

108TH CONGRESS
1ST SESSION

S. 654

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 18, 2003

Ms. SNOWE (for herself, Mr. BINGAMAN, Mr. BOND, and Mr. HOLLINGS) 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 2003”.

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. Coverage of additional Federally qualified health center services.
 Sec. 3. Providing safe harbor for certain collaborative efforts that benefit medically underserved populations.
 Sec. 4. Supplemental reimbursement for Federally qualified health centers participating in medicare managed care.

1 **SEC. 2. DELIVERY OF MEDICARE-COVERED PRIMARY AND**
 2 **PREVENTIVE SERVICES AT FEDERALLY**
 3 **QUALIFIED HEALTH CENTERS.**

4 (a) COVERAGE OF MEDICARE-COVERED AMBULA-
 5 TORY SERVICES BY FQHCS.—Section 1861(aa)(3) of the
 6 Social Security Act (42 U.S.C. 1395x(aa)(3)) is amended
 7 to read as follows:

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

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

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

20 when furnished to an individual as a patient of a Federally
 21 qualified health center and such services when provided
 22 by a health care provider or health care professional em-

1 ployed by or under contract with a Federally qualified
 2 health center shall be treated as billable visits for purposes
 3 of payment to the Federally qualified health center.”.

4 (b) ENSURING FQHC REIMBURSEMENT UNDER
 5 HOSPITAL AND SKILLED NURSING FACILITY PROSPEC-
 6 TIVE PAYMENT SYSTEMS.—

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) PATIENTS OF SKILLED NURSING FACILI-
 13 TIES.—Section 1888(e)(2)(A) of the Social Security
 14 Act (42 U.S.C. 1395yy(e)(2)(A)) is amended—

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

18 (B) by adding at the end the following new
 19 clause:

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

1 (c) TECHNICAL CORRECTIONS.—Clauses (i) and
 2 (ii)(II) of section 1861(aa)(4)(A) of the Social Security
 3 Act (42 U.S.C. 1395x(aa)(4)(A)) are each amended by
 4 striking “(other than subsection (h))”.

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

6 (1) by subsections (a) and (b) shall apply to
 7 services furnished on or after January 1, 2004; and

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

10 **SEC. 3. PROVIDING SAFE HARBOR FOR CERTAIN COLLABO-**
 11 **RATIVE EFFORTS THAT BENEFIT MEDICALLY**
 12 **UNDERSERVED POPULATIONS.**

13 (a) IN GENERAL.—Section 1128B(b)(3) (42 U.S.C.
 14 1320a–7(b)(3)) is amended—

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

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

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

21 “(G) any remuneration between a public or
 22 nonprofit private health center entity described
 23 under clause (i) or (ii) of section 1905(l)(2)(B)
 24 and any individual or entity providing goods,
 25 items, services, donations or loans, or a com-

1 bination thereof, to such health center entity
2 pursuant to a contract, lease, grant, loan, or
3 other agreement, if such agreement contributes
4 to the ability of the health center entity to main-
5 tain or increase the availability, or enhance the
6 quality, of services provided to a medically un-
7 derserved population served by the health center
8 entity.”.

9 (b) RULEMAKING FOR EXCEPTION FOR HEALTH
10 CENTER ENTITY ARRANGEMENTS.—

11 (1) ESTABLISHMENT.—

12 (A) IN GENERAL.—The Secretary of
13 Health and Human Services (in this subsection
14 referred to as the “Secretary”) shall establish,
15 on an expedited basis, standards relating to the
16 exception described in section 1128B(b)(3)(G)
17 of the Social Security Act, as added by sub-
18 section (a), for health center entity arrange-
19 ments to the antikickback penalties.

20 (B) FACTORS TO CONSIDER.—The Sec-
21 retary shall consider the following factors,
22 among others, in establishing standards relating
23 to the exception for health center entity ar-
24 rangements under subparagraph (A):

1 (i) Whether the arrangement between
2 the health center entity and the other
3 party results in savings of Federal grant
4 funds or increased revenues to the health
5 center entity.

6 (ii) Whether the arrangement between
7 the health center entity and the other
8 party restricts or limits a patient's freedom
9 of choice.

10 (iii) Whether the arrangement be-
11 tween the health center entity and the
12 other party protects a health care profes-
13 sional's independent medical judgment re-
14 garding medically appropriate treatment.

15 The Secretary may also include other standards
16 and criteria that are consistent with the intent
17 of Congress in enacting the exception estab-
18 lished under this section.

19 (2) INTERIM FINAL EFFECT.—No later than
20 180 days after the date of enactment of this Act, the
21 Secretary shall publish a rule in the Federal Reg-
22 ister consistent with the factors under paragraph
23 (1)(B). Such rule shall be effective and final imme-
24 diately on an interim basis, subject to such change
25 and revision, after public notice and opportunity (for

1 a period of not more than 60 days) for public com-
2 ment, as is consistent with this subsection.

3 **SEC. 4. REIMBURSEMENT FOR FEDERALLY QUALIFIED**
4 **HEALTH CENTERS PARTICIPATING IN MEDI-**
5 **CARE MANAGED CARE.**

6 (a) REIMBURSEMENT.—

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

10 “(3) in the case of services described in section
11 1832(a)(2)(D)—

12 “(A) except as provided in subparagraph
13 (B), the costs which are reasonable and related
14 to the cost of furnishing such services or which
15 are based on such other tests of reasonableness
16 as the Secretary may prescribe in regulations,
17 including those authorized under section
18 1861(v)(1)(A), less the amount a provider may
19 charge as described in clause (ii) of section
20 1866(a)(2)(A), but in no case may the payment
21 for such services (other than for items and serv-
22 ices described in section 1861(s)(10)(A)) exceed
23 80 percent of such costs; or

24 “(B) with respect to the services described
25 in clause (ii) of section 1832(a)(2)(D) that are

1 furnished to an individual enrolled with a
 2 Medicare+Choice organization under part C
 3 pursuant to a written agreement described in
 4 section 1853(j), the amount by which—

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

12 “(ii) the amount of the payments re-
 13 ceived under such written agreement for
 14 such services (not including any financial
 15 incentives provided for in such agreement
 16 such as risk pool payments, bonuses, or
 17 withholds),

18 less the amount the Federally qualified health
 19 center may charge as described in section
 20 1857(e)(3)(C);”.

21 (b) CONTINUATION OF MEDICARE+CHOICE MONTH-
 22 LY PAYMENTS.—

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

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

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

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

16 (2) CONFORMING AMENDMENTS.—

17 (A) Paragraphs (1) and (2) of section
18 1851(i) of the Social Security Act (42 U.S.C.
19 1395w-21(i)(1)) are each amended by inserting
20 “1853(j),” after “1853(h),”.

21 (B) Section 1853(e)(5) is amended by
22 striking “subsections (a)(3)(C)(iii) and (i)” and
23 inserting “subsections (a)(3)(C)(iii), (i), and
24 (j)(1)”.

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

5 “(3) AGREEMENTS WITH FEDERALLY QUALI-
6 FIED HEALTH CENTERS.—

7 “(A) PAYMENT LEVELS AND AMOUNTS.—A
8 contract under this part shall require the
9 Medicare+Choice organization to provide, in
10 any contract between the organization and a
11 Federally qualified health center, for a level and
12 amount of payment to the Federally qualified
13 health center for services provided by such
14 health center that is not less than the level and
15 amount of payment that the organization would
16 make for such services if the services had been
17 furnished by a provider of services that was not
18 a Federally qualified health center.

19 “(B) COST-SHARING.—Under the written
20 agreement described in subparagraph (A), a
21 Federally qualified health center must accept
22 the Medicare+Choice contract price plus the
23 Federal payment provided for in section
24 1833(a)(3)(B) as payment in full for services
25 covered by the contract, except that such a

1 health center may collect any amount of cost-
2 sharing permitted under the contract under this
3 part, so long as the amounts of any deductible,
4 coinsurance, or copayment comply with the re-
5 quirements under section 1854(e) and do not
6 result in a total payment to the center in excess
7 of the amount determined under section
8 1833(a)(3)(A) (calculated as if ‘100 percent’
9 were substituted for ‘80 percent’ in such sec-
10 tion).”.

11 (d) SAFE HARBOR FROM ANTIKICKBACK PROHIBI-
12 TION.—Section 1128B(b)(3) of the Social Security Act
13 (42 U.S.C. 1320a–7b(b)(3)), as amended by section 3(a),
14 is amended—

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

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

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

21 “(H) any remuneration between a Feder-
22 ally qualified health center (or an entity con-
23 trolled by such a health center) and a
24 Medicare+Choice organization pursuant to the

1 written agreement described in section
2 1853(j).”.

3 (e) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to services provided on or after
5 January 1, 2004, and contract years beginning on or after
6 such date.

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