

108TH CONGRESS  
1ST SESSION

# S. 942

To amend title XVIII of the Social Security Act to provide for improvements in access to services in rural hospitals and critical access hospitals.

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## IN THE SENATE OF THE UNITED STATES

APRIL 29, 2003

Mr. BROWNBACK (for himself and Mr. NELSON of Nebraska) 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 improvements in access to services in rural hospitals and critical access hospitals.

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; AMENDMENTS TO SOCIAL SECU-**  
4 **RITY ACT.**

5 (a) SHORT TITLE.—This Act may be cited as the  
6 “Rural Community Hospital Assistance Act of 2003”.

7 (b) AMENDMENTS TO SOCIAL SECURITY ACT.—Ex-  
8 cept as otherwise specifically provided, whenever in this  
9 Act an amendment is expressed in terms of an amendment

1 to, or repeal of, a section or other provision, the reference  
 2 shall be considered a reference to that section or other  
 3 provision of the Social Security Act.

4 **SEC. 2. ESTABLISHMENT OF RURAL COMMUNITY HOSPITAL**  
 5 **(RCH) PROGRAM.**

6 (a) IN GENERAL.—Section 1861 (42 U.S.C. 1395x)  
 7 is amended by adding at the end of the following new sub-  
 8 section:

9 “Rural Community Hospital; Rural Community Hospital  
 10 Services

11 “(ww)(1) The term ‘rural community hospital’ means  
 12 a hospital (as defined in subsection (e)) that—

13 “(A) is located in a rural area (as defined in  
 14 section 1886(d)(2)(D)) or treated as being so lo-  
 15 cated pursuant to section 1886(d)(8)(E);

16 “(B) subject to paragraph (2), has less than 51  
 17 acute care inpatient beds, as reported in its most re-  
 18 cent cost report;

19 “(C) makes available 24-hour emergency care  
 20 services;

21 “(D) subject to paragraph (3), has a provider  
 22 agreement in effect with the Secretary and is open  
 23 to the public as of January 1, 2003; and

24 “(E) applies to the Secretary for such designa-  
 25 tion.

1       “(2) For purposes of paragraph (1)(B), beds in a  
2 psychiatric or rehabilitation unit of the hospital which is  
3 a distinct part of the hospital shall not be counted.

4       “(3) Subparagraph (1)(D) shall not be construed to  
5 prohibit any of the following from qualifying as a rural  
6 community hospital:

7               “(A) A replacement facility (as defined by the  
8 Secretary in regulations in effect on January 1,  
9 2003) with the same service area (as defined by the  
10 Secretary in regulations in effect on such date).

11              “(B) A facility obtaining a new provider num-  
12 ber pursuant to a change of ownership.

13              “(C) A facility which has a binding written  
14 agreement with an outside, unrelated party for the  
15 construction, reconstruction, lease, rental, or financ-  
16 ing of a building as of January 1, 2003.

17       “(4) Nothing in this subsection shall be construed as  
18 prohibiting a critical access hospital from qualifying as a  
19 rural community hospital if the critical access hospital  
20 meets the conditions otherwise applicable to hospitals  
21 under subsection (e) and section 1866.”.

22       (b) PAYMENT.—

23              (1) INPATIENT SERVICES.—Section 1814 (42  
24 U.S.C. 1395f) is amended by adding at the end the  
25 following new subsection:

1     “Payment for Inpatient Services Furnished in Rural  
2                                   Community Hospitals

3           “(m) The amount of payment under this part for in-  
4 patient hospital services furnished in a rural community  
5 hospital, other than such services furnished in a psy-  
6 chiatric or rehabilitation unit of the hospital which is a  
7 distinct part, is, at the election of the hospital in the appli-  
8 cation referred to in section 1861(ww)(1)(E)—

9           “(1) the reasonable costs of providing such  
10 services, without regard to the amount of the cus-  
11 tomary or other charge, or

12           “(2) the amount of payment provided for under  
13 the prospective payment system for inpatient hos-  
14 pital services under section 1886(d).”.

15           (2) OUTPATIENT SERVICES.—Section 1834 (42  
16 U.S.C. 1395m) is amended by adding at the end the  
17 following new subsection:

18           “(n) PAYMENT FOR OUTPATIENT SERVICES FUR-  
19 NISHED IN RURAL COMMUNITY HOSPITALS.—The  
20 amount of payment under this part for outpatient services  
21 furnished in a rural community hospital is, at the election  
22 of the hospital in the application referred to in section  
23 1861(ww)(1)(E)—

24           “(1) the reasonable costs of providing such  
25 services, without regard to the amount of the cus-

1        tomary or other charge and any limitation under  
 2        section 1861(v)(1)(U), or

3            “(2) the amount of payment provided for under  
 4        the prospective payment system for covered OPD  
 5        services under section 1833(t).”.

6            (3) HOME HEALTH SERVICES.—

7            (A) EXCLUSION FROM HOME HEALTH  
 8        PPS.—

9            (i) IN GENERAL.—Section 1895 (42  
 10        U.S.C. 1395fff) is amended by adding at  
 11        the end the following:

12        “(f) EXCLUSION.—

13            “(1) IN GENERAL.—In determining payments  
 14        under this title for home health services furnished on  
 15        or after October 1, 2003, by a qualified RCH-based  
 16        home health agency (as defined in paragraph (2))—

17            “(A) the agency may make a one-time elec-  
 18        tion to waive application of the prospective pay-  
 19        ment system established under this section to  
 20        such services furnished by the agency shall not  
 21        apply; and

22            “(B) in the case of such an election, pay-  
 23        ment shall be made on the basis of the reason-  
 24        able costs incurred in furnishing such services  
 25        as determined under section 1861(v), but with-

out regard to the amount of the customary or other charges with respect to such services or the limitations established under paragraph (1)(L) of such section.

“(2) QUALIFIED RCH-BASED HOME HEALTH AGENCY DEFINED.—For purposes of paragraph (1), a ‘qualified RCH-based home health agency’ is a home health agency that is a provider-based entity (as defined in section 404 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (Public Law 106–554; Appendix F, 114 Stat. 2763A–506)) of a rural community hospital that is located—

“(A) in a county in which no main or branch office of another home health agency is located; or

“(B) at least 35 miles from any main or branch office of another home health agency.”.

(ii) CONFORMING CHANGES.—

(I) PAYMENTS UNDER PART A.—

Section 1814(b) (42 U.S.C. 1395f(b)) is amended by inserting “or with respect to services to which section 1895(f) applies” after “equipment” in the matter preceding paragraph (1).

1 (II) PAYMENTS UNDER PART  
 2 B.—Section 1833(a)(2)(A) (42 U.S.C.  
 3 1395l(a)(2)(A)) is amended by strik-  
 4 ing “the prospective payment system  
 5 under”.

6 (III) PER VISIT LIMITS.—Section  
 7 1861(v)(1)(L)(i) (42 U.S.C.  
 8 1395x(v)(1)(L)(i)) is amended by in-  
 9 serting “(other than by a qualified  
 10 RCH-based home health agency (as  
 11 defined in section 1895(f)(2))” after  
 12 “with respect to services furnished by  
 13 home health agencies”.

14 (iii) CONSOLIDATED BILLING.—

15 (I) RECIPIENT OF PAYMENT.—  
 16 Section 1842(b)(6)(F) (42 U.S.C.  
 17 1395u(b)(6)(F)) is amended by in-  
 18 serting “and excluding home health  
 19 services to which section 1895(f) ap-  
 20 plies” after “provided for in such sec-  
 21 tion”.

22 (II) EXCEPTION TO EXCLUSION  
 23 FROM COVERAGE.—Section 1862(a)  
 24 (42 U.S.C. 1395y(a)) is amended by  
 25 inserting before the period at the end

1 of the second sentence the following:  
 2 “and paragraph (21) shall not apply  
 3 to home health services to which sec-  
 4 tion 1895(f) applies”.

5 (4) RETURN ON EQUITY.—Section  
 6 1861(v)(1)(P) (42 U.S.C. 1395x(v)(1)(P)) is amend-  
 7 ed—

8 (A) by inserting “(i)” after “(P)”; and

9 (B) by adding at the end the following:

10 “(ii)(I) Notwithstanding clause (i), subparagraph  
 11 (S)(i), and section 1886(g)(2), such regulations shall pro-  
 12 vide, in determining the reasonable costs of the services  
 13 described in subclause (II) furnished by a rural commu-  
 14 nity hospital on or after October 1, 2003, for payment  
 15 of a return on equity capital at a rate of return equal to  
 16 150 percent of the average specified in clause (i).

17 “(II) The services referred to in subclause (I) are in-  
 18 patient hospital services, outpatient hospital services,  
 19 home health services furnished by an RCH-based home  
 20 health agency (as defined in section 1895(f)(2)), and am-  
 21 bulance services.

22 “(III) Payment under this clause shall be made with-  
 23 out regard to whether a provider is a proprietary pro-  
 24 vider.”.



1           (5) EXEMPTION FROM 30 PERCENT REDUCTION  
 2       IN REIMBURSEMENT FOR BAD DEBT.—Section  
 3       1861(v)(1)(T) (42 U.S.C. 1395x(v)(1)(T)) is amend-  
 4       ed by inserting “(other than a rural community hos-  
 5       pital)” after “In determining such reasonable costs  
 6       for hospitals”.

7       (c) BENEFICIARY COST-SHARING FOR OUTPATIENT  
 8       SERVICES.—Section 1834(n) (as added by subsection  
 9       (b)(2)) is amended—

10           (1) by inserting “(1)” after “(n)”; and

11           (2) by adding at the end the following:

12       “(2) The amounts of beneficiary cost-sharing for out-  
 13       patient services furnished in a rural community hospital  
 14       under this part shall be as follows:

15           “(A) For items and services that would have  
 16       been paid under section 1833(t) if provided by a  
 17       hospital, the amount of cost-sharing determined  
 18       under paragraph (8) of such section.

19           “(B) For items and services that would have  
 20       been paid under section 1833(h) if furnished by a  
 21       provider or supplier, no cost-sharing shall apply.

22           “(C) For all other items and services, the  
 23       amount of cost-sharing that would apply to the item  
 24       or service under the methodology that would be used  
 25       to determine payment for such item or service if pro-

1 vided by a physician, provider, or supplier, as the  
 2 case may be.”.

3 (d) CONFORMING AMENDMENTS.—

4 (1) PART A PAYMENT.—Section 1814(b) (42  
 5 U.S.C. 1395f(b)) is amended by inserting “other  
 6 than inpatient hospital services furnished by a rural  
 7 community hospital,” after “critical access hospital  
 8 services,”.

9 (2) PART B PAYMENT.—

10 (A) IN GENERAL.—Section 1833(a) (42  
 11 U.S.C. 1395l(a)) is amended—

12 (i) in paragraph (2), in the matter be-  
 13 fore subparagraph (A), by striking “and  
 14 (I)” and inserting “(I), and (K)”;

15 (ii) by striking “and” at the end of  
 16 paragraph (8);

17 (iii) by striking the period at the end  
 18 of paragraph (9) and inserting “; and”;  
 19 and

20 (iv) by adding at the end the fol-  
 21 lowing:

22 “(10) in the case of outpatient services fur-  
 23 nished by a rural community hospital, the amounts  
 24 described in section 1834(n).”.

(B) AMBULANCE SERVICES.—Section 1834(l)(8) (42 U.S.C. 1395m(l)(8)), as added by section 205(a) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (Appendix F, 114 Stat. 2763A–463), as enacted into law by section 1(a)(6) of Public Law 106–554, is amended—

(i) in the heading, by striking “CRITICAL ACCESS HOSPITALS” and inserting “CERTAIN FACILITIES”;

(ii) by striking “or” at the end of subparagraph (A);

(iii) by redesignating subparagraph (B) as subparagraph (C);

(iv) by inserting after subparagraph (A) the following new subparagraph:

“(B) by a rural community hospital (as defined in section 1861(ww)(1)), or”; and

(v) in subparagraph (C), as so redesignated, by inserting “or a rural community hospital” after “critical access hospital”.

(3) TECHNICAL AMENDMENTS.—

(A) CONSULTATION WITH STATE AGENCIES.—Section 1863 (42 U.S.C. 1395z) is

1 amended by striking “and (dd)(2)” and insert-  
 2 ing “(dd)(2), (mm)(1), and (ww)(1)”.

3 (B) PROVIDER AGREEMENTS.—Section  
 4 1866(a)(2)(A) (42 U.S.C. 1395cc(a)(2)(A)) is  
 5 amended by inserting “section 1834(n)(2),”  
 6 after “section 1833(b),”.

7 (C) BIPA AMENDMENT.—Paragraph (8)  
 8 of section 1834(l) (42 U.S.C. 1395m(l)), as  
 9 added by section 221(a) of the Medicare, Med-  
 10 icaid, and SCHIP Benefits Improvement and  
 11 Protection Act of 2000 (Appendix F, 114 Stat.  
 12 2763A–486), as enacted into law by section  
 13 1(a)(6) of Public Law 106–554, is redesignated  
 14 as paragraph (9).

15 (e) EFFECTIVE DATE.—The amendments made by  
 16 this section shall apply to items and services furnished on  
 17 or after October 1, 2003.

18 **SEC. 3. REMOVING BARRIERS TO ESTABLISHMENT OF DIS-**  
 19 **TINCT PART UNITS BY RCH AND CAH FACILI-**  
 20 **TIES.**

21 (a) IN GENERAL.—Section 1886(d)(1)(B) (42 U.S.C.  
 22 1395ww(d)(1)(B)) is amended by striking “a distinct part  
 23 of the hospital (as defined by the Secretary)” in the mat-  
 24 ter following clause (v) and inserting “a distinct part (as

1 defined by the Secretary) of the hospital or of a critical  
2 access hospital or a rural community hospital”.

3 (b) EFFECTIVE DATE.—The amendment made by  
4 subsection (a) shall apply to determinations with respect  
5 to distinct part unit status that are made on or after Octo-  
6 ber 1, 2003.

7 **SEC. 4. IMPROVEMENTS TO MEDICARE CRITICAL ACCESS**  
8 **HOSPITAL (CAH) PROGRAM.**

9 (a) EXCLUSION OF CERTAIN BEDS FROM BED  
10 COUNT.—Section 1820(c)(2) (42 U.S.C. 1395i–4(c)(2)) is  
11 amended by adding at the end the following:

12 “(E) EXCLUSION OF CERTAIN BEDS FROM  
13 BED COUNT.—In determining the number of  
14 beds of a facility for purposes of applying the  
15 bed limitations referred to in subparagraph  
16 (B)(iii) and subsection (f), the Secretary shall  
17 not take into account any bed of a distinct part  
18 psychiatric or rehabilitation unit (described in  
19 the matter following clause (v) of section  
20 1886(d)(1)(B)) of the facility, except that the  
21 total number of beds that are not taken into ac-  
22 count pursuant to this subparagraph with re-  
23 spect to a facility shall not exceed 10.”.

24 (b) PAYMENTS TO HOME HEALTH AGENCIES OWNED  
25 AND OPERATED BY A CAH.—Section 1895(f) (42 U.S.C.

1 1395fff(f)), as added by section 2(b)(3), is further amend-  
 2 ed by inserting “or by a home health agency that is owned  
 3 and operated by a critical access hospital (as defined in  
 4 section 1861(mm)(1))” after “as defined in paragraph  
 5 (2))”.

6 (c) PAYMENTS TO CAH-OWNED SNFs.—

7 (1) IN GENERAL.—Section 1888(e) (42 U.S.C.  
 8 1395yy(e)) is amended—

9 (A) in paragraph (1), by striking “and  
 10 (12)” and inserting “(12), and (13)”; and

11 (B) by adding at the end thereof the fol-  
 12 lowing:

13 “(13) EXEMPTION OF CAH FACILITIES FROM  
 14 PPS.—In determining payments under this part for  
 15 covered skilled nursing facility services furnished on  
 16 or after October 1, 2003, by a skilled nursing facil-  
 17 ity that is a distinct part unit of a critical access  
 18 hospital (as defined in section 1861(mm)(1)) or is  
 19 owned and operated by a critical access hospital—

20 “(A) the prospective payment system es-  
 21 tablished under this subsection shall not apply;  
 22 and

23 “(B) payment shall be made on the basis  
 24 of the reasonable costs incurred in furnishing  
 25 such services as determined under section

1861(v), but without regard to the amount of the customary or other charges with respect to such services or the limitations established under subsection (a).”.

(2) CONFORMING CHANGES.—

(A) IN GENERAL.—Section 1814(b) (42 U.S.C. 1395f(b)), as amended by subsection (b)(2)(A), is further amended in the matter preceding paragraph (1)—

(i) by inserting “other than a skilled nursing facility providing covered skilled nursing facility services (as defined in section 1888(e)(2)) or posthospital extended care services to which section 1888(e)(13) applies,” after “inpatient critical access hospital services”; and

(ii) by striking “1813 1886,” and inserting “1813, 1886, 1888,”.

(B) CONSOLIDATED BILLING.—

(i) RECIPIENT OF PAYMENT.—Section 1842(b)(6)(E) (42 U.S.C. 1395u(b)(6)(E)) is amended by inserting “services to which paragraph (7)(C) or (13) of section 1888(e) applies and” after “other than”.

1 (ii) EXCEPTION TO EXCLUSION FROM  
 2 COVERAGE.—Section 1862(a)(18) (42  
 3 U.S.C. 1395y(a)(18)) is amended by in-  
 4 serting “(other than services to which  
 5 paragraph (7)(C) or (13) of section  
 6 1888(e) applies)” after “section  
 7 1888(e)(2)(A)(i)”.

8 (d) PAYMENTS TO DISTINCT PART PSYCHIATRIC OR  
 9 REHABILITATION UNITS OF CAHS.—Section 1886(b) (42  
 10 U.S.C. 1395ww(b)) is amended—

11 (1) in paragraph (1), by inserting “, other than  
 12 a distinct part psychiatric or rehabilitation unit to  
 13 which paragraph (8) applies,” after “subsection  
 14 (d)(1)(B)”;

15 (2) by adding at the end the following:

16 “(8) EXEMPTION OF CERTAIN DISTINCT PART PSY-  
 17 CHIATRIC OR REHABILITATION UNITS FROM COST LIM-  
 18 ITS.—In determining payments under this part for inpa-  
 19 tient hospital services furnished on or after October 1,  
 20 2003, by a distinct part psychiatric or rehabilitation unit  
 21 (described in the matter following clause (v) of subsection  
 22 (d)(1)(B)) of a critical access hospital (as defined in sec-  
 23 tion 1861(mm)(1))—

24 “(A) the limits imposed under the preceding  
 25 paragraphs of this subsection shall not apply; and



1           “(B) payment shall be made on the basis of the  
 2           reasonable costs incurred in furnishing such services  
 3           as determined under section 1861(v), but without re-  
 4           gard to the amount of the customary or other  
 5           charges with respect to such services.”.

6           (e) ELIMINATION OF ISOLATION TEST FOR COST-  
 7           BASED CAH AMBULANCE SERVICES.—Paragraph (8) of  
 8           section 1834(l) (42 U.S.C. 1395m(l)), as added by section  
 9           205(a) of the Medicare, Medicaid, and SCHIP Benefits  
 10          Improvement and Protection Act of 2000 (Appendix F,  
 11          114 Stat. 2763A–482), as enacted into law by section  
 12          1(a)(6) of Public Law 106–554, is amended by striking  
 13          the comma at the end of the last subparagraph and all  
 14          that follows and inserting a period.

15          (f) RETURN ON EQUITY.—Section 1861(v)(1)(P) (42  
 16          U.S.C. 1395x(v)(1)(P)), as amended by section 2(b)(4),  
 17          is further amended by adding at the end the following:

18           “(iii)(I) Notwithstanding clause (i), subparagraph  
 19          (S)(i), and section 1886(g)(2), such regulations shall pro-  
 20          vide, in determining the reasonable costs of the services  
 21          described in subclause (II) furnished by a critical access  
 22          hospital on or after October 1, 2003, for payment of a  
 23          return on equity capital at a rate of return equal to 150  
 24          percent of the average specified in clause (i).

1       “(II) The services referred to in subclause (I) are in-  
 2 patient critical access hospital services (as defined in sec-  
 3 tion 1861(mm)(2)), outpatient critical access hospital  
 4 services (as defined in section 1861(mm)(3)), extended  
 5 care services provided pursuant to an agreement under  
 6 section 1883, posthospital extended care services to which  
 7 section 1888(e)(13) applies, home health services to which  
 8 section 1895(f) applies, ambulance services to which sec-  
 9 tion 1834(l) applies, and inpatient hospital services to  
 10 which section 1886(b)(8) applies.

11       “(III) Payment under this clause shall be made with-  
 12 out regard to whether a provider is a proprietary pro-  
 13 vider.”.

14       (g) COVERAGE OF COSTS FOR EMERGENCY ROOM  
 15 ON-CALL PHYSICIAN ASSISTANTS AND NURSE PRACTI-  
 16 TIONERS.—Section 1834(g) (42 U.S.C. 1395m(g)) is  
 17 amended by adding at the end the following new para-  
 18 graph:

19               “(6) COVERAGE OF COSTS FOR EMERGENCY  
 20 ROOM ON-CALL PHYSICIAN ASSISTANTS AND NURSE  
 21 PRACTITIONERS.—In determining the reasonable  
 22 costs of outpatient critical access hospital services  
 23 under paragraphs (1) and (2)(A), the Secretary shall  
 24 recognize as allowable costs, amounts (as defined by  
 25 the Secretary) for reasonable compensation and re-

lated costs for emergency room physician assistants and nurse practitioners who are on-call (as defined by the Secretary for purposes of paragraph (5)) but who are not present on the premises of the critical access hospital involved, and are not otherwise furnishing services which would be physicians' services if furnished by a physician and are not on-call at any other provider or facility.”.

(h) TECHNICAL CORRECTIONS.—

(1) SECTION 403(b) OF BBRA 1999.—Section 1820(b)(2) (42 U.S.C. 1395i–4(b)(2)) is amended by striking “nonprofit or public hospitals” and inserting “hospitals”.

(2) SECTION 203(b) OF BIPA 2000.—Section 1883(a)(3) (42 U.S.C. 1395tt(a)(3)) is amended—

(A) by inserting “section 1861(v)(1)(G) or” after “Notwithstanding”; and

(B) by striking “covered skilled nursing facility”.

(i) EFFECTIVE DATES.—

(1) ELIMINATION OF REQUIREMENTS.—The amendment made by subsections (a) and (b) shall apply to services furnished on or after October 1, 2003.

(2) TECHNICAL CORRECTIONS.—

1           (A) BBRA.—The amendment made by  
2           subsection (h)(1) shall be effective as if in-  
3           cluded in the enactment of section 403(b) of the  
4           Medicare, Medicaid, and SCHIP Balanced  
5           Budget Refinement Act of 1999 (Appendix F,  
6           113 Stat. 1501A–321), as enacted into law by  
7           section 1000(a)(6) of Public Law 106–113.

8           (B) BIPA.—The amendments made by  
9           subsection (h)(2) shall be effective as if in-  
10          cluded in the enactment of section 203(b) of the  
11          Medicare, Medicaid, and SCHIP Benefits Im-  
12          provement and Protection Act of 2000 (Appen-  
13          dix F, 114 Stat. 2763A–463), as enacted into  
14          law by section 1(a)(6) of Public Law 106–554.

○