

111TH CONGRESS  
1ST SESSION

# H. R. 362

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.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 9, 2009

Mr. BOSWELL (for himself, Mr. LOEBSACK, Mr. BERRY, Mr. BRALEY of Iowa, and Mrs. EMERSON) 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

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## 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,*

1 **SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Rural Hospital Assist-  
3       ance Act of 2009”.

4 **SEC. 2. TEMPORARY IMPROVEMENTS TO THE MEDICARE**  
5 **INPATIENT HOSPITAL PAYMENT ADJUST-**  
6 **MENT FOR LOW-VOLUME HOSPITALS.**

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

9               (1) in subparagraph (A), by inserting “or (D)  
10       (for discharges occurring in fiscal year 2010)” after  
11       “subparagraph (B)”;

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

15              (3) in subparagraph (C)(i)—

16                      (A) by inserting “(or, with respect to fiscal  
17       year 2010, 15 road miles)” after “25 road  
18       miles”; and

19                      (B) by inserting “(or, with respect to fiscal  
20       year 2010, 1,500 discharges of individuals enti-  
21       tled to, or enrolled for, benefits under part A)”  
22       after “800 discharges”; and

23              (4) by adding at the end the following new sub-  
24       paragraph:

25                      “(D) TEMPORARY APPLICABLE PERCENT-  
26       AGE INCREASE.—For discharges occurring in

1           fiscal year 2010, the Secretary shall determine  
 2           an applicable percentage increase for purposes  
 3           of subparagraph (A) using a continuous linear  
 4           sliding scale ranging from 25 percent for low-  
 5           volume hospitals with 200 or fewer discharges  
 6           of individuals entitled to, or enrolled for, bene-  
 7           fits under part A in the fiscal year to 0 percent  
 8           for low-volume hospitals with greater than  
 9           1,500 discharges of such individuals in the fis-  
 10          cal year.”.

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

15      **SEC. 3. USE OF NON-WAGE ADJUSTED PPS RATE UNDER**  
 16                              **THE     MEDICARE-DEPENDENT     HOSPITAL**  
 17                              **(MDH) PROGRAM.**

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

21           “(v) In the case of discharges occurring on or after  
 22          October 1, 2009, and before October 1, 2010, in deter-  
 23          mining the amount under paragraph (1)(A)(iii) for pur-  
 24          poses of clauses (i) and (ii)(II), such amount shall, if it  
 25          results in greater payments to the hospital, be determined

1 without regard to any adjustment for different area wage  
 2 levels under paragraph (3)(E).”.

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

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

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

12 (1) in subsection (d)(2)—

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

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

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

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

22 (2) in subsection (d)(3)—

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

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

3 (C) by adding at the end the following new  
 4 subparagraph:

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

9 (3) by adding at the end the following new sub-  
 10 section:

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

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

18 “(A) PROVIDER AGREEMENT.—The hos-  
 19 pital had—

20 “(i) physician ownership on Sep-  
 21 tember 1, 2008; and

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

24 “(B) LIMITATION ON EXPANSION OF FA-  
 25 CILITY CAPACITY.—Except as provided in para-

graph (3), the number of operating rooms, procedure rooms, and beds of the hospital at any time on or after the date of the enactment of this subsection are no greater than the number of operating rooms, procedure rooms, and beds as of such date.

“(C) PREVENTING CONFLICTS OF INTEREST.—

“(i) The hospital submits to the Secretary an annual report containing a detailed description of—

“(I) the identity of each physician owner and any other owners of the hospital; and

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

“(ii) The hospital has procedures in place to require that any referring physician owner discloses to the patient being referred, by a time that permits the patient to make a meaningful decision regarding the receipt of care, as determined by the Secretary—

1                   “(I) the ownership interest of  
2                   such referring physician in the hos-  
3                   pital; and

4                   “(II) if applicable, any such own-  
5                   ership interest of the treating physi-  
6                   cian.

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

13                  “(iv) The hospital discloses the fact  
14                  that the hospital is partially owned by phy-  
15                  sicians—

16                         “(I) on any public website for the  
17                         hospital; and

18                         “(II) in any public advertising  
19                         for the hospital.

20                  “(D) ENSURING BONA FIDE INVEST-  
21                  MENT.—

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

24                                 “(I) 40 percent of the total value  
25                                 of the investment interests held in the

1 hospital or in an entity whose assets  
2 include the hospital; or

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

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

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

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

22 “(v) Investment returns are distrib-  
23 uted to each investor in the hospital in an  
24 amount that is directly proportional to the



1 ownership interest of such investor in the  
2 hospital.

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

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

18 “(E) PATIENT SAFETY.—

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

1 “(I) the hospital discloses such  
2 fact to a patient; and

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

7 “(ii) The hospital has the capacity  
8 to—

9 “(I) provide assessment and ini-  
10 tial treatment for patients; and

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

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

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

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

3           “(A) PROCESS.—

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

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

17           “(iii) TIMING FOR IMPLEMENTA-  
18       TION.—The Secretary shall implement the  
19       process under clause (i) on November 1,  
20       2009.

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

1 “(B) FREQUENCY.—The process described  
2 in subparagraph (A) shall permit an applicable  
3 hospital to apply for an exception up to once  
4 every 2 years.

5 “(C) PERMITTED INCREASE.—

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

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

1 (i) to the extent such increase would result  
2 in the number of operating rooms, proce-  
3 dure rooms, and beds of the applicable  
4 hospital exceeding 200 percent of the base-  
5 line number of operating rooms, procedure  
6 rooms, and beds of the applicable hospital.

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

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

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

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

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

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

22 “(iv) that is located in a State in  
23 which the average bed capacity in the  
24 State is less than the national average bed  
25 capacity; and

1                   “(v) that has an average bed occu-  
2                   pancy rate that is greater than the average  
3                   bed occupancy rate in the State in which  
4                   the hospital is located.

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

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

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

24                  “(4) COLLECTION OF OWNERSHIP AND INVEST-  
25                  MENT INFORMATION.—For purposes of subpara-

1 graphs (A)(i) and (D)(i) of paragraph (1), the Sec-  
2 retary shall collect physician ownership and invest-  
3 ment information for each hospital.

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

9 (b) ENFORCEMENT.—

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

18 (2) AUDITS.—Beginning not later than January  
19 1, 2010, the Secretary of Health and Human Serv-  
20 ices shall conduct audits to determine if hospitals  
21 violate the requirements referred to in paragraph  
22 (1).

○