

111TH CONGRESS  
1ST SESSION

# S. 318

To amend title XVIII of the Social Security Act to improve access to health care under the Medicare program for beneficiaries residing in rural areas.

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IN THE SENATE OF THE UNITED STATES

JANUARY 26, 2009

Mr. GRASSLEY introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend title XVIII of the Social Security Act to improve access to health care under the Medicare program for beneficiaries residing in rural areas.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Medicare Rural Health Access Improvement Act of  
6 2009”.

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

Sec. 1. Short title; table of contents.

TITLE I—PROVISIONS RELATING TO MEDICARE PART A

- Sec. 101. Extension of Medicare FLEX grants.  
 Sec. 102. Improvements to the medicare-dependent hospital (MDH) program.  
 Sec. 103. Temporary improvements to the Medicare inpatient hospital payment adjustment for low-volume hospitals.  
 Sec. 104. Temporary elimination of the DSH adjustment cap.

## TITLE II—PROVISIONS RELATING TO MEDICARE PART B

- Sec. 201. Extension and expansion of the Medicare hold harmless provision under the prospective payment system for hospital outpatient department (HOPD) services for certain hospitals.  
 Sec. 202. Treatment of rural sole community hospitals and medicare dependent, small rural hospitals under the prospective payment system for hospital outpatient department (HOPD) services.  
 Sec. 203. Recognition of equality of physician work in all geographic areas under the Medicare physician fee schedule.  
 Sec. 204. Revisions to the practice expense geographic adjustment under the Medicare physician fee schedule.  
 Sec. 205. Extension of treatment of certain physician pathology services under Medicare.  
 Sec. 206. Extension of increased Medicare payments for rural ground ambulance services.  
 Sec. 207. Rural health clinic improvements.  
 Sec. 208. Exemption for suppliers in small MSAs and rural areas.  
 Sec. 209. Permitting physician assistants to order post-hospital extended care services and to provide for recognition of attending physician assistants as attending physicians to serve hospice patients.

# 1 **TITLE I—PROVISIONS RELATING** 2 **TO MEDICARE PART A**

## 3 **SEC. 101. EXTENSION OF MEDICARE FLEX GRANTS.**

4 Section 1820(j) of the Social Security Act (42 U.S.C.  
 5 1395i-4(j)) is amended by striking “fiscal years 2009 and  
 6 2010” each place it appears and inserting “fiscal years  
 7 2009, 2010, and 2011”.

## 8 **SEC. 102. IMPROVEMENTS TO THE MEDICARE-DEPENDENT** 9 **HOSPITAL (MDH) PROGRAM.**

10 (a) USE OF NON-WAGE ADJUSTED PPS RATE.—  
 11 Section 1886(d)(5)(G) of the Social Security Act (42  
 12 U.S.C. 1395ww(d)(5)(G)) is amended by adding at the  
 13 end the following new clause:

1 “(v) In the case of discharges occurring on or after  
 2 October 1, 2009, and before October 1, 2011, in deter-  
 3 mining the amount under paragraph (1)(A)(iii) for pur-  
 4 poses of clauses (i) and (ii)(II), such amount shall, if it  
 5 results in greater payments to the hospital, be determined  
 6 without regard to any adjustment for different area wage  
 7 levels under paragraph (3)(E).”.

8 (b) ENHANCED PAYMENT FOR AMOUNT BY WHICH  
 9 THE TARGET EXCEEDS THE PPS RATE.—Section  
 10 1886(d)(5)(G)(ii)(II) of the Social Security Act (42  
 11 U.S.C. 1395ww(d)(5)(G)(ii)(II)) is amended by inserting  
 12 “, and before October 1, 2009, or 85 percent in the case  
 13 of discharges occurring on or after October 1, 2009, and  
 14 before October 1, 2011” after “October 1, 2006”.

15 **SEC. 103. TEMPORARY IMPROVEMENTS TO THE MEDICARE**  
 16 **INPATIENT HOSPITAL PAYMENT ADJUST-**  
 17 **MENT FOR LOW-VOLUME HOSPITALS.**

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

20 (1) in subparagraph (A), by inserting “or (D)”  
 21 after “subparagraph (B)”;

22 (2) in subparagraph (B), by striking “The Sec-  
 23 retary” and inserting “For discharges occurring in  
 24 fiscal years 2005 through 2009 and for discharges

1 occurring in fiscal year 2012 and subsequent fiscal  
2 years, the Secretary”;

3 (3) in subparagraph (C)(i)—

4 (A) by inserting “(or, with respect to fiscal  
5 years 2010 and 2011, 15 road miles)” after  
6 “25 road miles”; and

7 (B) by inserting “(or, with respect to fiscal  
8 years 2010 and 2011, 2,000 discharges of indi-  
9 viduals entitled to, or enrolled for, benefits  
10 under part A)” after “800 discharges”; and

11 (4) by adding at the end the following new sub-  
12 paragraph:

13 “(D) TEMPORARY APPLICABLE PERCENT-  
14 AGE INCREASE.—For discharges occurring in  
15 fiscal years 2010 or 2011, the Secretary shall  
16 determine an applicable percentage increase for  
17 purposes of subparagraph (A) using a linear  
18 sliding scale ranging from 25 percent for low-  
19 volume hospitals with fewer than an appro-  
20 priate number (as determined by the Secretary)  
21 of discharges of individuals entitled to, or en-  
22 rolled for, benefits under part A in the fiscal  
23 year to 0 percent for low-volume hospitals with  
24 greater than 2,000 discharges of such individ-  
25 uals in the fiscal year.”.

1 **SEC. 104. TEMPORARY ELIMINATION OF THE DSH ADJUST-**  
 2 **MENT CAP.**

3 Section 1886(d)(5)(F)(xiv)(II) of the Social Security  
 4 Act (42 U.S.C. 1395ww(d)(5)(F)(xiv)(II)) is amended by  
 5 adding at the end the following new sentence: “The pre-  
 6 ceding sentence shall not apply to any hospital in the case  
 7 of discharges occurring on or after October 1, 2009, and  
 8 before October 1, 2011.”.

9 **TITLE II—PROVISIONS RELAT-**  
 10 **ING TO MEDICARE PART B**

11 **SEC. 201. EXTENSION AND EXPANSION OF THE MEDICARE**  
 12 **HOLD HARMLESS PROVISION UNDER THE**  
 13 **PROSPECTIVE PAYMENT SYSTEM FOR HOS-**  
 14 **PITAL OUTPATIENT DEPARTMENT (HOPD)**  
 15 **SERVICES FOR CERTAIN HOSPITALS.**

16 Section 1833(t)(7)(D)(i) of the Social Security Act  
 17 (42 U.S.C. 1395l(t)(7)(D)(i)) is amended—

18 (1) in subclause (II), in the second sentence—

19 (A) by striking “and 85” and inserting  
 20 “85”; and

21 (B) by inserting the following before the  
 22 period at the end: “, and 100 percent with re-  
 23 spect to such services furnished in 2010”; and

24 (2) in subclause (III)—

25 (A) by striking “2010” and inserting  
 26 “2011”; and

1 (B) by striking “85 percent” and inserting  
 2 “the applicable percentage (as determined  
 3 under the second sentence of subclause (II) for  
 4 the year)”.

5 **SEC. 202. TREATMENT OF RURAL SOLE COMMUNITY HOS-**  
 6 **PITALS AND MEDICARE DEPENDENT, SMALL**  
 7 **RURAL HOSPITALS UNDER THE PROSPEC-**  
 8 **TIVE PAYMENT SYSTEM FOR HOSPITAL OUT-**  
 9 **PATIENT DEPARTMENT (HOPD) SERVICES.**

10 Section 1833(t)(13) of the Social Security Act (42  
 11 U.S.C. 1395l(t)(13)) is amended—

12 (1) in the heading, by striking “AUTHORIZA-  
 13 TION OF ADJUSTMENT” and inserting “ADJUST-  
 14 MENT”;

15 (2) in subparagraph (B)—

16 (A) in the heading, by inserting “FOR 2006  
 17 THROUGH 2009” after “ADJUSTMENT”; and

18 (B) by adding at the end the following new  
 19 sentence: “Such authority shall apply with re-  
 20 spect to services furnished in 2006, 2007, 2008,  
 21 or 2009.”; and

22 (3) by adding at the end the following new sub-  
 23 paragraph:

1           “(C) ADJUSTMENT FOR 2010 AND SUBSE-  
2           QUENT YEARS FOR CERTAIN RURAL HOS-  
3           PITALS.—

4           “(i) ADJUSTMENT.—

5           “(I) IN GENERAL.—Subject to  
6           clause (ii), in the case of covered OPD  
7           services furnished on or after January  
8           1, 2010, by a sole community hospital  
9           (as defined in subparagraph (D)(iii)  
10          of section 1886(d)(5)) located in a  
11          rural area or a medicare-dependent,  
12          small rural hospital (as defined in  
13          subparagraph (G)(iv) of such section,  
14          the amount of payment that would  
15          otherwise be made for such service  
16          under this subsection shall be in-  
17          creased by an amount equal to 7.1  
18          percent of such amount. Such increase  
19          shall be applied before calculating  
20          outliers and coinsurance.

21          “(II) REVISION WITH NOTICE  
22          AND COMMENT.—In the case of cov-  
23          ered OPD services furnished on or  
24          after January 1, 2011, the Secretary  
25          may revise the percent described in

1 subclause (I) through the promulga-  
 2 tion of a regulation.

3 “(ii) NOT APPLICABLE TO PASS-  
 4 THROUGH DEVICES, DRUGS, AND  
 5 BIOLOGICALS.—The increase under clause  
 6 (i) shall not apply to the payment for a de-  
 7 vice, drug, or biological described in clause  
 8 (i), (ii), (iii), or (iv) of paragraph (6)(A).

9 “(iii) EXEMPTION FROM BUDGET  
 10 NEUTRALITY.—The provisions of this sub-  
 11 paragraph shall not be effected in a budg-  
 12 et-neutral manner under this subsection.”.

13 **SEC. 203. RECOGNITION OF EQUALITY OF PHYSICIAN WORK**  
 14 **IN ALL GEOGRAPHIC AREAS UNDER THE**  
 15 **MEDICARE PHYSICIAN FEE SCHEDULE.**

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

18 (1) in subparagraph (A), in the matter pre-  
 19 ceding clause (i), by striking “subparagraphs (B)”  
 20 through “the Secretary” and inserting “the suc-  
 21 ceeding provisions of this paragraph, the Secretary”;  
 22 and

23 (2) by inserting after subparagraph (E) the fol-  
 24 lowing new subparagraph:



1           “(F) RECOGNITION OF EQUALITY OF PHY-  
2           SICIAN WORK IN ALL GEOGRAPHIC AREAS.—In  
3           recognition of the fact that the physician work  
4           for a service is the same in all geographic areas,  
5           and should be similarly valued under this title,  
6           for services furnished on or after January 1,  
7           2010, the geographic index for physician work  
8           under subparagraph (A)(iii) shall be 1.0 in all  
9           fee schedule areas.”.

10 **SEC. 204. REVISIONS TO THE PRACTICE EXPENSE GEO-**  
11 **GRAPHIC ADJUSTMENT UNDER THE MEDI-**  
12 **CARE PHYSICIAN FEE SCHEDULE.**

13           (a) ESTABLISHMENT OF FLOOR.—Section  
14 1848(e)(1) of the Social Security Act (42 U.S.C. 1395w-  
15 4(e)(1)) is amended by adding at the end the following  
16 new subparagraph:

17           “(H) FLOOR AT 1.0 ON PRACTICE EXPENSE  
18           GEOGRAPHIC INDEX.—After calculating the  
19           practice expense geographic index in subpara-  
20           graph (A)(i), for purposes of payment for serv-  
21           ices furnished on or after January 1, 2010, the  
22           Secretary shall increase the practice expense ge-  
23           ographic index to 1.0 for any locality for which  
24           such practice expense geographic index is less  
25           than 1.0.”.

1 (b) MORE APPROPRIATE RECOGNITION OF PRACTICE  
2 EXPENSE DIFFERENCES IN EMPLOYEE WAGES AND OF-  
3 FICE RENTS AMONG GEOGRAPHIC AREAS.—Section  
4 1848(e)(1) of the Social Security Act (42 U.S.C. 1395w-  
5 4(e)(1)), as amended by subsection (a), is amended by  
6 adding at the end the following new subparagraph:

7 “(I) MORE APPROPRIATE RECOGNITION OF  
8 DIFFERENCES IN EMPLOYEE WAGES AND OF-  
9 FICE RENTS AMONG AREAS.—

10 “(i) IN GENERAL.—In recognition of  
11 the limitations on available data (as de-  
12 scribed in clause (ii)) for use as the em-  
13 ployee wage and office rent proxies in the  
14 practice expense geographic index de-  
15 scribed in subparagraph (A)(i), and in  
16 order to more appropriately reflect dif-  
17 ferences among different fee schedule  
18 areas, for services furnished on or after  
19 January 1, 2010, such practice expense ge-  
20 ographic index shall be an index which re-  
21 flects  $\frac{1}{2}$  of the difference between the rel-  
22 ative costs of employee wages and rents in  
23 each of the different fee schedule areas  
24 and the national average of such employee  
25 wages and rents.

1                   “(ii) LIMITATIONS ON AVAILABLE  
2                   DATA.—The limitations on available data  
3                   described in this clause are the following:

4                   “(I) The need to use proxy data  
5                   to reflect differences in employee  
6                   wages and rents among areas.

7                   “(II) Wages for some categories  
8                   of employees being determined in na-  
9                   tional markets.

10                  “(III) Physicians having to com-  
11                  pete for some employees in market  
12                  areas that cross fee schedule areas.

13                  “(IV) Physicians in rural areas  
14                  frequently having to locate their of-  
15                  fices close to urban areas and com-  
16                  peting with urban rent markets.”.

17 **SEC. 205. EXTENSION OF TREATMENT OF CERTAIN PHYSI-**  
18 **CIAN PATHOLOGY SERVICES UNDER MEDI-**  
19 **CARE.**

20                  Section 542(c) of the Medicare, Medicaid, and  
21 SCHIP Benefits Improvement and Protection Act of 2000  
22 (as enacted into law by section 1(a)(6) of Public Law 106–  
23 554), as amended by section 732 of the Medicare Prescrip-  
24 tion Drug, Improvement, and Modernization Act of 2003  
25 (42 U.S.C. 1395w–4 note), section 104 of division B of

1 the Tax Relief and Health Care Act of 2006 (42 U.S.C.  
2 1395w-4 note), section 104 of the Medicare, Medicaid,  
3 and SCHIP Extension Act of 2007 (Public Law 110-173)  
4 and section 136 of the Medicare Improvements for Pa-  
5 tients and Providers Act of 2008 (Public Law 110-275),  
6 is amended by striking “and 2009” and inserting “2009,  
7 and 2010”.

8 **SEC. 206. EXTENSION OF INCREASED MEDICARE PAYMENTS**  
9 **FOR RURAL GROUND AMBULANCE SERVICES.**

10 Section 1834(l)(13)(A) of the Social Security Act (42  
11 U.S.C. 1395m(l)(13)(A)) is amended—

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

13 (A) by striking “2007, and for” and in-  
14 serting “2007, for”; and

15 (B) by inserting “, and for such services  
16 described in clause (i) furnished on or after  
17 January 1, 2010, and before January 1, 2011”  
18 after “2010”; and

19 (2) in clause (i), by inserting “, or 5 percent if  
20 such service is furnished on or after January 1,  
21 2010, and before January 1, 2011” after “2010”.

22 **SEC. 207. RURAL HEALTH CLINIC IMPROVEMENTS.**

23 Section 1833(f) of the Social Security Act (42 U.S.C.  
24 1395l(f)) is amended—

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

3 (2) in paragraph (2)—

4 (A) by inserting “(before 2010)” after “in  
5 a subsequent year”; and

6 (B) by striking the period at the end and  
7 inserting a semicolon; and

8 (3) by adding at the end the following new  
9 paragraphs:

10 “(3) in 2010, at \$92 per visit; and

11 “(4) in a subsequent year, at the limit estab-  
12 lished under this subsection for the previous year in-  
13 creased by the percentage increase in the MEI (as  
14 so defined) furnished as of the first day of that  
15 year.”.

16 **SEC. 208. EXEMPTION FOR SUPPLIERS IN SMALL MSAS AND**  
17 **RURAL AREAS.**

18 (a) EXEMPTION.—Section 1847(a)(3) of the Social  
19 Security Act (42 U.S.C. 1395w-3(a)(3)) is amended—

20 (1) in the matter preceding subparagraph (A),  
21 by striking “may” and inserting “shall”; and

22 (2) by striking subparagraph (A) and inserting  
23 the following:

1           “(A) rural areas and small metropolitan  
2           statistical areas with a population of 600,000  
3           or less; and”.

4           (b) INAPPLICABILITY OF COMPETITIVELY BID  
5 PRICES TO RURAL AND SMALL MSAs.—Section  
6 1834(a)(1)(F)(ii) of the Social Security Act (42 U.S.C.  
7 1395m(a)(1)(F)(ii)) is amended by striking “the Sec-  
8 retary” and inserting “except in the case of any area that  
9 is exempt from the programs under section 1847 pursuant  
10 to subsection (a)(3)(A) of such section, the Secretary”.

11          (c) EFFECTIVE DATE.—The amendments made by  
12 this section shall take effect as if included in the enact-  
13 ment of section 302 of the Medicare Prescription Drug,  
14 Improvement, and Modernization Act of 2003 (Public Law  
15 108–173; 117 Stat. 2223).

16 **SEC. 209. PERMITTING PHYSICIAN ASSISTANTS TO ORDER**  
17 **POST-HOSPITAL EXTENDED CARE SERVICES**  
18 **AND TO PROVIDE FOR RECOGNITION OF AT-**  
19 **TENDING PHYSICIAN ASSISTANTS AS AT-**  
20 **TENDING PHYSICIANS TO SERVE HOSPICE**  
21 **PATIENTS.**

22          (a) ORDERING POST-HOSPITAL EXTENDED CARE  
23 SERVICES.—

24           (1) IN GENERAL.—Section 1814(a)(2) of the  
25          Social Security Act (42 U.S.C. 1395f(a)(2)), in the

1 matter preceding subparagraph (A), is amended by  
 2 striking “nurse practitioner or clinical nurse spe-  
 3 cialist” and inserting “nurse practitioner, a clinical  
 4 nurse specialist, or a physician assistant (as those  
 5 terms are defined in section 1861(aa)(5))”.

6 (2) CONFORMING AMENDMENT.—Section  
 7 1814(a) of the Social Security Act (42 U.S.C.  
 8 1395f(a)) is amended, in the second sentence, by  
 9 striking “or clinical nurse specialist” and inserting  
 10 “clinical nurse specialist, or physician assistant”.

11 (b) RECOGNITION OF ATTENDING PHYSICIAN AS-  
 12 SISTANTS AS ATTENDING PHYSICIANS TO SERVE HOS-  
 13 PICE PATIENTS.—

14 (1) IN GENERAL.—Section 1861(dd)(3)(B) of  
 15 the Social Security Act (42 U.S.C. 1395x(dd)(3)(B))  
 16 is amended—

17 (A) by striking “or nurse” and inserting “,  
 18 the nurse”; and

19 (B) by inserting “, or the physician assist-  
 20 ant (as defined in such subsection)” after “sub-  
 21 section (aa)(5))”.

22 (2) CLARIFICATION OF HOSPICE ROLE OF PHY-  
 23 SICIAN ASSISTANTS.—Section 1814(a)(7)(A)(i)(I) of  
 24 the Social Security Act (42 U.S.C.

1       1395f(a)(7)(A)(i)(I) is amended by inserting “or a  
2       physician assistant” after “a nurse practitioner”.

3       (c) EFFECTIVE DATE.—The amendments made by  
4 this section shall apply to items and services furnished on  
5 or after January 1, 2010.

○