

109TH CONGRESS
1ST SESSION

S. 1002

To amend title XVIII of the Social Security Act to make improvements in payments to hospitals under the medicare program, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 11, 2005

Mr. GRASSLEY (for himself and Mr. BAUCUS) 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 make improvements in payments to hospitals under the medicare 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 “Hospital Fair Competi-
5 tion Act of 2005”.

6 **SEC. 2. HOSPITAL PAYMENT IMPROVEMENTS.**

7 (a) USE OF ESTIMATED COSTS RATHER THAN AV-
8 ERAGE CHARGES IN ESTABLISHING WEIGHTING FACTORS
9 FOR DIAGNOSIS-RELATED GROUPS UNDER THE INPA-
10 TIENT HOSPITAL PROSPECTIVE PAYMENT SYSTEM.—

1 (1) IN GENERAL.—Section 1886(d)(4)(B) of
2 the Social Security Act (42 U.S.C.
3 1395ww(d)(4)(B)) is amended—

4 (A) by inserting “(i)” after “(B)”; and

5 (B) by adding at the end the following new
6 clause:

7 “(ii) For fiscal years beginning after fiscal year 2006,
8 in establishing the weighting factors under clause (i), the
9 Secretary shall ensure (to the extent feasible) that such
10 factors reflect the estimated costs of furnishing care in
11 each diagnosis-related group.”.

12 (2) NO REQUIREMENT FOR ANNUAL ADJUST-
13 MENT FOR CHANGES IN COSTS.—Section
14 1886(d)(4)(C)(i) of the Social Security Act (42
15 U.S.C. 1395ww(d)(4)(C)(i)) is amended by adding
16 at the end the following new sentence: “Notwith-
17 standing the preceding sentence, the Secretary may
18 adjust the weighting factors established under sub-
19 paragraph (B) less frequently than annually (but in
20 no case less frequently than once every 5 years) in
21 carrying out the requirement under clause (ii) of
22 such subparagraph.”.

23 (b) CALCULATION OF WEIGHTING FACTORS AT HOS-
24 PITAL LEVEL UNDER THE INPATIENT HOSPITAL PRO-
25 SPECTIVE PAYMENT SYSTEM.—Section 1886(d)(4)(B) of

1 the Social Security Act (42 U.S.C. 1395ww(d)(4)(B)), as
2 amended by subsection (a)(1), is amended by adding at
3 the end the following new clause:

4 “(iii) For fiscal years beginning after fiscal year
5 2006, in establishing the weighting factors under clause
6 (i), the Secretary shall calculate such factors at a hospital
7 level and then aggregate such factors to a national level.”.

8 (c) ADJUSTMENT OF WEIGHTING FACTORS FOR DI-
9 AGNOSIS-RELATED GROUPS UNDER THE INPATIENT HOS-
10 PITAL PROSPECTIVE PAYMENT SYSTEM TO FINANCE
11 HIGH-COST OUTLIER CASES AND TO ACCOUNT FOR
12 CHANGES IN THE DISTRIBUTION OF SUCH CASES.—

13 (1) PPS HOSPITALS.—

14 (A) IN GENERAL.—Section 1886(d)(3)(B)
15 of the Social Security Act (42 U.S.C.
16 1395ww(d)(3)(B)) is amended to read as fol-
17 lows:

18 “(B) REDUCING FOR VALUE OF OUTLIER PAY-
19 MENTS.—

20 “(i) REDUCTION OF AVERAGE STANDARD-
21 IZED AMOUNTS.—The Secretary shall, for dis-
22 charges occurring before fiscal year 2007, re-
23 duce each of the average standardized amounts
24 determined under subparagraph (A) by a factor
25 equal to the proportion of payments under this

1 subsection (as estimated by the Secretary)
2 based on DRG prospective payment amounts
3 which are additional payments described in
4 paragraph (5)(A) (relating to outlier payments).

5 “(ii) REDUCTION OF WEIGHTING FAC-
6 TORS.—The Secretary shall, for discharges oc-
7 ccurring after fiscal year 2006, reduce each of
8 the weighting factors determined under para-
9 graph (4)(B) by a factor equal to the propor-
10 tion of payments in the diagnosis-related group
11 under this subsection (as estimated by the Sec-
12 retary) based on DRG prospective payment
13 amounts which are additional payments de-
14 scribed in paragraph (5)(A) (relating to outlier
15 payments).”.

16 (B) ANNUAL ADJUSTMENT TO ACCOUNT
17 FOR PROJECTED CHANGES IN THE DISTRIBU-
18 TION OF OUTLIER PAYMENTS WITHIN DIAG-
19 NOSIS-RELATED GROUPS.—Section
20 1886(d)(4)(C)(i) of the Social Security Act (42
21 U.S.C. 1395ww(d)(4)(C)(i)), as amended by
22 subsection (a)(2), is amended by inserting “, in-
23 cluding, for discharges occurring after fiscal
24 year 2006, projected changes in the distribution
25 of additional payments described in paragraph

1 (5)(A) within diagnosis-related groups” before
2 the period at the end of the first sentence.

3 (C) CONFORMING AMENDMENTS.—Section
4 1886(d)(3)(D) of the Social Security Act (42
5 U.S.C. 1395ww(d)(3)(D)) is amended—

6 (i) in clauses (i)(I), (ii)(I), and (iii)(I),
7 by striking “reduced under subparagraph
8 (B)” and inserting “reduced under sub-
9 paragraph (B)(i)”; and

10 (ii) in clause (iii)(II), by inserting “,
11 and, in the case of a fiscal year beginning
12 after 2006, reduced under subparagraph
13 (B)(ii)” before the period at the end.

14 (2) PUERTO RICO HOSPITALS.—

15 (A) COMPUTING PUERTO RICO DRG-SPE-
16 CIFIC RATES.—Section 1886(d)(9)(C)(ii) of the
17 Social Security Act (42 U.S.C.
18 1395ww(d)(9)(C)(ii)) is amended—

19 (i) by inserting “, for discharges oc-
20 ccurring before fiscal year 2007,” after
21 “The Secretary shall”; and

22 (ii) by striking “fiscal year 2004 and
23 thereafter” and inserting “fiscal years
24 2004, 2005, and 2006”.

1 (B) CONFORMING AMENDMENTS.—Section
2 1886(d)(9)(C)(iii)(II) of the Social Security Act
3 (42 U.S.C. 1395ww(d)(9)(C)(iii)(II)) is amend-
4 ed by inserting “and reduced under paragraph
5 (3)(B)(ii)” after “paragraph (4)(B)”.

6 (d) ENSURING THAT DIAGNOSTIC-RELATED GROUPS
7 APPROPRIATELY CAPTURE THE DIFFERENCE IN SEVER-
8 ITY OF ILLNESS OF PATIENTS.—Section 1886(d)(4)(A) of
9 the Social Security Act (42 U.S.C. 1395ww(d)(4)(A)) is
10 amended by adding at the end the following new sentence:
11 “In establishing the classification of inpatient discharges
12 by diagnosis-related groups under the preceding sentence,
13 the Secretary shall ensure that such groups appropriately
14 capture the difference in severity of illness of patients.”.

15 (e) PHASE-IN OF CHANGES TO THE INPATIENT HOS-
16 PITAL PROSPECTIVE PAYMENT SYSTEM.—Section
17 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d))
18 is amended by adding at the end the following new para-
19 graph:

20 “(14) Notwithstanding the preceding provisions of
21 this subsection, the Secretary shall phase in the applica-
22 tion of the amendments made by subsections (a), (b), (c),
23 and (d) of section 2 of the Hospital Fair Competition Act
24 of 2005 over a 3-fiscal year period beginning with fiscal
25 year 2007. In implementing the phase-in under the pre-

1 ceding sentence, the Secretary shall take into account the
2 negative impact that the phase-in may have on certain
3 hospitals.”.

4 **SEC. 3. PROHIBITION ON CERTAIN PHYSICIAN SELF REFER-**
5 **RALS.**

6 (a) PROHIBITION.—Section 1877(d) of the Social Se-
7 curity Act (42 U.S.C. 1395nn(d)) is amended in each of
8 paragraphs (2)(B) and (3)(B) by striking “effective for
9 the 18-month period beginning on the date of enactment
10 of the Medicare Prescription Drug, Improvement, and
11 Modernization Act of 2003” and inserting “on and after
12 December 8, 2003”.

13 (b) REVISIONS TO THE REQUIREMENTS TO QUALIFY
14 FOR THE EXCEPTION TO THE DEFINITION OF SPECIALTY
15 HOSPITAL.—Section 1877(h)(7)(B) of the Social Security
16 Act (42 U.S.C. 1395nn(h)(7)(B)) is amended—

17 (1) by redesignating clauses (iii), (iv), and (v)
18 as clauses (vi), (vii), and (viii), respectively;

19 (2) by inserting after clause (ii) the following
20 new clauses:

21 “(iii) for which the percent of invest-
22 ment in the hospital by physician investors
23 at any time on or after June 8, 2005, is
24 no greater than the percent of such invest-

1 ment by physician investors as of such
2 date;

3 “(iv) for which the percent of invest-
4 ment in the hospital by any physician in-
5 vestor at any time on or after June 8,
6 2005, is no greater than the percent of
7 such investment by such physician as of
8 such date;

9 “(v) for which the number of oper-
10 ating rooms at the hospital at any time on
11 or after June 8, 2005, is no greater than
12 the number of such rooms as of such
13 date;”;

14 (3) by striking clause (vii), as so redesignated,
15 and inserting the following:

16 “(vii) for which—

17 “(I) during the period beginning
18 on December 8, 2003, and ending on
19 June 7, 2005, any increase in the
20 number of beds occurs only in the fa-
21 cilities on the main campus of the
22 hospital and does not exceed 50 per-
23 cent of the number of beds in the hos-
24 pital as of November 18, 2003, or 5
25 beds, whichever is greater; and

1 “(II) the number of beds at the
2 hospital at any time on or after June
3 8, 2005, is no greater than the num-
4 ber of such beds as of such date;
5 and”.

6 (c) EFFECTIVE DATE.—The amendments made by
7 this section shall take effect on June 8, 2005.

8 **SEC. 4. PERMISSIBLE COORDINATED CARE INCENTIVE AR-**
9 **RANGEMENTS BETWEEN HOSPITALS AND**
10 **PHYSICIANS.**

11 (a) ESTABLISHMENT OF REQUIREMENTS FOR AR-
12 RANGEMENTS AND EXEMPTION FROM IMPOSITION OF
13 CIVIL MONETARY PENALTIES.—Section 1128A of the So-
14 cial Security Act (42 U.S.C. 1320a–7a) is amended by
15 adding at the end the following new subsection:

16 “(o) ARRANGEMENTS BETWEEN HOSPITALS AND
17 PHYSICIANS.—

18 “(1) IN GENERAL.—Subsection (b) shall not
19 apply to an arrangement that meets the require-
20 ments under paragraph (2).

21 “(2) REQUIREMENTS.—

22 “(A) ESTABLISHMENT.—The Secretary
23 shall establish requirements for arrangements
24 between hospitals or critical access hospitals
25 and physicians in which physicians share in the

1 savings experienced by the hospital or critical
2 access hospital by reason of cost-reduction ef-
3 forts that involve the physicians.

4 “(B) PROTECTIONS.—In establishing the
5 requirements under subparagraph (A), the Sec-
6 retary shall ensure that—

7 “(i) the quality of care provided to in-
8 dividuals is protected under the arrange-
9 ment; and

10 “(ii) financial incentives that could af-
11 fect physician referrals are minimized.

12 “(C) MONITOR.—The Secretary shall es-
13 tablish procedures to monitor arrangements de-
14 scribed in subparagraph (A) to ensure that
15 such agreements meet the requirements under
16 such subparagraph.”.

17 (b) EXEMPTION FROM CRIMINAL PENALTIES.—Sec-
18 tion 1128B(b)(3) of the Social Security Act (42 U.S.C.
19 1320a–7b(b)(3)) is amended—

20 (1) in subparagraph (G), by striking “and” at
21 the end;

22 (2) in subparagraph (H), as added by section
23 237(d) of the Medicare Prescription Drug, Improve-
24 ment, and Modernization Act of 2003 (Public Law
25 108–173; 117 Stat. 2213)—

1 (A) by moving such subparagraph 2 ems to
2 the left; and

3 (B) by striking the period at the end and
4 inserting a semicolon;

5 (3) by redesignating subparagraph (H), as
6 added by section 431(a) of the Medicare Prescrip-
7 tion Drug, Improvement, and Modernization Act of
8 2003 (Public Law 108–173; 117 Stat. 2287), as
9 subparagraph (I);

10 (4) in subparagraph (I), as so redesignated—

11 (A) by moving such subparagraph 2 ems to
12 the left; and

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

15 (5) by adding at the end the following new sub-
16 paragraph:

17 “(J) an arrangement that meets the require-
18 ments established under section 1128A(o).”.

19 (c) EXEMPTION FROM LIMITATION ON CERTAIN
20 PHYSICIAN REFERRALS.—Section 1877(e) of the Social
21 Security Act (42 U.S.C. 1395nn(e)) is amended by adding
22 at the end the following new paragraph:

1 “(9) ARRANGEMENTS BETWEEN HOSPITALS
2 AND PHYSICIANS.—An arrangement that meets the
3 requirements established under section 1128A(o).”.

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