

107TH CONGRESS
2D SESSION

S. 2067

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.

IN THE SENATE OF THE UNITED STATES

MARCH 22, 2002

Mr. BINGAMAN (for himself, Mr. BOND, and Mr. INOUE) introduced the following bill; which was read twice and referred to the Committee on Finance

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,*

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

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

6 (b) **TABLE OF CONTENTS.**—The table of contents of
7 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.

1 SEC. 2. SUPPLEMENTAL REIMBURSEMENT FOR FEDERALLY
2 QUALIFIED HEALTH CENTERS PARTICI-
3 PATING IN MEDICARE MANAGED CARE.

4 (a) SUPPLEMENTAL REIMBURSEMENT.—

5 (1) IN GENERAL.—Section 1833(a)(3) of the
6 Social Security Act (42 U.S.C. 1395l(a)(3)) is
7 amended to read as follows:

8 “(3) in the case of services described in section
9 1832(a)(2)(D)—

10 “(A) except as provided in subparagraph
11 (B), the costs which are reasonable and related
12 to the cost of furnishing such services or which
13 are based on such other tests of reasonableness
14 as the Secretary may prescribe in regulations,
15 including those authorized under section
16 1861(v)(1)(A), less the amount a provider may
17 charge as described in clause (ii) of section
18 1866(a)(2)(A), but in no case may the payment
19 for such services (other than for items and serv-
20 ices described in section 1861(s)(10)(A)) exceed
21 80 percent of such costs; or

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

“(i) the amount of payment that would have otherwise been provided under subparagraph (A) (calculated as if ‘100 percent’ were substituted for ‘80 percent’ in such subparagraph) for such services if the individual had not been so enrolled; exceeds

“(ii) the amount of the payments received under such written agreement for such services (not including any financial incentives provided for in such agreement such as risk pool payments, bonuses, or withholds),

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

(b) CONTINUATION OF MEDICARE+CHOICE MONTHLY PAYMENTS.—

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

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

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

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

19 (2) CONFORMING AMENDMENTS.—

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

24 (B) Section 1853(c)(5) is amended by
 25 striking “subsections (a)(3)(C)(iii) and (i)” and

1 inserting “subsections (a)(3)(C)(iii), (i), and
2 (j)(1)”.

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

7 “(3) AGREEMENTS WITH FEDERALLY QUALI-
8 FIED HEALTH CENTERS.—

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

22 “(B) ENSURING EQUAL PAYMENT LEVELS
23 AND AMOUNTS.—A contract under this part
24 shall require the Medicare+Choice organization
25 to provide a level and amount of payment to

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

9 “(C) COST-SHARING.—Under the written
10 agreement described in subparagraph (A), a
11 Federally qualified health center must accept
12 the Medicare+Choice contract price plus the
13 Federal payment as payment in full for services
14 covered by the contract, except that such a
15 health center may collect any amount of cost-
16 sharing permitted under the contract under this
17 part, so long as the amounts of any deductible,
18 coinsurance, or copayment comply with the re-
19 quirements under section 1854(e) and do not
20 result in a total payment to the center in excess
21 of the amount determined under section
22 1833(a)(3)(A) (calculated as if ‘100 percent’
23 were substituted for ‘80 percent’ in such sec-
24 tion).”.

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

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

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

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

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

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

20 **SEC. 3. REVISION OF FEDERALLY QUALIFIED HEALTH CEN-**
 21 **TER PAYMENT LIMITS.**

22 (a) PER VISIT PAYMENT REQUIREMENTS FOR
 23 FQHCs.—Section 1833(a)(3)(A) of the Social Security
 24 Act (42 U.S.C. 1395l(a)(3)(A)), as amended by section
 25 2(a), is amended by adding “(which regulations may not

1 limit the per visit payment amount, or a component of
 2 such amount, for services described in section
 3 1832(a)(2)(D)(ii))” after “the Secretary may prescribe in
 4 regulations”.

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

8 **SEC. 4. COVERAGE OF ADDITIONAL FEDERALLY QUALIFIED**
 9 **HEALTH CENTER SERVICES.**

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

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

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

22 “(B) preventive primary health services that a
 23 center is required to provide under section 330 of
 24 the Public Health Service Act,

1 when furnished to an individual as a patient of a Federally
 2 qualified health center.”.

3 (b) OFFSITE FQHC SERVICES.—

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

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

14 (A) in paragraph (2)(A)(i)(II), by striking
 15 “clauses (ii) and (iii)” and inserting “clauses
 16 (ii) through (iv)”; and

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

19 “(iv) EXCLUSION OF FEDERALLY
 20 QUALIFIED HEALTH CENTER SERVICES.—
 21 Services described in this clause are Feder-
 22 ally qualified health center services (as de-
 23 fined in section 1861(aa)(3)).”.

24 (c) TECHNICAL CORRECTIONS.—

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

5 (2) Clauses (i) and (ii)(II) of section
 6 1861(aa)(4)(A) of the Social Security Act (42
 7 U.S.C. 1395x(aa)(4)(A)) are each amended by strik-
 8 ing “(other than subsection (h))”.

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

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

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

14 **SEC. 5. PROVIDING SAFE HARBOR FOR CERTAIN COLLABO-**
 15 **RATIVE EFFORTS THAT BENEFIT MEDICALLY**
 16 **UNDERSERVED POPULATIONS.**

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

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

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

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

1 “(H) any remuneration between a public
 2 or nonprofit private health center entity de-
 3 scribed under clauses (i) and (ii) of section
 4 1905(l)(2)(B) and any individual or entity pro-
 5 viding goods, items, services, donations or
 6 loans, or a combination thereof, to such health
 7 center entity pursuant to a contract, lease,
 8 grant, loan, or other agreement, if such agree-
 9 ment produces a community benefit that will be
 10 used by the health center entity to maintain or
 11 increase the availability or accessibility, or en-
 12 hance the quality, of services provided to a
 13 medically underserved population served by the
 14 health center entity.”.

15 (b) RULEMAKING FOR EXCEPTION FOR HEALTH
 16 CENTER ENTITY ARRANGEMENTS.—

17 (1) ESTABLISHMENT.—

18 (A) IN GENERAL.—The Secretary of
 19 Health and Human Services (in this subsection
 20 referred to as the “Secretary”) shall establish,
 21 on an expedited basis, standards relating to the
 22 exception for health center entity arrangements
 23 to the antikickback penalties described in sec-
 24 tion 1128B(b)(3)(F) of the Social Security Act,
 25 as added by subsection (a).

1 (B) FACTORS TO CONSIDER.—In estab-
2 lishing standards relating to the exception for
3 health center entity arrangements under sub-
4 paragraph (A), the Secretary—

5 (i) shall extend the exception where
6 the arrangement between the health center
7 entity and the other party—

8 (I) results in savings of Federal
9 grant funds or increased revenues to
10 the health center entity;

11 (II) does not limit or restrict a
12 patient's freedom of choice; and

13 (III) does not interfere with a
14 health care professional's independent
15 medical judgment regarding medically
16 appropriate treatment; and

17 (ii) may include other standards and
18 criteria that are consistent with the intent
19 of Congress in enacting the exception es-
20 tablished under this subsection.

21 (2) INTERIM FINAL EFFECT.—No later than 60
22 days after the date of enactment of this Act, the
23 Secretary shall publish a rule in the Federal Reg-
24 ister consistent with the factors under paragraph
25 (1)(B). Such rule shall be effective and final imme-

1 diately on an interim basis, subject to change and
2 revision after public notice and opportunity (for a
3 period of not more than 60 days) for public com-
4 ment, provided that any change or revision shall be
5 consistent with this subsection.

