

107<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5234

To amend title XVIII of the Social Security Act to provide for fair payments under the Medicare hospital outpatient department prospective payment system.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 25, 2002

Mr. SESSIONS (for himself, Mr. DINGELL, Mr. BROWN of Ohio, and Mr. BURR of North Carolina) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, 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 provide for fair payments under the Medicare hospital outpatient department prospective payment system.

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 Hospital Outpatient Department Fair Payment  
6       Act of 2002”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Ensuring adequate OPD fee schedule amounts for clinic and emergency visits.
- Sec. 3. Limitation of pro rata reductions to pass-through payments.
- Sec. 4. Clarifying application of OPD fee schedule increase factor.
- Sec. 5. Limitation on budget neutrality adjustment for annual revisions to system components.
- Sec. 6. Outlier payments.
- Sec. 7. Adjustment to limit decline in payment.
- Sec. 8. Special increase in certain relative payment weights.
- Sec. 9. Permanent extension of provider-based status.

3 **SEC. 2. ENSURING ADEQUATE OPD FEE SCHEDULE**  
 4 **AMOUNTS FOR CLINIC AND EMERGENCY VIS-**  
 5 **ITS.**

6 (a) IN GENERAL.—Section 1833(t) of the Social Se-  
 7 curity Act (42 U.S.C. 1395l(t)) is amended—

8 (1) in paragraph (3)(C)(ii)—

9 (A) by striking “paragraph (8)(B)” and  
 10 inserting “paragraphs (11)(B) and (13)(A)(i)”;  
 11 and

12 (B) by striking “clause (iii)” and inserting  
 13 “clause (iv)”;

14 (2) in paragraph (3)(C)(iii), by inserting “,  
 15 paragraph (11)(B), or paragraph (13)(B)” after  
 16 “this subparagraph”;

17 (3) in paragraph (3)(D)—

18 (A) in clause (i), by striking “conversion  
 19 factor computed under subparagraph (C) for  
 20 the year” and inserting “applicable conversion

1 factor computed under subparagraph (C), para-  
2 graph (11)(B), or paragraph (13)(B) for the  
3 year (or portion thereof)”; and

4 (B) in clause (ii), by inserting “, para-  
5 graph (9)(A), or paragraph (13)(C)” after  
6 “paragraph (2)(C)”;

7 (4) in paragraph (9), by striking subparagraph  
8 (B) and inserting the following new subparagraph:

9 “(B) BUDGET NEUTRALITY ADJUST-  
10 MENT.—

11 “(i) IN GENERAL.—If the Secretary  
12 makes revisions under subparagraph (A),  
13 then the revisions for a year may not cause  
14 the estimated amount of expenditures  
15 under this part for the year to increase or  
16 decrease from the estimated amount of ex-  
17 penditures under this part (including ex-  
18 penditures attributable to the special rules  
19 specified in paragraph (13)) that would  
20 have been made if the revisions had not  
21 been made.

22 “(ii) EXEMPTION FROM REDUC-  
23 TION.—The relative payment weights de-  
24 termined under paragraph (13)(C) and the  
25 conversion factor computed under para-

1 graph (13)(B) shall not be reduced by any  
2 budget neutrality adjustment made pursu-  
3 ant to this subparagraph.”; and

4 (5) by redesignating paragraph (13) as para-  
5 graph (14) and by inserting after paragraph (12)  
6 the following new paragraph:

7 “(13) SPECIAL RULES FOR CALCULATING MEDI-  
8 CARE OPD FEE SCHEDULE AMOUNT FOR CLINIC AND  
9 EMERGENCY VISITS.—

10 “(A) IN GENERAL.—In computing the  
11 medicare OPD fee schedule amount under para-  
12 graph (3)(D) for covered OPD services that are  
13 furnished on or after April 1, 2002, and classi-  
14 fied within a group established or revised under  
15 paragraph (2)(B) or (9)(A), respectively, for  
16 clinic or emergency visits (as described in sub-  
17 paragraph (D)), the Secretary shall—

18 “(i) substitute for the conversion fac-  
19 tor calculated under paragraph (3)(C) the  
20 conversion factor calculated under sub-  
21 paragraph (B); and

22 “(ii) substitute for the relative pay-  
23 ment weight established or revised under  
24 paragraph (2)(C) or (9)(A), respectively,

1 the relative payment weight determined  
2 under subparagraph (C) for such group.

3 “(B) CALCULATION OF CONVERSION FAC-  
4 TOR.—For purposes of subparagraph (A)(i), the  
5 conversion factor calculated under this subpara-  
6 graph is—

7 “(i) for services furnished on or after  
8 April 1, 2002, and before January 1,  
9 2003, an amount equal to 112.82 percent  
10 of the conversion factor specified for such  
11 period in the final rule published on March  
12 1, 2002 (67 Fed. Reg. 9556 et seq.; enti-  
13 tled ‘Medicare Program; Correction of Cer-  
14 tain Calendar Year 2002 Payment Rates  
15 Under the Hospital Outpatient Prospective  
16 Payment System and the Pro Rata Reduc-  
17 tion on Transitional Pass-Through Pay-  
18 ments; Correction of Technical and Typo-  
19 graphical Errors’) and not taking into ac-  
20 count any subsequent amendments to such  
21 final rule; and

22 “(ii) for services furnished in a year  
23 beginning after December 31, 2002, the  
24 conversion factor computed under this sub-  
25 paragraph for the previous year (or in the

1 case of 2003, for the previous 9 months)  
2 increased by the OPD fee schedule in-  
3 crease factor specified under paragraph  
4 (3)(C)(iv) for the year involved.

5 “(C) DETERMINATION OF RELATIVE PAY-  
6 MENT WEIGHTS.—For purposes of subpara-  
7 graph (A)(ii), the relative payment weight de-  
8 termined under this subparagraph for a covered  
9 OPD service that is classified within such a  
10 group is—

11 “(i) for services furnished on or after  
12 April 1, 2002, and before January 1,  
13 2003, the relative payment weight specified  
14 for such group for such period in Adden-  
15 dum A of the final rule published on  
16 March 1, 2002 (67 Fed. Reg. 9556 et seq.;  
17 entitled ‘Medicare Program; Correction of  
18 Certain Calendar Year 2002 Payment  
19 Rates Under the Hospital Outpatient Pro-  
20 spective Payment System and the Pro  
21 Rata Reduction on Transitional Pass-  
22 Through Payments; Correction of Tech-  
23 nical and Typographical Errors’) and not  
24 taking into account any subsequent  
25 amendments to such final rule; and

1                   “(ii) for services furnished in a year  
2                   beginning on or after January 1, 2003—

3                   “(I) for ambulatory patient clas-  
4                   sification group 0601 (relating to mid-  
5                   level clinic visits), or a successor to  
6                   such group, the relative payment  
7                   weight specified for such group in the  
8                   final rule referred to in clause (i); and

9                   “(II) other ambulatory patient  
10                  classification groups described in sub-  
11                  paragraph (D), the relative payment  
12                  weight established or revised under  
13                  paragraph (2)(C) or (9)(A), respec-  
14                  tively, for such group for such year  
15                  (but without regard to any budget  
16                  neutrality adjustment under para-  
17                  graph (9)(B)).

18                  “(D) GROUPS FOR CLINIC AND EMER-  
19                  GENCY VISITS.—For purposes of this para-  
20                  graph, the groups established or revised under  
21                  paragraph (2)(B) or (9)(A), respectively, for  
22                  clinic and emergency visits are ambulatory pa-  
23                  tient classification groups 0600, 0601, 0602,  
24                  0610, 0611, and 0612 as defined for purposes

1 of the final rule referred to in subparagraph  
2 (C)(i) (and any successors to such groups).”.

3 (b) LIMITATION ON SECRETARIAL AUTHORITY.—

4 Notwithstanding section 1833(t) of the Social Security  
5 Act (42 U.S.C. 1395l(t)), the Secretary of Health and  
6 Human Services may not make any adjustment under—

7 (1) paragraph (2)(F), (3)(C)(iii), (9)(B), or  
8 (9)(C) of section 1833(t) of the Social Security Act  
9 (42 U.S.C. 1395l(t)); or

10 (2) any other provision of such section;

11 to ensure that the amendments made by subsection (a)  
12 do not cause the estimated amount of expenditures under  
13 part B of title XVIII of such Act (42 U.S.C. 1395j et  
14 seq.) to exceed the estimated amount of expenditures that  
15 would have been made under such part but for such  
16 amendments.

17 (c) PERIODIC LUMP-SUM RETROACTIVE PAY-

18 MENTS.—The Secretary of Health and Human Services  
19 shall, not later than 60 days after the date of enactment  
20 of this Act (and at least every 90 days thereafter until  
21 the amendments made by subsection (a) are imple-  
22 mented)—

23 (1) estimate, for each hospital furnishing serv-  
24 ices for which payment may be made under section

1 1833(t) of the Social Security Act (42 U.S.C.  
2 1395l(t)) on or after April 1, 2002—

3 (A) the total amount of additional pay-  
4 ments under such section that would have been  
5 made to such hospital as of the date of such es-  
6 timate if such amendments had been imple-  
7 mented as of such date; and

8 (B) the total amount of additional pay-  
9 ments under such section that have actually  
10 been made to such hospital as of the date of  
11 such estimate (including any amounts paid pur-  
12 suant to this subsection); and

13 (2) make a lump-sum payment to such hospital  
14 equal to the amount by which the amount estimated  
15 under paragraph (1)(A) exceeds the amount esti-  
16 mated under paragraph (1)(B).

17 **SEC. 3. LIMITATION OF PRO RATA REDUCTIONS TO PASS-**  
18 **THROUGH PAYMENTS.**

19 (a) IN GENERAL.—Section 1833(t)(6)(E) of the So-  
20 cial Security Act (42 U.S.C. 1395l(t)(6)(E)) is amended—

21 (1) in clause (i), by striking “The total” and in-  
22 serting “Subject to clause (iv), the total”;

23 (2) in clause (iii), by striking “If the Secretary”  
24 and inserting “Subject to clause (iv), if the Sec-  
25 retary”; and

1           (3) by adding at the end the following new  
2       clause:

3                           “(iv) LIMITATION ON PRO RATA RE-  
4                           DUCTIONS.—Notwithstanding clauses (i),  
5                           (ii), and (iii), the Secretary may not reduce  
6                           the additional payments that would other-  
7                           wise be made under this paragraph (but  
8                           for this subparagraph) for items and serv-  
9                           ices furnished on or after April 1, 2002, by  
10                           a percentage that exceeds 20.0 percent.”.

11       (b) PERIODIC LUMP-SUM RETROACTIVE PAY-  
12       MENTS.—The Secretary of Health and Human Services  
13       shall, not later than 60 days after the date of enactment  
14       of this Act (and at least every 90 days thereafter until  
15       clause (iv) of section 1833(t)(6)(E) of the Social Security  
16       Act (as added by subsection (a)(3)) is implemented)—

17                   (1) estimate, for each hospital furnishing serv-  
18       ices for which payment may be made under section  
19       1833(t) of the Social Security Act (42 U.S.C.  
20       1395l(t)) on or after April 1, 2002—

21                   (A) the total amount of additional pay-  
22       ments under paragraph (6) of such section that  
23       would have been made to such hospital as of  
24       the date of such estimate if such clause had  
25       been implemented as of such date; and

1 (B) the total amount of additional pay-  
2 ments under such paragraph that have actually  
3 been made to such hospital as of the date of  
4 such estimate (including any amounts paid pur-  
5 suant to this subsection); and

6 (2) make a lump-sum payment to such hospital  
7 equal to the amount by which the amount estimated  
8 under paragraph (1)(A) exceeds the amount esti-  
9 mated under paragraph (1)(B).

10 **SEC. 4. CLARIFYING APPLICATION OF OPD FEE SCHEDULE**

11 **INCREASE FACTOR.**

12 Section 1833(t)(3)(C)(iv) of the Social Security Act  
13 (42 U.S.C. 1395l(t)(3)(C)(iv)) is amended by adding at  
14 the end the following new sentence: “Effective for years  
15 beginning with 2002, the OPD fee schedule increase factor  
16 for a year shall take effect on January 1 of such year,  
17 and nothing in this subsection shall be construed as au-  
18 thorizing the Secretary to delay the date on which such  
19 increase factor takes effect by reason of any delay in im-  
20 plementing the revisions authorized by paragraph (9)(A)  
21 for such year or for any other reason.”.

1 **SEC. 5. LIMITATION ON BUDGET NEUTRALITY ADJUST-**  
2 **MENT FOR ANNUAL REVISIONS TO SYSTEM**  
3 **COMPONENTS.**

4 Section 1833(t)(9)(B) of the Social Security Act (42  
5 U.S.C. 1395l(t)(9)(B)), as amended by section 2(a)(4), is  
6 amended—

7 (1) in clause (i), by striking “If the Secretary”  
8 and inserting “Subject to clause (iii), if the Sec-  
9 retary”; and

10 (2) by adding at the end the following new  
11 clause:

12 “(iii) LIMITATION ON ADJUSTMENT.—  
13 For years after 2001, the budget neu-  
14 trality adjustment under this subparagraph  
15 may not reduce the payments that would  
16 otherwise be made under this part but for  
17 this subparagraph by more than 2.0 per-  
18 cent.”.

19 **SEC. 6. OUTLIER PAYMENTS.**

20 Section 1833(t)(5) of the Social Security Act (42  
21 U.S.C. 1395l(t)(5)) is amended—

22 (1) in subparagraph (C)—

23 (A) in clause (i), by striking “exceed the  
24 applicable” and inserting “exceed a percentage  
25 specified by the Secretary that is not less than

1 the applicable minimum percentage or greater  
2 than the applicable maximum”; and

3 (B) by striking clause (ii) and inserting the  
4 following new clause:

5 “(ii) APPLICABLE PERCENTAGES.—

6 For purposes of clause (i)—

7 “(I) the term ‘applicable min-  
8 imum percentage’ for a year means  
9 zero percent for years before 2003  
10 and 2.0 percent for years after 2002;  
11 and

12 “(II) the term ‘applicable max-  
13 imum percentage’ for a year means  
14 2.5 percent for years before 2003 and  
15 3.0 percent for years after 2002.”;  
16 and

17 (2) in subparagraph (D)—

18 (A) in the heading, by striking “TRANSI-  
19 TIONAL AUTHORITY” and inserting “FLEXI-  
20 BILITY”; and

21 (B) in the matter preceding clause (i), by  
22 striking “for covered OPD services furnished  
23 before January 1, 2002,”.

1 **SEC. 7. ADJUSTMENT TO LIMIT DECLINE IN PAYMENT.**

2 Section 1833(t)(7) of the Social Security Act (42  
3 U.S.C. 1395l(t)(7)) is amended—

4 (1) in the heading, by striking “TRANSITIONAL  
5 ADJUSTMENT” and inserting “ADJUSTMENT”;

6 (2) in subparagraph (A)—

7 (A) in the heading, by striking “BEFORE  
8 2002” and inserting “IN GENERAL”;

9 (B) in the matter preceding clause (i)—

10 (i) by striking “subparagraph (D)”  
11 and inserting “subparagraph (B)”;

12 (ii) by striking “furnished before Jan-  
13 uary 1, 2002,”; and

14 (iii) by striking “subparagraph (E)”  
15 and inserting “subparagraph (C)”;

16 (C) in clause (i), by striking “subpara-  
17 graph (F)” and inserting “subparagraph (D)”;

18 (3) by striking subparagraph (D) and inserting  
19 the following new subparagraph:

20 “(D) HOLD HARMLESS PROVISIONS.—

21 “(i) CANCER, CHILDREN’S, AND  
22 SMALL RURAL HOSPITALS.—In the case of  
23 a hospital that is described in clause (iii)  
24 or (v) of section 1886(d)(1)(B) or is lo-  
25 cated in a rural area and has not more  
26 than 100 beds, for covered OPD services—

1           “(I) that are furnished on or  
2           after the date on which payment is  
3           first made under this subsection; and

4           “(II) for which the PPS amount  
5           is less than the pre-BBA amount (or  
6           for services furnished on or after Jan-  
7           uary 1, 2002, is less than the greater  
8           of the pre-BBA amount or the reason-  
9           able costs incurred in furnishing such  
10          services),

11          the amount of payment under this sub-  
12          section shall be increased by the amount of  
13          such difference.

14          “(ii) EYE AND EAR HOSPITALS.—In  
15          the case of a hospital or unit described in  
16          subsection (i)(4), for covered OPD  
17          services—

18                 “(I) that are furnished on or  
19                 after January 1, 2002; and

20                 “(II) for which the PPS amount  
21                 is less than the greater of the base  
22                 year amount (which for purposes of  
23                 this subparagraph shall be determined  
24                 in the same manner as the pre-BBA  
25                 amount under subparagraph (D), ex-

1                   cept that clause (ii)(I) of such sub-  
2                   paragraph shall be applied by sub-  
3                   stituting ‘2001’ for ‘1996’) or the rea-  
4                   sonable costs incurred in furnishing  
5                   such services,

6                   the amount of payment under this sub-  
7                   section shall be increased by the amount of  
8                   such difference.”;

9                   (4) in subparagraph (F)(ii)(I), by striking  
10                  “subparagraph (E)” and inserting “subparagraph  
11                  (C)”;

12                  (5) by striking subparagraphs (B) and (C) and  
13                  redesignating subparagraphs (D), (E), (F), (G),  
14                  (H), and (I) as subparagraphs (B), (C), (D), (E),  
15                  (F), and (G), respectively.

16 **SEC. 8. SPECIAL INCREASE IN CERTAIN RELATIVE PAY-**  
17 **MENT WEIGHTS.**

18                  Section 1833(t) of the Social Security Act (42 U.S.C.  
19 1395l(t)) is amended—

20                  (1) in paragraph (3)(D)(ii), as amended by sec-  
21                  tion 2(a)(3)(B), by striking “or paragraph (13)(C)”  
22                  and inserting “paragraph (13)(C), or paragraph  
23                  (14)”;

24                  (2) in paragraph (9)(B)(i), as amended by sec-  
25                  tion 2(a)(4), by inserting “determined without re-

1       gard to expenditures made by reason of the adjust-  
2       ments required by paragraph (14)” after “para-  
3       graph (13)”;

4               (3) in paragraph (12)(C), by striking “para-  
5       graph (6)” and inserting “paragraph (9) (including  
6       adjustments authorized by paragraph (14))”; and

7               (4) by redesignating paragraph (14) (as redesi-  
8       gnated by section 2(a)(5)) as paragraph (15) and  
9       by inserting after paragraph (13) the following new  
10       paragraph:

11               “(14) REQUIREMENT TO INCREASE RELATIVE  
12       PAYMENT WEIGHTS IN CERTAIN CIRCUMSTANCES.—

13               “(A) IN GENERAL.—Notwithstanding the  
14       methodologies specified for determining relative  
15       payment weights described in paragraphs  
16       (2)(C) and (9)(A), for years beginning with  
17       2002, the Secretary shall, as part of the revi-  
18       sions required by paragraph (9)(A), increase  
19       the relative payment weight for any group es-  
20       tablished or revised under paragraph (2)(C) or  
21       (9)(A), respectively, above the weight that  
22       would otherwise apply to such group under this  
23       subsection if the Secretary determines that such  
24       an increase is necessary to ensure that the  
25       medicare OPD fee schedule amount for the

1 group for the year is not less than 90 percent  
2 of the median costs for services classified within  
3 the group.

4 “(B) PRIORITIES.—For purposes of pro-  
5 viding for increases under subparagraph (A),  
6 the Secretary shall give priority first to preven-  
7 tive services, second to cancer services, third to  
8 services for which the medicare OPD fee sched-  
9 ule amount that would otherwise apply is less  
10 the payment level under this title for such serv-  
11 ices in other settings, and fourth to other serv-  
12 ices.

13 “(C) DATA.—The Secretary may base in-  
14 creases under subparagraph (A) on data from  
15 any source and is not limited to data appro-  
16 priate for estimating the costs incurred by hos-  
17 pitals in furnishing such services.

18 “(D) AGGREGATE EXPENDITURES.—Not-  
19 withstanding the application of the percentage  
20 specified under subparagraph (A), the Secretary  
21 shall provide for increases under such subpara-  
22 graph for each year so that the estimated  
23 amount of additional expenditures attributable  
24 to adjustments under such subparagraph is not  
25 less than \$1,000,000,000 in such year.”.

1 **SEC. 9. PERMANENT EXTENSION OF PROVIDER-BASED STA-**  
2 **TUS.**

3 Paragraphs (1) and (2) of section 404(a) of the Medi-  
4 care, Medicaid, and SCHIP Benefits Improvement and  
5 Protection Act of 2000 (113 Stat. 2763A–506), as en-  
6 acted into law by section 1(a)(6) of Public Law 106–554,  
7 are each amended by striking “until October 1, 2002”.

○