

109TH CONGRESS
1ST SESSION

S. _____

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

Mr. GRASSLEY (for himself and Mr. BAUCUS) introduced the following bill; which was read twice and referred to the Committee on

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

1 FOR DIAGNOSIS-RELATED GROUPS UNDER THE INPA-
2 TIENT HOSPITAL PROSPECTIVE PAYMENT SYSTEM.—

3 (1) IN GENERAL.—Section 1886(d)(4)(B) of
4 the Social Security Act (42 U.S.C.
5 1395ww(d)(4)(B)) is amended—

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

7 (B) by adding at the end the following new
8 clause:

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

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

1 (b) CALCULATION OF WEIGHTING FACTORS AT HOS-
2 PITAL LEVEL UNDER THE INPATIENT HOSPITAL PRO-
3 SPECTIVE PAYMENT SYSTEM.—Section 1886(d)(4)(B) of
4 the Social Security Act (42 U.S.C. 1395ww(d)(4)(B)), as
5 amended by subsection (a)(1), is amended by adding at
6 the end the following new clause:

7 “(iii) For fiscal years beginning after fiscal year
8 2006, in establishing the weighting factors under clause
9 (i), the Secretary shall calculate such factors at a hospital
10 level and then aggregate such factors to a national level.”.

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

16 (1) PPS HOSPITALS.—

17 (A) IN GENERAL.—Section 1886(d)(3)(B)
18 of the Social Security Act (42 U.S.C.
19 1395ww(d)(3)(B)) is amended to read as fol-
20 lows:

21 “(B) REDUCING FOR VALUE OF OUTLIER PAY-
22 MENTS.—

23 “(i) REDUCTION OF AVERAGE STANDARD-
24 IZED AMOUNTS.—The Secretary shall, for dis-
25 charges occurring before fiscal year 2007, re-

1 cluding, for discharges occurring after fiscal
2 year 2006, projected changes in the distribution
3 of additional payments described in paragraph
4 (5)(A) within diagnosis-related groups” before
5 the period at the end of the first sentence.

6 (C) CONFORMING AMENDMENTS.—Section
7 1886(d)(3)(D) of the Social Security Act (42
8 U.S.C. 1395ww(d)(3)(D)) is amended—

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

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

17 (2) PUERTO RICO HOSPITALS.—

18 (A) COMPUTING PUERTO RICO DRG-SPE-
19 CIFIC RATES.—Section 1886(d)(9)(C)(ii) of the
20 Social Security Act (42 U.S.C.
21 1395ww(d)(9)(C)(ii)) is amended—

22 (i) by inserting “, for discharges oc-
23 ccurring before fiscal year 2007,” after
24 “The Secretary shall”; and

1 (ii) by striking “fiscal year 2004 and
2 thereafter” and inserting “fiscal years
3 2004, 2005, and 2006”.

4 (B) CONFORMING AMENDMENTS.—Section
5 1886(d)(9)(C)(iii)(II) of the Social Security Act
6 (42 U.S.C. 1395ww(d)(9)(C)(iii)(II)) is amend-
7 ed by inserting “and reduced under paragraph
8 (3)(B)(ii)” after “paragraph (4)(B)”.

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

18 (e) PHASE-IN OF CHANGES TO THE INPATIENT HOS-
19 PITAL PROSPECTIVE PAYMENT SYSTEM.—Section
20 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d))
21 is amended by adding at the end the following new para-
22 graph:

23 “(14) Notwithstanding the preceding provisions of
24 this subsection, the Secretary shall phase in the applica-
25 tion of the amendments made by subsections (a), (b), (c),

1 and (d) of section 2 of the Hospital Fair Competition Act
2 of 2005 over a 3-fiscal year period beginning with fiscal
3 year 2007. In implementing the phase-in under the pre-
4 ceding sentence, the Secretary shall take into account the
5 negative impact that the phase-in may have on certain
6 hospitals.”.

7 **SEC. 3. PROHIBITION ON CERTAIN PHYSICIAN SELF REFER-**
8 **RALS.**

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

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

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

22 (2) by inserting after clause (ii) the following
23 new clauses:

24 “(iii) for which the percent of invest-
25 ment in the hospital by physician investors

1 at any time on or after June 8, 2005, is
2 no greater than the percent of such invest-
3 ment by physician investors as of such
4 date;

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

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

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

18 “(vii) for which—

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

1 pital as of November 18, 2003, or 5
2 beds, whichever is greater; and

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

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

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

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

18 “(o) ARRANGEMENTS BETWEEN HOSPITALS AND
19 PHYSICIANS.—

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

23 “(2) REQUIREMENTS.—

24 “(A) ESTABLISHMENT.—The Secretary
25 shall establish requirements for arrangements

1 between hospitals or critical access hospitals
2 and physicians in which physicians share in the
3 savings experienced by the hospital or critical
4 access hospital by reason of cost-reduction ef-
5 forts that involve the physicians.

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

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

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

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

19 (b) EXEMPTION FROM CRIMINAL PENALTIES.—Sec-
20 tion 1128B(b)(3) of the Social Security Act (42 U.S.C.
21 1320a–7b(b)(3)) is amended—

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

24 (2) in subparagraph (H), as added by section
25 237(d) of the Medicare Prescription Drug, Improve-

1 ment, and Modernization Act of 2003 (Public Law
2 108–173; 117 Stat. 2213)—

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

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

7 (3) by redesignating subparagraph (H), as
8 added by section 431(a) of the Medicare Prescrip-
9 tion Drug, Improvement, and Modernization Act of
10 2003 (Public Law 108–173; 117 Stat. 2287), as
11 subparagraph (I);

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

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

15 (B) by striking the period at the end and
16 inserting “; and”; and

17 (5) by adding at the end the following new sub-
18 paragraph:

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

21 (c) EXEMPTION FROM LIMITATION ON CERTAIN
22 PHYSICIAN REFERRALS.—Section 1877(e) of the Social
23 Security Act (42 U.S.C. 1395nn(e)) is amended by adding
24 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).”.