

MEDICARE EXTENSION AMENDMENTS

JUNE 25. (legislative day, JUNE 18), 1976.—Ordered to be printed

Mr. LONG, from the Committee on Finance,
submitted the following

REPORT

[To accompany H.R. 13501]

The Committee on Finance, to which was referred the bill (H.R. 13501) to extend or remove certain time limitations and make other administrative improvements in the medicare program under title XVIII of the Social Security Act, having considered the same, reports favorably thereon with an amendment and recommends that the bill do pass.

I. SUMMARY OF THE BILL

The bill would make three relatively minor changes in the medicare law that must take effect by July 1, 1976, in order to avoid certain adverse effects on medicare beneficiaries and health care providers. In brief, these changes would (a) provide needed additional time during which the Congress can determine an appropriate policy regarding medicare reimbursement for the services of physicians in teaching hospitals; (b) avoid the rollback below fiscal year 1975 levels, of "prevailing charges" (used in determining medicare reimbursement for physicians' services); and (c) continue the practice, which the medicare program has followed since its inception, of updating "customary" and "prevailing" charges (used in determining physician reimbursement) each year as of July 1.

The committee recommends these minor, but necessary, amendments at this time to modify the effect of medicare changes that would otherwise occur as of July 1 of this year.

In addition, the committee bill would authorize the Secretary of Health, Education, and Welfare to make adjustments in medicare nursing home reimbursement in certain areas of the country—such as Alaska—with unusually high cost levels.

II. GENERAL EXPLANATION OF THE BILL

A. REIMBURSEMENT FOR SERVICES OF PHYSICIANS PROVIDED IN TEACHING HOSPITALS

When medicare was enacted, the general expectation reflected in the law was that the patient care services of physicians would be reimbursed under part B of medicare (supplementary medical insurance) on the basis of reasonable charges. Hospital costs, including salaries of interns and residents, as well as supervising physicians participating in educational program in the hospital, were to be reimbursed under part A of medicare (hospital insurance) on a reasonable cost basis.

These distinctions, however, are not easily made with respect to the actual services and responsibilities in a teaching hospital, where teaching and patient care are often inseparable. The original medicare law did not address the specific issue of how medicare should determine reimbursement for the services of a physician when he supervises interns and residents in the care of patients.

This ambiguity led in practice to a variety of arrangements for reimbursing the services of physicians in teaching hospitals. Out of concern about the lack of uniformity in these arrangements, the Congress included a provision (section 227) in the 1972 social security amendments (Public Law 92-603) that was intended to simplify payment problems.

Adoption of this provision, however, brought forth expressions of serious concern from the medical education community about whether the legislation in fact established a workable and equitable reimbursement policy for the teaching hospital setting. Thereafter, and before section 227 was implemented, the Congress adopted legislation (P.L. 92-233) calling for a thorough study of the issue by the National Academy of Sciences. Pending completion of the study, section 227 of Public Law 92-603 was suspended (until July 1, 1976).

The congressionally chartered study by the National Academy of Sciences was submitted on March 1, 1976. There has not been sufficient time since then to consider the results of the study and develop appropriate legislation. However, the reimbursement method for services of teaching physicians mandated in the 1972 amendments will become effective beginning July 1, 1976, in the absence of any legislative action. Since the Committee on Ways and Means and the Committee on Finance plan to fully reexamine the entire issue of reimbursement of teaching physicians in light of the study by the National Academy, the bill would postpone the effective date of the 1972 reimbursement provision until October 1, 1977. This would allow the time necessary to give full consideration to the study's findings and recommendations relating to alternative methods of reimbursement for services of physicians in teaching hospitals.

B. ELIMINATION OF ROLLEBACKS IN PREVAILING CHARGES DUE TO APPLICATION OF THE ECONOMIC INDEX

The Social Security Amendments of 1972 (Public Law 92-603) included several provisions designed to control the escalating costs of

the medicare program. Among these was a provision limiting the rate at which "prevailing charges" (the ceilings on what the medicare program will recognize as reasonable charges for physicians' services) can increase from year to year.

Under this provision, the prevailing charges recognized in fiscal year 1973 for a locality were allowed to increase in fiscal year 1974, and in later years, only to the extent justified by indices reflecting changes in operating expenses of physicians and in general earnings levels. The statistical methods used to calculate the limit on increases allowed by the provision were to be established by the Secretary of Health, Education, and Welfare.

The application of the index in the fiscal year beginning July 1, 1975 had one completely unintended effect. In some cases, the index caused fiscal year 1976 prevailing charges to be rolled back below fiscal year 1975 prevailing charge levels. Out of concern that this reduction in the ceiling on medicare payments would have an adverse effect on beneficiaries, the committee recommended legislation to assure that operation of the economic index during fiscal year 1976 would not result in lower prevailing charges for physicians' services than during fiscal year 1976. This legislation was enacted into law on December 31, 1975 (Public Law 94-182).

However, in the absence of further legislation, application of the economic index in periods after fiscal year 1976 will once again have a rollback effect—reducing some prevailing charges to levels below what they were in fiscal year 1975. Although the total effects of the rollback in the next 12 months will be less than in the prior fiscal year (and will in the future totally disappear), it is nevertheless an unintended and adverse effect, and should not be allowed to take place. The bill would, therefore, change the law to eliminate the future possibility of rollbacks in prevailing charges due to application of the economic index.

C. UPDATING OF CUSTOMARY AND PREVAILING CHARGES

Under present medicare law, "customary" and "prevailing" charges (used to determine the medicare reasonable charge for a physician's service) are updated at the beginning of every fiscal year. In years prior to 1976, this meant that charges were updated every July 1, with the update based on actual charges made by physicians in the preceding calendar year.

Under the Congressional Budget and Impoundment Control Act of 1974, the beginning of the governmental fiscal year is moved from July 1 to October 1. A consequence for the medicare program is that the updating of customary and prevailing charges will henceforth take place each year as of October 1 rather than July 1, because existing medicare law calls for such updating to occur at the beginning of each fiscal year. Thus, without a change in the law, in 1976 and every year thereafter, medicare will delay for three additional months the recognition of fee increases that have occurred during the preceding calendar year. The effect is to make medicare reimbursement amounts for physicians' services less adequate than today—at a time when many physicians and beneficiaries already believe that medicare delays too long in recognizing increases in fees.

D. ADJUSTMENT IN MEDICARE REIMBURSEMENT IN UNUSUALLY HIGH COST GEOGRAPHIC AREAS

The committee is concerned that present methods for determining reasonable costs reimbursement for nursing home care under Medicare may be inadequate in Alaska because of the unusually high cost levels prevailing in that State. The effect of any significant inadequacies in payment may be to discourage the provision and availability of necessary care for medicare patients. The committee has, therefore, included an amendment authorizing the Secretary of HEW to increase reimbursement for skilled nursing facility care in Alaska if he finds present payment levels and procedures inadequate or inequitable. Any adjustments which the Secretary might find appropriate would be applicable for care provided in skilled nursing facilities which currently participate in or which previously participated in the medicare program.

It is the concern of the committee that this additional 3-month lag would have a direct adverse effect on beneficiaries. Even fewer physicians than today would be willing to accept assignment of claims—with the result that additional beneficiaries would have to pay out of their own pockets the increased difference between the medicare allowance and the actual charge of the physician.

The bill would, therefore, maintain the July 1 date for revising prevailing and customary charges, irrespective of the overall change in the Federal Government's fiscal year.

III. BUDGETARY IMPACT OF THE BILL

In compliance with section 252(a) of the Legislative Reorganization Act of 1970 and section 308 of the Congressional Budget Act of 1974, the following statements are made with respect to budgetary impact:

Section 1 of the bill postpones for 15 months the effective date of the reimbursement methods for teaching physicians mandated in section 227 of Public Law 92-603. The President's budget made no assumption that section 227 would go into effect on July 1, 1976. The Administration estimates, however, that if section 227 were allowed to go into effect on July 1, 1976, additional medicare expenditures would be incurred. The estimated additional expenditures are shown below:

Medicare expenditures—additional expenditures resulting from reimbursement methods under section 227 of Public Law 92-603

Fiscal years:	Millions
Transitional fiscal period (July 1, 1976, through Sept. 30, 1976)-----	(¹)
1977 -----	\$5
1978 -----	6
1979 -----	7
1980 -----	8
1981 -----	9

¹ Less than \$1,000,000.

It should be emphasized that enactment of this provision of the bill would have no effect on the outlays shown in the President's budget for the existing medicare program. Failure to enact this or any other provision (thus permitting the provisions of existing law to take effect) would increase budgeted program outlays by the amount shown above.

Section 2 of the bill assures that application of the economic index (as required by Public Law 92-603) will never result in the determination or prevailing charges which are lower than such charges determined for fiscal year 1975. The Administration estimates that if the rollback of prevailing charges were allowed to take place, the resulting savings to the medicare program would amount to \$3 million in the transitional fiscal period, \$7 million in fiscal year 1977, less than \$1 million in fiscal year 1978, and negligible amounts beginning in fiscal year 1979, declining eventually to zero.

However, in determining total medicare expenditures under existing law, the President's budget did not assume that there would be any rollback in prevailing charges. Thus, adoption of this provision of the bill would not affect the amounts already shown in the budget for the existing medicare program.

Section 3 of the bill provides that, regardless of the change in the Federal Government's fiscal year, medicare's customary and prevailing charges will continue to be updated every July 1. To allow the three-month delay in recognition of increases in physicians' fees to occur would result in a reduction in program expenditures. The estimated reductions are as follows:

Medicare expenditures—reduction in outlays resulting from additional delay in updating customary and prevailing charges

Fiscal years:	
Transitional fiscal period (July 1, 1976 through Sept. 30, 1977)-----	\$91
1977 -----	62
1978 -----	67
1979 -----	76
1980 -----	73
1981 -----	66

However, the President's budget as sent to Congress did not assume that customary and prevailing charges would henceforth be updated as of October 1 (rather than July 1) of each year. Thus, adoption of this provision of the bill would not affect the amounts already shown in the budget for the existing medicare program.

The statement relative to the estimated costs of carrying out the bill furnished by the Director of the Congressional Budget Office follows:

CONGRESS OF THE UNITED STATES,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., May 6, 1976.

HON. AL ULLMAN,
Chairman, Committee on Ways and Means, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for H.R. 13501, the Medicare Extension Amendments.

Should the Committee so desire, we would be pleased to provide further details on the attached cost estimate.

Sincerely,

ALICE M. RIVLIN,
Director.

Attachment.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 13501.
2. Bill title: Medicare Extension Amendments.
3. Purposes of the bill: To extend provisions in the Medicare statute (Title XVIII of the Social Security Act) related to the avoidance of roll backs in charges due to the economic index, the maintenance of the July 1 updating of the charge screen, and the reimbursement of teaching physicians.
4. Cost estimate: No budgetary impact.
5. Basis for estimate: The provisions in this bill extend current law. Since CBO projections for the costs of the Medicare program are based upon current policy, H.R. 13501 would make no change in those projections.
6. Estimate comparison: The Social Security Administration has also indicated that these provisions would have no impact on their current services projections for medicare outlays.
7. Previous CBO estimate: Not applicable.
8. Estimate prepared by: Jeffrey C. Merrill (225-4972).
9. Estimate approved by: C. G. Nuckols for James L. Blum, Assistant Director for Budget Analysis.

IV. VOTE OF THE COMMITTEE IN REPORTING THE BILL

In compliance with section 133 of the Legislative Reorganization Act of 1946 the following statement is made relative to the vote by the committee on the motion to report the bill. The bill was ordered reported by voice vote.

V. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 15 OF PUBLIC LAW 93-233

To provide a 7-percent increase in social security benefits beginning with March 1974 and an additional 4-percent increase beginning with June 1974, to provide increases in supplemental security income benefits, and for other purposes

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PAYMENT FOR SERVICES OF PHYSICIANS RENDERED IN A TEACHING HOSPITAL

SEC. 15. (a) (1) * * *

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(d) The provisions of subsection (a) shall apply with respect to cost accounting periods beginning after June 30, 1973, and prior to [July 1, 1976] *October 1, 1977.*

EXCERPTS FROM THE SOCIAL SECURITY ACT

USE OF CARRIERS FOR ADMINISTRATION OF BENEFITS

SEC. 1842. (a) * * *

(b) (1) * * *

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(3) Each such contract shall provide that the carrier—

(A) will take such action as may be necessary to assure that, where payment under this part for a service is on a cost basis, the cost is reasonable cost (as determined under section 1861(v));

(B) will take such action as may be necessary to assure that, where payment under this part for a service is on a charge basis, such charge will be reasonable and not higher than the charge applicable, for a comparable service and under comparable circumstances, to the policyholders and subscribers of the carrier, and such payment will (except as otherwise provided in section 1870(f)) be made—

(i) on the basis of an itemized bill; or

(ii) on the basis of an assignment under the terms of which (I) the reasonable charge is the full charge for the service (except in the case of physicians' services and ambulance service furnished as described in section 1862(a)(4), other than for purposes of section 1870(f) and (II) the physician or other person furnishing such service agrees not to charge for such service if payment may not be made therefor by reason of the provisions of paragraph (1) of section 1862, and if the individual to whom such service was furnished was without fault in incurring the expenses of such service, and if the Secretary's determination that payment (pursuant to such assignment) was incorrect and was made subsequent to the third year following the year in which notice of such payment was sent to such individual; except that the Secretary may reduce such three-year period to not less than one year if he finds such reduction is consistent with the objectives of this title;

but (in the case of bills submitted, or requests for payment made, after March 1968) only if the bill is submitted, or a written request for payment is made in such other form as may be permitted under regulations, no later than the close of the calendar year following the year in which such service is furnished (deeming any service furnished in the last 3 months of any calendar year to have been furnished in the succeeding calendar year);

(C) will establish and maintain procedures pursuant to which an individual enrolled under this part will be granted an opportunity for a fair hearing by the carrier, in any case where the amount in controversy is \$100 or more when requests for payment under this part with respect to services furnished him are denied or are not acted upon with reasonable promptness or when the amount of such payment is in controversy;

(D) will furnish to the Secretary such timely information and reports as he may find necessary in performing his functions under this part; and

(E) will maintain such records and afford such access thereto as the Secretary finds necessary to assure the correctness and verification of the information and reports under subparagraph (D) and otherwise to carry out the purposes of this part;

and shall contain such other terms and conditions not inconsistent with this section as the Secretary may find necessary or appropriate. In determining the reasonable charge for services for purposes of this paragraph, there shall be taken into consideration the customary charges for similar services generally made by the physician or other person furnishing such services, as well as the prevailing charges in the locality for similar services.

No charge may be determined to be reasonable in the case of bills submitted or requests for payment made under this part after December 31, 1970, if it exceeds the higher of (i) the prevailing charge recognized by the carrier and found acceptable by the Secretary for similar services in the same locality in administering this part on December 31, 1970, or (ii) the prevailing charge level that, on the basis of statistical data and methodology acceptable to the Secretary, would cover 75 percent of the customary charges made for similar services in the same locality during the last preceding calendar year elapsing prior to the start of the [fiscal year] 12-month period (beginning July 1 of each year) in which the bill is submitted or the request for payment is made. In the case of physician services the prevailing charge level determined for purposes of clause (ii) of the preceding sentence for any [fiscal year beginning after June 30, 1973,] 12-month period (beginning after June 30, 1973) specified in clause (ii) of such sentence may not exceed (in the aggregate) the level determined under such clause for the fiscal year ending June 30, 1973, except to the extent that the Secretary finds, on the basis of appropriate economics index data, that such higher level is justified by economic changes. In the case of medical services, supplies, and equipment (including equipment servicing) that, in the judgment of the Secretary, do not generally vary significantly in quality from one supplier to another, the charges incurred after December 31, 1972, determined to be reasonable may not exceed the lowest charge levels at which such services, supplies, and equipment are widely and consistently available in a locality except to the extent and under the circumstances specified by the Secretary. The requirement in subparagraph (B) that a bill be submitted or request for payment be made by the close of the following calendar year shall not apply if (i) failure to submit the bill or request the payment by the close of such year is due to the error or misrepresentation of an officer, employee, fiscal intermediary, carrier, or agent of the Department of Health, Education, and Welfare performing functions under this title and acting within the scope of his or its authority, and (ii) the bill is submitted or the payment is requested promptly after such error or misrepresentation is eliminated or corrected. Notwithstanding the provisions of the third and fourth sentences preceding this sentence, the prevailing charge level in the

case of a physician service in a particular locality determined pursuant to such third and fourth sentences for the [fiscal year beginning July 1, 1975.] 12-month period beginning on July 1 in any calendar year after 1974 shall, if lower than the prevailing charge level for the fiscal year ending June 30, 1975, in the case of a similar physician service in the same locality by reason of the application of economic index data, be raised to such prevailing charge level for the fiscal year ending June 30, 1975.

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Sec. 1861 (a) * * *

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(v) (1) (A) * * *

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(F) *The Secretary of Health, Education, and Welfare in the administration of the health insurance program established by title XVIII of the Social Security Act may, establish special criteria for purposes of determining the reasonable cost incurred by a skilled nursing facility for services for which payment is authorized under either such title, if—*

(1) *such skilled nursing facility is located in an area characterized by unusually higher cost levels (as compared to other areas in the United States),*

(2) *such facility is experiencing financial adversity due in substantial part to such unusually higher cost levels,*

(3) *an increase in reimbursement to such facility, for services performed by it for patients covered under the program established by such title XVIII would enable such facility to continue in operation, and*

(4) *such facility was a provider of services on or before July 1, 1976, which special criteria shall be designed to increase the amounts otherwise payable to such facility, under such title XVIII to the extent necessary more fully to take into account the unusually higher costs incurred by such facility and the impact of such higher costs on the cost which such facility would incur in necessary replacement of items and facilities utilized by it in carrying out its functions.*

(b) *The special criteria referred to in subsection (a) shall be applicable to a skilled nursing facility only during a period with respect to which such facility meets the conditions specified in paragraphs (1), (2), (3) and (4) of such subsection.*

SECTION 204 OF THE FISCAL YEAR TRANSITION ACT

AN ACT To provide for the orderly transaction to the new October 1 to September 30 fiscal year

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SEC. 204. The period of July 1, 1976, through September 30, 1976, shall be treated as part of the fiscal year beginning July 1, 1975, for the purposes of the following provisions of law:

(1) * * *

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(7) the following provisions of the Social Security Act:

section 201(c) (42 U.S.C. 401(c));
 section 403 (c) and (f) (42 U.S.C. 603 (c) and (f));
 section 423(c) (42 U.S.C. 623(c));
 section 1118 (42 U.S.C. 1318);
 section 1817 (b) (42 U.S.C. 1395i (b));
 section 1841(b) (42 U.S.C. 1395t(b));
 [section 1842(b) (3) (42 U.S.C. 1395u(b) (3));]

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