

111TH CONGRESS
1ST SESSION

H. R. 2251

To amend title XVIII of the Social Security Act to provide for the distribution of additional residency positions, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 5, 2009

Mr. CROWLEY (for himself, Mr. MEEK of Florida, Ms. CASTOR of Florida, and Mr. ENGEL) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, 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 title XVIII of the Social Security Act to provide for the distribution of additional residency positions, 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 “Resident Physician
5 Shortage Reduction Act of 2009”.

1 **SEC. 2. DISTRIBUTION OF ADDITIONAL RESIDENCY POSI-**
 2 **TIONS.**

3 (a) IN GENERAL.—Section 1886(h) of the Social Se-
 4 curity Act (42 U.S.C. 1395ww(h)) is amended—

5 (1) in paragraph (4)(F)(i), by striking “para-
 6 graph (7)” and inserting “paragraphs (7) and (8)”;

7 (2) in paragraph (4)(H)(i), by striking “para-
 8 graph (7)” and inserting “paragraphs (7) and (8)”;
 9 and

10 (3) by adding at the end the following new
 11 paragraph:

12 “(8) DISTRIBUTION OF ADDITIONAL RESIDENCY
 13 POSITIONS.—

14 “(A) ADDITIONAL RESIDENCY POSI-
 15 TIONS.—

16 “(i) REDUCTION IN LIMIT BASED ON
 17 UNUSED POSITIONS.—

18 “(I) IN GENERAL.—The Sec-
 19 retary shall reduce the otherwise ap-
 20 plicable resident limit for a hospital
 21 that the Secretary determines had
 22 residency positions that were unused
 23 for all 5 of the most recent cost re-
 24 porting periods ending prior to the
 25 date of enactment of this paragraph
 26 by an amount that is equal to the

1 number of such unused residency po-
2 sitions.

3 “(II) EXCEPTION FOR RURAL
4 HOSPITALS AND CERTAIN OTHER HOS-
5 PITALS.—This subparagraph shall not
6 apply to a hospital—

7 “(aa) located in a rural area
8 (as defined in subsection
9 (d)(2)(D)(ii));

10 “(bb) that has participated
11 in a voluntary reduction plan
12 under paragraph (6); or

13 “(cc) that has participated
14 in a demonstration project ap-
15 proved as of October 31, 2003,
16 under the authority of section
17 402 of Public Law 90–248.

18 “(ii) NUMBER AVAILABLE FOR DIS-
19 TRIBUTION.—The number of additional
20 residency positions available for distribu-
21 tion under subparagraph (B) shall be an
22 amount that the Secretary determines
23 would result in a 15 percent increase in
24 the aggregate number of full-time equiva-
25 lent residents in approved medical training

1 programs (as determined based on the
2 most recent cost reports available at the
3 time of distribution). One-third of such
4 number shall only be available for distribu-
5 tion to hospitals described in subclause (I)
6 of subparagraph (B)(ii) under such sub-
7 paragraph.

8 “(B) DISTRIBUTION.—

9 “(i) IN GENERAL.—The Secretary
10 shall increase the otherwise applicable resi-
11 dent limit for each qualifying hospital that
12 submits an application under this subpara-
13 graph by such number as the Secretary
14 may approve for portions of cost reporting
15 periods occurring on or after the date of
16 enactment of this paragraph. The aggre-
17 gate number of increases in the otherwise
18 applicable resident limit under this sub-
19 paragraph shall be equal to the number of
20 additional residency positions available for
21 distribution under subparagraph (A)(ii).

22 “(ii) DISTRIBUTION TO HOSPITALS
23 ALREADY OPERATING OVER RESIDENT
24 LIMIT.—

1 “(I) IN GENERAL.—Subject to
2 subclause (II), in the case of a hos-
3 pital in which the reference resident
4 level of the hospital (as specified in
5 clause (iii)) is greater than the other-
6 wise applicable resident limit, the in-
7 crease in the otherwise applicable resi-
8 dent limit under this subparagraph
9 shall be an amount equal to the prod-
10 uct of the total number of additional
11 residency positions available for dis-
12 tribution under subparagraph (A)(ii)
13 and the quotient of—

14 “(aa) the number of resident
15 positions by which the reference
16 resident level of the hospital ex-
17 ceeds the otherwise applicable
18 resident limit for the hospital;
19 and

20 “(bb) the number of resident
21 positions by which the reference
22 resident level of all such hospitals
23 with respect to which an applica-
24 tion is approved under this sub-
25 paragraph exceeds the otherwise

1 applicable resident limit for such
2 hospitals.

3 “(II) REQUIREMENTS.—A hos-
4 pital described in subclause (I)—

5 “(aa) is not eligible for an
6 increase in the otherwise applica-
7 ble resident limit under this sub-
8 paragraph unless the amount by
9 which the reference resident level
10 of the hospital exceeds the other-
11 wise applicable resident limit is
12 not less than 10 and the hospital
13 trains at least 25 percent of the
14 full-time equivalent residents of
15 the hospital in primary care and
16 general surgery (as of the date of
17 enactment of this paragraph);
18 and

19 “(bb) shall continue to train
20 at least 25 percent of the full-
21 time equivalent residents of the
22 hospital in primary care and gen-
23 eral surgery for the 10-year pe-
24 riod beginning on such date.

1 In the case where the Secretary deter-
2 mines that a hospital no longer meets
3 the requirement of item (bb), the Sec-
4 retary may reduce the otherwise appli-
5 cable resident limit of the hospital by
6 the amount by which such limit was
7 increased under this clause.

8 “(III) CLARIFICATION REGARD-
9 ING ELIGIBILITY FOR OTHER ADDI-
10 TIONAL RESIDENCY POSITIONS.—
11 Nothing in this clause shall be con-
12 strued as preventing a hospital de-
13 scribed in subclause (I) from applying
14 for additional residency positions
15 under this paragraph that are not re-
16 served for distribution under this
17 clause.

18 “(iii) REFERENCE RESIDENT
19 LEVEL.—

20 “(I) IN GENERAL.—Except as
21 otherwise provided in subclause (II),
22 the reference resident level specified in
23 this clause for a hospital is the resi-
24 dent level for the most recent cost re-
25 porting period of the hospital ending

1 on or before the date of enactment of
2 this paragraph, for which a cost re-
3 port has been settled (or, if not, sub-
4 mitted (subject to audit)), as deter-
5 mined by the Secretary.

6 “(II) USE OF MOST RECENT AC-
7 COUNTING PERIOD TO RECOGNIZE EX-
8 PANSION OF EXISTING PROGRAM OR
9 ESTABLISHMENT OF NEW PRO-
10 GRAM.—If a hospital submits a timely
11 request to increase its resident level
12 due to an expansion of an existing
13 residency training program or the es-
14 tablishment of a new residency train-
15 ing program that is not reflected on
16 the most recent cost report that has
17 been settled (or, if not, submitted
18 (subject to audit)), subject to the dis-
19 cretion of the Secretary, the reference
20 resident level for such hospital is the
21 resident level for the cost reporting
22 period that includes the additional
23 residents attributable to such expan-
24 sion or establishment, as determined
25 by the Secretary.

1 “(C) CONSIDERATIONS IN REDISTRIBU-
2 TION.—In determining for which hospitals the
3 increase in the otherwise applicable resident
4 limit is provided under subparagraph (B) (other
5 than an increase under subparagraph (B)(ii)),
6 the Secretary shall take into account the dem-
7 onstrated likelihood of the hospital filling the
8 positions within the first 3 cost reporting peri-
9 ods beginning on or after July 1, 2010, made
10 available under this paragraph, as determined
11 by the Secretary.

12 “(D) PRIORITY FOR CERTAIN AREAS.—In
13 determining for which hospitals the increase in
14 the otherwise applicable resident limit is pro-
15 vided under subparagraph (B) (other than an
16 increase under subparagraph (B)(ii)), the Sec-
17 retary shall distribute the increase to hospitals
18 based on the following criteria:

19 “(i) The Secretary shall give pref-
20 erence to hospitals that submit applica-
21 tions for new primary care and general
22 surgery residency positions. In the case of
23 any increase based on such preference, a
24 hospital shall ensure that—

1 “(I) the position made available
2 as a result of such increase remains a
3 primary care or general surgery resi-
4 dency position for not less than 10
5 years after the date on which the posi-
6 tion is filled; and

7 “(II) the total number of primary
8 care and general surgery residency po-
9 sitions in the hospital (determined
10 based on the number of such positions
11 as of the date of such increase, includ-
12 ing any position added as a result of
13 such increase) is not decreased during
14 such 10-year period.

15 In the case where the Secretary determines
16 that a hospital no longer meets the re-
17 quirement of subclause (II), the Secretary
18 may reduce the otherwise applicable resi-
19 dent limit of the hospital by the amount by
20 which such limit was increased under this
21 paragraph.

22 “(ii) The Secretary shall give pref-
23 erence to hospitals that emphasize training
24 in community health centers and other
25 community-based clinical settings.

1 “(iii) The Secretary shall give pref-
2 erence to hospitals in States that have
3 more medical students than residency posi-
4 tions available (including a greater pref-
5 erence for those States with smaller resi-
6 dent-to-medical-student ratios). In deter-
7 mining the number of medical students in
8 a State for purposes of the preceding sen-
9 tence, the Secretary shall include planned
10 students at medical schools which have
11 provisional accreditation by the Liaison
12 Committee on Medical Education or the
13 American Osteopathic Association.

14 “(iv) The Secretary shall give pref-
15 erence to hospitals in States that have low
16 resident-to-population ratios (including a
17 greater preference for those States with
18 lower resident-to-population ratios).

19 “(E) LIMITATION.—

20 “(i) IN GENERAL.—Except as pro-
21 vided in clause (ii), in no case may a hos-
22 pital (other than a hospital described in
23 subparagraph (B)(ii)(I), subject to the lim-
24 itation under subparagraph (B)(ii)(III))
25 apply for more than 50 full-time equivalent

1 additional residency positions under this
2 paragraph.

3 “(ii) INCREASE IN NUMBER OF ADDI-
4 TIONAL POSITIONS AVAILABLE FOR DIS-
5 TRIBUTION.—The Secretary shall increase
6 the number of full-time equivalent addi-
7 tional residency positions a hospital may
8 apply for under this paragraph if the Sec-
9 retary determines that the number of addi-
10 tional residency positions available for dis-
11 tribution under subparagraph (A)(ii) ex-
12 ceeds the number of such applications ap-
13 proved.

14 “(F) APPLICATION OF PER RESIDENT
15 AMOUNTS FOR PRIMARY CARE AND NONPRI-
16 MARY CARE.—With respect to additional resi-
17 dency positions in a hospital attributable to the
18 increase provided under this paragraph, the ap-
19 proved FTE resident amounts are deemed to be
20 equal to the hospital per resident amounts for
21 primary care and nonprimary care computed
22 under paragraph (2)(D) for that hospital.

23 “(G) DISTRIBUTION.—The Secretary shall
24 distribute the increase to hospitals under this

1 paragraph not later than 2 years after the date
2 of enactment of this paragraph.”.

3 (b) IME.—

4 (1) IN GENERAL.—Section 1886(d)(5)(B)(v) of
5 the Social Security Act (42 U.S.C.
6 1395ww(d)(5)(B)(v)), in the second sentence, is
7 amended—

8 (A) by striking “subsection (h)(7)” and in-
9 serting “subsections (h)(7) and (h)(8)”; and

10 (B) by striking “it applies” and inserting
11 “they apply”.

12 (2) CONFORMING PROVISION.—Section
13 1886(d)(5)(B) of the Social Security Act (42 U.S.C.
14 1395ww(d)(5)(B)) is amended by adding at the end
15 the following clause:

16 “(x) For discharges occurring on or after the
17 date of enactment of this clause, insofar as an addi-
18 tional payment amount under this subparagraph is
19 attributable to resident positions distributed to a
20 hospital under subsection (h)(8)(B), the indirect
21 teaching adjustment factor shall be computed in the
22 same manner as provided under clause (ii) with re-
23 spect to such resident positions.”.

1 **SEC. 3. COUNTING RESIDENT TIME IN OUTPATIENT SET-**
2 **TINGS.**

3 (a) GME.—Section 1886(h)(4)(E) of the Social Se-
4 curity Act (42 U.S.C. 1395ww(h)) is amended—

5 (1) by striking “shall be counted and that all
6 the time” and inserting “shall be counted and
7 that—

8 “(i) effective for cost reporting peri-
9 ods beginning before July 1, 2009, all the
10 time”;

11 (2) in clause (i), as inserted by paragraph (1),
12 by striking the period at the end and inserting “;
13 and”; and

14 (3) by inserting after clause (i), as so inserted,
15 the following new clause:

16 “(ii) effective for cost reporting peri-
17 ods beginning on or after July 1, 2009, all
18 the time so spent by a resident shall be
19 counted towards the determination of full-
20 time equivalency, without regard to the
21 setting in which the activities are per-
22 formed, if the hospital continues to incur
23 the costs of the stipends and fringe bene-
24 fits of the resident during the time the
25 resident spends in that setting.”.

1 (b) IME.—Section 1886(d)(5)(B)(iv) of the Social
2 Security Act (42 U.S.C. 1395ww(d)(5)(B)(iv)) is amend-
3 ed—

4 (1) by striking “(iv) Effective for discharges oc-
5 ccurring on or after October 1, 1997” and inserting
6 “(iv)(A) Effective for discharges occurring on or
7 after October 1, 1997, and before July 1, 2009”;
8 and

9 (2) by inserting after subparagraph (A), as in-
10 serted by paragraph (1), the following new subpara-
11 graph:

12 “(B) Effective for discharges occur-
13 ring on or after July 1, 2009, all the time
14 spent by an intern or resident in patient
15 care activities at an entity in a nonhospital
16 setting shall be counted towards the deter-
17 mination of full-time equivalency if the
18 hospital continues to incur the costs of the
19 stipends and fringe benefits of the intern
20 or resident during the time the intern or
21 resident spends in that setting.”.

22 (c) APPLICATION.—The amendments made by this
23 section shall not be applied in a manner that requires re-
24 opening of any settled hospital cost reports as to which
25 there is not a jurisdictionally proper appeal pending as

1 of the date of the enactment of this Act on the issue of
 2 payment for indirect costs of medical education under sec-
 3 tion 1886(d)(5)(B) of the Social Security Act (42 U.S.C.
 4 1395ww(d)(5)(B)) or for direct graduate medical edu-
 5 cation costs under section 1886(h) of such Act (42 U.S.C.
 6 1395ww(h)).

7 **SEC. 4. RULES FOR COUNTING RESIDENT TIME FOR DIDAC-**
 8 **TIC AND SCHOLARLY ACTIVITIES AND OTHER**
 9 **ACTIVITIES.**

10 (a) GME.—Section 1886(h) of the Social Security
 11 Act (42 U.S.C. 1395ww(h)), as amended by section 3, is
 12 amended—

13 (1) in paragraph (4)(E)—

14 (A) by designating the first sentence as a
 15 clause (i) with the heading “IN GENERAL” and
 16 appropriate indentation and by striking “Such
 17 rules” and inserting “Subject to clause (ii),
 18 such rules”; and

19 (B) by adding at the end the following new
 20 clause:

21 “(ii) TREATMENT OF CERTAIN NON-
 22 HOSPITAL AND DIDACTIC ACTIVITIES.—
 23 Such rules shall provide that all time spent
 24 by an intern or resident in an approved
 25 medical residency training program in a

1 nonhospital setting that is primarily en-
2 gaged in furnishing patient care (as de-
3 fined in paragraph (5)(K)) in non-patient
4 care activities, such as didactic conferences
5 and seminars, but not including research
6 not associated with the treatment or diag-
7 nosis of a particular patient, as such time
8 and activities are defined by the Secretary,
9 shall be counted toward the determination
10 of full-time equivalency.”;

11 (2) in paragraph (4), by adding at the end the
12 following new subparagraph:

13 “(I) In determining the hospital’s number
14 of full-time equivalent residents for purposes of
15 this subsection, all the time that is spent by an
16 intern or resident in an approved medical resi-
17 dency training program on vacation, sick leave,
18 or other approved leave, as such time is defined
19 by the Secretary, and that does not prolong the
20 total time the resident is participating in the
21 approved program beyond the normal duration
22 of the program shall be counted toward the de-
23 termination of full-time equivalency.”; and

24 (3) in paragraph (5), by adding at the end the
25 following new subparagraph:

1 “(K) NONHOSPITAL SETTING THAT IS PRI-
 2 MARILY ENGAGED IN FURNISHING PATIENT
 3 CARE.—The term ‘nonhospital setting that is
 4 primarily engaged in furnishing patient care’
 5 means a nonhospital setting in which the pri-
 6 mary activity is the care and treatment of pa-
 7 tients, as defined by the Secretary.”.

8 (b) IME DETERMINATIONS.—Section 1886(d)(5)(B)
 9 of such Act (42 U.S.C. 1395ww(d)(5)(B)) is amended by
 10 adding at the end the following new clause:

11 “(x)(I) The provisions of subpara-
 12 graph (I) of subsection (h)(4) shall apply
 13 under this subparagraph in the same man-
 14 ner as they apply under such subsection.

15 “(II) In determining the hospital’s
 16 number of full-time equivalent residents
 17 for purposes of this subparagraph, all the
 18 time spent by an intern or resident in an
 19 approved medical residency training pro-
 20 gram in non-patient care activities, such as
 21 didactic conferences and seminars, as such
 22 time and activities are defined by the Sec-
 23 retary, that occurs in the hospital shall be
 24 counted toward the determination of full-
 25 time equivalency if the hospital—

1 “(aa) is recognized as a sub-
2 section (d) hospital;

3 “(bb) is recognized as a sub-
4 section (d) Puerto Rico hospital;

5 “(cc) is reimbursed under a reim-
6 bursement system authorized under
7 section 1814(b)(3); or

8 “(dd) is a provider-based hospital
9 outpatient department.

10 “(III) In determining the hospital’s
11 number of full-time equivalent residents
12 for purposes of this subparagraph, all the
13 time spent by an intern or resident in an
14 approved medical residency training pro-
15 gram in research activities that are not as-
16 sociated with the treatment or diagnosis of
17 a particular patient, as such time and ac-
18 tivities are defined by the Secretary, shall
19 not be counted toward the determination of
20 full-time equivalency.”.

21 (c) EFFECTIVE DATES; APPLICATION.—

22 (1) IN GENERAL.—Except as otherwise pro-
23 vided, the Secretary of Health and Human Services
24 shall implement the amendments made by this sec-

tion in a manner so as to apply to cost reporting periods beginning on or after January 1, 1983.

(2) DIRECT GME.—Section 1886(h)(4)(E)(ii) of the Social Security Act, as added by subsection (a)(1)(B), shall apply to cost reporting periods beginning on or after July 1, 2008.

(3) IME.—Section 1886(d)(5)(B)(x)(III) of the Social Security Act, as added by subsection (b), shall apply to cost reporting periods beginning on or after October 1, 2001. Such section, as so added, shall not give rise to any inference on how the law in effect prior to such date should be interpreted.

(4) APPLICATION.—The amendments made by this section shall not be applied in a manner that requires reopening of any settled hospital cost reports as to which there is not a jurisdictionally proper appeal pending as of the date of the enactment of this Act on the issue of payment for indirect costs of medical education under section 1886(d)(5)(B) of the Social Security Act or for direct graduate medical education costs under section 1886(h) of such Act.

1 **SEC. 5. PRESERVATION OF RESIDENT CAP POSITIONS**
2 **FROM CLOSED AND ACQUIRED HOSPITALS.**

3 (a) GME.—Section 1886(h)(4)(H) of the Social Se-
4 curity Act (42 U.S.C. Section 1395ww(h)(4)(H)) is
5 amended by adding at the end the following new clauses:

6 “(vi) REDISTRIBUTION OF RESIDENCY
7 SLOTS AFTER A HOSPITAL CLOSES.—

8 “(I) IN GENERAL.—Subject to
9 the succeeding provisions of this
10 clause, the Secretary shall, by regula-
11 tion, establish a process under which,
12 in the case where a hospital with an
13 approved medical residency program
14 closes on or after the date of enact-
15 ment of the Balanced Budget Act of
16 1997, the Secretary shall increase the
17 otherwise applicable resident limit
18 under this paragraph for other hos-
19 pitals in accordance with this clause.

20 “(II) PRIORITY FOR HOSPITALS
21 IN CERTAIN AREAS.—Subject to the
22 succeeding provisions of this clause, in
23 determining for which hospitals the
24 increase in the otherwise applicable
25 resident limit is provided under such
26 process, the Secretary shall distribute

1 the increase to hospitals located in the
2 following priority order (with pref-
3 erence given within each category to
4 hospitals that are members of the
5 same affiliated group (as defined by
6 the Secretary under clause (ii)) as the
7 closed hospital):

8 “(aa) First, to hospitals lo-
9 cated in the same core-based sta-
10 tistical area as, or a core-based
11 statistical area contiguous to, the
12 hospital that closed.

13 “(bb) Second, to hospitals
14 located in the same State as the
15 hospital that closed.

16 “(cc) Third, to hospitals lo-
17 cated in the same region of the
18 country as the hospital that
19 closed.

20 “(dd) Fourth, to all other
21 hospitals.

22 “(III) REQUIREMENT HOSPITAL
23 LIKELY TO FILL POSITION WITHIN
24 CERTAIN TIME PERIOD.—The Sec-
25 retary may only increase the otherwise

1 applicable resident limit of a hospital
2 under such process if the Secretary
3 determines the hospital has dem-
4 onstrated a likelihood of filling the po-
5 sitions made available under this
6 clause within 3 years.

7 “(IV) LIMITATION.—The aggre-
8 gate number of increases in the other-
9 wise applicable resident limits for hos-
10 pitals under this clause shall be equal
11 to the number of resident positions in
12 the approved medical residency pro-
13 grams that closed on or after the date
14 described in subclause (I).

15 “(vii) SPECIAL RULE FOR ACQUIRED
16 HOSPITALS.—

17 “(I) IN GENERAL.—In the case
18 of a hospital that is acquired (through
19 any mechanism) by another entity
20 with the approval of a bankruptcy
21 court, during a period determined by
22 the Secretary (but not less than 3
23 years), the applicable resident limit of
24 the acquired hospital shall, except as
25 provided in subclause (II), be the ap-

1 plicable resident limit of the hospital
2 that was acquired (as of the date im-
3 mediately before the acquisition),
4 without regard to whether the acquir-
5 ing entity accepts assignment of the
6 Medicare provider agreement of the
7 hospital that was acquired, so long as
8 the acquiring entity continues to oper-
9 ate the hospital that was acquired and
10 to furnish services, medical residency
11 programs, and volume of patients
12 similar to the services, medical resi-
13 dency programs, and volume of pa-
14 tients of the hospital that was ac-
15 quired (as determined by the Sec-
16 retary) during such period.

17 “(II) LIMITATION.—Subclause
18 (I) shall only apply in the case where
19 an acquiring entity waives the right as
20 a new provider under the program
21 under this title to have the otherwise
22 applicable resident limit of the ac-
23 quired hospital re-established or in-
24 creased.”.

1 (b) IME.—Section 1886(d)(5)(B)(v) of the Social Se-
2 curity Act (42 U.S.C. 1395ww(d)(5)(B)(v)), in the second
3 sentence, as amended by section 3, is amended by striking
4 “subsections (h)(7) and (h)(8)” and inserting “sub-
5 sections (h)(4)(H)(vi), (h)(4)(H)(vii), (h)(7), and (h)(8)”.

6 (c) APPLICATION.—The amendments made by this
7 section shall not be applied in a manner that requires re-
8 opening of any settled hospital cost reports as to which
9 there is not a jurisdictionally proper appeal pending as
10 of the date of the enactment of this Act on the issue of
11 payment for indirect costs of medical education under sec-
12 tion 1886(d)(5)(B) of the Social Security Act (42 U.S.C.
13 1395ww(d)(5)(B)) or for direct graduate medical edu-
14 cation costs under section 1886(h) of such Act (42 U.S.C.
15 Section 1395ww(h)).

16 (d) NO EFFECT ON TEMPORARY FTE CAP ADJUST-
17 MENTS.—The amendments made by this section shall not
18 effect any temporary adjustment to a hospital’s FTE cap
19 under section 413.79(h) of title 42, Code of Federal Regu-
20 lations (as in effect on the date of enactment of this Act).

○