

110TH CONGRESS  
1ST SESSION

# H. R. 3038

To amend section 1848 of the Social Security Act to establish standards for growth in Medicare expenditures for physicians' services based on categories of services.

---

## IN THE HOUSE OF REPRESENTATIVES

JULY 12, 2007

Mr. SESSIONS 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

---

## A BILL

To amend section 1848 of the Social Security Act to establish standards for growth in Medicare expenditures for physicians' services based on categories of services.

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 Physician Payment Reform Act of 2007”.

6 (b) **TABLE OF CONTENTS.**—The table of contents of  
7 this Act is as follows:

Sec. 1. Short title; table of contents.

- Sec. 2. Reforming standards for growth in Medicare expenditures for physicians' and related services.
- Sec. 3. Establishment of update service categories and expenditure measurement categories.
- Sec. 4. Establishing updates for conversion factors for update service categories.
- Sec. 5. Replacement of sustainable growth rate with service category growth rates.
- Sec. 6. Reports to Congress on excess expenditures for part B drugs and clinical diagnostic laboratory tests.

1 **SEC. 2. REFORMING STANDARDS FOR GROWTH IN MEDI-**  
 2 **CARE EXPENDITURES FOR PHYSICIANS' AND**  
 3 **RELATED SERVICES.**

4 (a) PROVIDING FOR SEPARATE CONVERSION FAC-  
 5 TORS FOR SERVICE CATEGORIES.—Subsection (d)(1)(A)  
 6 of section 1848 of the Social Security Act (42 U.S.C.  
 7 1395w-4) is amended—

8 (1) by designating the sentence beginning “The  
 9 conversion factor” as clause (i) with the heading  
 10 “YEARS BEFORE 2009” and with appropriate inden-  
 11 tation;

12 (2) by inserting “and ending with 2008” after  
 13 “beginning with 2001”; and

14 (3) by adding at the end the following new  
 15 clause:

16 “(ii) 2009 AND SUBSEQUENT  
 17 YEARS.—For years after 2008, the conver-  
 18 sion factor for an update service category  
 19 (as defined in subsection (j)(5)) for a year  
 20 shall be the conversion factor established

1           for such category under this subsection for  
2           the previous year (or in the case of 2009,  
3           the single conversion factor established  
4           under this subsection for 2008), multiplied  
5           by the update established under paragraph  
6           (8) for such category for the year in-  
7           volved.”.

8           (b) CONFORMING AMENDMENTS.—Such section is  
9 further amended—

10           (1) in subsection (b)(1)(B), by inserting “appli-  
11 cable” before “conversion factor”;

12           (2) in subsection (d)(1)(D)—

13               (A) by inserting “before 2009” after “for  
14 a year”; and

15               (B) by adding at the end the following:  
16 “For 2009 and subsequent years, the separate  
17 conversion factor for anesthesia services shall  
18 be determined as follows:

19                   “(i) For 2009, 46 percent of the sin-  
20 gle conversion factor established under this  
21 subsection for other physicians’ services for  
22 2008, multiplied by the update established  
23 under paragraph (8) for the applicable up-  
24 date service category for 2009.

1           “(ii) For a subsequent year, the con-  
2           version factor established under this sub-  
3           section for the previous year, multiplied by  
4           the update established under paragraph  
5           (8) for the applicable update service cat-  
6           egory for the year involved.”;

7           (3) in subsection (d)(1)(E)—

8           (A) in clause (i), by inserting “(or, for  
9           publications beginning with 2009, the applicable  
10          conversion factor for each update service cat-  
11          egory)” after “conversion factor”;

12          (B) in clause (i), by striking “under para-  
13          graph (4)” and inserting “(for each update  
14          service category for publications beginning with  
15          2009)”;

16          (C) in clause (i), by striking “under such  
17          paragraph” and inserting “(for each update  
18          service category for publications beginning with  
19          2008)”;

20          (D) in clause (ii), by inserting “(or, for  
21          years beginning with 2008, the service category  
22          growth rate and, for years beginning with 2009,  
23          the applicable conversion factor, for each up-  
24          date service category)” after “sustainable  
25          growth rate”; and

1 (4) in subsection (d)(4)—

2 (A) in the heading, by inserting “AND  
3 ENDING WITH 2008” after “BEGINNING WITH  
4 2001”; and

5 (B) in subparagraph (A), in the matter  
6 preceding clause (i), by inserting “and ending  
7 with 2008” after “beginning with 2001”.

8 **SEC. 3. ESTABLISHMENT OF UPDATE SERVICE CATEGORIES**  
9 **AND EXPENDITURE MEASUREMENT CAT-**  
10 **EGORIES.**

11 (a) UPDATE SERVICE CATEGORIES.—Subsection (j)  
12 of section 1848 of the Social Security Act (42 U.S.C.  
13 1395w–4) is amended by adding at the end the following  
14 new paragraph:

15 “(5) UPDATE SERVICE CATEGORIES.—Each of  
16 the following categories of physicians’ services shall  
17 be treated as a separate ‘update service category’:

18 “(A) Evaluation and management services.

19 “(B) Radiology services and diagnostic  
20 tests (other than clinical diagnostic laboratory  
21 tests).

22 “(C) Procedures that are subject to a 10-  
23 day or 90-day global period (in this paragraph  
24 referred to as ‘major procedures’), except that  
25 the Secretary may reclassify as minor proce-

dures under subparagraph (E) any procedures that would otherwise be included in this category if the Secretary determines that such procedures are not major procedures.

“(D) Anesthesia services that are paid on the basis of the separate conversion factor for anesthesia services determined under subsection (d)(1)(D).

“(E) Minor procedures and any other physicians’ services that are not described in a preceding clause.”.

(b) EXPENDITURE MEASUREMENT CATEGORY.—

Subsection (f)(4) of such section is amended by adding at the end the following new subparagraph:

“(D) EXPENDITURE MEASUREMENT CATEGORY.—The term ‘expenditure measurement category’ means each of the update service categories described in subparagraphs (A) through (E) of subsection (j)(5) and, only for purposes of reporting, the following additional categories of physicians’ services (as defined in subparagraph (A)):

“(i) Clinical diagnostic laboratory tests.

1 “(ii) Drugs, biologicals, and radio-  
 2 pharmaceuticals for which payment is  
 3 made under this part.”.

4 **SEC. 4. ESTABLISHING UPDATES FOR CONVERSION FAC-**  
 5 **TORS FOR UPDATE SERVICE CATEGORIES.**

6 Section 1848(d) of the Social Security Act (42 U.S.C.  
 7 1395w-4(d)) is amended—

8 (1) in paragraph (4)(C)(iii), by inserting “AND  
 9 ENDING WITH 2008” and “and ending with 2008”  
 10 after “BEGINNING WITH 2000” and after “beginning  
 11 with 2000”, respectively; and

12 (2) by adding at the end the following new  
 13 paragraph:

14 “(8) UPDATES FOR UPDATE SERVICE CAT-  
 15 EGORIES FOR YEARS AFTER 2008.—

16 “(A) IN GENERAL.—Unless otherwise pro-  
 17 vided by law, subject to the budget neutrality  
 18 factor determined by the Secretary under sub-  
 19 section (c)(2)(B)(ii), the update to the conver-  
 20 sion factor for an update service category (as  
 21 defined in subsection (j)(5)) for a year begin-  
 22 ning with 2009 is equal to the product of—

23 “(i) 1 plus the Secretary’s estimate of  
 24 the percentage increase in the MEI (as de-

1           fined in section 1842(i)(3)) for the year;  
 2           and

3           “(ii) 1 plus the Secretary’s estimate of  
 4           the update adjustment factor for the up-  
 5           date service category for the year.

6           “(B) UPDATE ADJUSTMENT FACTORS.—

7           “(i) IN GENERAL.—For purposes of  
 8           subparagraph (A)(ii), subject to clause  
 9           (iv), the ‘update adjustment factor’ for an  
 10          update service category for a year is equal  
 11          (as estimated by the Secretary) to the sum  
 12          of—

13                  “(I) the prior year adjustment  
 14                  component under clause (ii) for the  
 15                  category and year; and

16                  “(II) the cumulative adjustment  
 17                  component under clause (iii) for the  
 18                  category and year.

19           “(ii) PRIOR YEAR ADJUSTMENT COM-  
 20          PONENT.—The prior year adjustment com-  
 21          ponent under this clause for an update  
 22          service category for a year is determined  
 23          by—

24                  “(I) computing the difference  
 25                  (which may be positive or negative)



1 between the amount of allowed ex-  
2 penditures (as determined under sub-  
3 paragraph (C)) for the corresponding  
4 expenditure measurement category for  
5 the preceding year (beginning with  
6 2008), as determined under clause  
7 (v), and the amount of actual expendi-  
8 tures for such corresponding expendi-  
9 ture measurement category for that  
10 year;

11 “(II) dividing that difference by  
12 the amount of actual expenditures for  
13 such expenditure measurement cat-  
14 egory for that year; and

15 “(III) multiplying that quotient  
16 by 0.75.

17 “(iii) CUMULATIVE ADJUSTMENT  
18 COMPONENT.—The cumulative adjustment  
19 component under this clause for an update  
20 service category for a year is determined  
21 by—

22 “(I) computing the difference  
23 (which may be positive or negative)  
24 between the amount of allowed ex-  
25 penditures for the corresponding ex-

penditure measurement category from January 1, 2008, through the end of for the preceding year, as determined under clause (iv), and the amount of actual expenditures for such expenditure measurement category for such period;

“(II) dividing that difference by the amount of actual expenditures for such expenditure measurement category for such preceding year as increased by the service category growth rate under subsection (f) for the year for which the update adjustment factor is to be determined; and

“(III) multiplying that quotient by 0.33.

“(iv) RESTRICTION ON UPDATE ADJUSTMENT FACTORS.—An update adjustment factor determined under subparagraph (B) for an update service category for a year—

“(I) may not reduce the update by more than 0.03 or, if greater, the percentage increase in the MEI (as

1 defined in section 1842(i)(3)) for the  
2 year (divided by 100); and

3 “(II) may not increase the up-  
4 date by more than 0.01.

5 “(v) CORRESPONDING EXPENDITURE  
6 MEASUREMENT CATEGORY.—For purposes  
7 of this subparagraph, the term ‘cor-  
8 responding expenditure measurement cat-  
9 egory’ means, with respect to an update  
10 service category, the expenditure measure-  
11 ment category (as defined in subsection  
12 (f)(4)(D)) that includes the services that  
13 are included in the update measurement  
14 category.

15 “(C) DETERMINATION OF ALLOWED EX-  
16 PENDITURES.—

17 “(i) IN GENERAL.—Subject to clause  
18 (ii), the allowed expenditures for an ex-  
19 penditure measurement category (as de-  
20 fined in subsection (f)(4)(D)) for a year  
21 (beginning with 2008) is equal to—

22 “(I) for 2008, the actual expendi-  
23 tures for services in such category for  
24 2007, increased by the service cat-

1           egory growth rate for such category  
2           under subsection (f) for 2008; and

3           “(II) for a year after 2008, the  
4           amount of allowed expenditures for  
5           such category for the preceding year,  
6           increased by the service category  
7           growth rate determined under sub-  
8           section (f) for the year involved.

9           “(ii) ADJUSTMENTS TO ALLOWED EX-  
10          PENDITURES.—The Secretary shall, as a  
11          part of the annual rule making process for  
12          making changes in the fee schedule estab-  
13          lished under this section, propose and im-  
14          plement adjustments to allowed expendi-  
15          tures by expenditure measurement cat-  
16          egory to take into account changes in tech-  
17          nology and practice patterns, such as  
18          changes in the site of service.

19          “(iii) RECALCULATION OF ALLOWED  
20          EXPENDITURES.—For purposes of deter-  
21          mining the update adjustment factor for  
22          an update service category for a year (be-  
23          ginning with 2009), the Secretary shall re-  
24          compute the allowed expenditures for pre-  
25          vious periods beginning on or after Janu-

1                   ary 1, 2008, consistent with subsection  
2                   (f)(3)(D).”.

3 **SEC. 5. REPLACEMENT OF SUSTAINABLE GROWTH RATE**  
4 **WITH SERVICE CATEGORY GROWTH RATES.**

5       (a) IN GENERAL.—Section 1848(f) of the Social Se-  
6 curity Act (42 U.S.C. 1395w–4(f)) is amended—

7           (1) in the heading, by inserting “AND SERVICE  
8       CATEGORY GROWTH RATES” after “SUSTAINABLE  
9       GROWTH RATE”;

10          (2) in paragraph (1)—

11           (A) in subparagraph (A), by striking  
12       “and” at the end;

13           (B) in subparagraph (B)—

14           (i) by inserting “before 2008” after  
15       “each succeeding year”, and

16           (ii) by striking the period at the end  
17       and inserting “; and”; and

18           (C) by adding at the end the following new  
19       subparagraph:

20           “(C) November 1 of each succeeding year  
21       after 2007 the growth rate (in this subsection  
22       referred to as ‘service category growth rate’) for  
23       each expenditure measurement category for  
24       such succeeding year and each of the preceding

1           2 years (or in the case of 2009, the preceding  
2           year).”;

3           (3) in paragraph (2)—

4                 (A) in the heading, by striking “RATE”  
5                 and inserting “RATES”;

6                 (B) by redesignating subparagraphs (A)  
7                 through (E) and as clauses (i) through (v), re-  
8                 spectively, and by designating the sentence be-  
9                 ginning “The sustainable growth rate” as a  
10                subparagraph (A) with the heading “SUSTAIN-  
11                ABLE GROWTH RATE FOR PERIODS BEFORE  
12                2008” and with appropriate indentation for the  
13                subparagraph and its redesignated clauses;

14                (C) by inserting “and before 2008” after  
15                “beginning with 2000”; and

16                (D) by adding at the end the following new  
17                subparagraph:

18                         “(B) SERVICE CATEGORY GROWTH RATES  
19                         FOR YEARS BEGINNING WITH 2008.—The service  
20                         category growth rate for an expenditure meas-  
21                         urement category for a year beginning with  
22                         2008 shall be equal to the product of—

23                                 “(i) 1 plus the Secretary’s estimate of  
24                                 the weighted average percentage increase  
25                                 (divided by 100) in the fees for services in

1 the category for the applicable period in-  
2 volved;

3 “(ii) 1 plus the Secretary’s estimate of  
4 the percentage change (divided by 100) in  
5 the average number of individuals enrolled  
6 under this part (other than Medicare Ad-  
7 vantage plan enrollees) from the previous  
8 fiscal year to the applicable period in-  
9 volved;

10 “(iii) 1 plus—

11 “(I) 5.1 percentage points (di-  
12 vided by 100) in the case of the serv-  
13 ice category specified in subsection  
14 (j)(5)(A); and

15 “(II) 2.1 percentage points (di-  
16 vided by 100) in the case of all other  
17 categories; and

18 “(iv) 1 plus the Secretary’s estimate  
19 of the percentage change (divided by 100)  
20 in expenditures for services in the category  
21 in the fiscal year (compared with the pre-  
22 vious fiscal year) which will result from  
23 changes in law and regulations, taking into  
24 account all national coverage determina-  
25 tions (as defined in section 1869(f)(1)(B))

1 and any local coverage determinations (as  
2 defined in section 1869(f)(2)(B)) with a  
3 significant impact on expenditures for phy-  
4 sicians' services, but without taking into  
5 account estimated changes in expenditures  
6 resulting from the update adjustment fac-  
7 tor determined under subsection (d)(8)(B),  
8 minus 1 and multiplied by 100.”; and  
9 (4) in paragraph (3)—

10 (A) in the matter preceding subparagraph  
11 (A), by striking “the sustainable growth rates”  
12 and inserting “and ending with 2008 and under  
13 subsection (d)(8)(B) beginning with 2009, the  
14 growth rates”;

15 (B) in subparagraph (C)—

16 (i) in the heading, by inserting “AND  
17 BEFORE 2009” after “SUCCEEDING YEARS”;  
18 and

19 (ii) in the matter before clause (i), by  
20 inserting “and before 2009” after “after  
21 2002”; and

22 (C) by inserting after subparagraph (C)  
23 the following new subparagraph:



1 “(D) FOR 2009 AND SUCCEEDING YEARS.—  
 2 For purposes of calculations for a year after  
 3 2008—

4 “(i) the service category growth rates  
 5 for that year and the preceding 2 years (or  
 6 in the case of 2009, the preceding year)  
 7 shall be determined on the basis of the  
 8 best data available to the Secretary as of  
 9 September 1 of the year preceding the year  
 10 for which the calculation is made; and

11 “(ii) the service category growth rates  
 12 for any year before a year described in  
 13 clause (i) shall be the rates most recently  
 14 determined for that year under this sub-  
 15 section.”.

16 (b) CONFORMING CHANGE; NO ADMINISTRATIVE OR  
 17 JUDICIAL REVIEW.—Section 1848(i)(1)(C) of such Act  
 18 (42 U.S.C. 1395w-4(i)(1)(C)) is amended by inserting “or  
 19 service category growth rates” after “sustainable growth  
 20 rates”.

21 **SEC. 6. REPORTS TO CONGRESS ON EXCESS EXPENDI-**  
 22 **TURES FOR PART B DRUGS AND CLINICAL DI-**  
 23 **AGNOSTIC LABORATORY TESTS.**

24 (a) REPORTING REQUIREMENT.—The Secretary of  
 25 Health and Human Services shall report to the appro-

1 priate committees of the Congress not later than 3 months  
2 after the end of any year in which the Secretary deter-  
3 mines that actual expenditures exceeded allowed expendi-  
4 tures for such year and the preceding year for either of  
5 the expenditure measurement categories described in  
6 clause (i) or (ii) of section 1848(f)(4)(D) of the Social Se-  
7 curity Act, as added by section 3(b).

8 (b) RECOMMENDATIONS.—The report submitted  
9 under subsection (a) shall include an analysis of the rea-  
10 sons for such excess expenditures and recommendations  
11 for addressing them in the future.

○