

110TH CONGRESS
2^D SESSION

S. 3300

To amend title XVIII of the Social Security Act to provide for temporary improvements to the Medicare inpatient hospital payment adjustment for low-volume hospitals and to provide for the use of the non-wage adjusted PPS rate under the Medicare-dependent hospital (MDH) program, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 22, 2008

Mr. GRASSLEY 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 temporary improvements to the Medicare inpatient hospital payment adjustment for low-volume hospitals and to provide for the use of the non-wage adjusted PPS rate under the Medicare-dependent hospital (MDH) 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.**

4 This Act may be cited as the “Rural Hospital Assist-
5 ance Act of 2008”.

1 **SEC. 2. TEMPORARY IMPROVEMENTS TO THE MEDICARE**
2 **INPATIENT HOSPITAL PAYMENT ADJUST-**
3 **MENT FOR LOW-VOLUME HOSPITALS.**

4 (a) IN GENERAL.—Section 1886(d)(12) of the Social
5 Security Act (42 U.S.C. 1395ww(d)(12)) is amended—

6 (1) in subparagraph (A), by inserting “or (D)
7 (for discharges occurring in fiscal year 2009)” after
8 “subparagraph (B)”;

9 (2) in subparagraph (B), by striking “The Sec-
10 retary” and inserting “Except as provided in sub-
11 paragraph (D), the Secretary”;

12 (3) in subparagraph (C)(i)—

13 (A) by inserting “(or, with respect to fiscal
14 year 2009, 15 road miles)” after “25 road
15 miles”; and

16 (B) by inserting “(or, with respect to fiscal
17 year 2009, 1,500 discharges of individuals enti-
18 tled to, or enrolled for, benefits under part A)”
19 after “800 discharges”; and

20 (4) by adding at the end the following new sub-
21 paragraph:

22 “(D) TEMPORARY APPLICABLE PERCENT-
23 AGE INCREASE.—For discharges occurring in
24 fiscal year 2009, the Secretary shall determine
25 an applicable percentage increase for purposes
26 of subparagraph (A) using a continuous linear

1 sliding scale ranging from 25 percent for low-
2 volume hospitals with 200 or fewer discharges
3 of individuals entitled to, or enrolled for, bene-
4 fits under part A in the fiscal year to 0 percent
5 for low-volume hospitals with greater than
6 1,500 discharges of such individuals in the fis-
7 cal year.”.

8 (b) IMPLEMENTATION.—Notwithstanding any other
9 provision of law, the Secretary of Health and Human
10 Services may implement the amendments made by sub-
11 section (a) by program instruction or otherwise.

12 **SEC. 3. USE OF NON-WAGE ADJUSTED PPS RATE UNDER**
13 **THE MEDICARE-DEPENDENT HOSPITAL**
14 **(MDH) PROGRAM.**

15 (a) IN GENERAL.—Section 1886(d)(5)(G) of the So-
16 cial Security Act (42 U.S.C. 1395ww(d)(5)(G)) is amend-
17 ed by adding at the end the following new clause:

18 “(v) In the case of discharges occurring on or after
19 October 1, 2008, and before October 1, 2009, in deter-
20 mining the amount under paragraph (1)(A)(iii) for pur-
21 poses of clauses (i) and (ii)(II), such amount shall, if it
22 results in greater payments to the hospital, be determined
23 without regard to any adjustment for different area wage
24 levels under paragraph (3)(E).”.

1 (b) IMPLEMENTATION.—Notwithstanding any other
 2 provision of law, the Secretary of Health and Human
 3 Services may implement the amendment made by sub-
 4 section (a) by program instruction or otherwise.

5 **SEC. 4. LIMITATION ON MEDICARE EXCEPTION TO THE**
 6 **PROHIBITION ON CERTAIN PHYSICIAN RE-**
 7 **FERRALS FOR HOSPITALS.**

8 (a) IN GENERAL.—Section 1877 of the Social Secu-
 9 rity Act (42 U.S.C. 1395nn) is amended—

10 (1) in subsection (d)(2)—

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

13 (B) in subparagraph (B), by striking the
 14 period at the end and inserting “; and”; and

15 (C) by adding at the end the following new
 16 subparagraph:

17 “(C) in the case where the entity is a hos-
 18 pital, the hospital meets the requirements of
 19 paragraph (3)(D).”;

20 (2) in subsection (d)(3)—

21 (A) in subparagraph (B), by striking
 22 “and” at the end;

23 (B) in subparagraph (C), by striking the
 24 period at the end and inserting “; and”; and

1 (C) by adding at the end the following new
2 subparagraph:

3 “(D) the hospital meets the requirements
4 described in subsection (i)(1) not later than 18
5 months after the date of the enactment of this
6 subparagraph.”; and

7 (3) by adding at the end the following new sub-
8 section:

9 “(i) REQUIREMENTS FOR HOSPITALS TO QUALIFY
10 FOR HOSPITAL EXCEPTION TO OWNERSHIP OR INVEST-
11 MENT PROHIBITION.—

12 “(1) REQUIREMENTS DESCRIBED.—For pur-
13 poses of subsection (d)(3)(D), the requirements de-
14 scribed in this paragraph for a hospital are as fol-
15 lows:

16 “(A) PROVIDER AGREEMENT.—The hos-
17 pital had—

18 “(i) physician ownership on Sep-
19 tember 1, 2008; and

20 “(ii) a provider agreement under sec-
21 tion 1866 in effect on such date.

22 “(B) LIMITATION ON EXPANSION OF FA-
23 CILITY CAPACITY.—Except as provided in para-
24 graph (3), the number of operating rooms, pro-
25 cedure rooms, and beds of the hospital at any

1 time on or after the date of the enactment of
2 this subsection are no greater than the number
3 of operating rooms, procedure rooms, and beds
4 as of such date.

5 “(C) PREVENTING CONFLICTS OF INTER-
6 EST.—

7 “(i) The hospital submits to the Sec-
8 retary an annual report containing a de-
9 tailed description of—

10 “(I) the identity of each physi-
11 cian owner and any other owners of
12 the hospital; and

13 “(II) the nature and extent of all
14 ownership interests in the hospital.

15 “(ii) The hospital has procedures in
16 place to require that any referring physi-
17 cian owner discloses to the patient being
18 referred, by a time that permits the pa-
19 tient to make a meaningful decision re-
20 garding the receipt of care, as determined
21 by the Secretary—

22 “(I) the ownership interest of
23 such referring physician in the hos-
24 pital; and

1 “(II) if applicable, any such own-
2 ership interest of the treating physi-
3 cian.

4 “(iii) The hospital does not condition
5 any physician ownership interests either di-
6 rectly or indirectly on the physician owner
7 making or influencing referrals to the hos-
8 pital or otherwise generating business for
9 the hospital.

10 “(iv) The hospital discloses the fact
11 that the hospital is partially owned by phy-
12 sicians—

13 “(I) on any public website for the
14 hospital; and

15 “(II) in any public advertising
16 for the hospital.

17 “(D) ENSURING BONA FIDE INVEST-
18 MENT.—

19 “(i) Physician owners in the aggregate
20 do not own more than the greater of—

21 “(I) 40 percent of the total value
22 of the investment interests held in the
23 hospital or in an entity whose assets
24 include the hospital; or

1 “(II) the percentage of such total
2 value determined on the date of enact-
3 ment of this subsection.

4 “(ii) Any ownership or investment in-
5 terests that the hospital offers to a physi-
6 cian owner are not offered on more favor-
7 able terms than the terms offered to a per-
8 son who is not a physician owner.

9 “(iii) The hospital (or any investors in
10 the hospital) does not directly or indirectly
11 provide loans or financing for any physi-
12 cian owner investments in the hospital.

13 “(iv) The hospital (or any investors in
14 the hospital) does not directly or indirectly
15 guarantee a loan, make a payment toward
16 a loan, or otherwise subsidize a loan, for
17 any individual physician owner or group of
18 physician owners that is related to acquir-
19 ing any ownership interest in the hospital.

20 “(v) Investment returns are distrib-
21 uted to each investor in the hospital in an
22 amount that is directly proportional to the
23 ownership interest of such investor in the
24 hospital.

1 “(vi) Physician owners do not receive,
2 directly or indirectly, any guaranteed re-
3 ceipt of or right to purchase other business
4 interests related to the hospital, including
5 the purchase or lease of any property
6 under the control of other investors in the
7 hospital or located near the premises of the
8 hospital.

9 “(vii) The hospital does not offer a
10 physician owner the opportunity to pur-
11 chase or lease any property under the con-
12 trol of the hospital or any other investor in
13 the hospital on more favorable terms than
14 the terms offered to an individual who is
15 not a physician owner.

16 “(E) PATIENT SAFETY.—

17 “(i) Insofar as the hospital admits a
18 patient and does not have any physician
19 available on the premises to provide serv-
20 ices during all hours in which the hospital
21 is providing services to such patient, before
22 admitting the patient—

23 “(I) the hospital discloses such
24 fact to a patient; and

1 “(II) following such disclosure,
2 the hospital receives from the patient
3 a signed acknowledgment that the pa-
4 tient understands such fact.

5 “(ii) The hospital has the capacity
6 to—

7 “(I) provide assessment and ini-
8 tial treatment for patients; and

9 “(II) refer and transfer patients
10 to hospitals with the capability to
11 treat the needs of the patient in-
12 volved.

13 “(F) LIMITATION ON APPLICATION TO
14 CERTAIN CONVERTED FACILITIES.—The hos-
15 pital was not converted from an ambulatory
16 surgical center to a hospital on or after the date
17 of enactment of this subsection.

18 “(2) PUBLICATION OF INFORMATION RE-
19 PORTED.—The Secretary shall publish, and update
20 on an annual basis, the information submitted by
21 hospitals under paragraph (1)(C)(i) on the public
22 Internet website of the Centers for Medicare & Med-
23 icaid Services.

24 “(3) EXCEPTION TO PROHIBITION ON EXPAN-
25 SION OF FACILITY CAPACITY.—

1 “(A) PROCESS.—

2 “(i) ESTABLISHMENT.—The Secretary
3 shall establish and implement a process
4 under which an applicable hospital (as de-
5 fined in subparagraph (E)) may apply for
6 an exception from the requirement under
7 paragraph (1)(B).

8 “(ii) OPPORTUNITY FOR COMMUNITY
9 INPUT.—The process under clause (i) shall
10 provide individuals and entities in the com-
11 munity that the applicable hospital apply-
12 ing for an exception is located with the op-
13 portunity to provide input with respect to
14 the application.

15 “(iii) TIMING FOR IMPLEMENTA-
16 TION.—The Secretary shall implement the
17 process under clause (i) on November 1,
18 2009.

19 “(iv) REGULATIONS.—Not later than
20 November 1, 2009, the Secretary shall pro-
21 mulgate regulations to carry out the proc-
22 ess under clause (i).

23 “(B) FREQUENCY.—The process described
24 in subparagraph (A) shall permit an applicable

1 hospital to apply for an exception up to once
2 every 2 years.

3 “(C) PERMITTED INCREASE.—

4 “(i) IN GENERAL.—Subject to clause
5 (ii) and subparagraph (D), an applicable
6 hospital granted an exception under the
7 process described in subparagraph (A) may
8 increase the number of operating rooms,
9 procedure rooms, and beds of the applica-
10 ble hospital above the baseline number of
11 operating rooms, procedure rooms, and
12 beds of the applicable hospital (or, if the
13 applicable hospital has been granted a pre-
14 vious exception under this paragraph,
15 above the number of operating rooms, pro-
16 cedure rooms, and beds of the hospital
17 after the application of the most recent in-
18 crease under such an exception).

19 “(ii) LIFETIME 100 PERCENT IN-
20 CREASE LIMITATION.—The Secretary shall
21 not permit an increase in the number of
22 operating rooms, procedure rooms, and
23 beds of an applicable hospital under clause
24 (i) to the extent such increase would result
25 in the number of operating rooms, proce-

1 dure rooms, and beds of the applicable
2 hospital exceeding 200 percent of the base-
3 line number of operating rooms, procedure
4 rooms, and beds of the applicable hospital.

5 “(iii) BASELINE NUMBER OF OPER-
6 ATING ROOMS, PROCEDURE ROOMS, AND
7 BEDS.—In this paragraph, the term ‘base-
8 line number of operating rooms, procedure
9 rooms, and beds’ means the number of op-
10 erating rooms, procedure rooms, and beds
11 of the applicable hospital as of the date of
12 enactment of this subsection.

13 “(D) INCREASE LIMITED TO FACILITIES
14 ON THE MAIN CAMPUS OF THE HOSPITAL.—
15 Any increase in the number of operating rooms,
16 procedure rooms, and beds of an applicable hos-
17 pital pursuant to this paragraph may only occur
18 in facilities on the main campus of the applica-
19 ble hospital.

20 “(E) APPLICABLE HOSPITAL.—In this
21 paragraph, the term ‘applicable hospital’ means
22 a hospital—

23 “(i) that is located in a county in
24 which the percentage increase in the popu-
25 lation during the most recent 5-year period

1 (as of the date of the application under
2 subparagraph (A)) is at least 150 percent
3 of the percentage increase in the popu-
4 lation growth of the State in which the
5 hospital is located during that period, as
6 estimated by Bureau of the Census;

7 “(ii) whose annual percent of total in-
8 patient admissions that represent inpatient
9 admissions under the program under title
10 XIX is equal to or greater than the aver-
11 age percent with respect to such admis-
12 sions for all hospitals located in the county
13 in which the hospital is located;

14 “(iii) that does not discriminate
15 against beneficiaries of Federal health care
16 programs and does not permit physicians
17 practicing at the hospital to discriminate
18 against such beneficiaries;

19 “(iv) that is located in a State in
20 which the average bed capacity in the
21 State is less than the national average bed
22 capacity; and

23 “(v) that has an average bed occu-
24 pancy rate that is greater than the average

1 bed occupancy rate in the State in which
2 the hospital is located.

3 “(F) PROCEDURE ROOMS.—In this sub-
4 section, the term ‘procedure rooms’ includes
5 rooms in which catheterizations, angiographies,
6 angiograms, and endoscopies are performed, ex-
7 cept such term shall not include emergency
8 rooms or departments (exclusive of rooms in
9 which catheterizations, angiographies,
10 angiograms, and endoscopies are performed).

11 “(G) PUBLICATION OF FINAL DECI-
12 SIONS.—Not later than 60 days after receiving
13 a complete application under this paragraph,
14 the Secretary shall publish in the Federal Reg-
15 ister the final decision with respect to such ap-
16 plication.

17 “(H) LIMITATION ON REVIEW.—There
18 shall be no administrative or judicial review
19 under section 1869, section 1878, or otherwise
20 of the process under this paragraph (including
21 the establishment of such process).

22 “(4) COLLECTION OF OWNERSHIP AND INVEST-
23 MENT INFORMATION.—For purposes of subpara-
24 graphs (A)(i) and (D)(i) of paragraph (1), the Sec-

1 retary shall collect physician ownership and invest-
2 ment information for each hospital.

3 “(5) PHYSICIAN OWNER DEFINED.—For pur-
4 poses of this subsection, the term ‘physician owner’
5 means a physician (or an immediate family member
6 of such physician) with a direct or an indirect own-
7 ership interest in the hospital.”.

8 (b) ENFORCEMENT.—

9 (1) ENSURING COMPLIANCE.—The Secretary of
10 Health and Human Services shall establish policies
11 and procedures to ensure compliance with the re-
12 quirements described in subsection (i)(1) of section
13 1877 of the Social Security Act, as added by sub-
14 section (a)(3), beginning on the date such require-
15 ments first apply. Such policies and procedures may
16 include unannounced site reviews of hospitals.

17 (2) AUDITS.—Beginning not later than January
18 1, 2010, the Secretary of Health and Human Serv-
19 ices shall conduct audits to determine if hospitals
20 violate the requirements referred to in paragraph
21 (1).

○