

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.

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

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:

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-

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

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

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

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

19 (ii) CONFORMING CHANGES.—

20 (I) PAYMENTS UNDER PART A.—
21 Section 1814(b) (42 U.S.C. 1395f(b))
22 is amended by inserting “or with re-
23 spect to services to which section
24 1895(f) applies” after “equipment” in
25 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.”.

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”.

23 (3) TECHNICAL AMENDMENTS.—

24 (A) CONSULTATION WITH STATE AGEN-
25 CIES.—Section 1863 (42 U.S.C. 1395z) is

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

1 1861(v), but without regard to the amount of
2 the customary or other charges with respect to
3 such services or the limitations established
4 under subsection (a).”.

5 (2) CONFORMING CHANGES.—

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

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

17 (ii) by striking “1813 1886,” and in-
18 serting “1813, 1886, 1888.”.

19 (B) CONSOLIDATED BILLING.—

20 (i) RECIPIENT OF PAYMENT.—Section
21 1842(b)(6)(E) (42 U.S.C. 1395u(b)(6)(E))
22 is amended by inserting “services to which
23 paragraph (7)(C) or (13) of section
24 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—

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-

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

9 (h) TECHNICAL CORRECTIONS.—

10 (1) SECTION 403(b) OF BBRA 1999.—Section
11 1820(b)(2) (42 U.S.C. 1395i-4(b)(2)) is amended
12 by striking “nonprofit or public hospitals” and in-
13 serting “hospitals”.

14 (2) SECTION 203(b) OF BIPA 2000.—Section
15 1883(a)(3) (42 U.S.C. 1395tt(a)(3)) is amended—

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

18 (B) by striking “covered skilled nursing fa-
19 cility”.

20 (i) EFFECTIVE DATES.—

21 (1) ELIMINATION OF REQUIREMENTS.—The
22 amendment made by subsections (a) and (b) shall
23 apply to services furnished on or after October 1,
24 2003.

25 (2) TECHNICAL CORRECTIONS.—

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.