

108TH CONGRESS  
1ST SESSION

# S. 1206

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 SENATE OF THE UNITED STATES

JUNE 9, 2003

Mr. BOND 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 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 **THE MEDICARE OUTPATIENT HOSPITAL PRO-**  
3 **SPECTIVE PAYMENT 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  
8 amended—

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

11 (B) by striking the period at the end of  
12 subparagraph (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 the Social Security Act (42 U.S.C. 1395l(t)) is  
5 amended—

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

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

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

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

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

24 “(ii) SPECIAL RULES FOR 2004.—

1           “(I) IN GENERAL.—Notwith-  
2           standing clause (i), the medicare OPD  
3           fee schedule amount for 2004 for a  
4           drug or biological that is treated as a  
5           separate group of covered OPD serv-  
6           ices and is—

7                   “(aa) a single-source drug  
8                   (as defined in section  
9                   1927(k)(7)(A)(iv));

10                   “(bb) an innovator multiple  
11                   source drug (as defined in section  
12                   1927(k)(7)(A)(ii)); or

13                   “(cc) a biological product  
14                   approved for marketing under  
15                   section 351 of the Public Health  
16                   Service Act (including any such  
17                   product that is marketed by any  
18                   cross-licensed producers or dis-  
19                   tributors),

20           may not be less than 87.37 percent of  
21           the payment rate for the drug or bio-  
22           logical under paragraph (6) as of De-  
23           cember 31, 2002 (determined without  
24           regard to any reduction under sub-  
25           paragraph (E)(iii) of such paragraph).

1 “(II) NO REVISION OF RELATIVE  
 2 PAYMENT WEIGHTS.—The relative  
 3 payment weights established under  
 4 paragraph (9)(A) for 2004 for groups  
 5 of covered OPD services other than  
 6 those to which subclause (I) applies  
 7 shall not be revised to take into ac-  
 8 count the application of such sub-  
 9 clause (I).”;

10 (B) in paragraph (4)—

11 (i) in subparagraph (A), by striking  
 12 “Secretary, as computed under paragraphs  
 13 (2)(D) and (2)(E)” and inserting “Sec-  
 14 retary (as computed under paragraphs  
 15 (2)(D) and (2)(E)), except that the medi-  
 16 care OPD fee schedule amount determined  
 17 under paragraph (3)(D) for a drug or bio-  
 18 logical that is treated as a separate group  
 19 of covered OPD services shall not be ad-  
 20 justed for relative differences in the cost of  
 21 labor”; and

22 (ii) in subparagraph (B), by striking  
 23 “adjusted”; and

24 (C) in paragraph (9), by adding at the end  
 25 the following:

1           “(D) USE OF EXTERNAL DATA.—In deter-  
2           mining the relative payment weight for any  
3           drug or biological that is treated as a separate  
4           group of covered OPD services for any year  
5           after 2003, the Secretary shall adjust the  
6           weight otherwise determined under this para-  
7           graph with respect to the drug or biological to  
8           the extent that reliable and valid data collected  
9           and submitted by entities and organizations  
10          other than the Department of Health and  
11          Human Services (including data submitted in  
12          public comments on the proposed rule promul-  
13          gated with respect to the system established  
14          under this subsection for 2004) demonstrate  
15          that such payment weight is inadequate or inac-  
16          curate. In the case of any adjustments made  
17          pursuant to the preceding sentence for 2004,  
18          the Secretary shall not revise the relative pay-  
19          ment weights for other groups of covered OPD  
20          services for such year to take into account such  
21          adjustments, and the medicare OPD fee sched-  
22          ule amount determined under paragraph (3)(D)  
23          using a relative weight resulting from such an  
24          adjustment shall be subject to the minimum

1 amount described in clause (ii)(I) of such para-  
 2 graph.”.

3 (2) COPAYMENTS.—Section 1833(t)(8)(E) of  
 4 the Social Security Act (42 U.S.C. 1395l(t)(8)(E))  
 5 is amended—

6 (A) in the heading, by striking “OUTLIER  
 7 AND PASS-THROUGH” and inserting “CERTAIN”;  
 8 and

9 (B) by striking “paragraphs (5) and (6)”  
 10 and inserting “paragraphs (3)(D)(ii), (5), and  
 11 (6)”.

12 (3) EXCEPTIONS TO BUDGET NEUTRALITY RE-  
 13 QUIREMENT.—Section 1833(t)(9)(B) of the Social  
 14 Security Act (42 U.S.C. 1395l(t)(9)(B)) is amended  
 15 by adding at the end the following: “In determining  
 16 the budget neutrality adjustment required by the  
 17 preceding sentence, the Secretary shall not take into  
 18 account—

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

22 “(ii) any expenditures made by reason  
 23 of an adjustment required by subpara-  
 24 graph (D) for 2004.”.

1       (c) STUDY OF PHARMACY SERVICES USED TO PRO-  
 2 VIDE CANCER DRUG THERAPIES IN HOSPITAL OUT-  
 3 PATIENT SETTING.—

4           (1) IN GENERAL.—The Comptroller General  
 5 shall conduct a study of payments under part B of  
 6 title XVIII of the Social Security Act for pharmacy  
 7 service costs and related costs that are incurred in  
 8 acquiring chemotherapy and supportive care drugs  
 9 and providing these therapies to cancer patients in  
 10 hospital outpatient departments. The study shall—

11           (A) identify pharmacy costs, including the  
 12 costs of storage, handling, processing, quality  
 13 control, disposal, compliance with safety proto-  
 14 cols and regulations, establishing dosage regi-  
 15 mens that avoid drug interactions and contra-  
 16 indications, and pharmacy overhead;

17           (B) include a review of the adequacy of the  
 18 current payment methodology for pharmacy  
 19 service costs and related costs (including the  
 20 adequacy of the methodology used to estimate  
 21 costs); and

22           (C) identify any changes to that method-  
 23 ology that are necessary to ensure recognition  
 24 of, and appropriate payment for, all of the serv-



1           ices and functions inherent in the provision of  
2           cancer treatment in hospital outpatient settings.

3           (2) REPORT TO CONGRESS.—Not later than 12  
4           months after the date of enactment of this Act, the  
5           Comptroller General shall submit to Congress a re-  
6           port on the results of the study under paragraph  
7           (1), including any recommendations for legislation  
8           that is necessary to implement the changes identified  
9           under paragraph (1)(C).

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