

108TH CONGRESS  
1ST SESSION

# H. R. 1032

To amend title XVIII of the Social Security Act to provide for special treatment for certain drugs and biologicals under the prospective payment system for hospital outpatient department services under the Medicare Program.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 27, 2003

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

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## A BILL

To amend title XVIII of the Social Security Act to provide for special treatment for certain drugs and biologicals under the prospective payment system for hospital outpatient department 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.**

4 This Act may be cited as the “Beneficiary Access to  
5 Care Act of 2003”.

1 **SEC. 2. TREATMENT OF DRUGS AND BIOLOGICALS UNDER**  
2 **OUTPATIENT HOSPITAL PROSPECTIVE PAY-**  
3 **MENT SYSTEM.**

4 (a) SEPARATE APCs FOR MOST DRUGS AND  
5 BIOLOGICALS.—

6 (1) IN GENERAL.—Section 1833(t)(2) of the  
7 Social Security Act (42 U.S.C. 1395l(t)(2) is amend-  
8 ed—

9 (A) by striking “and” at the end of sub-  
10 paragraph (F);

11 (B) striking the period at the end of sub-  
12 paragraph (G) and inserting “; and”; and

13 (C) by adding at the end the following:

14 “(H) the Secretary shall treat as a sepa-  
15 rate group of covered OPD services—

16 “(i) any drug or biological that was  
17 treated as such a group as of December  
18 31, 2002; and

19 “(ii) any drug or biological that has  
20 ceased to be eligible for transitional, pass-  
21 through payments under paragraph (6) by  
22 reason of the limited period of payment  
23 specified in paragraph (6)(C)(i).”.

24 (2) EFFECTIVE DATE.—The amendments made  
25 by paragraph (1) shall apply to items and services  
26 furnished on or after January 1, 2004.

1 (b) PAYMENT RATES FOR NON-PASS-THROUGH  
2 DRUGS AND BIOLOGICALS.—

3 (1) PROGRAM PAYMENTS.—Section 1833(t) of  
4 such Act (42 U.S.C. 1395l(t)) is amended—

5 (A) in paragraph (3), by amending sub-  
6 paragraph (D) to read as follows:

7 “(D) CALCULATION OF MEDICARE OPD  
8 FEE SCHEDULE AMOUNTS.—

9 “(i) IN GENERAL.—The Secretary  
10 shall compute a Medicare OPD fee sched-  
11 ule amount for each covered OPD service  
12 (or group of such services) furnished in a  
13 year, in an amount that (except as pro-  
14 vided in clause (ii)) is equal to the product  
15 of—

16 “(I) the conversion factor com-  
17 puted under subparagraph (C) for the  
18 year, and

19 “(II) the relative payment weight  
20 (determined under paragraph (2)(C)  
21 or paragraph (9)(A)) for the service  
22 or group.

23 “(ii) SPECIAL RULES FOR 2004.—

24 “(I) IN GENERAL.—Notwith-  
25 standing clause (i), the Medicare OPD

1 fee schedule amount for 2004 for a  
2 drug or biological that is treated as a  
3 separate group of covered OPD serv-  
4 ices and is a single-source drug (as  
5 defined in section 1927(k)(7)(A)(iv))  
6 or an innovator multiple source drug  
7 (as defined in section  
8 1927(k)(7)(A)(ii)) may not be less  
9 than an amount equal to 83 percent  
10 of the average wholesale price for the  
11 drug or biological.

12 “(II) NO REVISION OF RELATIVE  
13 PAYMENT WEIGHTS.—The relative  
14 payment weights established under  
15 paragraph (9)(A) for 2004 for groups  
16 of covered OPD services other than  
17 those to which subclause (I) applies  
18 shall not be revised to take into ac-  
19 count the application of such sub-  
20 clause (I).

21 “(III) DEFINITION.—For pur-  
22 poses of subclause (I), the term ‘mul-  
23 tiple source drug or biological’ has the  
24 meaning given to the term ‘multiple

1 source drug' in section  
2 1927(k)(7)(A)(i).”;

3 (B) in paragraph (4)—

4 (i) in subparagraph (A), by striking  
5 “Secretary, as computed under paragraphs  
6 (2)(D) and (2)(E)” and inserting “Sec-  
7 retary (as computed under paragraphs  
8 (2)(D) and (2)(E)), except that the Medi-  
9 care OPD fee schedule amount determined  
10 under paragraph (3)(D) for a drug or bio-  
11 logical that is treated as a separate group  
12 of covered OPD services shall not be ad-  
13 justed for relative differences in the cost of  
14 labor”; and

15 (ii) in subparagraph (B), by striking  
16 “adjusted”; and

17 (C) in paragraph (9), by adding at the end  
18 the following:

19 “(D) USE OF EXTERNAL DATA.—In deter-  
20 mining the relative payment weight for any  
21 drug or biological that is treated as a separate  
22 group of covered OPD services for any year  
23 after 2003, the Secretary shall adjust the  
24 weight otherwise determined under this para-  
25 graph with respect to the drug or biological to

1 the extent that reliable and valid data collected  
2 and submitted by entities and organizations  
3 other than the Department of Health and  
4 Human Services (including data submitted in  
5 public comments on the proposed rule promul-  
6 gated with respect to the system established  
7 under this subsection for 2004) demonstrate  
8 that such payment weight is inadequate or inac-  
9 curate. In the case of any adjustments made  
10 pursuant to the preceding sentence for 2004,  
11 the Secretary shall not revise the relative pay-  
12 ment weights for other groups of covered OPD  
13 services for such year to take into account such  
14 adjustments, and the medicare OPD fee sched-  
15 ule amount determined under paragraph (3)(D)  
16 using a relative weight resulting from such an  
17 adjustment shall be subject to the minimum  
18 amount described in clause (ii)(I) of such para-  
19 graph.”.

20 (2) COPAYMENTS.—Section 1833(t)(8)(E) of  
21 such Act (42 U.S.C. 1395l(t)(8)(E)) is amended—

22 (A) in the heading, by striking “OUTLIER  
23 AND PASS-THROUGH” and inserting “CERTAIN”;  
24 and

1 (B) by striking “paragraphs (5) and (6)”  
2 and inserting “paragraphs (3)(D)(ii), (5), and  
3 (6)”.

4 (3) EXCEPTIONS TO BUDGET NEUTRALITY RE-  
5 QUIREMENT.—Section 1833(t)(9)(B) of such Act  
6 (42 U.S.C. 1395l(t)(9)(B)) is amended by adding at  
7 the end the following: “In determining the budget  
8 neutrality adjustment required by the preceding sen-  
9 tence, the Secretary shall not take into account—

10 “(i) any expenditures that would not  
11 have been made but for the application of  
12 clause (ii) of paragraph (3)(D); or

13 “(ii) any expenditures made by reason  
14 of an adjustment required by subpara-  
15 graph (D) for 2004.”.

16 (c) STUDY OF PHARMACY SERVICES USED TO PRO-  
17 VIDE CANCER DRUG THERAPIES IN HOSPITAL OUT-  
18 PATIENT SETTING.—

19 (1) IN GENERAL.—The Comptroller General of  
20 the United States shall conduct a study of payments  
21 under part B of title XVIII of the Social Security  
22 Act for pharmacy service costs and related costs that  
23 are incurred in acquiring chemotherapy and sup-  
24 portive care drugs and providing these therapies to

1 cancer patients in hospital outpatient departments.

2 The study shall—

3 (A) identify pharmacy costs, including the  
4 costs of storage, handling, processing, quality  
5 control, disposal, compliance with safety proto-  
6 cols and regulations, establishing dosage regi-  
7 mens that avoid drug interactions and contra-  
8 indications, and pharmacy overhead;

9 (B) include a review of the adequacy of the  
10 current payment methodology for pharmacy  
11 service costs and related costs (including the  
12 adequacy of the cost-to-charge ratios used in  
13 such methodology); and

14 (C) identify any changes to that method-  
15 ology that are necessary to ensure recognition  
16 of, and appropriate payment for, all of the serv-  
17 ices and functions inherent in the provision of  
18 cancer treatment in hospital outpatient settings.

19 (2) REPORT TO CONGRESS.—Not later than 12  
20 months after the date of enactment of this Act, the  
21 Comptroller General shall submit to Congress a re-  
22 port on the results of the study under paragraph  
23 (1), including any recommendations for legislation

1        necessary to implement the changes identified under  
2        paragraph (1)(C).

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