that—

3 “(A) there have been at least 5 reversals of
4 redeterminations made by a fiscal intermediary
5 or carrier after a hearing before an administra-
6 tive law judge on claims submitted by the pro-
7 vider;

8 “(B) each reversal described in subpara-
9 graph (A) involves substantially similar mate-
10 rial facts;

11 “(C) each reversal described in subpara-
12 graph (A) involves the application of the same
13 policy, manual provision, or other interpretive
14 guidance to the material facts described in sub-
15 paragraph (B); and

16 “(D) at least 50 percent of the total num-
17 ber of denied claims involving the substantially
18 similar material facts described in subpara-
19 graph (B) and the application of the policy,
20 manual provision, or other interpretive guidance
21 described in subparagraph (C) to such facts
22 have been reversed by an administrative law
23 judge.

24 “(4) EFFECT OF SECRETARIAL DETERMINA-
25 TION.—

1 “(A) APPROVAL OF PETITION.—If the Sec-
 2 retary determines that subparagraphs (A)
 3 through (D) of paragraph (3) have been satis-
 4 fied, the Secretary shall require the fiscal inter-
 5 mediary or carrier identified in the provider
 6 local coverage determination petition to make or
 7 revise a local coverage determination with re-
 8 spect to the item or service that is the subject
 9 of the petition not later than the date that is
 10 180 days after the date on which the Secretary
 11 makes the determination.

12 “(B) REJECTION OF PETITION.—If the
 13 Secretary determines that subparagraphs (A)
 14 through (D) of paragraph (3) have not been
 15 satisfied, the Secretary shall reject the provider
 16 local coverage determination petition and shall
 17 notify the provider of services, physician, practi-
 18 tioner, or supplier that filed the petition of the
 19 reason for such rejection and no further pro-
 20 ceedings in relation to such petition shall be
 21 conducted.”.

22 (d) STUDY AND REPORT ON THE USE OF CONTRAC-
 23 TORS TO MONITOR MEDICARE APPEALS.—

24 (1) STUDY.—The Secretary of Health and
 25 Human Services (in this section referred to as the

1 “Secretary”) shall conduct a study on the feasibility
2 and advisability of requiring fiscal intermediaries
3 and carriers to monitor and track—

4 (A) the subject matter and status of claims
5 denied by the fiscal intermediary or carrier (as
6 applicable) that are appealed under section
7 1869 of the Social Security Act (42 U.S.C.
8 1395ff), as added by section 522 of the Medi-
9 care, Medicaid, and SCHIP Benefits Improve-
10 ment and Protection Act of 2000 (114 Stat.
11 2763A–543), as enacted into law by section
12 1(a)(6) of Public Law 106–554 and amended
13 by section 206; and

14 (B) any final determination made with re-
15 spect to such claims.

16 (2) REPORT.—Not later than the date that is
17 1 year after the date of enactment of this Act, the
18 Secretary shall submit to Congress a report on the
19 study conducted under paragraph (1) together with
20 such recommendations for legislation and adminis-
21 trative action as the Commission determines appro-
22 priate.

23 (e) AUTHORIZATION OF APPROPRIATIONS.—There
24 are authorized to be appropriated such sums as are nec-

1 essary to carry out the amendments made by subsections
 2 (a), (b), and (c).

3 (f) EFFECTIVE DATES.—

4 (1) PROVIDER ACCESS TO REVIEW OF LOCAL
 5 COVERAGE DETERMINATIONS.—The amendments
 6 made by subsections (a) and (b) shall apply to—

7 (A) any review of any local coverage deter-
 8 mination filed on or after October 1, 2002;

9 (B) any request to make such a determina-
 10 tion made on or after such date; and

11 (C) any local coverage determination made
 12 on or after such date.

13 (2) PROVIDER LOCAL COVERAGE DETERMINA-
 14 TION PETITIONS.—The amendment made by sub-
 15 section (c) shall apply with respect to provider local
 16 coverage determination petitions (as defined in sec-
 17 tion 1869(g)(2) of the Social Security Act (42
 18 U.S.C. 1395ff(g)(2)), as added by subsection (c))
 19 filed on or after the date of enactment of this Act.

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