

108TH CONGRESS  
1ST SESSION

# H. R. 1377

To amend title XVIII of the Social Security Act to enhance the access of Medicare beneficiaries who live in medically underserved areas to critical primary and preventive health care benefits, to improve the Medicare+Choice program, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 20, 2003

Mr. WELLER (for himself, Mr. LEWIS of Georgia, Mr. HOUGHTON, Mr. McNULTY, Mr. FARR, Mr. STUPAK, and Mr. HINCHEY) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, 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 enhance the access of Medicare beneficiaries who live in medically underserved areas to critical primary and preventive health care benefits, to improve the Medicare+Choice program, 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,*

### 3   **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5   “Medicare Safety Net Access Act of 2003”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Coverage of additional Federally qualified health center services.
- Sec. 3. Providing safe harbor for certain collaborative efforts that benefit medically underserved populations.
- Sec. 4. Supplemental reimbursement for Federally qualified health centers participating in medicare managed care.

3 **SEC. 2. DELIVERY OF MEDICARE-COVERED PRIMARY AND**  
 4 **PREVENTIVE SERVICES AT FEDERALLY**  
 5 **QUALIFIED HEALTH CENTERS.**

6 (a) COVERAGE OF MEDICARE-COVERED AMBULA-  
 7 TORY SERVICES BY FQHCs.—Section 1861(aa)(3) of the  
 8 Social Security Act (42 U.S.C. 1395x(aa)(3)) is amended  
 9 to read as follows:

10 “(3) The term ‘Federally qualified health center serv-  
 11 ices’ means—

12 “(A) services of the type described in subpara-  
 13 graphs (A) through (C) of paragraph (1), and such  
 14 other services furnished by a Federally qualified  
 15 health center for which payment may otherwise be  
 16 made under this title if such services were furnished  
 17 by a health care provider or health care professional  
 18 other than a Federally qualified health center; and

19 “(B) preventive primary health services that a  
 20 center is required to provide under section 330 of  
 21 the Public Health Service Act,

1 when furnished to an individual as a patient of a Federally  
 2 qualified health center and such services when provided  
 3 by a health care provider or health care professional em-  
 4 ployed by or under contract with a Federally qualified  
 5 health center shall be treated as billable visits for purposes  
 6 of payment to the Federally qualified health center.”.

7 (b) ENSURING FQHC REIMBURSEMENT UNDER  
 8 HOSPITAL AND SKILLED NURSING FACILITY PROSPEC-  
 9 TIVE PAYMENT SYSTEMS.—

10 (1) PATIENTS OF HOSPITALS AND CRITICAL AC-  
 11 CESS HOSPITALS.—Section 1862(a)(14) of the Social  
 12 Security Act (42 U.S.C. 1395y(a)) is amended by  
 13 inserting “Federally qualified health center serv-  
 14 ices,” after “qualified psychologist services,”.

15 (2) PATIENTS OF SKILLED NURSING FACILI-  
 16 TIES.—Section 1888(e)(2)(A) of the Social Security  
 17 Act (42 U.S.C. 1395yy(e)(2)(A)) is amended—

18 (A) in clause (i)(II), by striking “clauses  
 19 (ii) and (iii)” and inserting “clauses (ii)  
 20 through (iv)”; and

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

23 “(iv) EXCLUSION OF FEDERALLY  
 24 QUALIFIED HEALTH CENTER SERVICES.—  
 25 Services described in this clause are Feder-

1                   ally qualified health center services (as de-  
2                   fined in section 1861(aa)(3)).”.

3           (c) TECHNICAL CORRECTIONS.—Clauses (i) and  
4 (ii)(II) of section 1861(aa)(4)(A) of the Social Security  
5 Act (42 U.S.C. 1395x(aa)(4)(A)) are each amended by  
6 striking “(other than subsection (h))”.

7           (d) EFFECTIVE DATES.—The amendments made—

8                   (1) by subsections (a) and (b) shall apply to  
9                   services furnished on or after January 1, 2004; and

10                   (2) by subsection (c) shall take effect on the  
11                   date of enactment of this Act.

12 **SEC. 3. PROVIDING SAFE HARBOR FOR CERTAIN COLLABO-**  
13 **RATIVE EFFORTS THAT BENEFIT MEDICALLY**  
14 **UNDERSERVED POPULATIONS.**

15           (a) IN GENERAL.—Section 1128B(b)(3) (42 U.S.C.  
16 1320a–7(b)(3)) is amended—

17                   (1) in subparagraph (E), by striking “and”  
18                   after the semicolon at the end;

19                   (2) in subparagraph (F), by striking the period  
20                   at the end and inserting “; and”; and

21                   (3) by adding at the end the following new sub-  
22                   paragraph:

23                           “(G) any remuneration between a public or  
24                           nonprofit private health center entity described  
25                           under clause (i) or (ii) of section 1905(l)(2)(B)

1           and any individual or entity providing goods,  
2           items, services, donations or loans, or a com-  
3           bination thereof, to such health center entity  
4           pursuant to a contract, lease, grant, loan, or  
5           other agreement, if such agreement contributes  
6           to the ability of the health center entity to  
7           maintain or increase the availability, or enhance  
8           the quality, of services provided to a medically  
9           underserved population served by the health  
10          center entity.”.

11          (b) RULEMAKING FOR EXCEPTION FOR HEALTH  
12          CENTER ENTITY ARRANGEMENTS.—

13               (1) ESTABLISHMENT.—

14                   (A) IN GENERAL.—The Secretary of  
15                   Health and Human Services (in this subsection  
16                   referred to as the “Secretary”) shall establish,  
17                   on an expedited basis, standards relating to the  
18                   exception described in section 1128B(b)(3)(G)  
19                   of the Social Security Act, as added by sub-  
20                   section (a), for health center entity arrange-  
21                   ments to the antikickback penalties.

22                   (B) FACTORS TO CONSIDER.—The Sec-  
23                   retary shall consider the following factors,  
24                   among others, in establishing standards relating

1 to the exception for health center entity ar-  
2 rangements under subparagraph (A):

3 (i) Whether the arrangement between  
4 the health center entity and the other  
5 party results in savings of Federal grant  
6 funds or increased revenues to the health  
7 center entity.

8 (ii) Whether the arrangement between  
9 the health center entity and the other  
10 party restricts or limits a patient's freedom  
11 of choice.

12 (iii) Whether the arrangement be-  
13 tween the health center entity and the  
14 other party protects a health care profes-  
15 sional's independent medical judgment re-  
16 garding medically appropriate treatment.

17 The Secretary may also include other standards  
18 and criteria that are consistent with the intent  
19 of Congress in enacting the exception estab-  
20 lished under this section.

21 (2) INTERIM FINAL EFFECT.—No later than  
22 180 days after the date of enactment of this Act, the  
23 Secretary shall publish a rule in the Federal Reg-  
24 ister consistent with the factors under paragraph  
25 (1)(B). Such rule shall be effective and final imme-

diately on an interim basis, subject to such change and revision, after public notice and opportunity (for a period of not more than 60 days) for public comment, as is consistent with this subsection.

**SEC. 4. REIMBURSEMENT FOR FEDERALLY QUALIFIED HEALTH CENTERS PARTICIPATING IN MEDICARE MANAGED CARE.**

(a) REIMBURSEMENT.—

(1) IN GENERAL.—Section 1833(a)(3) of the Social Security Act (42 U.S.C. 1395l(a)(3)) is amended to read as follows:

“(3) in the case of services described in section 1832(a)(2)(D)—

“(A) except as provided in subparagraph (B), the costs which are reasonable and related to the cost of furnishing such services or which are based on such other tests of reasonableness as the Secretary may prescribe in regulations, including those authorized under section 1861(v)(1)(A), less the amount a provider may charge as described in clause (ii) of section 1866(a)(2)(A), but in no case may the payment for such services (other than for items and services described in section 1861(s)(10)(A)) exceed 80 percent of such costs; or

“(B) with respect to the services described in clause (ii) of section 1832(a)(2)(D) that are furnished to an individual enrolled with a Medicare+Choice organization under part C pursuant to a written agreement described in section 1853(j), the amount by which—

“(i) the amount of payment that would have otherwise been provided under subparagraph (A) (calculated as if ‘100 percent’ were substituted for ‘80 percent’ in such subparagraph) for such services if the individual had not been so enrolled; exceeds

“(ii) the amount of the payments received under such written agreement for such services (not including any financial incentives provided for in such agreement such as risk pool payments, bonuses, or withholds),

less the amount the Federally qualified health center may charge as described in section 1857(e)(3)(C);”.

(b) CONTINUATION OF MEDICARE+CHOICE MONTHLY PAYMENTS.—



1           (1) IN GENERAL.—Section 1853 of the Social  
2       Security Act (42 U.S.C. 1395w–23) is amended by  
3       adding at the end the following new subsection:

4       “(j) PAYMENT RULE FOR FEDERALLY QUALIFIED  
5       HEALTH CENTER SERVICES.—If an individual who is en-  
6       rolled with a Medicare+Choice organization under this  
7       part receives a service from a Federally qualified health  
8       center that has a written agreement with such organiza-  
9       tion for providing such a service (including any agreement  
10      required under section 1857(e)(3))—

11           “(1) the Secretary shall pay the amount deter-  
12      mined under section 1833(a)(3)(B) directly to the  
13      Federally qualified health center not less frequently  
14      than quarterly; and

15           “(2) the Secretary shall not reduce the amount  
16      of the monthly payments to the Medicare+Choice  
17      organization made under section 1853(a) as a result  
18      of the application of paragraph (1).”.

19           (2) CONFORMING AMENDMENTS.—

20           (A) Paragraphs (1) and (2) of section  
21      1851(i) of the Social Security Act (42 U.S.C.  
22      1395w–21(i)(1)) are each amended by inserting  
23      “1853(j),” after “1853(h),”.

24           (B) Section 1853(c)(5) is amended by  
25      striking “subsections (a)(3)(C)(iii) and (i)” and

1           inserting “subsections (a)(3)(C)(iii), (i), and  
2           (j)(1)”.

3           (c) ADDITIONAL MEDICARE+CHOICE CONTRACT RE-  
4   QUIREMENTS.—Section 1857(e) of the Social Security Act  
5   (42 U.S.C. 1395w–27(e)) is amended by adding at the end  
6   the following new paragraph:

7           “(3) AGREEMENTS WITH FEDERALLY QUALI-  
8       FIED HEALTH CENTERS.—

9           “(A) PAYMENT LEVELS AND AMOUNTS.—A  
10       contract under this part shall require the  
11       Medicare+Choice organization to provide, in  
12       any contract between the organization and a  
13       Federally qualified health center, for a level and  
14       amount of payment to the Federally qualified  
15       health center for services provided by such  
16       health center that is not less than the level and  
17       amount of payment that the organization would  
18       make for such services if the services had been  
19       furnished by a provider of services that was not  
20       a Federally qualified health center.

21           “(B) COST-SHARING.—Under the written  
22       agreement described in subparagraph (A), a  
23       Federally qualified health center must accept  
24       the Medicare+Choice contract price plus the  
25       Federal payment provided for in section

1           1833(a)(3)(B) as payment in full for services  
2           covered by the contract, except that such a  
3           health center may collect any amount of cost-  
4           sharing permitted under the contract under this  
5           part, so long as the amounts of any deductible,  
6           coinsurance, or copayment comply with the re-  
7           quirements under section 1854(e) and do not  
8           result in a total payment to the center in excess  
9           of the amount determined under section  
10          1833(a)(3)(A) (calculated as if ‘100 percent’  
11          were substituted for ‘80 percent’ in such sec-  
12          tion).”.

13          (d) SAFE HARBOR FROM ANTIKICKBACK PROHIBI-  
14          TION.—Section 1128B(b)(3) of the Social Security Act  
15          (42 U.S.C. 1320a–7b(b)(3)), as amended by section 3(a),  
16          is amended—

17               (1) in subparagraph (F), by striking “and”  
18               after the semicolon at the end;

19               (2) in subparagraph (G), by striking the period  
20               at the end and inserting “; and”; and

21               (3) by adding at the end the following new sub-  
22               paragraph:

23                       “(H) any remuneration between a Feder-  
24                       ally qualified health center (or an entity con-  
25                       trolled by such a health center) and a

1 Medicare+Choice organization pursuant to the  
2 written agreement described in section  
3 1853(j).”.

4 (e) EFFECTIVE DATE.—The amendments made by  
5 this section shall apply to services provided on or after  
6 January 1, 2004, and contract years beginning on or after  
7 such date.

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