

107TH CONGRESS  
2D SESSION

# H. R. 4000

To amend title XVIII of the Social Security Act to enhance the access of Medicare beneficiaries who live in medically underserved areas to critical primary and preventive health care benefits, to improve the Medicare+Choice program, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 19, 2002

Mr. WELLER (for himself, Mr. LEWIS of Georgia, Mr. BEREUTER, Mr. HINCHEY, Mr. FOLEY, Mr. McNULTY, Mr. DEAL of Georgia, Ms. CARSON of Indiana, Mr. BONILLA, Mrs. CHRISTENSEN, Mr. SESSIONS, Mrs. JONES of Ohio, Mr. LATOURETTE, and Mr. DAVIS of Illinois) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend title XVIII of the Social Security Act to enhance the access of Medicare beneficiaries who live in medically underserved areas to critical primary and preventive health care benefits, to improve the Medicare+Choice 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,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) **SHORT TITLE.**—This Act may be cited as the  
3 “Medicare Safety Net Access Act of 2002”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Supplemental reimbursement for Federally qualified health centers participating in medicare managed care.
- Sec. 3. Revision of Federally qualified health center payment limits.
- Sec. 4. Coverage of additional Federally qualified health center services.
- Sec. 5. Providing safe harbor for certain collaborative efforts that benefit medically underserved populations.

6 **SEC. 2. SUPPLEMENTAL REIMBURSEMENT FOR FEDERALLY**  
7 **QUALIFIED HEALTH CENTERS PARTICI-**  
8 **PATING IN MEDICARE MANAGED CARE.**

9 (a) **SUPPLEMENTAL REIMBURSEMENT.**—Section  
10 1833(a)(3) of the Social Security Act (42 U.S.C.  
11 1395l(a)(3)) is amended to read as follows:

12 “(3) in the case of services described in section  
13 1832(a)(2)(D)—

14 “(A) except as provided in subparagraph  
15 (B), the costs which are reasonable and related  
16 to the cost of furnishing such services or which  
17 are based on such other tests of reasonableness  
18 as the Secretary may prescribe in regulations,  
19 including those authorized under section  
20 1861(v)(1)(A), less the amount a provider may  
21 charge as described in clause (ii) of section  
22 1866(a)(2)(A), but in no case may the payment

1 for such services (other than for items and serv-  
2 ices described in section 1861(s)(10)(A)) exceed  
3 80 percent of such costs; or

4 “(B) with respect to the services described  
5 in clause (ii) of section 1832(a)(2)(D) that are  
6 furnished to an individual enrolled with a  
7 Medicare+Choice organization under part C  
8 pursuant to a written agreement described in  
9 section 1853(j), the amount by which—

10 “(i) the amount of payment that  
11 would have otherwise been provided under  
12 subparagraph (A) (calculated as if ‘100  
13 percent’ were substituted for ‘80 percent’  
14 in such subparagraph) for such services if  
15 the individual had not been so enrolled; ex-  
16 ceeds

17 “(ii) the amount of the payments re-  
18 ceived under such written agreement for  
19 such services (not including any financial  
20 incentives provided for in such agreement  
21 such as risk pool payments, bonuses, or  
22 withholds),

23 less the amount the Federally qualified health  
24 center may charge as described in section  
25 1857(e)(3)(C);”.

1 (b) CONTINUATION OF MEDICARE+CHOICE MONTH-  
2 LY PAYMENTS.—

3 (1) IN GENERAL.—Section 1853 of the Social  
4 Security Act (42 U.S.C. 1395w–23) is amended by  
5 adding at the end the following new subsection:

6 “(j) SPECIAL PAYMENT RULE FOR FEDERALLY  
7 QUALIFIED HEALTH CENTER SERVICES.—If an indi-  
8 vidual who is enrolled with a Medicare+Choice organiza-  
9 tion under this part receives a service from a Federally  
10 qualified health center that has a written agreement with  
11 such organization for providing such a service (including  
12 any agreement required under section 1857(e)(3))—

13 “(1) the Secretary shall pay the amount deter-  
14 mined under section 1833(a)(3)(B) directly to the  
15 Federally qualified health center not less frequently  
16 than quarterly; and

17 “(2) the Secretary shall not reduce the amount  
18 of the monthly payments to the Medicare+Choice  
19 organization made under section 1853(a) as a result  
20 of the application of paragraph (1).”.

21 (2) CONFORMING AMENDMENTS.—

22 (A) Paragraphs (1) and (2) of section  
23 1851(i) of the Social Security Act (42 U.S.C.  
24 1395w–21(i)(1)) are each amended by inserting  
25 “1853(j),” after “1853(h),”.

1           (B) Section 1853(c)(5) is amended by  
2           striking “subsections (a)(3)(C)(iii) and (i)” and  
3           inserting “subsections (a)(3)(C)(iii), (i), and  
4           (j)(1)”.

5           (c) **ADDITIONAL MEDICARE+CHOICE CONTRACT RE-**  
6 **QUIREMENTS.**—Section 1857(e) of the Social Security Act  
7 (42 U.S.C. 1395w–27(e)) is amended by adding at the end  
8 the following new paragraph:

9           “(3) **AGREEMENTS WITH FEDERALLY QUALI-**  
10 **FIED HEALTH CENTERS.**—

11           “(A) **ENSURING EQUAL ACCESS TO SERV-**  
12 **ICES OF FQHCS.**—A contract under this part  
13 shall require the Medicare+Choice organization  
14 to enter into (and to demonstrate to the Sec-  
15 retary that it has entered into) a sufficient  
16 number of written agreements with Federally  
17 qualified health centers providing Federally  
18 qualified health center services for which pay-  
19 ment may be made under this title in the serv-  
20 ice area of each Medicare+Choice plan offered  
21 by such organization so that such services are  
22 reasonably available to individuals enrolled in  
23 the plan.

24           “(B) **ENSURING EQUAL PAYMENT LEVELS**  
25 **AND AMOUNTS.**—A contract under this part

1 shall require the Medicare+Choice organization  
2 to provide a level and amount of payment to  
3 each Federally qualified health center for serv-  
4 ices provided by such health center that are  
5 covered under the written agreement described  
6 in subparagraph (A) that is not less than the  
7 level and amount of payment that the organiza-  
8 tion would make for such services if the services  
9 had been furnished by a provider of services  
10 that was not a Federally qualified health center.

11 “(C) COST-SHARING.—Under the written  
12 agreement described in subparagraph (A), a  
13 Federally qualified health center must accept  
14 the Medicare+Choice contract price plus the  
15 Federal payment as payment in full for services  
16 covered by the contract, except that such a  
17 health center may collect any amount of cost-  
18 sharing permitted under the contract under this  
19 part, so long as the amounts of any deductible,  
20 coinsurance, or copayment comply with the re-  
21 quirements under section 1854(e) and do not  
22 result in a total payment to the center in excess  
23 of the amount determined under section  
24 1833(a)(3)(A) (calculated as if ‘100 percent’

1           were substituted for ‘80 percent’ in such sec-  
2           tion).”.

3           (d) **SAFE HARBOR FROM ANTIKICKBACK PROHIBI-**  
4 **TION.**—Section 1128B(b)(3) of the Social Security Act  
5 (42 U.S.C. 1320a–7b(b)(3)) is amended—

6           (1) in subparagraph (E), by striking “and”  
7           after the semicolon at the end;

8           (2) in subparagraph (F), by striking the period  
9           at the end and inserting “; and”; and

10          (3) by adding at the end the following new sub-  
11          paragraph:

12                   “(G) any remuneration between a Feder-  
13                   ally qualified health center (or an entity con-  
14                   trolled by such a health center) and a  
15                   Medicare+Choice organization pursuant to the  
16                   written agreement described in section  
17                   1853(j).”.

18          (e) **EFFECTIVE DATE.**—The amendments made by  
19 this section shall apply to services provided on or after  
20 January 1, 2003, and contract years beginning on or after  
21 such date.

22 **SEC. 3. REVISION OF FEDERALLY QUALIFIED HEALTH CEN-**  
23 **TER PAYMENT LIMITS.**

24          (a) **PER VISIT PAYMENT REQUIREMENTS FOR**  
25 **FQHCs.**—Section 1833(a)(3)(A) of the Social Security

1 Act (42 U.S.C. 1395l(a)(3)(A)), as amended by section  
2 2(a), is amended by adding “(which regulations may not  
3 limit the per visit payment amount, or a component of  
4 such amount, for services described in section  
5 1832(a)(2)(D)(ii))” after “the Secretary may prescribe in  
6 regulations”.

7 (b) EFFECTIVE DATE.—The amendment made by  
8 subsection (a) shall apply to services provided on or after  
9 January 1, 2003.

10 **SEC. 4. COVERAGE OF ADDITIONAL FEDERALLY QUALIFIED**  
11 **HEALTH CENTER SERVICES.**

12 (a) COVERAGE FOR FQHC AMBULATORY SERV-  
13 ICES.—Section 1861(aa)(3) of the Social Security Act (42  
14 U.S.C. 1395x(aa)(3)) is amended to read as follows:

15 “(3) The term ‘Federally qualified health center serv-  
16 ices’ means—

17 “(A) services of the type described in subpara-  
18 graphs (A) through (C) of paragraph (1), and such  
19 other services furnished by a Federally qualified  
20 health center for which payment may otherwise be  
21 made under this title if such services were furnished  
22 by a health care provider or health care professional  
23 other than a Federally qualified health center; and

1           “(B) preventive primary health services that a  
2           center is required to provide under section 330 of  
3           the Public Health Service Act,  
4           when furnished to an individual as a patient of a Federally  
5           qualified health center.”.

6           (b) OFFSITE FQHC SERVICES.—

7           (1) PATIENTS OF HOSPITALS AND CRITICAL AC-  
8           CESS HOSPITALS.—Section 1862(a)(14) of the Social  
9           Security Act (42 U.S.C. 1395y(a)) is amended by  
10          inserting “Federally qualified health center serv-  
11          ices,” after “qualified psychologist services,”.

12          (2) EXCLUSION OF FEDERALLY QUALIFIED  
13          HEALTH CENTER SERVICES FROM THE PPS FOR  
14          SKILLED NURSING FACILITIES.—Section 1888(e) of  
15          the Social Security Act (42 U.S.C. 1395yy(e)) is  
16          amended—

17                 (A) in paragraph (2)(A)(i)(II), by striking  
18                 “clauses (ii) and (iii)” and inserting “clauses  
19                 (ii) through (iv)”;

20                 (B) by adding at the end of paragraph  
21                 (2)(A) the following new clause:

22                         “(iv) EXCLUSION OF FEDERALLY  
23                         QUALIFIED HEALTH CENTER SERVICES.—  
24                         Services described in this clause are Feder-

1                   ally qualified health center services (as de-  
2                   fined in section 1861(aa)(3)).”.

3           (c) TECHNICAL CORRECTIONS.—

4           (1) Section 1861(aa)(1)(B) of the Social Secu-  
5           rity Act (42 U.S.C. 1395x(aa)(1)(B)) is amended by  
6           striking “subsection (hh)(1),,” and inserting “sub-  
7           section (hh)(1),”.

8           (2) Clauses (i) and (ii)(II) of section  
9           1861(aa)(4)(A) of the Social Security Act (42  
10           U.S.C. 1395x(aa)(4)(A)) are each amended by strik-  
11           ing “(other than subsection (h))”.

12           (d) EFFECTIVE DATES.—The amendments made—

13           (1) by subsections (a) and (b) shall apply to  
14           services furnished on or after January 1, 2003; and

15           (2) by subsection (c) shall take effect on the  
16           date of enactment of this Act.

17   **SEC. 5. PROVIDING SAFE HARBOR FOR CERTAIN COLLABO-**  
18                                   **RATIVE EFFORTS THAT BENEFIT MEDICALLY**  
19                                   **UNDERSERVED POPULATIONS.**

20           (a) IN GENERAL.—Section 1128B(b)(3) of the Social  
21           Security Act (42 U.S.C. 1320a–7(b)(3)), as amended by  
22           section 2(d), is amended—

23           (1) in subparagraph (F), by striking “and”  
24           after the semicolon at the end;

1 (2) in subparagraph (G), by striking the period  
2 at the end and inserting “; and”; and

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

5 “(H) any remuneration between a public  
6 or nonprofit private health center entity de-  
7 scribed under clauses (i) and (ii) of section  
8 1905(l)(2)(B) and any individual or entity pro-  
9 viding goods, items, services, donations or  
10 loans, or a combination thereof, to such health  
11 center entity pursuant to a contract, lease,  
12 grant, loan, or other agreement, if such agree-  
13 ment produces a community benefit that will be  
14 used by the health center entity to maintain or  
15 increase the availability or accessibility, or en-  
16 hance the quality, of services provided to a  
17 medically underserved population served by the  
18 health center entity.”.

19 (b) RULEMAKING FOR EXCEPTION FOR HEALTH  
20 CENTER ENTITY ARRANGEMENTS.—

21 (1) ESTABLISHMENT.—

22 (A) IN GENERAL.—The Secretary of  
23 Health and Human Services (in this subsection  
24 referred to as the “Secretary”) shall establish,  
25 on an expedited basis, standards relating to the

1 exception for health center entity arrangements  
2 to the antikickback penalties described in sec-  
3 tion 1128B(b)(3)(F) of the Social Security Act,  
4 as added by subsection (a).

5 (B) FACTORS TO CONSIDER.—In estab-  
6 lishing standards relating to the exception for  
7 health center entity arrangements under sub-  
8 paragraph (A), the Secretary—

9 (i) shall extend the exception where  
10 the arrangement between the health center  
11 entity and the other party—

12 (I) results in savings of Federal  
13 grant funds or increased revenues to  
14 the health center entity;

15 (II) does not limit or restrict a  
16 patient’s freedom of choice; and

17 (III) does not interfere with a  
18 health care professional’s independent  
19 medical judgment regarding medically  
20 appropriate treatment; and

21 (ii) may include other standards and  
22 criteria that are consistent with the intent  
23 of Congress in enacting the exception es-  
24 tablished under this subsection.

1           (2) INTERIM FINAL EFFECT.—No later than 60  
2       days after the date of enactment of this Act, the  
3       Secretary shall publish a rule in the Federal Reg-  
4       ister consistent with the factors under paragraph  
5       (1)(B). Such rule shall be effective and final imme-  
6       diately on an interim basis, subject to change and  
7       revision after public notice and opportunity (for a  
8       period of not more than 60 days) for public com-  
9       ment, provided that any change or revision shall be  
10      consistent with this subsection.

○