

112TH CONGRESS
2D SESSION

H. R. 5194

To amend title XVIII of the Social Security Act to protect and preserve access of Medicare beneficiaries in rural areas to health care providers under the Medicare program, to amend title III of the Public Health Service Act to extend discounts under the 340B program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 27, 2012

Mrs. McMORRIS RODGERS (for herself and Mr. THOMPSON of California) 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 title XVIII of the Social Security Act to protect and preserve access of Medicare beneficiaries in rural areas to health care providers under the Medicare program, to amend title III of the Public Health Service Act to extend discounts under the 340B 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; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
 3 “Rural Hospital and Provider Equity and 340B Improve-
 4 ment Act of 2012”.

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

Sec. 1. Short title; table of contents.

TITLE I—RURAL HOSPITAL AND PROVIDER EQUITY

Sec. 101. Sense of the Congress.

Sec. 102. Fairness in the Medicare disproportionate share hospital (DSH) ad-
 justment for rural hospitals.

Sec. 103. Extension and expansion of the Medicare hold harmless provision
 under the prospective payment system for hospital outpatient
 department (HOPD) services for certain hospitals.

Sec. 104. Temporary improvements to the Medicare inpatient hospital payment
 adjustment for low-volume hospitals.

Sec. 105. Extension of Medicare wage index reclassifications for certain hos-
 pitals.

Sec. 106. Extension of Medicare reasonable costs payments for certain clinical
 diagnostic laboratory tests furnished to hospital patients in cer-
 tain rural areas.

Sec. 107. Elimination of isolation test for cost-based ambulance reimbursement
 for critical access hospitals.

Sec. 108. Extension of Medicare incentive payment program for physician scar-
 city areas.

Sec. 109. Extension of floor on Medicare work geographic adjustment.

Sec. 110. Improving care planning for Medicare home health services.

Sec. 111. Rural health clinic improvements.

Sec. 112. Temporary Medicare payment increase for home health services fur-
 nished in a rural area.

Sec. 113. Extension of increased Medicare payments for rural ground ambu-
 lance services.

Sec. 114. Extension of payment for technical component of certain physician
 pathology services.

Sec. 115. Facilitating the provision of telehealth services across State lines.

Sec. 116. Medicare Part A payment for anesthesiologist services in certain
 rural hospitals based on CRNA pass-through rules.

Sec. 117. Temporary floor on the practice expense geographic index for services
 furnished in rural areas outside of frontier States under the
 Medicare physician fee schedule.

Sec. 118. Revisions to standard for designation of sole community hospitals.

Sec. 119. State offices of rural health.

Sec. 120. Ensuring proportional representation of interests of rural areas on
 MEDPAC.

TITLE II—340B PROGRAM IMPROVEMENT

Sec. 201. Extension of discounts to inpatient drugs.

Sec. 202. Prohibition against duplicate discounts for physician administered drugs.

Sec. 203. Continued inclusion of orphan drugs in definition of covered outpatient drugs; technical amendment.

Sec. 204. Application of rules for determining provider-based status for certain entities.

1 **TITLE I—RURAL HOSPITAL AND** 2 **PROVIDER EQUITY**

3 **SEC. 101. SENSE OF THE CONGRESS.**

4 It is the sense of the Congress that—

5 (1) residents of rural and frontier communities
6 should have access to affordable, quality health care;

7 (2) rural and frontier communities face unique
8 challenges in health care delivery and financing;

9 (3) Federal health policy must reflect the
10 unique needs of residents of rural and frontier com-
11 munities and such communities in an equitable and
12 sustainable manner; and

13 (4) stakeholders should work collectively to
14 identify innovative policies that address the avail-
15 ability, delivery, and affordability of health care
16 services in rural and frontier communities.

17 **SEC. 102. FAIRNESS IN THE MEDICARE DISPROPOR-** 18 **TIONATE SHARE HOSPITAL (DSH) ADJUST-** 19 **MENT FOR RURAL HOSPITALS.**

20 Section 1886(d)(5)(F)(xiv)(II) of the Social Security
21 Act (42 U.S.C. 1395ww(d)(5)(F)(xiv)(II)) is amended by
22 adding at the end the following new sentence: “The pre-

1 ceding sentence shall not apply to any hospital with re-
 2 spect to discharges occurring on or after October 1, 2011,
 3 and before October 1, 2012.”.

4 **SEC. 103. EXTENSION AND EXPANSION OF THE MEDICARE**
 5 **HOLD HARMLESS PROVISION UNDER THE**
 6 **PROSPECTIVE PAYMENT SYSTEM FOR HOS-**
 7 **PITAL OUTPATIENT DEPARTMENT (HOPD)**
 8 **SERVICES FOR CERTAIN HOSPITALS.**

9 Section 1833(t)(7)(D)(i) of the Social Security Act
 10 (42 U.S.C. 1395l(t)(7)(D)(i)) is amended—

11 (1) in subclause (II)—

12 (A) in the first sentence, by striking
 13 “March 1, 2012” and inserting “January 1,
 14 2013”; and

15 (B) in the second sentence—

16 (i) by striking “and 85” and inserting
 17 “85”; and

18 (ii) by inserting the following before
 19 the period at the end: “, and 100 percent
 20 with respect to such services furnished in
 21 the last 10 months of 2012”; and

22 (2) in subclause (III)—

23 (A) in the first sentence—

24 (i) by striking “2009, and before
 25 March 1, 2012, for which” and inserting

1 “2009, and before January 1, 2013, for
2 which”; and

3 (ii) by striking “85 percent” and in-
4 serting “the applicable percentage (as de-
5 termined under the second sentence of sub-
6 clause (II) for the year)”; and

7 (B) in the second sentence, by striking
8 “2010, and before March 1, 2012, the pre-
9 ceding” and inserting “2010, and before Janu-
10 ary 1, 2013, the preceding”.

11 **SEC. 104. TEMPORARY IMPROVEMENTS TO THE MEDICARE**
12 **INPATIENT HOSPITAL PAYMENT ADJUST-**
13 **MENT FOR LOW-VOLUME HOSPITALS.**

14 Section 1886(d)(12) of the Social Security Act (42
15 U.S.C. 1395ww(d)(12)) is amended—

16 (1) in subparagraph (C)(i), by inserting “and
17 2,000 discharges, respectively,” after “1,600 dis-
18 charges”; and

19 (2) in subparagraph (D)—

20 (A) by striking “1,600” and inserting “the
21 applicable number of”; and

22 (B) by adding at the end the following new
23 sentence: “For purposes of the preceding sen-
24 tence, the term ‘applicable number of dis-
25 charges’ means 1,600 discharges with respect to

1 discharges occurring in fiscal year 2011 and
 2 2,000 discharges with respect to discharges oc-
 3 ccurring in fiscal year 2012”.

4 **SEC. 105. EXTENSION OF MEDICARE WAGE INDEX RECLAS-**
 5 **SIFICATIONS FOR CERTAIN HOSPITALS.**

6 (a) EXTENSION OF CORRECTION OF MID-YEAR RE-
 7 CLASSIFICATION EXPIRATION FOR CERTAIN HOS-
 8 PITALS.—

9 (1) IN GENERAL.—In the case of a hospital de-
 10 scribed in paragraph (2), the Secretary of Health
 11 and Human Services shall apply subsection (a) of
 12 section 106 of division B of the Tax Relief and
 13 Health Care Act of 2006 (42 U.S.C. 1395ww note),
 14 as amended by section 117 of the Medicare, Med-
 15 icaid, and SCHIP Extension Act of 2007 (Public
 16 Law 110–173), section 124 of the Medicare Im-
 17 provements for Patients and Providers Act of 2008
 18 (Public Law 110–275), sections 3137(a) and 10317
 19 of the Patient Protection and Affordable Care Act
 20 (Public Law 111–148), and section 102 of the Medi-
 21 care and Medicaid Extenders Act of 2010 (Public
 22 Law 111–309), by substituting “September 30,
 23 2012” for “November 30, 2011”.

24 (2) HOSPITAL DESCRIBED.—A hospital de-
 25 scribed in this paragraph is—

1 (A) a hospital—

2 (i) that is described in subsection (a)
3 of such section 106; and

4 (ii)(I) that is located in a rural area;
5 and

6 (II) for which the Secretary of Health
7 and Human Services has determined the
8 extension under this subsection to be ap-
9 propriate; or

10 (B) a sole community hospital located in a
11 State with less than 10 people per square mile
12 that was provided with a special exception re-
13 classification extension under section 117(a)(2)
14 of the Medicare, Medicaid, and SCHIP Exten-
15 sion Act of 2007 (Public Law 110–173).

16 (b) NOT BUDGET NEUTRAL.—The provisions of this
17 section shall not be effected in a budget-neutral manner.

18 **SEC. 106. EXTENSION OF MEDICARE REASONABLE COSTS**
19 **PAYMENTS FOR CERTAIN CLINICAL DIAG-**
20 **NOSTIC LABORATORY TESTS FURNISHED TO**
21 **HOSPITAL PATIENTS IN CERTAIN RURAL**
22 **AREAS.**

23 Section 416(b) of the Medicare Prescription Drug,
24 Improvement, and Modernization Act of 2003 (42 U.S.C.
25 1395l–4), as amended by section 105 of division B of the

1 Tax Relief and Health Care Act of 2006 (42 U.S.C. 1395l
 2 note), section 107 of the Medicare, Medicaid, and SCHIP
 3 Extension Act of 2007 (42 U.S.C. 1395l note), section
 4 3122 of the Patient Protection and Affordable Care Act
 5 (Public Law 111–148), and section 109 of the Medicare
 6 and Medicaid Extenders Act of 2010 (Public Law 111–
 7 309), is amended by striking “the 2-year period beginning
 8 on July 1, 2010” and inserting “the 30-month period be-
 9 ginning on July 1, 2010”.

10 **SEC. 107. ELIMINATION OF ISOLATION TEST FOR COST-**
 11 **BASED AMBULANCE REIMBURSEMENT FOR**
 12 **CRITICAL ACCESS HOSPITALS.**

13 (a) IN GENERAL.—Section 1834(l)(8) of the Social
 14 Security Act (42 U.S.C. 1395m(l)(8)) is amended—

15 (1) in subparagraph (B)—

16 (A) by striking “owned and”; and

17 (B) by inserting “(including when such
 18 services are provided by the entity under an ar-
 19 rangement with the hospital)” after “hospital”;
 20 and

21 (2) by striking the comma at the end of sub-
 22 paragraph (B) and all that follows and inserting a
 23 period.

1 (b) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply to services furnished on or after
 3 January 1, 2012.

4 **SEC. 108. EXTENSION OF MEDICARE INCENTIVE PAYMENT**
 5 **PROGRAM FOR PHYSICIAN SCARCITY AREAS.**

6 Section 1833(u)(1) of the Social Security Act (42
 7 U.S.C. 1395l(u)(1)) is amended by inserting “, and such
 8 services furnished on or after January 1, 2012, and before
 9 January 1, 2013” after “2008”.

10 **SEC. 109. EXTENSION OF FLOOR ON MEDICARE WORK GEO-**
 11 **GRAPHIC ADJUSTMENT.**

12 Section 1848(e)(1)(E) of the Social Security Act (42
 13 U.S.C. 1395w-4(e)(1)(E)) is amended by striking “before
 14 March 1, 2012” and inserting “before January 1, 2013”.

15 **SEC. 110. IMPROVING CARE PLANNING FOR MEDICARE**
 16 **HOME HEALTH SERVICES.**

17 (a) PART A PROVISIONS.—Section 1814(a) of the So-
 18 cial Security Act (42 U.S.C. 1395f(a)) is amended—

19 (1) in paragraph (2)—

20 (A) in the matter preceding subparagraph

21 (A), by inserting “, a nurse practitioner or clin-

22 ical nurse specialist who is working in collabo-

23 ration with a physician in accordance with

24 State law, a certified nurse-midwife (as defined

25 in section 1861(gg)) as authorized by State law,

1 or a physician assistant (as defined in section
2 1861(aa)(5)) under the supervision of a physi-
3 cian” after “1866(j)”; and

4 (B) in subparagraph (C)—

5 (i) by inserting “, a nurse practi-
6 tioner, a clinical nurse specialist, a cer-
7 tified nurse-midwife, or a physician assist-
8 ant (as the case may be)” after “physi-
9 cian” the first 2 times it appears; and

10 (ii) by striking “, and, in the case of
11 a certification made by a physician” and
12 all that follows through “face-to-face en-
13 counter” and inserting “, and, in the case
14 of a certification made by a physician after
15 January 1, 2010, or by a nurse practi-
16 tioner, clinical nurse specialist, certified
17 nurse-midwife, or physician assistant (as
18 the case may be) after January 1, 2012,
19 prior to making such certification the phy-
20 sician, nurse practitioner, clinical nurse
21 specialist, certified nurse-midwife, or physi-
22 cian assistant must document that the
23 physician, nurse practitioner, clinical nurse
24 specialist, certified nurse-midwife, or physi-

1 cian assistant has had a face-to-face en-
2 counter”;

3 (2) in the second sentence, by inserting “cer-
4 tified nurse-midwife,” after “clinical nurse spe-
5 cialist,”;

6 (3) in the third sentence—

7 (A) by striking “physician certification”
8 and inserting “certification”;

9 (B) by inserting “(or on January 1, 2012,
10 in the case of regulations to implement the
11 amendments made by section 11 of the Rural
12 Hospital and Provider Equity and 340B Im-
13 provement Act of 2012)” after “1981”; and

14 (C) by striking “a physician who” and in-
15 serting “a physician, nurse practitioner, clinical
16 nurse specialist, certified nurse-midwife, or phy-
17 sician assistant who”; and

18 (4) in the fourth sentence, by inserting “, nurse
19 practitioner, clinical nurse specialist, certified nurse-
20 midwife, or physician assistant” after “physician”.

21 (b) PART B PROVISIONS.—Section 1835(a) of the So-
22 cial Security Act (42 U.S.C. 1395n(a)) is amended—

23 (1) in paragraph (2)—

24 (A) in the matter preceding subparagraph

25 (A), by inserting “, a nurse practitioner or clin-

1 ical nurse specialist (as those terms are defined
2 in section 1861(aa)(5)) who is working in col-
3 laboration with a physician in accordance with
4 State law, a certified nurse-midwife (as defined
5 in section 1861(gg)) as authorized by State law,
6 or a physician assistant (as defined in section
7 1861(aa)(5)) under the supervision of a physi-
8 cian” after “1866(j)”; and

9 (B) in subparagraph (A)—

10 (i) in each of clauses (ii) and (iii) of
11 subparagraph (A) by inserting “, a nurse
12 practitioner, a clinical nurse specialist, a
13 certified nurse-midwife, or a physician as-
14 sistant (as the case may be)” after “physi-
15 cian”; and

16 (ii) in clause (iv), by striking “after
17 January 1, 2010” and all that follows
18 through “face-to-face encounter” and in-
19 sserting “made by a physician after Janu-
20 ary 1, 2010, or by a nurse practitioner,
21 clinical nurse specialist, certified nurse-
22 midwife, or physician assistant (as the case
23 may be) after January 1, 2012, prior to
24 making such certification the physician,
25 nurse practitioner, clinical nurse specialist,

1 certified nurse-midwife, or physician assist-
2 ant must document that the physician,
3 nurse practitioner, clinical nurse specialist,
4 certified nurse-midwife, or physician assist-
5 ant has had a face-to-face encounter”;

6 (2) in the third sentence, by inserting “, nurse
7 practitioner, clinical nurse specialist, certified nurse-
8 midwife, or physician assistant (as the case may
9 be)” after “physician”;

10 (3) in the fourth sentence—

11 (A) by striking “physician certification”
12 and inserting “certification”;

13 (B) by inserting “(or on January 1, 2012,
14 in the case of regulations to implement the
15 amendments made by section 11 of the Rural
16 Hospital and Provider Equity and 340B Im-
17 provement Act of 2012)” after “1981”; and

18 (C) by striking “a physician who” and in-
19 serting “a physician, nurse practitioner, clinical
20 nurse specialist, certified nurse-midwife, or phy-
21 sician assistant who”; and

22 (4) in the fifth sentence, by inserting “, nurse
23 practitioner, clinical nurse specialist, certified nurse-
24 midwife, or physician assistant” after “physician”.

25 (c) DEFINITION PROVISIONS.—

1 (1) HOME HEALTH SERVICES.—Section
2 1861(m) of the Social Security Act (42 U.S.C.
3 1395x(m)) is amended—

4 (A) in the matter preceding paragraph
5 (1)—

6 (i) by inserting “, a nurse practitioner
7 or a clinical nurse specialist (as those
8 terms are defined in subsection (aa)(5)), a
9 certified nurse-midwife (as defined in sec-
10 tion 1861(gg)), or a physician assistant (as
11 defined in subsection (aa)(5))” after “phy-
12 sician” the first place it appears; and

13 (ii) by inserting “, a nurse practi-
14 tioner, a clinical nurse specialist, a cer-
15 tified nurse-midwife, or a physician assist-
16 ant” after “physician” the second place it
17 appears; and

18 (B) in paragraph (3), by inserting “, a
19 nurse practitioner, a clinical nurse specialist, a
20 certified nurse-midwife, or a physician assist-
21 ant” after “physician”.

22 (2) HOME HEALTH AGENCY.—Section
23 1861(o)(2) of the Social Security Act (42 U.S.C.
24 1395x(o)(2)) is amended—

(A) by inserting “, nurse practitioners or clinical nurse specialists (as those terms are defined in subsection (aa)(5)), certified nurse-midwives (as defined in section 1861(gg)), or physician assistants (as defined in subsection (aa)(5))” after “physicians”; and

(B) by inserting “, nurse practitioner, clinical nurse specialist, certified nurse-midwife, physician assistant,” after “physician”.

(d) HOME HEALTH PROSPECTIVE PAYMENT SYSTEM PROVISIONS.—Section 1895 of the Social Security Act (42 U.S.C. 1395fff) is amended—

(1) in subsection (c)(1), by inserting “, the nurse practitioner or clinical nurse specialist (as those terms are defined in section 1861(aa)(5)), the certified nurse-midwife (as defined in section 1861(gg)), or the physician assistant (as defined in section 1861(aa)(5)),” after “physician”; and

(2) in subsection (e)—

(A) in paragraph (1)(A), by inserting “, a nurse practitioner or clinical nurse specialist (as those terms are defined in section 1861(aa)(5)), a certified nurse-midwife (as defined in section 1861(gg)), or a physician assistant (as defined in section 1861(aa)(5))” after “physician”; and

1 (B) in paragraph (2)—

2 (i) in the heading, by striking “PHY-
3 SICIAN CERTIFICATION” and inserting
4 “RULE OF CONSTRUCTION REGARDING RE-
5 QUIREMENT FOR CERTIFICATION”; and

6 (ii) by striking “physician”.

7 (e) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to items and services furnished on
9 or after January 1, 2012.

10 **SEC. 111. RURAL HEALTH CLINIC IMPROVEMENTS.**

11 Section 1833(f) of the Social Security Act (42 U.S.C.
12 1395l(f)) is amended—

13 (1) in paragraph (1), by striking “, and” at the
14 end and inserting a semicolon;

15 (2) in paragraph (2)—

16 (A) by inserting “(before 2012)” after “in
17 a subsequent year”; and

18 (B) by striking the period at the end and
19 inserting a semicolon; and

20 (3) by adding at the end the following new
21 paragraphs:

22 “(3) in 2012, at \$101 per visit; and

23 “(4) in a subsequent year, at the limit estab-
24 lished under this subsection for the previous year in-
25 creased by the percentage increase in the MEI (as

1 so defined) applicable to primary care services (as so
 2 defined) furnished as of the first day of that year.”.

3 **SEC. 112. TEMPORARY MEDICARE PAYMENT INCREASE FOR**
 4 **HOME HEALTH SERVICES FURNISHED IN A**
 5 **RURAL AREA.**

6 Section 421(a) of the Medicare Prescription Drug,
 7 Improvement, and Modernization Act of 2003 (Public Law
 8 108–173; 117 Stat. 2283), as amended by section 5201(b)
 9 of the Deficit Reduction Act of 2005 (Public Law 109–
 10 171; 120 Stat. 46) and section 3131(c) of the Patient Pro-
 11 tection and Affordable Care Act (Public Law 111–148;
 12 124 Stat. 428), is amended by striking “2016, 3 percent”
 13 and inserting “2011, and episodes and visits ending on
 14 or after January 1, 2013, and before January 1, 2016,
 15 3 percent”.

16 **SEC. 113. EXTENSION OF INCREASED MEDICARE PAYMENTS**
 17 **FOR RURAL GROUND AMBULANCE SERVICES.**

18 (a) IN GENERAL.—Section 1834(l)(13)(A) of the So-
 19 cial Security Act (42 U.S.C. 1395m(l)(13)(A)) is amend-
 20 ed—

21 (1) in the matter preceding clause (i)—

22 (A) by striking “2007, and for” and in-
 23 serting “2007, for”; and

24 (B) by inserting “, and for such services
 25 described in clause (i) furnished on or after

1 March 1, 2012, and before January 1, 2013”
 2 after “2012”; and

3 (2) in clause (i), by inserting “, or 5 percent if
 4 such service is furnished on or after March 1, 2012,
 5 and before January 1, 2013” after “2012”.

6 (b) SUPER RURAL AMBULANCE.—Section
 7 1834(l)(12)(A) of the Social Security Act (42 U.S.C.
 8 1395m(l)(12)(A)) is amended by striking “March 1,
 9 2012” and inserting “January 1, 2013”.

10 **SEC. 114. EXTENSION OF PAYMENT FOR TECHNICAL COM-**
 11 **PONENT OF CERTAIN PHYSICIAN PATHOL-**
 12 **OGY SERVICES.**

13 Section 542(c) of the Medicare, Medicaid, and
 14 SCHIP Benefits Improvement and Protection Act of 2000
 15 (as enacted into law by section 1(a)(6) of Public Law 106–
 16 554), as amended by section 732 of the Medicare Prescrip-
 17 tion Drug, Improvement, and Modernization Act of 2003
 18 (42 U.S.C. 1395w–4 note), section 104 of division B of
 19 the Tax Relief and Health Care Act of 2006 (42 U.S.C.
 20 1395w–4 note), section 104 of the Medicare, Medicaid,
 21 and SCHIP Extension Act of 2007 (Public Law 110–
 22 173), section 136 of the Medicare Improvements for Pa-
 23 tients and Providers Act of 2008 (Public Law 110–275),
 24 section 3104 of the Patient Protection and Affordable
 25 Care Act (Public Law 111–148), section 105 of the Medi-

1 care and Medicaid Extenders Act of 2010 (Public Law
 2 111–309), and section 305 of the Temporary Payroll Tax
 3 Cut Continuation Act of 2011 (Public Law 112–78) is
 4 amended by striking “the first two months of”.

5 **SEC. 115. FACILITATING THE PROVISION OF TELEHEALTH**
 6 **SERVICES ACROSS STATE LINES.**

7 (a) IN GENERAL.—For purposes of expediting the
 8 provision of telehealth services, for which payment is made
 9 under the Medicare program, across State lines, the Sec-
 10 retary of Health and Human Services shall, in consulta-
 11 tion with representatives of States, physicians, health care
 12 practitioners, and patient advocates, encourage and facili-
 13 tate the adoption of provisions allowing for multistate
 14 practitioner practice across State lines.

15 (b) DEFINITIONS.—In subsection (a):

16 (1) TELEHEALTH SERVICE.—The term “tele-
 17 health service” has the meaning given that term in
 18 subparagraph (F) of section 1834(m)(4) of the So-
 19 cial Security Act (42 U.S.C. 1395m(m)(4)).

20 (2) PHYSICIAN, PRACTITIONER.—The terms
 21 “physician” and “practitioner” have the meaning
 22 given those terms in subparagraphs (D) and (E), re-
 23 spectively, of such section.

24 (3) MEDICARE PROGRAM.—The term “Medicare
 25 program” means the program of health insurance

1 administered by the Secretary of Health and Human
2 Services under title XVIII of the Social Security Act
3 (42 U.S.C. 1395 et seq.).

4 **SEC. 116. MEDICARE PART A PAYMENT FOR ANESTHESIOLOGIST SERVICES IN CERTAIN RURAL HOSPITALS BASED ON CRNA PASS-THROUGH RULES.**

8 (a) IN GENERAL.—Section 1814 of the Social Security Act (42 U.S.C. 1395f) is amended by adding at the
9 end the following new subsection:

11 “Anesthesiologist Services Provided in Certain Rural
12 Hospitals

13 “(m)(1) Notwithstanding any other provision of this
14 title, coverage and payment shall be provided under this
15 part for physicians’ services that are anesthesia services
16 furnished by a physician who is an anesthesiologist in a
17 rural hospital described in paragraph (3) in the same
18 manner as payment is made under the exception provided
19 in section 9320(k) of the Omnibus Budget Reconciliation
20 Act of 1986, as added by section 608(c)(2) of the Family
21 Support Act of 1988 and amended by section 6132 of the
22 Omnibus Budget Reconciliation Act of 1989, (relating to
23 payment on a reasonable cost, pass-through basis) for cer-
24 tified registered nurse anesthetist services furnished by a

1 certified registered nurse anesthetist in a hospital de-
2 scribed in such section 9320(k).

3 “(2) No payment shall be made under any other pro-
4 vision of this title for physicians’ services for which pay-
5 ment is made under this subsection.

6 “(3) A rural hospital described in this paragraph is
7 a hospital described in section 9320(k) of the Omnibus
8 Budget Reconciliation Act of 1986, as so added and
9 amended, except that—

10 “(A) any reference in such section to a ‘cer-
11 tified registered nurse anesthetist’ or an ‘anesthetist’
12 is deemed a reference to a ‘physician who is an anes-
13 thesiologist’ or an ‘anesthesiologist’, respectively;
14 and

15 “(B) any reference to ‘January 1, 1988’ or
16 ‘1987’ is deemed a reference to such date and year
17 as the Secretary shall specify.”.

18 (b) EFFECTIVE DATE.—The amendment made by
19 subsection (a) shall apply to services furnished during cost
20 reporting periods beginning on or after the date of the
21 enactment of this Act.

1 **SEC. 117. TEMPORARY FLOOR ON THE PRACTICE EXPENSE**
2 **GEOGRAPHIC INDEX FOR SERVICES FUR-**
3 **NISHED IN RURAL AREAS OUTSIDE OF FRON-**
4 **TIER STATES UNDER THE MEDICARE PHYSI-**
5 **CIAN FEE SCHEDULE.**

6 Section 1848(e)(1) of the Social Security Act (42
7 U.S.C. 1395w-4(e)(1)) is amended—

8 (1) in subparagraph (A), by striking “and (I)”
9 and inserting “(I), and (J)”; and

10 (2) by adding at the end the following new sub-
11 paragraph:

12 “(J) FLOOR AT 1.0 ON PRACTICE EXPENSE
13 GEOGRAPHIC INDEX FOR SERVICES FURNISHED
14 IN RURAL AREAS OUTSIDE OF FRONTIER
15 STATES.—For purposes of payment for services
16 furnished in a rural area (other than a rural
17 area located in a State to which subparagraph
18 (I) applies) on or after January 1, 2012, and
19 before January 1, 2013, after calculating the
20 practice expense index under subparagraph
21 (A)(i), the Secretary shall increase any such
22 index to 1.0 if such index would otherwise be
23 less than 1.0. The preceding sentence shall not
24 be applied in a budget neutral manner.”.

1 **SEC. 118. REVISIONS TO STANDARD FOR DESIGNATION OF**
 2 **SOLE COMMUNITY HOSPITALS.**

3 Section 1886(d)(5)(D)(iv) of the Social Security Act
 4 (42 U.S.C. 1395ww(d)(5)(D)(iv)) is amended by adding
 5 at the end the following new sentence: “Under such stand-
 6 ard, the time required for an individual to travel to the
 7 nearest alternative source of care shall be measured over
 8 improved roads maintained by a local, State, or Federal
 9 Government entity for use by the general public which is
 10 the most expeditious and accessible route as designated
 11 by law enforcement for emergency vehicle travel.”.

12 **SEC. 119. STATE OFFICES OF RURAL HEALTH.**

13 Section 338J(j)(1) of the Public Health Service Act
 14 (42 U.S.C. 254r(j)(1)) is amended by inserting “and 2012
 15 through 2013” before the period.

16 **SEC. 120. ENSURING PROPORTIONAL REPRESENTATION OF**
 17 **INTERESTS OF RURAL AREAS ON MEDPAC.**

18 (a) IN GENERAL.—Section 1805(c)(2) of the Social
 19 Security Act (42 U.S.C. 1395b–6(c)(2)) is amended—

20 (1) in subparagraph (A), by inserting “ (con-
 21 sistent with the requirements of subparagraph (E))”
 22 after “rural representatives”; and

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

25 “(E) PROPORTIONAL REPRESENTATION OF
 26 INTERESTS OF RURAL AREAS.—In order to pro-

vide a balance between urban and rural representatives under subparagraph (A), the proportion of members who represent the interests of health care providers and Medicare beneficiaries located in rural areas shall be no less than the proportion of the total number of Medicare beneficiaries who reside in rural areas.”.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to appointments made to the Medicare Payment Advisory Commission after the date of the enactment of this Act.

TITLE II—340B PROGRAM IMPROVEMENT

SEC. 201. EXTENSION OF DISCOUNTS TO INPATIENT DRUGS.

(a) IN GENERAL.—Section 340B of the Public Health Service Act (42 U.S.C. 256b) is amended—

(1) in subsection (a)—

(A) in paragraphs (1), (2), and (5), by striking “covered outpatient drug” each place such term appears and inserting “covered drug”; and

(B) in paragraphs (1), (7), and (9), by striking “covered outpatient drugs” each place

1 such term appears and inserting “covered
2 drugs”;

3 (2) in subsection (b)(2)(B) by striking “para-
4 graph (3)(A)” and inserting “paragraph (3)”; and

5 (3) in subsection (d), by striking “covered out-
6 patient drugs” each place such term appears and in-
7 serting “covered drugs”.

8 (b) MEDICAID CREDITS ON INPATIENT DRUGS.—
9 Section 340B of the Public Health Service Act (42 U.S.C.
10 256b) is amended by inserting after subsection (b) the fol-
11 lowing new subsection:

12 “(c) MEDICAID CREDITS ON INPATIENT DRUGS.—

13 “(1) IN GENERAL.—For each cost reporting pe-
14 riod, based on the most recently filed Medicare cost
15 report under title XVIII of the Social Security Act
16 and subject to paragraph (5), a hospital described in
17 subparagraph (L), (M), (N), or (O) of subsection
18 (a)(4) and enrolled to participate in the drug dis-
19 count program under this section shall provide to
20 each State that has a plan for medical assistance
21 under title XIX of such Act and that makes pay-
22 ment to such hospital for covered drugs provided to
23 Medicaid recipients for inpatient use, a credit on the
24 estimated annual purchases by such hospital of such
25 covered drugs provided to such Medicaid recipients.

1 “(2) AMOUNT OF CREDIT.—

2 “(A) IN GENERAL.—The credit described
3 in paragraph (1), with respect to a hospital and
4 cost reporting period described in such para-
5 graph shall be equal to—

6 “(i) the product of—

7 “(I) the sum of the annual credit
8 amounts (described in subparagraph
9 (B)) calculated under subparagraph
10 (B)(i) for each dosage form and
11 strength of each covered drug pur-
12 chased by the hospital during the cost
13 reporting period; and

14 “(II) the estimated percentage of
15 the purchases of covered drugs by the
16 hospital during such period attrib-
17 utable to Medicaid recipients for inpa-
18 tient use, as determined in accordance
19 with subparagraph (D); and

20 “(ii) subject to paragraph (3)(D), re-
21 duced by the amount by which the Med-
22 icaid inpatient reimbursement (as defined
23 in subparagraph (E)(ii)) of the hospital for
24 such period was reduced as a result of par-
25 ticipation in the drug discount program

1 under this section during such period by
2 the hospital, as determined in accordance
3 with subparagraph (E).

4 “(B) ANNUAL CREDIT AMOUNTS.—For
5 purposes of subparagraph (A)(i)(I), an annual
6 credit amount, with respect to a covered drug
7 purchased by a hospital described in paragraph
8 (1) during a cost reporting period of the hos-
9 pital—

10 “(i) is equal to the sum of the quar-
11 terly credit amounts calculated under sub-
12 paragraph (C)(i), for each of the 4 quar-
13 ters of the cost reporting period for such
14 covered drug; and

15 “(ii) shall be calculated for each dos-
16 age form and strength of such covered
17 drug.

18 “(C) QUARTERLY CREDIT AMOUNTS.—For
19 purposes of subparagraph (B)(ii), a quarterly
20 credit amount, with respect to a covered drug
21 purchased by a hospital described in paragraph
22 (1) during a quarter of the cost reporting pe-
23 riod of the hospital—

24 “(i) is equal to the product of—

1 “(I) the total number of units of
 2 each dosage form and strength of
 3 such covered drug purchased by the
 4 hospital during such quarter;

5 “(II) the average manufacturer
 6 price of the covered drug (for the unit
 7 of the dosage form and strength in-
 8 volved) during such quarter; and

9 “(III) half of the rebate percent-
 10 age for the covered drug, as defined in
 11 subsection (a)(2); and

12 “(ii) shall be calculated for—

13 “(I) each dosage form and
 14 strength of the covered drug pur-
 15 chased by the hospital; and

16 “(II) each of the 4 quarters of
 17 such cost reporting period.

18 “(D) PERCENTAGE OF DRUG PURCHASES
 19 ATTRIBUTABLE TO MEDICAID RECIPIENTS FOR
 20 INPATIENT USE.—For purposes of subpara-
 21 graph (A)(i)(II), the estimated percentage of
 22 the drug purchases of the hospital attributable
 23 to Medicaid recipients for inpatient use shall be
 24 equal to the Medicaid inpatient drug charges as
 25 reported on the most recently filed Medicare

1 cost report of the hospital, divided by the total
2 drug charges reported on the cost report.

3 “(E) CREDIT OFFSET.—

4 “(i) IN GENERAL.—For purposes of
5 subparagraph (A)(ii), the amount by which
6 the Medicaid inpatient reimbursement of a
7 hospital, with respect to a cost reporting
8 period, is reduced as a result of the partici-
9 pation in the drug discount program under
10 this section by the hospital shall be com-
11 puted as the difference between—

12 “(I) the Medicaid inpatient reim-
13 bursement that would have otherwise
14 been payable to the hospital for the
15 cost reporting period if the hospital
16 did not participate in such drug dis-
17 count program; and

18 “(II) the actual Medicaid inpa-
19 tient reimbursement payable to the
20 hospital for the cost reporting period.

21 “(ii) MEDICAID INPATIENT REIM-
22 BURSEMENT DEFINED.—For purposes of
23 this subsection, the term ‘Medicaid inpa-
24 tient reimbursement’ means the total pay-
25 ments received by the hospital under the

1 State plan under title XIX of the Social
2 Security Act for providing inpatient serv-
3 ices to Medicaid recipients.

4 “(3) REQUIREMENTS.—

5 “(A) IN GENERAL.—A hospital shall not be
6 required to provide a credit under paragraph
7 (1) to a State unless, not later than 30 days
8 after receiving the information described in sub-
9 paragraph (B), the State calculates in accord-
10 ance with paragraph (2) the amount of the
11 credit owed by the hospital under paragraph (1)
12 and provides the hospital with both the amount
13 of such credit so owed and an explanation of
14 how the State calculated such credit.

15 “(B) HOSPITAL PROVISION OF INFORMA-
16 TION.—Not later than 30 days after the date of
17 the filing of the most recently filed Medicare
18 cost report of a hospital described in paragraph
19 (1), the hospital shall provide the State involved
20 with the information described in subpara-
21 graphs (C)(i)(I) and (D) of paragraph (2).
22 With respect to each covered drug purchased
23 during the cost reporting period, the hospital
24 shall provide the National Drug Code, date of
25 purchase, and the number of units purchased.

1 Submission of such information shall not be re-
2 quired if a covered drug has not been assigned
3 a National Drug Code at the time of purchase.

4 “(C) ACCESS TO AMP AND REBATE
5 DATA.—The Secretary shall establish a system
6 for giving States access to the information nec-
7 essary for them to calculate credits under para-
8 graph (2), with respect to covered drugs, in-
9 cluding the average manufacturer price and re-
10 bate percentage for such covered drugs.

11 “(D) CREDIT OFFSET.—Paragraph
12 (2)(A)(ii) shall be applied, with respect to a
13 credit owed by a hospital under paragraph (1),
14 only if, not later than 30 days after filing the
15 most recent Medicare cost report, the hospital
16 submits to the State involved—

17 “(i) a request for the State to apply
18 such paragraph and to calculate the
19 amount described in such paragraph in ac-
20 cordance with paragraph (2)(E); and

21 “(ii) the data needed by the State to
22 determine the amount of the Medicaid in-
23 patient reimbursement described in para-
24 graph (2)(E)(i)(I) for such hospital.

1 “(E) DISPUTES.—A State and hospital de-
2 scribed in paragraph (1) shall have access to
3 the same State dispute resolution procedures
4 and system applicable to Medicaid reimburse-
5 ment matters under title XIX of the Social Se-
6 curity Act.

7 “(4) PAYMENT DEADLINE.—A hospital shall
8 provide to a State the credits owed by such hospital
9 under paragraph (1) not later than 60 days after
10 the hospital receives the information described in
11 paragraph (3)(A).

12 “(5) OPT OUT.—A hospital shall not be re-
13 quired to provide a credit under paragraph (1) to a
14 State if the hospital and State agree to an alter-
15 native arrangement.

16 “(6) OFFSET AGAINST MEDICAL ASSISTANCE.—
17 Amounts received by a State under this subsection
18 shall be considered to be a reduction in the amount
19 expended under the State plan for medical assist-
20 ance for purposes of section 1903(a)(1) of the Social
21 Security Act.

22 “(7) MEDICAID RECIPIENT DEFINED.—For
23 purposes of this subsection, the term ‘Medicaid re-
24 cipient’ means, with respect to a State, an individual

1 who receives benefits under the State plan under
2 title XIX of the Social Security Act.”.

3 (c) CONFORMING AMENDMENTS.—Section 1927 of
4 the Social Security Act (42 U.S.C. 1396r–8) is amended—

5 (1) in subsection (a)(5)—

6 (A) in subparagraph (A), by striking “cov-
7 ered outpatient drugs” and inserting “covered
8 drugs (as defined in section 340B(b)(2) of the
9 Public Health Service Act)”; and

10 (B) by striking subparagraphs (D) and
11 (E); and

12 (2) in subsection (c)(1)(C)(i)—

13 (A) by redesignating subclauses (II)
14 through (VI) as subclauses (III) through (VII),
15 respectively; and

16 (B) by inserting after subclause (I) the fol-
17 lowing:

18 “(II) any prices charged for a
19 covered drug, as defined in section
20 340B(b)(2) of the Public Health Serv-
21 ice Act;”.

1 **SEC. 202. PROHIBITION AGAINST DUPLICATE DISCOUNTS**
2 **FOR PHYSICIAN ADMINISTERED DRUGS.**

3 Section 340B(a)(5)(A) of the Public Health Service
4 Act (42 U.S.C. 256b) is amended by adding at the end
5 the following:

6 “(iii) PHYSICIAN ADMINISTERED
7 DRUGS.—A hospital described in subpara-
8 graph (L), (M), (N), or (O) of paragraph
9 (4) shall not be required under section
10 1927(a)(7) of the Social Security Act to
11 report National Drug Code numbers for
12 drugs administered by a physician (or
13 under a physician’s supervision) if the
14 State is precluded from seeking a rebate
15 on such drugs because such drugs were
16 purchased at a discount under this section.
17 Nothing in this clause shall relieve a hos-
18 pital of its obligation to submit National
19 Drug Codes in accordance with subsection
20 (c)(3)(B).”.

21 **SEC. 203. CONTINUED INCLUSION OF ORPHAN DRUGS IN**
22 **DEFINITION OF COVERED OUTPATIENT**
23 **DRUGS; TECHNICAL AMENDMENT.**

24 (a) IN GENERAL.—Section 340B of the Public
25 Health Service Act (42 U.S.C. 256b) is amended by strik-
26 ing subsection (e).

1 (b) EFFECTIVE DATE.—The amendment made by
2 subsection (a) shall apply to drugs purchased on or after
3 March 30, 2010.

4 **SEC. 204. APPLICATION OF RULES FOR DETERMINING PRO-**
5 **VIDER-BASED STATUS FOR CERTAIN ENTI-**
6 **TIES.**

7 Notwithstanding any other provision of law, in mak-
8 ing determinations of provider-based status under title
9 XVIII of the Social Security Act, the facility or organiza-
10 tion shall be treated as satisfying any requirements and
11 standards for geographic location in relation to a hospital
12 or a critical access hospital if the facility or organization
13 is described in subparagraph (L), (M), (N), or (O) of sec-
14 tion 340B(a)(4) of the Public Health Service Act (42
15 U.S.C. 256b(a)(4)).

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