

Public Law 111–309
111th Congress

An Act

To extend certain expiring provisions of the Medicare and Medicaid programs,
and for other purposes.

Dec. 15, 2010
[H.R. 4994]

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Medicare
and Medicaid Extenders Act of 2010”.

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

Sec. 1. Short title; table of contents.

TITLE I—EXTENSIONS

- Sec. 101. Physician payment update.
- Sec. 102. Extension of MMA section 508 reclassifications.
- Sec. 103. Extension of Medicare work geographic adjustment floor.
- Sec. 104. Extension of exceptions process for Medicare therapy caps.
- Sec. 105. Extension of payment for technical component of certain physician pathology services.
- Sec. 106. Extension of ambulance add-ons.
- Sec. 107. Extension of physician fee schedule mental health add-on payment.
- Sec. 108. Extension of outpatient hold harmless provision.
- Sec. 109. Extension of Medicare reasonable costs payments for certain clinical diagnostic laboratory tests furnished to hospital patients in certain rural areas.
- Sec. 110. Extension of the qualifying individual (QI) program.
- Sec. 111. Extension of Transitional Medical Assistance (TMA).
- Sec. 112. Special diabetes programs.

TITLE II—OTHER PROVISIONS

- Sec. 201. Clarification of effective date of part B special enrollment period for disabled TRICARE beneficiaries.
- Sec. 202. Repeal of delay of RUG–IV.
- Sec. 203. Clarification for affiliated hospitals for distribution of additional residency positions.
- Sec. 204. Continued inclusion of orphan drugs in definition of covered outpatient drugs with respect to children’s hospitals under the 340B drug discount program.
- Sec. 205. Medicaid and CHIP technical corrections.
- Sec. 206. Funding for claims reprocessing.
- Sec. 207. Revision to the Medicare Improvement Fund.
- Sec. 208. Limitations on aggregate amount recovered on reconciliation of the health insurance tax credit and the advance of that credit.
- Sec. 209. Determination of budgetary effects.

TITLE I—EXTENSIONS

SEC. 101. PHYSICIAN PAYMENT UPDATE.

Section 1848(d) of the Social Security Act (42 U.S.C. 1395w–4(d)) is amended by adding at the end the following new paragraph:

Medicare and
Medicaid
Extenders Act of
2010.
42 USC 1305
note.

“(12) UPDATE FOR 2011.—

“(A) IN GENERAL.—Subject to paragraphs (7)(B), (8)(B), (9)(B), (10)(B), and (11)(B), in lieu of the update to the single conversion factor established in paragraph (1)(C) that would otherwise apply for 2011, the update to the single conversion factor shall be 0 percent.

“(B) NO EFFECT ON COMPUTATION OF CONVERSION FACTOR FOR 2012 AND SUBSEQUENT YEARS.—The conversion factor under this subsection shall be computed under paragraph (1)(A) for 2012 and subsequent years as if subparagraph (A) had never applied.”.

SEC. 102. EXTENSION OF MMA SECTION 508 RECLASSIFICATIONS.

(a) EXTENSION.—

42 USC 1395ww
note.

(1) IN GENERAL.—Section 106(a) of division B of the Tax Relief and Health Care Act of 2006 (42 U.S.C. 1395 note), as amended by section 117 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (Public Law 110-173), section 124 of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law 110-275), and sections 3137(a) and 10317 of the Patient Protection and Affordable Care Act (Public Law 111-148), is amended by striking “September 30, 2010” and inserting “September 30, 2011”.

42 USC 1395ww
note.

(2) SPECIAL RULE FOR FISCAL YEAR 2011.—

(A) IN GENERAL.—Subject to subparagraph (B), for purposes of implementation of the amendment made by paragraph (1), including (notwithstanding paragraph (3) of section 117(a) of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (Public Law 110-173), as amended by section 124(b) of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law 110-275)) for purposes of the implementation of paragraph (2) of such section 117(a), during fiscal year 2011, the Secretary of Health and Human Services shall use the hospital wage index that was promulgated by the Secretary of Health and Human Services in the Federal Register on August 16, 2010 (75 Fed. Reg. 50042), and any subsequent corrections.

Effective date.

(B) EXCEPTION.—Beginning on April 1, 2011, in determining the wage index applicable to hospitals that qualify for wage index reclassification, the Secretary shall include the average hourly wage data of hospitals whose reclassification was extended pursuant to the amendment made by paragraph (1) only if including such data results in a higher applicable reclassified wage index. Any revision to hospital wage indexes made as a result of this subparagraph shall not be effected in a budget neutral manner.

42 USC 1395ww
note.

(3) ADJUSTMENT FOR CERTAIN HOSPITALS IN FISCAL YEAR 2011.—

Payments.

(A) IN GENERAL.—In the case of a subsection (d) hospital (as defined in subsection (d)(1)(B) of section 1886 of the Social Security Act (42 U.S.C. 1395ww)) with respect to which—

(i) a reclassification of its wage index for purposes of such section was extended pursuant to the amendment made by paragraph (1); and

Time periods.

(ii) the wage index applicable for such hospital for the period beginning on October 1, 2010, and ending

on March 31, 2011, was lower than for the period beginning on April 1, 2011, and ending on September 30, 2011, by reason of the application of paragraph (2)(B);

the Secretary shall pay such hospital an additional payment that reflects the difference between the wage index for such periods.

(B) TIMEFRAME FOR PAYMENTS.—The Secretary shall make payments required under subparagraph (A) by not later than December 31, 2011.

(b) CONFORMING AMENDMENT.—Section 117(a)(3) of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (Public Law 110–173) is amended by inserting “in fiscal years 2008 and 2009” after “For purposes of implementation of this subsection”.

42 USC 1395ww
note.

SEC. 103. EXTENSION OF MEDICARE WORK GEOGRAPHIC ADJUSTMENT FLOOR.

Section 1848(e)(1)(E) of the Social Security Act (42 U.S.C. 1395w–4(e)(1)(E)) is amended by striking “before January 1, 2011” and inserting “before January 1, 2012”.

SEC. 104. EXTENSION OF EXCEPTIONS PROCESS FOR MEDICARE THERAPY CAPS.

Section 1833(g)(5) of the Social Security Act (42 U.S.C. 1395l(g)(5)) is amended by striking “and ending on” and all that follows through “2010” and inserting “and ending on December 31, 2011”.

SEC. 105. EXTENSION OF PAYMENT FOR TECHNICAL COMPONENT OF CERTAIN PHYSICIAN PATHOLOGY SERVICES.

Section 542(c) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (as enacted into law by section 1(a)(6) of Public Law 106–554), as amended by section 732 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (42 U.S.C. 1395w–4 note), section 104 of division B of the Tax Relief and Health Care Act of 2006 (42 U.S.C. 1395w–4 note), section 104 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (Public Law 110–173), section 136 of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law 110–275), and section 3104 of the Patient Protection and Affordable Care Act (Public Law 111–148) is amended by striking “and 2010” and inserting “2010, and 2011”.

SEC. 106. EXTENSION OF AMBULANCE ADD-ONS.

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

(1) in the matter preceding clause (i), by striking “2011” and inserting “2012,”; and

(2) in each of clauses (i) and (ii), by striking “January 1, 2011” and inserting “January 1, 2012” each place it appears.

(b) AIR AMBULANCE.—Section 146(b)(1) of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law 110–275), as amended by sections 3105(b) and 10311(b) of Public Law 111–148, is amended by striking “December 31, 2010” and inserting “December 31, 2011”.

42 USC 1395m
note.

(c) SUPER RURAL AMBULANCE.—Section 1834(l)(12)(A) of the Social Security Act (42 U.S.C. 1395m(l)(12)(A)) is amended by striking “2011” and inserting “2012”.

SEC. 107. EXTENSION OF PHYSICIAN FEE SCHEDULE MENTAL HEALTH ADD-ON PAYMENT.42 USC 1395w–4
note.

Section 138(a)(1) of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law 110–275), as amended by section 3107 of the Patient Protection and Affordable Care Act (Public Law 111–148), is amended by striking “December 31, 2010” and inserting “December 31, 2011”.

SEC. 108. EXTENSION OF OUTPATIENT HOLD HARMLESS PROVISION.

Section 1833(t)(7)(D)(i) of the Social Security Act (42 U.S.C. 1395l(t)(7)(D)(i)), as amended by section 3121(a) of the Patient Protection and Affordable Care Act (Public Law 111–148), is amended—

(1) in subclause (II)—

(A) in the first sentence, by striking “2011” and inserting “2012”; and

(B) in the second sentence, by striking “or 2010” and inserting “2010, or 2011”; and

(2) in subclause (III), by striking “January 1, 2011” and inserting “January 1, 2012”.

42 USC 1395l
note.**SEC. 109. EXTENSION OF MEDICARE REASONABLE COSTS PAYMENTS FOR CERTAIN CLINICAL DIAGNOSTIC LABORATORY TESTS FURNISHED TO HOSPITAL PATIENTS IN CERTAIN RURAL AREAS.**

Section 416(b) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (42 U.S.C. 1395l–4), as amended by section 105 of division B of the Tax Relief and Health Care Act of 2006 (42 U.S.C. 1395l note), section 107 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (42 U.S.C. 1395l note), and section 3122 of the Patient Protection and Affordable Care Act (Public Law 111–148), is amended by striking “the 1-year period beginning on July 1, 2010” and inserting “the 2-year period beginning on July 1, 2010”.

SEC. 110. EXTENSION OF THE QUALIFYING INDIVIDUAL (QI) PROGRAM.

(a) EXTENSION.—Section 1902(a)(10)(E)(iv) of the Social Security Act (42 U.S.C. 1396a(a)(10)(E)(iv)) is amended by striking “December 2010” and inserting “December 2011”.

(b) EXTENDING TOTAL AMOUNT AVAILABLE FOR ALLOCATION.—Section 1933(g) of such Act (42 U.S.C. 1396u–3(g)) is amended—

(1) in paragraph (2)—

(A) by striking “and” at the end of subparagraph (M);

(B) in subparagraph (N), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following new subparagraphs:

Time period.

“(O) for the period that begins on January 1, 2011, and ends on September 30, 2011, the total allocation amount is \$720,000,000; and

Time period.

“(P) for the period that begins on October 1, 2011, and ends on December 31, 2011, the total allocation amount is \$280,000,000.”; and

(2) in paragraph (3), in the matter preceding subparagraph (A), by striking “or (N)” and inserting “(N), or (P)”.

SEC. 111. EXTENSION OF TRANSITIONAL MEDICAL ASSISTANCE (TMA).

Sections 1902(e)(1)(B) and 1925(f) of the Social Security Act (42 U.S.C. 1396a(e)(1)(B), 1396r–6(f)) are each amended by striking “December 31, 2010” and inserting “December 31, 2011”.

SEC. 112. SPECIAL DIABETES PROGRAMS.

(1) SPECIAL DIABETES PROGRAMS FOR TYPE I DIABETES.—Section 330B(b)(2)(C) of the Public Health Service Act (42 U.S.C. 254c–2(b)(2)(C)) is amended by striking “2011” and inserting “2013”.

(2) SPECIAL DIABETES PROGRAMS FOR INDIANS.—Section 330C(c)(2)(C) of the Public Health Service Act (42 U.S.C. 254c–3(c)(2)(C)) is amended by striking “2011” and inserting “2013”.

TITLE II—OTHER PROVISIONS

SEC. 201. CLARIFICATION OF EFFECTIVE DATE OF PART B SPECIAL ENROLLMENT PERIOD FOR DISABLED TRICARE BENEFICIARIES.

Effective as if included in the enactment of Public Law 111–148, section 3110(a)(2) of such Act is amended to read as follows:

“(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to elections made on and after the date of the enactment of this Act.”.

42 USC 1395p
note.

SEC. 202. REPEAL OF DELAY OF RUG–IV.

Effective as if included in the enactment of Public Law 111–148, section 10325 of such Act is repealed.

Ante, p. 960.

SEC. 203. CLARIFICATION FOR AFFILIATED HOSPITALS FOR DISTRIBUTION OF ADDITIONAL RESIDENCY POSITIONS.

Effective as if included in the enactment of section 5503(a) of Public Law 111–148, section 1886(h)(8) of the Social Security Act (42 U.S.C. 1395ww(h)(8)), as added by such section 5503(a), is amended by adding at the end the following new subparagraph:

“(I) AFFILIATION.—The provisions of this paragraph shall be applied to hospitals which are members of the same affiliated group (as defined by the Secretary under paragraph (4)(H)(ii)) and the reference resident level for each such hospital shall be the reference resident level with respect to the cost reporting period that results in the smallest difference between the reference resident level and the otherwise applicable resident limit.”.

42 USC 1395ww
note.

Applicability.

SEC. 204. CONTINUED INCLUSION OF ORPHAN DRUGS IN DEFINITION OF COVERED OUTPATIENT DRUGS WITH RESPECT TO CHILDREN’S HOSPITALS UNDER THE 340B DRUG DISCOUNT PROGRAM.

(a) DEFINITION OF COVERED OUTPATIENT DRUG.—

(1) AMENDMENT.—Subsection (e) of section 340B of the Public Health Service Act (42 U.S.C. 256b) is amended by striking “covered entities described in subparagraph (M)” and inserting “covered entities described in subparagraph (M) (other than a children’s hospital described in subparagraph (M))”.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect as if included in the enactment of section

42 USC 256b
note.

2302 of the Health Care and Education Reconciliation Act of 2010 (Public Law 111–152).

(b) **TECHNICAL AMENDMENT.**—Subparagraph (B) of section 1927(a)(5) of the Social Security Act (42 U.S.C. 1396r–8(a)(5)) is amended by striking “and a children’s hospital” and all that follows through the end of the subparagraph and inserting a period.

SEC. 205. MEDICAID AND CHIP TECHNICAL CORRECTIONS.

(a) **REPEAL OF EXCLUSION OF CERTAIN INDIVIDUALS AND ENTITIES FROM MEDICAID.**—Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)) is amended by striking paragraph (78).

(b) **INCOME LEVEL FOR CERTAIN CHILDREN UNDER MEDICAID.**—Section 1902(l)(2)(C) of the Social Security Act (42 U.S.C. 1396a(l)(2)(C)) is amended by striking “133 percent” and inserting “100 percent (or, beginning January 1, 2014, 133 percent)”.

Ante, p. 96.

(c) **CALCULATION AND PUBLICATION OF PAYMENT ERROR RATE MEASUREMENT FOR CERTAIN YEARS.**—Section 601(b) of the Children’s Health Insurance Program Reauthorization Act of 2009 (Public Law 111–3) is amended by adding at the end the following: “The Secretary is not required under this subsection to calculate or publish a national or a State-specific error rate for fiscal year 2009 or fiscal year 2010.”.

(d) **CORRECTIONS TO EXCEPTIONS TO EXCLUSION OF CHILDREN OF CERTAIN EMPLOYEES.**—Section 2110(b)(6) of the Social Security Act (42 U.S.C. 1397jj(b)(6)) is amended—

(1) in subparagraph (B)—

(A) by striking “PER PERSON” in the heading; and

(B) by striking “each employee” and inserting “employees”; and

(2) in subparagraph (C), by striking “, on a case-by-case basis,”.

42 USC 1396b
note.

(e) **ELECTRONIC HEALTH RECORDS.**—Effective as if included in the enactment of section 4201(a)(2) of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5), section 1903(t) of the Social Security Act (42 U.S.C. 1396b(t)) is amended—

(1) in paragraph (3)(E), by striking “reduced by any payment that is made to such Medicaid provider from any other source (other than under this subsection or by a State or local government)” and inserting “reduced by the average payment the Secretary estimates will be made to such Medicaid providers (determined on a percentage or other basis for such classes or types of providers as the Secretary may specify) from other sources (other than under this subsection, or by the Federal government or a State or local government)”;

(2) in paragraph (6)(B), by inserting before the period the following: “and shall be determined to have met such responsibility to the extent that the payment to the Medicaid provider is not in excess of 85 percent of the net average allowable cost”.

(f) **CORRECTIONS OF DESIGNATIONS.**—

(1) Section 1902 of the Social Security Act (42 U.S.C. 1396a) is amended—

(A) in subsection (a)(10), in the matter following subparagraph (G), by striking “and” before “(XVI) the medical” and by striking “(XVI) if” and inserting “(XVII) if”;

(B) in subsection (a)(23), by striking “(ii)” and inserting “(kk)”;

(C) in subsection (a)(77), by striking “(ii)” and inserting “(kk)”;

(D) in subsection (ii)(2), as added by section 2303(a)(2) of Public Law 111–148, by striking “(XV)” and inserting “(XVI)”;

(E) by redesignating subsection (ii), as added by section 6401(b)(1)(B) of Public Law 111–148, as subsection (kk) and transferring such subsection so as to appear after subsection (jj) of that section.

(2) Section 2107(e)(1) of the Social Security Act (42 U.S.C. 1397gg(e)(1)) is amended—

(A) in subparagraph (D), as added by section 6401(c) of Public Law 111–148, by striking “(ii)” and inserting “(kk)”;

(B) by redesignating the subparagraph (N) of that section added by 2101(e) of Public Law 111–148 as subparagraph (O).

SEC. 206. FUNDING FOR CLAIMS REPROCESSING.

For purposes of carrying out the provisions of, and amendments made by, this Act that relate to title XVIII of the Social Security Act, and other provisions of, or relating to, such title that ensure appropriate payment of claims, there are appropriated to the Secretary of Health and Human Services for the Centers for Medicare & Medicaid Services Program Management Account, from amounts in the general fund of the Treasury not otherwise appropriated, \$200,000,000. Amounts appropriated under the preceding sentence shall be in addition to any other funds available for such purposes, shall remain available until expended, and shall not be used to implement changes to title XVIII of the Social Security Act made by Public Laws 111-148 and 111-152.

SEC. 207. REVISION TO THE MEDICARE IMPROVEMENT FUND.

Section 1898(b)(1)(B) of the Social Security Act (42 U.S.C. 1395iii(b)(1)(B)) is amended by striking “\$550,000,000” and inserting “\$275,000,000”.

SEC. 208. LIMITATIONS ON AGGREGATE AMOUNT RECOVERED ON RECONCILIATION OF THE HEALTH INSURANCE TAX CREDIT AND THE ADVANCE OF THAT CREDIT.

(a) IN GENERAL.—So much of section 36B(f)(2)(B) of the Internal Revenue Code of 1986 as precedes clause (ii) thereof is amended to read as follows: 26 USC 36B.

“(B) LIMITATION ON INCREASE.—

“(i) IN GENERAL.—In the case of a taxpayer whose household income is less than 500 percent of the poverty line for the size of the family involved for the taxable year, the amount of the increase under subparagraph (A) shall in no event exceed the applicable dollar amount determined in accordance with the following table (one-half of such amount in the case of a taxpayer whose tax is determined under section 1(c) for the taxable year):

“If the household income (expressed as a percent of poverty line) is:	The applicable dollar amount is:
Less than 200%	\$600
At least 200% but less than 250%	\$1,000
At least 250% but less than 300%	\$1,500
At least 300% but less than 350%	\$2,000
At least 350% but less than 400%	\$2,500
At least 400% but less than 450%	\$3,000
At least 450% but less than 500%	\$3,500”.

26 USC 36B. (b) CONFORMING AMENDMENT.—Section 36B(f)(2)(B)(ii) of such Code is amended by inserting “in the table contained” after “each of the dollar amounts”.

26 USC 36B note. (c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2013.

SEC. 209. DETERMINATION OF BUDGETARY EFFECTS.

(a) IN GENERAL.—The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the Congressional Record by the Chairman of the Senate Budget Committee, provided that such statement has been submitted prior to the vote on passage.

(b) EMERGENCY DESIGNATION FOR CONGRESSIONAL ENFORCEMENT.—In the House of Representatives, this Act, with the exception of section 101, is designated as an emergency for purposes of pay-as-you-go principles.

Approved December 15, 2010.

LEGISLATIVE HISTORY—H.R. 4994:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Apr. 14, considered and passed House.

Dec. 8, considered and passed Senate, amended.

Dec. 9, House concurred in Senate amendments.

