

111TH CONGRESS
1ST SESSION

S. 382

To amend title XVIII of the Social Security Act to improve the provision of items and services provided to Medicare beneficiaries residing in States with more cost-effective health care delivery systems.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 4, 2009

Mrs. MURRAY (for herself and Ms. CANTWELL) 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 improve the provision of items and services provided to Medicare beneficiaries residing in States with more cost-effective health care delivery systems.

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 “MediFair Act of
5 2009”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

1 (1) Regional inequities in Medicare reimburse-
2 ment have created barriers to care for seniors and
3 the disabled.

4 (2) The regional inequities in Medicare reim-
5 bursement penalize States that have cost-effective
6 health care delivery systems and reward those States
7 with high utilization rates and that provide ineffi-
8 cient care.

9 (3) Comparatively, in 2003, per capita spending
10 under traditional Medicare was \$5,661 for bene-
11 ficiaries in Seattle, \$9,752 for those in Los Angeles,
12 and \$11,340 for those in Miami.

13 (4) Over a lifetime, regional inequities can
14 mean as much as a \$125,000 difference in the cost
15 of care provided per beneficiary.

16 (5) Regional inequities have resulted in creating
17 very different Medicare programs and amount of
18 care received for seniors and the disabled based on
19 where they live.

20 (6) Because the Medicare Advantage rate is
21 based on the fee-for-service reimbursement rate, re-
22 gional inequities have allowed some Medicare bene-
23 ficiaries access to plans with significantly more bene-
24 fits and reduced cost sharing. Beneficiaries in States
25 with lower reimbursement rates have not benefitted

1 to the same degree as beneficiaries in other parts of
 2 the country.

3 (7) Regional inequities in Medicare reimburse-
 4 ment have created an unfair competitive advantage
 5 for hospitals and other health care providers in
 6 States that receive above average payments. Higher
 7 payments mean that those providers can pay higher
 8 salaries in a tight, competitive market.

9 (8) Regional inequities in Medicare reimburse-
 10 ment are not just a rural versus urban problem.
 11 Many States with large urban centers are at the bot-
 12 tom of the national average for per beneficiary costs.

13 **SEC. 3. IMPROVING FAIRNESS OF PAYMENTS TO PRO-**
 14 **VIDERS UNDER THE MEDICARE FEE-FOR-**
 15 **SERVICE PROGRAM.**

16 Title XVIII of the Social Security Act (42 U.S.C.
 17 1395 et seq.) is amended by adding at the end the fol-
 18 lowing new section:

19 “IMPROVING PAYMENT EQUITY UNDER THE ORIGINAL
 20 MEDICARE FEE-FOR-SERVICE PROGRAM

21 “SEC. 1899. (a) ESTABLISHMENT OF SYSTEM.—Not-
 22 withstanding any other provision of law, the Secretary
 23 shall establish a system for making adjustments to the
 24 amount of payment made to entities and individuals for
 25 items and services provided under the original Medicare
 26 fee-for-service program under parts A and B.

1 “(b) SYSTEM REQUIREMENTS.—

2 “(1) INCREASE FOR STATES BELOW THE NA-
3 TIONAL AVERAGE.—Under the system established
4 under subsection (a), if a State average per bene-
5 ficiary amount for a year is less than the national
6 average per beneficiary amount for such year, then
7 the Secretary (beginning in 2010) shall increase the
8 amount of applicable payments in such a manner as
9 will result (as estimated by the Secretary) in the
10 State average per beneficiary amount for the subse-
11 quent year being equal to the national average per
12 beneficiary amount for such subsequent year.

13 “(2) REDUCTION FOR CERTAIN STATES ABOVE
14 THE NATIONAL AVERAGE TO ENHANCE QUALITY
15 CARE AND MAINTAIN BUDGET NEUTRALITY.—

16 “(A) IN GENERAL.—The Secretary shall
17 ensure that the increase in payments under
18 paragraph (1) does not cause the estimated
19 amount of expenditures under this title for a
20 year to increase or decrease from the estimated
21 amount of expenditures under this title that
22 would have been made in such year if this sec-
23 tion had not been enacted by reducing the
24 amount of applicable payments in each State
25 that the Secretary determines has—

1 “(i) a State average per beneficiary
 2 amount for a year that is greater than the
 3 national average per beneficiary amount
 4 for such year; and

5 “(ii) healthy outcome measurements
 6 or quality care measurements that indicate
 7 that a reduction in applicable payments
 8 would encourage more efficient use of, and
 9 reduce overuse of, items and services for
 10 which payment is made under this title.

11 “(B) LIMITATION.—The Secretary shall
 12 not reduce applicable payments under subpara-
 13 graph (A) to a State that—

14 “(i) has a State average per bene-
 15 ficiary amount for a year that is greater
 16 than the national average per beneficiary
 17 amount for such year; and

18 “(ii) has healthy outcome measure-
 19 ments or quality care measurements that
 20 indicate that the applicable payments are
 21 being used to improve the access of bene-
 22 ficiaries to quality care.

23 “(3) DETERMINATION OF AVERAGES.—

24 “(A) STATE AVERAGE PER BENEFICIARY
 25 AMOUNT.—Each year (beginning in 2009), the

1 Secretary shall determine a State average per
2 beneficiary amount for each State which shall
3 be equal to the Secretary's estimate of the aver-
4 age amount of expenditures under the original
5 Medicare fee-for-service program under parts A
6 and B for the year for a beneficiary enrolled
7 under such parts who resides in the State.

8 “(B) NATIONAL AVERAGE PER BENE-
9 FICIARY AMOUNT.—Each year (beginning in
10 2009), the Secretary shall determine the na-
11 tional average per beneficiary amount which
12 shall be equal to the average of the State aver-
13 age per beneficiary amount determined under
14 subparagraph (A) for the year.

15 “(4) DEFINITIONS.—In this section:

16 “(A) APPLICABLE PAYMENTS.—The term
17 ‘applicable payments’ means payments made to
18 entities and individuals for items and services
19 provided under the original Medicare fee-for-
20 service program under parts A and B to bene-
21 ficiaries enrolled under such parts who reside in
22 the State.

23 “(B) STATE.—The term ‘State’ has the
24 meaning given such term in section 210(h).

1 “(c) BENEFICIARIES HELD HARMLESS.—The provi-
2 sions of this section shall not affect—

3 “(1) the entitlement to items and services of a
4 beneficiary under this title, including the scope of
5 such items and services; or

6 “(2) any liability of the beneficiary with respect
7 to such items and services.

8 “(d) REGULATIONS.—

9 “(1) IN GENERAL.—The Secretary, in consulta-
10 tion with the Medicare Payment Advisory Commis-
11 sion, shall promulgate regulations to carry out this
12 section.

13 “(2) PROTECTING RURAL COMMUNITIES.—In
14 promulgating the regulations pursuant to paragraph
15 (1), the Secretary shall give special consideration to
16 rural areas.”.

17 **SEC. 4. MEDPAC RECOMMENDATIONS ON HEALTHY OUT-**
18 **COMES AND QUALITY CARE.**

19 (a) RECOMMENDATIONS.—The Medicare Payment
20 Advisory Commission established under section 1805 of
21 the Social Security Act (42 U.S.C. 1395b–6) shall develop
22 recommendations on policies and practices that, if imple-
23 mented, would encourage—

24 (1) healthy outcomes and quality care under the
25 Medicare program in States with respect to which

1 payments are reduced under section 1899(b)(2) of
2 such Act (as added by section 3); and

3 (2) the efficient use of payments made under
4 the Medicare program in such States.

5 (b) SUBMISSION.—Not later than the date that is 9
6 months after the date of enactment of this Act, the Com-
7 mission shall submit to Congress the recommendations de-
8 veloped under subsection (a).

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