

110TH CONGRESS
1ST SESSION

S. 2499

AN ACT

To amend titles XVIII, XIX, and XXI of the Social Security Act to extend provisions under the Medicare, Medicaid, and SCHIP programs, 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) IN GENERAL.—This Act may be cited as the
3 “Medicare, Medicaid, and SCHIP Extension Act of
4 2007”.

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

Sec. 1. Short title; table of contents.

TITLE I—MEDICARE

- Sec. 101. Increase in physician payment update; extension of the physician quality reporting system.
- Sec. 102. Extension of Medicare incentive payment program for physician scarcity areas.
- Sec. 103. Extension of floor on work geographic adjustment under the Medicare physician fee schedule.
- Sec. 104. Extension of treatment of certain physician pathology services under Medicare.
- Sec. 105. Extension of exceptions process for Medicare therapy caps.
- Sec. 106. Extension of payment rule for brachytherapy; extension to therapeutic radiopharmaceuticals.
- Sec. 107. Extension of Medicare reasonable costs payments for certain clinical diagnostic laboratory tests furnished to hospital patients in certain rural areas.
- Sec. 108. Extension of authority of specialized Medicare Advantage plans for special needs individuals to restrict enrollment.
- Sec. 109. Extension of deadline for application of limitation on extension or renewal of Medicare reasonable cost contract plans.
- Sec. 110. Adjustment to the Medicare Advantage stabilization fund.
- Sec. 111. Medicare secondary payor.
- Sec. 112. Payment for part B drugs.
- Sec. 113. Payment rate for certain diagnostic laboratory tests.
- Sec. 114. Long-term care hospitals.
- Sec. 115. Payment for inpatient rehabilitation facility (IRF) services.
- Sec. 116. Extension of accommodation of physicians ordered to active duty in the Armed Services.
- Sec. 117. Treatment of certain hospitals.
- Sec. 118. Additional Funding for State Health Insurance Assistance Programs, Area Agencies on Aging, and Aging and Disability Resource Centers.

TITLE II—MEDICAID AND SCHIP

- Sec. 201. Extending SCHIP funding through March 31, 2009.
- Sec. 202. Extension of transitional medical assistance (TMA) and abstinence education program.
- Sec. 203. Extension of qualifying individual (QI) program.
- Sec. 204. Medicaid DSH extension.
- Sec. 205. Improving data collection.

Sec. 206. Moratorium on certain payment restrictions.

TITLE III—MISCELLANEOUS

Sec. 301. Medicare Payment Advisory Commission status.

Sec. 302. Special Diabetes Programs for Type I Diabetes and Indians.

TITLE I—MEDICARE

SEC. 101. INCREASE IN PHYSICIAN PAYMENT UPDATE; EXTENSION OF THE PHYSICIAN QUALITY REPORTING SYSTEM.

(a) INCREASE IN PHYSICIAN PAYMENT UPDATE.—

(1) IN GENERAL.—Section 1848(d) of the Social Security Act (42 U.S.C. 1395w–4(d)) is amended—

(A) in paragraph (4)(B), by striking “and paragraphs (5) and (6)” and inserting “and the succeeding paragraphs of this subsection”; and

(B) by adding at the end the following new paragraph:

“(8) UPDATE FOR A PORTION OF 2008.—

“(A) IN GENERAL.—Subject to paragraph (7)(B), in lieu of the update to the single conversion factor established in paragraph (1)(C) that would otherwise apply for 2008, for the period beginning on January 1, 2008, and ending on June 30, 2008, the update to the single conversion factor shall be 0.5 percent.

“(B) NO EFFECT ON COMPUTATION OF CONVERSION FACTOR FOR THE REMAINING

1 PORTION OF 2008 AND 2009.—The conversion
 2 factor under this subsection shall be computed
 3 under paragraph (1)(A) for the period begin-
 4 ning on July 1, 2008, and ending on December
 5 31, 2008, and for 2009 and subsequent years
 6 as if subparagraph (A) had never applied.”.

7 (2) REVISION OF THE PHYSICIAN ASSISTANCE
 8 AND QUALITY INITIATIVE FUND.—

9 (A) REVISION.—Section 1848(l)(2) of the
 10 Social Security Act (42 U.S.C. 1395w-4(l)(2))
 11 is amended—

12 (i) by striking subparagraph (A) and
 13 inserting the following:

14 “(A) AMOUNT AVAILABLE.—

15 “(i) IN GENERAL.—Subject to clause
 16 (ii), there shall be available to the Fund
 17 the following amounts:

18 “(I) For expenditures during
 19 2008, an amount equal to
 20 \$150,500,000.

21 “(II) For expenditures during
 22 2009, an amount equal to
 23 \$24,500,000.

1 “(III) For expenditures during
2 2013, an amount equal to
3 \$4,960,000,000.

4 “(ii) LIMITATIONS ON EXPENDI-
5 TURES.—

6 “(I) 2008.—The amount avail-
7 able for expenditures during 2008
8 shall be reduced as provided by sub-
9 paragraph (A) of section 225(c)(1)
10 and section 524 of the Departments
11 of Labor, Health and Human Serv-
12 ices, and Education, and Related
13 Agencies Appropriations Act, 2008
14 (division G of the Consolidated Appro-
15 priations Act, 2008).

16 “(II) 2009.—The amount avail-
17 able for expenditures during 2009
18 shall be reduced as provided by sub-
19 paragraph (B) of such section
20 225(c)(1).

21 “(III) 2013.—The amount avail-
22 able for expenditures during 2013
23 shall only be available for an adjust-
24 ment to the update of the conversion

1 factor under subsection (d) for that
2 year.”; and

3 (ii) in subparagraph (B), by striking
4 “entire amount specified in the first sen-
5 tence of subparagraph (A)” and all that
6 follows and inserting the following: “entire
7 amount available for expenditures, after
8 application of subparagraph (A)(ii), dur-
9 ing—

10 “(i) 2008 for payment with respect to
11 physicians’ services furnished during 2008;

12 “(ii) 2009 for payment with respect to
13 physicians’ services furnished during 2009;
14 and

15 “(iii) 2013 for payment with respect
16 to physicians’ services furnished during
17 2013.”.

18 (B) EFFECTIVE DATE.—

19 (i) IN GENERAL.—Subject to clause
20 (ii), the amendments made by subpara-
21 graph (A) shall take effect on the date of
22 the enactment of this Act.

23 (ii) SPECIAL RULE FOR COORDINA-
24 TION WITH CONSOLIDATED APPROPRIA-
25 TIONS ACT, 2008.—If the date of the enact-

1 ment of the Consolidated Appropriations
2 Act, 2008, occurs on or after the date de-
3 scribed in clause (i), the amendments made
4 by subparagraph (A) shall be deemed to be
5 made on the day after the effective date of
6 sections 225(c)(1) and 524 of the Depart-
7 ments of Labor, Health and Human Serv-
8 ices, and Education, and Related Agencies
9 Appropriations Act, 2008 (division G of
10 the Consolidated Appropriations Act,
11 2008).

12 (C) TRANSFER OF FUNDS TO PART B
13 TRUST FUND.—Amounts that would have been
14 available to the Physician Assistance and Qual-
15 ity Initiative Fund under section 1848(l)(2) of
16 the Social Security Act (42 U.S.C. 1395w-
17 4(l)(2)) for payment with respect to physicians’
18 services furnished prior to January 1, 2013,
19 but for the amendments made by subparagraph
20 (A), shall be deposited into, and made available
21 for expenditures from, the Federal Supple-
22 mentary Medical Insurance Trust Fund under
23 section 1841 of such Act (42 U.S.C. 1395t).

24 (b) EXTENSION OF THE PHYSICIAN QUALITY RE-
25 PORTING SYSTEM.—

(1) SYSTEM.—Section 1848(k)(2)(B) of the Social Security Act (42 U.S.C. 1395w–4(k)(2)(B)) is amended—

(A) in the heading, by inserting “AND 2009” after “2008”;

(B) in clause (i), by inserting “and 2009” after “2008”; and

(C) in each of clauses (ii) and (iii)—

(i) by striking “, 2007” and inserting “of each of 2007 and 2008”; and

(ii) by inserting “or 2009, as applicable” after “2008”.

(2) REPORTING.—Section 101(c) of division B of the Tax Relief and Health Care Act of 2006 (42 U.S.C. 1395w–4 note) is amended—

(A) in the heading, by inserting “AND 2008” after “2007”;

(B) in paragraph (5), by adding at the end the following:

“(F) EXTENSION.—For 2008 and 2009, paragraph (3) shall not apply, and the Secretary shall establish alternative criteria for satisfactorily reporting under paragraph (2) and alternative reporting periods under paragraph (6)(C) for reporting groups of measures under

paragraph (2)(B) of section 1848(k) of the Social Security Act (42 U.S.C. 1395w-4(k)) and for reporting using the method specified in paragraph (4) of such section.”; and

(C) in paragraph (6), by striking subparagraph (C) and inserting the following new subparagraph:

“(C) REPORTING PERIOD.—The term ‘reporting period’ means—

“(i) for 2007, the period beginning on July 1, 2007, and ending on December 31, 2007; and

“(ii) for 2008, all of 2008.”.

(c) IMPLEMENTATION.—For purposes of carrying out the provisions of, and amendments made by subsections (a) and (b), in addition to any amounts otherwise provided in this title, there are appropriated to the Centers for Medicare & Medicaid Services Program Management Account, out of any money in the Treasury not otherwise appropriated, \$25,000,000 for the period of fiscal years 2008 and 2009.

SEC. 102. EXTENSION OF MEDICARE INCENTIVE PAYMENT PROGRAM FOR PHYSICIAN SCARCITY AREAS.

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

(1) in paragraph (1), by striking “before January 1, 2008” and inserting “before July 1, 2008”; and

(2) in paragraph (4)—

(A) by redesignating subparagraph (D) as subparagraph (E); and

(B) by inserting after subparagraph (C) the following new subparagraph:

“(D) SPECIAL RULE.—With respect to physicians’ services furnished on or after January 1, 2008, and before July 1, 2008, for purposes of this subsection, the Secretary shall use the primary care scarcity counties and the specialty care scarcity counties (as identified under the preceding provisions of this paragraph) that the Secretary was using under this subsection with respect to physicians’ services furnished on December 31, 2007.”.

**SEC. 103. EXTENSION OF FLOOR ON WORK GEOGRAPHIC
ADJUSTMENT UNDER THE MEDICARE PHYSICIAN FEE SCHEDULE.**

Section 1848(e)(1)(E) of the Social Security Act (42 U.S.C. 1395w-4(e)(1)(E)), as amended by section 102 of division B of the Tax Relief and Health Care Act of 2006,

1 is amended by striking “before January 1, 2008” and in-
 2 serting “before July 1, 2008”.

3 **SEC. 104. EXTENSION OF TREATMENT OF CERTAIN PHYSI-**
 4 **CIAN PATHOLOGY SERVICES UNDER MEDI-**
 5 **CARE.**

6 Section 542(c) of the Medicare, Medicaid, and
 7 SCHIP Benefits Improvement and Protection Act of 2000
 8 (as enacted into law by section 1(a)(6) of Public Law 106–
 9 554), as amended by section 732 of the Medicare Prescrip-
 10 tion Drug, Improvement, and Modernization Act of 2003
 11 (42 U.S.C. 1395w–4 note) and section 104 of division B
 12 of the Tax Relief and Health Care Act of 2006 (42 U.S.C.
 13 1395w–4 note), is amended by striking “and 2007” and
 14 inserting “2007, and the first 6 months of 2008”.

15 **SEC. 105. EXTENSION OF EXCEPTIONS PROCESS FOR MEDI-**
 16 **CARE THERAPY CAPS.**

17 Section 1833(g)(5) of the Social Security Act (42
 18 U.S.C. 1395l(g)(5)) is amended by striking “December
 19 31, 2007” and inserting “June 30, 2008”.

20 **SEC. 106. EXTENSION OF PAYMENT RULE FOR**
 21 **BRACHYTHERAPY; EXTENSION TO THERA-**
 22 **PEUTIC RADIOPHARMACEUTICALS.**

23 (a) EXTENSION OF PAYMENT RULE FOR
 24 BRACHYTHERAPY.—Section 1833(t)(16)(C) of the Social
 25 Security Act (42 U.S.C. 1395l(t)(16)(C)), as amended by

1 section 107(a) of division B of the Tax Relief and Health
2 Care Act of 2006, is amended by striking “January 1,
3 2008” and inserting “July 1, 2008”.

4 (b) PAYMENT FOR THERAPEUTIC RADIOPHARMA-
5 CEUTICALS.—Section 1833(t)(16)(C) of the Social Secu-
6 rity Act (42 U.S.C. 1395l(t)(16)(C)), as amended by sub-
7 section (a), is amended—

8 (1) in the heading, by inserting “AND THERA-
9 PEUTIC RADIOPHARMACEUTICALS” before “AT
10 CHARGES”;

11 (2) in the first sentence—

12 (A) by inserting “and for therapeutic
13 radiopharmaceuticals furnished on or after Jan-
14 uary 1, 2008, and before July 1, 2008,” after
15 “July 1, 2008,”;

16 (B) by inserting “or therapeutic radio-
17 pharmaceutical” after “the device”; and

18 (C) by inserting “or therapeutic radio-
19 pharmaceutical” after “each device”; and

20 (3) in the second sentence, by inserting “or
21 therapeutic radiopharmaceuticals” after “such de-
22 vices”.

1 **SEC. 107. EXTENSION OF MEDICARE REASONABLE COSTS**
 2 **PAYMENTS FOR CERTAIN CLINICAL DIAG-**
 3 **NOSTIC LABORATORY TESTS FURNISHED TO**
 4 **HOSPITAL PATIENTS IN CERTAIN RURAL**
 5 **AREAS.**

6 Section 416(b) of the Medicare Prescription Drug,
 7 Improvement, and Modernization Act of 2003 (42 U.S.C.
 8 1395l–4), as amended by section 105 of division B of the
 9 Tax Relief and Health Care Act of 2006 (42 U.S.C. 1395l
 10 note), is amended by striking “the 3-year period beginning
 11 on July 1, 2004” and inserting “the period beginning on
 12 July 1, 2004, and ending on June 30, 2008”.

13 **SEC. 108. EXTENSION OF AUTHORITY OF SPECIALIZED**
 14 **MEDICARE ADVANTAGE PLANS FOR SPECIAL**
 15 **NEEDS INDIVIDUALS TO RESTRICT ENROLL-**
 16 **MENT.**

17 (a) **EXTENSION OF AUTHORITY TO RESTRICT EN-**
 18 **ROLLMENT.**—Section 1859(f) of the Social Security Act
 19 (42 U.S.C. 1395w–28(f)) is amended by striking “2009”
 20 and inserting “2010”.

21 (b) **MORATORIUM.**—

22 (1) **AUTHORITY TO DESIGNATE OTHER PLANS**
 23 **AS SPECIALIZED MA PLANS.**—During the period be-
 24 ginning on January 1, 2008, and ending on Decem-
 25 ber 31, 2009, the Secretary of Health and Human
 26 Services shall not exercise the authority provided

1 under section 231(d) of the Medicare Prescription
2 Drug, Improvement, and Modernization Act of 2003
3 (42 U.S.C. 1395w–21 note) to designate other plans
4 as specialized MA plans for special needs individuals
5 under part C of title XVIII of the Social Security
6 Act. The preceding sentence shall not apply to plans
7 designated as specialized MA plans for special needs
8 individuals under such authority prior to January 1,
9 2008.

10 (2) ENROLLMENT IN NEW PLANS.—During the
11 period beginning on January 1, 2008, and ending on
12 December 31, 2009, the Secretary of Health and
13 Human Services shall not permit enrollment of any
14 individual residing in an area in a specialized Medi-
15 care Advantage plan for special needs individuals
16 under part C of title XVIII of the Social Security
17 Act to take effect unless that specialized Medicare
18 Advantage plan for special needs individuals was
19 available for enrollment for individuals residing in
20 that area on January 1, 2008.

1 **SEC. 109. EXTENSION OF DEADLINE FOR APPLICATION OF**
 2 **LIMITATION ON EXTENSION OR RENEWAL OF**
 3 **MEDICARE REASONABLE COST CONTRACT**
 4 **PLANS.**

5 Section 1876(h)(5)(C)(ii) of the Social Security Act
 6 (42 U.S.C. 1395mm(h)(5)(C)(ii)), in the matter preceding
 7 subclause (I), is amended by striking “January 1, 2008”
 8 and inserting “January 1, 2009”.

9 **SEC. 110. ADJUSTMENT TO THE MEDICARE ADVANTAGE**
 10 **STABILIZATION FUND.**

11 Section 1858(e)(2)(A)(i) of the Social Security Act
 12 (42 U.S.C. 1395w–27a(e)(2)(A)(i)), as amended by sec-
 13 tion 3 of Public Law 110–48, is amended by striking “the
 14 Fund” and all that follows and inserting “the Fund dur-
 15 ing 2013, \$1,790,000,000.”

16 **SEC. 111. MEDICARE SECONDARY PAYOR.**

17 (a) IN GENERAL.—Section 1862(b) of the Social Se-
 18 curity Act (42 U.S.C. 1395y(b)) is amended by adding at
 19 the end the following new paragraphs:

20 “(7) REQUIRED SUBMISSION OF INFORMATION
 21 BY GROUP HEALTH PLANS.—

22 “(A) REQUIREMENT.—On and after the
 23 first day of the first calendar quarter beginning
 24 after the date that is 1 year after the date of
 25 the enactment of this paragraph, an entity serv-
 26 ing as an insurer or third party administrator

1 for a group health plan, as defined in para-
2 graph (1)(A)(v), and, in the case of a group
3 health plan that is self-insured and self-admin-
4 istered, a plan administrator or fiduciary,
5 shall—

6 “(i) secure from the plan sponsor and
7 plan participants such information as the
8 Secretary shall specify for the purpose of
9 identifying situations where the group
10 health plan is or has been a primary plan
11 to the program under this title; and

12 “(ii) submit such information to the
13 Secretary in a form and manner (including
14 frequency) specified by the Secretary.

15 “(B) ENFORCEMENT.—

16 “(i) IN GENERAL.—An entity, a plan
17 administrator, or a fiduciary described in
18 subparagraph (A) that fails to comply with
19 the requirements under such subparagraph
20 shall be subject to a civil money penalty of
21 \$1,000 for each day of noncompliance for
22 each individual for which the information
23 under such subparagraph should have been
24 submitted. The provisions of subsections
25 (e) and (k) of section 1128A shall apply to

1 a civil money penalty under the previous
2 sentence in the same manner as such pro-
3 visions apply to a penalty or proceeding
4 under section 1128A(a). A civil money
5 penalty under this clause shall be in addi-
6 tion to any other penalties prescribed by
7 law and in addition to any Medicare sec-
8 ondary payer claim under this title with re-
9 spect to an individual.

10 “(ii) DEPOSIT OF AMOUNTS COL-
11 LECTED.—Any amounts collected pursuant
12 to clause (i) shall be deposited in the Fed-
13 eral Hospital Insurance Trust Fund under
14 section 1817.

15 “(C) SHARING OF INFORMATION.—Not-
16 withstanding any other provision of law, under
17 terms and conditions established by the Sec-
18 retary, the Secretary—

19 “(i) shall share information on entitle-
20 ment under Part A and enrollment under
21 Part B under this title with entities, plan
22 administrators, and fiduciaries described in
23 subparagraph (A);

24 “(ii) may share the entitlement and
25 enrollment information described in clause

1 (i) with entities and persons not described
2 in such clause; and

3 “(iii) may share information collected
4 under this paragraph as necessary for pur-
5 poses of the proper coordination of bene-
6 fits.

7 “(D) IMPLEMENTATION.—Notwithstanding
8 any other provision of law, the Secretary may
9 implement this paragraph by program instruc-
10 tion or otherwise.

11 “(8) REQUIRED SUBMISSION OF INFORMATION
12 BY OR ON BEHALF OF LIABILITY INSURANCE (IN-
13 CLUDING SELF-INSURANCE), NO FAULT INSURANCE,
14 AND WORKERS’ COMPENSATION LAWS AND PLANS.—

15 “(A) REQUIREMENT.—On and after the
16 first day of the first calendar quarter beginning
17 after the date that is 18 months after the date
18 of the enactment of this paragraph, an applica-
19 ble plan shall—

20 “(i) determine whether a claimant (in-
21 cluding an individual whose claim is unre-
22 solved) is entitled to benefits under the
23 program under this title on any basis; and

24 “(ii) if the claimant is determined to
25 be so entitled, submit the information de-

1 scribed in subparagraph (B) with respect
2 to the claimant to the Secretary in a form
3 and manner (including frequency) specified
4 by the Secretary.

5 “(B) REQUIRED INFORMATION.—The in-
6 formation described in this subparagraph is—

7 “(i) the identity of the claimant for
8 which the determination under subpara-
9 graph (A) was made; and

10 “(ii) such other information as the
11 Secretary shall specify in order to enable
12 the Secretary to make an appropriate de-
13 termination concerning coordination of
14 benefits, including any applicable recovery
15 claim.

16 “(C) TIMING.—Information shall be sub-
17 mitted under subparagraph (A)(ii) within a
18 time specified by the Secretary after the claim
19 is resolved through a settlement, judgment,
20 award, or other payment (regardless of whether
21 or not there is a determination or admission of
22 liability).

23 “(D) CLAIMANT.—For purposes of sub-
24 paragraph (A), the term ‘claimant’ includes—

1 “(i) an individual filing a claim di-
2 rectly against the applicable plan; and

3 “(ii) an individual filing a claim
4 against an individual or entity insured or
5 covered by the applicable plan.

6 “(E) ENFORCEMENT.—

7 “(i) IN GENERAL.—An applicable plan
8 that fails to comply with the requirements
9 under subparagraph (A) with respect to
10 any claimant shall be subject to a civil
11 money penalty of \$1,000 for each day of
12 noncompliance with respect to each claim-
13 ant. The provisions of subsections (e) and
14 (k) of section 1128A shall apply to a civil
15 money penalty under the previous sentence
16 in the same manner as such provisions
17 apply to a penalty or proceeding under sec-
18 tion 1128A(a). A civil money penalty
19 under this clause shall be in addition to
20 any other penalties prescribed by law and
21 in addition to any Medicare secondary
22 payer claim under this title with respect to
23 an individual.

24 “(ii) DEPOSIT OF AMOUNTS COL-
25 LECTED.—Any amounts collected pursuant

1 to clause (i) shall be deposited in the Fed-
2 eral Hospital Insurance Trust Fund.

3 “(F) APPLICABLE PLAN.—In this para-
4 graph, the term ‘applicable plan’ means the fol-
5 lowing laws, plans, or other arrangements, in-
6 cluding the fiduciary or administrator for such
7 law, plan, or arrangement:

8 “(i) Liability insurance (including
9 self-insurance).

10 “(ii) No fault insurance.

11 “(iii) Workers’ compensation laws or
12 plans.

13 “(G) SHARING OF INFORMATION.—The
14 Secretary may share information collected
15 under this paragraph as necessary for purposes
16 of the proper coordination of benefits.

17 “(H) IMPLEMENTATION.—Notwithstanding
18 any other provision of law, the Secretary may
19 implement this paragraph by program instruc-
20 tion or otherwise.”.

21 (b) RULE OF CONSTRUCTION.—Nothing in the
22 amendments made by this section shall be construed to
23 limit the authority of the Secretary of Health and Human
24 Services to collect information to carry out Medicare sec-

1 ondary payer provisions under title XVIII of the Social
2 Security Act, including under parts C and D of such title.

3 (c) IMPLEMENTATION.—For purposes of imple-
4 menting paragraphs (7) and (8) of section 1862(b) of the
5 Social Security Act, as added by subsection (a), to ensure
6 appropriate payments under title XVIII of such Act, the
7 Secretary of Health and Human Services shall provide for
8 the transfer, from the Federal Hospital Insurance Trust
9 Fund established under section 1817 of the Social Secu-
10 rity Act (42 U.S.C. 1395i) and the Federal Supple-
11 mentary Medical Insurance Trust Fund established under
12 section 1841 of such Act (42 U.S.C. 1395t), in such pro-
13 portions as the Secretary determines appropriate, of
14 \$35,000,000 to the Centers for Medicare & Medicaid Serv-
15 ices Program Management Account for the period of fiscal
16 years 2008, 2009, and 2010.

17 **SEC. 112. PAYMENT FOR PART B DRUGS.**

18 (a) APPLICATION OF ALTERNATIVE VOLUME
19 WEIGHTING IN COMPUTATION OF ASP.—Section
20 1847A(b) of the Social Security Act (42 U.S.C. 1395w-
21 3a(b)) is amended—

22 (1) in paragraph (1)(A), by inserting “for a
23 multiple source drug furnished before April 1, 2008,
24 or 106 percent of the amount determined under

1 paragraph (6) for a multiple source drug furnished
2 on or after April 1, 2008” after “paragraph (3)”;

3 (2) in each of subparagraphs (A) and (B) of
4 paragraph (4), by inserting “for single source drugs
5 and biologicals furnished before April 1, 2008, and
6 using the methodology applied under paragraph (6)
7 for single source drugs and biologicals furnished on
8 or after April 1, 2008,” after “paragraph (3)”;

9 (3) by adding at the end the following new
10 paragraph:

11 “(6) USE OF VOLUME-WEIGHTED AVERAGE
12 SALES PRICES IN CALCULATION OF AVERAGE SALES
13 PRICE.—

14 “(A) IN GENERAL.—For all drug products
15 included within the same multiple source drug
16 billing and payment code, the amount specified
17 in this paragraph is the volume-weighted aver-
18 age of the average sales prices reported under
19 section 1927(b)(3)(A)(iii) determined by—

20 “(i) computing the sum of the prod-
21 ucts (for each National Drug Code as-
22 signed to such drug products) of—

23 “(I) the manufacturer’s average
24 sales price (as defined in subsection
25 (c)), determined by the Secretary

1 without dividing such price by the
2 total number of billing units for the
3 National Drug Code for the billing
4 and payment code; and

5 “(II) the total number of units
6 specified under paragraph (2) sold;
7 and

8 “(ii) dividing the sum determined
9 under clause (i) by the sum of the products
10 (for each National Drug Code assigned to
11 such drug products) of—

12 “(I) the total number of units
13 specified under paragraph (2) sold;
14 and

15 “(II) the total number of billing
16 units for the National Drug Code for
17 the billing and payment code.

18 “(B) BILLING UNIT DEFINED.—For pur-
19 poses of this subsection, the term ‘billing unit’
20 means the identifiable quantity associated with
21 a billing and payment code, as established by
22 the Secretary.”.

23 (b) TREATMENT OF CERTAIN DRUGS.—Section
24 1847A(b) of the Social Security Act (42 U.S.C. 1395w-
25 3a(b)), as amended by subsection (a), is amended—

1 (1) in paragraph (1), by inserting “paragraph
2 (7) and” after “Subject to”; and

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

5 “(7) SPECIAL RULE.—Beginning with April 1,
6 2008, the payment amount for—

7 “(A) each single source drug or biological
8 described in section 1842(o)(1)(G) that is treat-
9 ed as a multiple source drug because of the ap-
10 plication of subsection (c)(6)(C)(ii) is the lower
11 of—

12 “(i) the payment amount that would
13 be determined for such drug or biological
14 applying such subsection; or

15 “(ii) the payment amount that would
16 have been determined for such drug or bio-
17 logical if such subsection were not applied;
18 and

19 “(B) a multiple source drug described in
20 section 1842(o)(1)(G) (excluding a drug or bio-
21 logical that is treated as a multiple source drug
22 because of the application of such subsection) is
23 the lower of—

24 “(i) the payment amount that would
25 be determined for such drug or biological

1 taking into account the application of such
 2 subsection; or

3 “(ii) the payment amount that would
 4 have been determined for such drug or bio-
 5 logical if such subsection were not ap-
 6 plied.”.

7 **SEC. 113. PAYMENT RATE FOR CERTAIN DIAGNOSTIC LAB-**
 8 **ORATORY TESTS.**

9 Section 1833(h) of the Social Security Act (42 U.S.C.
 10 1395l(h)) is amended by adding at the end the following
 11 new paragraph:

12 “(9) Notwithstanding any other provision in this
 13 part, in the case of any diagnostic laboratory test for
 14 HbA1c that is labeled by the Food and Drug Administra-
 15 tion for home use and is furnished on or after April 1,
 16 2008, the payment rate for such test shall be the payment
 17 rate established under this part for a glycated hemoglobin
 18 test (identified as of October 1, 2007, by HCPCS code
 19 83036 (and any succeeding codes)).”.

20 **SEC. 114. LONG-TERM CARE HOSPITALS.**

21 (a) DEFINITION OF LONG-TERM CARE HOSPITAL.—
 22 Section 1861 of the Social Security Act (42 U.S.C. 1395x)
 23 is amended by adding at the end the following new sub-
 24 section:

1 “Long-Term Care Hospital

2 “(ccc) The term ‘long-term care hospital’ means a
3 hospital which—

4 “(1) is primarily engaged in providing inpatient
5 services, by or under the supervision of a physician,
6 to Medicare beneficiaries whose medically complex
7 conditions require a long hospital stay and programs
8 of care provided by a long-term care hospital;

9 “(2) has an average inpatient length of stay (as
10 determined by the Secretary) of greater than 25
11 days, or meets the requirements of clause (II) of sec-
12 tion 1886(d)(1)(B)(iv);

13 “(3) satisfies the requirements of subsection
14 (e); and

15 “(4) meets the following facility criteria:

16 “(A) the institution has a patient review
17 process, documented in the patient medical
18 record, that screens patients prior to admission
19 for appropriateness of admission to a long-term
20 care hospital, validates within 48 hours of ad-
21 mission that patients meet admission criteria
22 for long-term care hospitals, regularly evaluates
23 patients throughout their stay for continuation
24 of care in a long-term care hospital, and as-
25 sesses the available discharge options when pa-

1 tients no longer meet such continued stay cri-
2 teria;

3 “(B) the institution has active physician
4 involvement with patients during their treat-
5 ment through an organized medical staff, physi-
6 cian-directed treatment with physician on-site
7 availability on a daily basis to review patient
8 progress, and consulting physicians on call and
9 capable of being at the patient’s side within a
10 moderate period of time, as determined by the
11 Secretary; and

12 “(C) the institution has interdisciplinary
13 team treatment for patients, requiring inter-
14 disciplinary teams of health care professionals,
15 including physicians, to prepare and carry out
16 an individualized treatment plan for each pa-
17 tient.”.

18 (b) STUDY AND REPORT ON LONG-TERM CARE HOS-
19 PITAL FACILITY AND PATIENT CRITERIA.—

20 (1) IN GENERAL.—The Secretary of Health and
21 Human Services (in this section referred to as the
22 “Secretary”) shall conduct a study on the establish-
23 ment of national long-term care hospital facility and
24 patient criteria for purposes of determining medical
25 necessity, appropriateness of admission, and contin-

1 ued stay at, and discharge from, long-term care hos-
2 pitals.

3 (2) REPORT.—Not later than 18 months after
4 the date of the enactment of this Act, the Secretary
5 shall submit to Congress a report on the study con-
6 ducted under paragraph (1), together with rec-
7 ommendations for such legislation and administra-
8 tive actions, including timelines for implementation
9 of patient criteria or other actions, as the Secretary
10 determines appropriate.

11 (3) CONSIDERATIONS.—In conducting the study
12 and preparing the report under this subsection, the
13 Secretary shall consider—

14 (A) recommendations contained in a report
15 to Congress by the Medicare Payment Advisory
16 Commission in June 2004 for long-term care
17 hospital-specific facility and patient criteria to
18 ensure that patients admitted to long-term care
19 hospitals are medically complex and appropriate
20 to receive long-term care hospital services; and

21 (B) ongoing work by the Secretary to
22 evaluate and determine the feasibility of such
23 recommendations.

24 (c) PAYMENT FOR LONG-TERM CARE HOSPITAL
25 SERVICES.—

1 (1) NO APPLICATION OF 25 PERCENT PATIENT
2 THRESHOLD PAYMENT ADJUSTMENT TO FREE-
3 STANDING AND GRANDFATHERED LTCHS.—The Sec-
4 retary shall not apply, for cost reporting periods be-
5 ginning on or after the date of the enactment of this
6 Act for a 3-year period—

7 (A) section 412.536 of title 42, Code of
8 Federal Regulations, or any similar provision,
9 to freestanding long-term care hospitals; and

10 (B) such section or section 412.534 of title
11 42, Code of Federal Regulations, or any similar
12 provisions, to a long-term care hospital identi-
13 fied by the amendment made by section
14 4417(a) of the Balanced Budget Act of 1997
15 (Public Law 105–33).

16 (2) PAYMENT FOR HOSPITALS-WITHIN-HOS-
17 PITALS.—

18 (A) IN GENERAL.—Payment to an applica-
19 ble long-term care hospital or satellite facility
20 which is located in a rural area or which is co-
21 located with an urban single or MSA dominant
22 hospital under paragraphs (d)(1), (e)(1), and
23 (e)(4) of section 412.534 of title 42, Code of
24 Federal Regulations, shall not be subject to any
25 payment adjustment under such section if no

1 more than 75 percent of the hospital’s Medicare
2 discharges (other than discharges described in
3 paragraph (d)(2) or (e)(3) of such section) are
4 admitted from a co-located hospital.

5 (B) CO-LOCATED LONG-TERM CARE HOS-
6 PITALS AND SATELLITE FACILITIES.—

7 (i) IN GENERAL.—Payment to an ap-
8 plicable long-term care hospital or satellite
9 facility which is co-located with another
10 hospital shall not be subject to any pay-
11 ment adjustment under section 412.534 of
12 title 42, Code of Federal Regulations, if no
13 more than 50 percent of the hospital’s
14 Medicare discharges (other than discharges
15 described in paragraph (c)(3) of such sec-
16 tion) are admitted from a co-located hos-
17 pital.

18 (ii) APPLICABLE LONG-TERM CARE
19 HOSPITAL OR SATELLITE FACILITY DE-
20 FINED.—In this paragraph, the term “ap-
21 plicable long-term care hospital or satellite
22 facility” means a hospital or satellite facil-
23 ity that is subject to the transition rules
24 under section 412.534(g) of title 42, Code
25 of Federal Regulations.

1 (C) EFFECTIVE DATE.—Subparagraphs
2 (A) and (B) shall apply to cost reporting peri-
3 ods beginning on or after the date of the enact-
4 ment of this Act for a 3-year period.

5 (3) NO APPLICATION OF VERY SHORT-STAY
6 OUTLIER POLICY.—The Secretary shall not apply,
7 for the 3-year period beginning on the date of the
8 enactment of this Act, the amendments finalized on
9 May 11, 2007 (72 Federal Register 26904, 26992)
10 made to the short-stay outlier payment provision for
11 long-term care hospitals contained in section
12 412.529(c)(3)(i) of title 42, Code of Federal Regula-
13 tions, or any similar provision.

14 (4) NO APPLICATION OF ONE-TIME ADJUST-
15 MENT TO STANDARD AMOUNT.—The Secretary shall
16 not, for the 3-year period beginning on the date of
17 the enactment of this Act, make the one-time pro-
18 spective adjustment to long-term care hospital pro-
19 spective payment rates provided for in section
20 412.523(d)(3) of title 42, Code of Federal Regula-
21 tions, or any similar provision.

22 (d) MORATORIUM ON THE ESTABLISHMENT OF
23 LONG-TERM CARE HOSPITALS, LONG-TERM CARE SAT-
24 ELLITE FACILITIES AND ON THE INCREASE OF LONG-

1 TERM CARE HOSPITAL BEDS IN EXISTING LONG-TERM
2 CARE HOSPITALS OR SATELLITE FACILITIES.—

3 (1) IN GENERAL.—During the 3-year period be-
4 ginning on the date of the enactment of this Act, the
5 Secretary shall impose a moratorium for purposes of
6 the Medicare program under title XVIII of the So-
7 cial Security Act—

8 (A) subject to paragraph (2), on the estab-
9 lishment and classification of a long-term care
10 hospital or satellite facility, other than an exist-
11 ing long-term care hospital or facility; and

12 (B) subject to paragraph (3), on an in-
13 crease of long-term care hospital beds in exist-
14 ing long-term care hospitals or satellite facili-
15 ties.

16 (2) EXCEPTION FOR CERTAIN LONG-TERM CARE
17 HOSPITALS.—The moratorium under paragraph
18 (1)(A) shall not apply to a long-term care hospital
19 that as of the date of the enactment of this Act—

20 (A) began its qualifying period for pay-
21 ment as a long-term care hospital under section
22 412.23(e) of title 42, Code of Federal Regula-
23 tions, on or before the date of the enactment of
24 this Act;

(B) has a binding written agreement with an outside, unrelated party for the actual construction, renovation, lease, or demolition for a long-term care hospital, and has expended, before the date of the enactment of this Act, at least 10 percent of the estimated cost of the project (or, if less, \$2,500,000); or

(C) has obtained an approved certificate of need in a State where one is required on or before the date of the enactment of this Act.

(3) EXCEPTION FOR BED INCREASES DURING MORATORIUM.—

(A) IN GENERAL.—Subject to subparagraph (B), the moratorium under paragraph (1)(B) shall not apply to an increase in beds in an existing hospital or satellite facility if the hospital or facility—

(i) is located in a State where there is only one other long-term care hospital; and

(ii) requests an increase in beds following the closure or the decrease in the number of beds of another long-term care hospital in the State.

(B) NO EFFECT ON CERTAIN LIMITATION.—The exception under subparagraph (A)

1 shall not effect the limitation on increasing beds
 2 under sections 412.22(h)(3) and 412.22(f) of
 3 title 42, Code of Federal Regulations.

4 (4) EXISTING HOSPITAL OR SATELLITE FACIL-
 5 ITY DEFINED.—For purposes of this subsection, the
 6 term “existing” means, with respect to a hospital or
 7 satellite facility, a hospital or satellite facility that
 8 received payment under the provisions of subpart O
 9 of part 412 of title 42, Code of Federal Regulations,
 10 as of the date of the enactment of this Act.

11 (5) JUDICIAL REVIEW.—There shall be no ad-
 12 ministrative or judicial review under section 1869 of
 13 the Social Security Act (42 U.S.C. 1395ff), section
 14 1878 of such Act (42 U.S.C. 1395oo), or otherwise,
 15 of the application of this subsection by the Sec-
 16 retary.

17 (e) LONG-TERM CARE HOSPITAL PAYMENT UP-
 18 DATE.—

19 (1) IN GENERAL.—Section 1886 of the Social
 20 Security Act (42 U.S.C. 1395ww) is amended by
 21 adding at the end the following new subsection:

22 “(m) PROSPECTIVE PAYMENT FOR LONG-TERM
 23 CARE HOSPITALS.—

24 “(1) REFERENCE TO ESTABLISHMENT AND IM-
 25 PLEMENTATION OF SYSTEM.—For provisions related

1 to the establishment and implementation of a pro-
 2 spective payment system for payments under this
 3 title for inpatient hospital services furnished by a
 4 long-term care hospital described in subsection
 5 (d)(1)(B)(iv), see section 123 of the Medicare, Med-
 6 icaid, and SCHIP Balanced Budget Refinement Act
 7 of 1999 and section 307(b) of the Medicare, Med-
 8 icaid, and SCHIP Benefits Improvement and Pro-
 9 tection Act of 2000.

10 “(2) UPDATE FOR RATE YEAR 2008.—In imple-
 11 menting the system described in paragraph (1) for
 12 discharges occurring during the rate year ending in
 13 2008 for a hospital, the base rate for such dis-
 14 charges for the hospital shall be the same as the
 15 base rate for discharges for the hospital occurring
 16 during the rate year ending in 2007.”.

17 (2) DELAYED EFFECTIVE DATE.—Subsection
 18 (m)(2) of section 1886 of the Social Security Act, as
 19 added by paragraph (1), shall not apply to dis-
 20 charges occurring on or after July 1, 2007, and be-
 21 fore April 1, 2008.

22 (f) EXPANDED REVIEW OF MEDICAL NECESSITY.—

23 (1) IN GENERAL.—The Secretary of Health and
 24 Human Services shall provide, under contracts with
 25 one or more appropriate fiscal intermediaries or

1 medicare administrative contractors under section
 2 1874A(a)(4)(G) of the Social Security Act (42
 3 U.S.C. 1395kk–1(a)(4)(G)), for reviews of the med-
 4 ical necessity of admissions to long-term care hos-
 5 pitals (described in section 1886(d)(1)(B)(iv) of such
 6 Act) and continued stay at such hospitals, of individ-
 7 uals entitled to, or enrolled for, benefits under part
 8 A of title XVIII of such Act consistent with this sub-
 9 section. Such reviews shall be made for discharges
 10 occurring on or after October 1, 2007.

11 (2) REVIEW METHODOLOGY.—The medical ne-
 12 cessity reviews under paragraph (1) shall be con-
 13 ducted on an annual basis in accordance with rules
 14 specified by the Secretary. Such reviews shall—

15 (A) provide for a statistically valid and
 16 representative sample of admissions of such in-
 17 dividuals sufficient to provide results at a 95
 18 percent confidence interval; and

19 (B) guarantee that at least 75 percent of
 20 overpayments received by long-term care hos-
 21 pitals for medically unnecessary admissions and
 22 continued stays of individuals in long-term care
 23 hospitals will be identified and recovered and
 24 that related days of care will not be counted to-
 25 ward the length of stay requirement contained

1 in section 1886(d)(1)(B)(iv) of the Social Secu-
2 rity Act (42 U.S.C. 1395ww(d)(1)(B)(iv)).

3 (3) CONTINUATION OF REVIEWS.—Under con-
4 tracts under this subsection, the Secretary shall es-
5 tablish an error rate with respect to such reviews
6 that could require further review of the medical ne-
7 cessity of admissions and continued stay in the hos-
8 pital involved and other actions as determined by the
9 Secretary.

10 (4) TERMINATION OF REQUIRED REVIEWS.—

11 (A) IN GENERAL.—Subject to subpara-
12 graph (B), the previous provisions of this sub-
13 section shall cease to apply for discharges oc-
14 ccurring on or after October 1, 2010.

15 (B) CONTINUATION.—As of the date speci-
16 fied in subparagraph (A), the Secretary shall
17 determine whether to continue to guarantee,
18 through continued medical review and sampling
19 under this paragraph, recovery of at least 75
20 percent of overpayments received by long-term
21 care hospitals due to medically unnecessary ad-
22 missions and continued stays.

23 (5) FUNDING.—The costs to fiscal inter-
24 mediaries or medicare administrative contractors
25 conducting the medical necessity reviews under para-

1 graph (1) shall be funded from the aggregate over-
 2 payments recouped by the Secretary of Health and
 3 Human Services from long-term care hospitals due
 4 to medically unnecessary admissions and continued
 5 stays. The Secretary may use an amount not in ex-
 6 cess of 40 percent of the overpayments recouped
 7 under this paragraph to compensate the fiscal inter-
 8 mediaries or Medicare administrative contractors for
 9 the costs of services performed.

10 (g) IMPLEMENTATION.—For purposes of carrying out
 11 the provisions of, and amendments made by, this title, in
 12 addition to any amounts otherwise provided in this title,
 13 there are appropriated to the Centers for Medicare & Med-
 14 icaid Services Program Management Account, out of any
 15 money in the Treasury not otherwise appropriated,
 16 \$35,000,000 for the period of fiscal years 2008 and 2009.

17 **SEC. 115. PAYMENT FOR INPATIENT REHABILITATION FA-**
 18 **CILITY (IRF) SERVICES.**

19 (a) PAYMENT UPDATE.—

20 (1) IN GENERAL.—Section 1886(j)(3)(C) of the
 21 Social Security Act (42 U.S.C. 1395ww(j)(3)(C)) is
 22 amended by adding at the end the following: “The
 23 increase factor to be applied under this subpara-
 24 graph for each of fiscal years 2008 and 2009 shall
 25 be 0 percent.”.

1 (2) DELAYED EFFECTIVE DATE.—The amend-
 2 ment made by paragraph (1) shall not apply to pay-
 3 ment units occurring before April 1, 2008.

4 (b) INPATIENT REHABILITATION FACILITY CLASSI-
 5 FICATION CRITERIA.—

6 (1) IN GENERAL.—Section 5005 of the Deficit
 7 Reduction Act of 2005 (Public Law 109–171; 42
 8 U.S.C. 1395ww note) is amended—

9 (A) in subsection (a), by striking “apply
 10 the applicable percent specified in subsection
 11 (b)” and inserting “require a compliance rate
 12 that is no greater than the 60 percent compli-
 13 ance rate that became effective for cost report-
 14 ing periods beginning on or after July 1,
 15 2006,”; and

16 (B) by amending subsection (b) to read as
 17 follows:

18 “(b) CONTINUED USE OF COMORBIDITIES.—For cost
 19 reporting periods beginning on or after July 1, 2007, the
 20 Secretary shall include patients with comorbidities as de-
 21 scribed in section 412.23(b)(2)(i) of title 42, Code of Fed-
 22 eral Regulations (as in effect as of January 1, 2007), in
 23 the inpatient population that counts toward the percent
 24 specified in subsection (a).”.

1 (2) EFFECTIVE DATE.—The amendment made
2 by paragraph (1)(A) shall apply for cost reporting
3 periods beginning on or after July 1, 2007.

4 (c) RECOMMENDATIONS FOR CLASSIFYING INPA-
5 TIENT REHABILITATION HOSPITALS AND UNITS.—

6 (1) REPORT TO CONGRESS.—Not later than 18
7 months after the date of the enactment of this Act,
8 the Secretary of Health and Human Services, in
9 consultation with physicians (including geriatricians
10 and physiatrists), administrators of inpatient reha-
11 bilitation, acute care hospitals, skilled nursing facili-
12 ties, and other settings providing rehabilitation serv-
13 ices, Medicare beneficiaries, trade organizations rep-
14 resenting inpatient rehabilitation hospitals and units
15 and skilled nursing facilities, and the Medicare Pay-
16 ment Advisory Commission, shall submit to the
17 Committee on Ways and Means of the House of
18 Representatives and the Committee on Finance of
19 the Senate a report that includes the following:

20 (A) An analysis of Medicare beneficiaries'
21 access to medically necessary rehabilitation
22 services, including the potential effect of the 75
23 percent rule (as defined in paragraph (2)) on
24 access to care.

1 (B) An analysis of alternatives or refine-
2 ments to the 75 percent rule policy for deter-
3 mining criteria for inpatient rehabilitation hos-
4 pital and unit designation under the Medicare
5 program, including alternative criteria which
6 would consider a patient's functional status, di-
7 agnosis, co-morbidities, and other relevant fac-
8 tors.

9 (C) An analysis of the conditions for which
10 individuals are commonly admitted to inpatient
11 rehabilitation hospitals that are not included as
12 a condition described in section
13 412.23(b)(2)(iii) of title 42, Code of Federal
14 Regulations, to determine the appropriate set-
15 ting of care, and any variation in patient out-
16 comes and costs, across settings of care, for
17 treatment of such conditions.

18 (2) 75 PERCENT RULE DEFINED.—For pur-
19 poses of this subsection, the term “75 percent rule”
20 means the requirement of section 412.23(b)(2) of
21 title 42, Code of Federal Regulations, that 75 per-
22 cent of the patients of a rehabilitation hospital or
23 converted rehabilitation unit are in 1 or more of 13
24 listed treatment categories.

1 **SEC. 116. EXTENSION OF ACCOMMODATION OF PHYSICIANS**
2 **ORDERED TO ACTIVE DUTY IN THE ARMED**
3 **SERVICES.**

4 Section 1842(b)(6)(D)(iii) of the Social Security Act
5 (42 U.S.C. 1395u(b)(6)(D)(iii)), as amended by Public
6 Law 110–54 (121 Stat. 551) is amended by striking “Jan-
7 uary 1, 2008” and inserting “July 1, 2008”.

8 **SEC. 117. TREATMENT OF CERTAIN HOSPITALS.**

9 (a) EXTENDING CERTAIN MEDICARE HOSPITAL
10 WAGE INDEX RECLASSIFICATIONS THROUGH FISCAL
11 YEAR 2008.—

12 (1) IN GENERAL.—Section 106(a) of division B
13 of the Tax Relief and Health Care Act of 2006 (42
14 U.S.C. 1395 note) is amended by striking “Sep-
15 tember 30, 2007” and inserting “September 30,
16 2008”.

17 (2) SPECIAL EXCEPTION RECLASSIFICATIONS.—
18 The Secretary of Health and Human Services shall
19 extend for discharges occurring through September
20 30, 2008, the special exception reclassifications
21 made under the authority of section 1886(d)(5)(I)(i)
22 of the Social Security Act (42 U.S.C.
23 1395ww(d)(5)(I)(i)) and contained in the final rule
24 promulgated by the Secretary in the Federal Reg-
25 ister on August 11, 2004 (69 Fed. Reg. 49105,
26 49107).

1 (3) USE OF PARTICULAR WAGE INDEX.—For
2 purposes of implementation of this subsection, the
3 Secretary shall use the hospital wage index that was
4 promulgated by the Secretary in the Federal Reg-
5 ister on October 10, 2007 (72 Fed. Reg. 57634),
6 and any subsequent corrections.

7 (b) DISREGARDING SECTION 508 HOSPITAL RECLAS-
8 SIFICATIONS FOR PURPOSES OF GROUP RECLASSIFICA-
9 TIONS.—Section 508 of the Medicare Prescription Drug,
10 Improvement, and Modernization Act of 2003 (Public Law
11 108–173, 42 U.S.C. 1395ww note) is amended by adding
12 at the end the following new subsection:

13 “(g) DISREGARDING HOSPITAL RECLASSIFICATIONS
14 FOR PURPOSES OF GROUP RECLASSIFICATIONS.—For
15 purposes of the reclassification of a group of hospitals in
16 a geographic area under section 1886(d) of the Social Se-
17 curity Act for purposes of discharges occurring during fis-
18 cal year 2008, a hospital reclassified under this section
19 (including any such reclassification which is extended
20 under section 106(a) of the Medicare Improvements and
21 Extension Act of 2006) shall not be taken into account
22 and shall not prevent the other hospitals in such area from
23 continuing such a group for such purpose.”.

24 (c) CORRECTION OF APPLICATION OF WAGE INDEX
25 DURING TAX RELIEF AND HEALTH CARE ACT EXTEN-

1 SION.—In the case of a subsection (d) hospital (as defined
2 for purposes of section 1886 of the Social Security Act
3 (42 U.S.C. 1395ww)) with respect to which—

4 (1) a reclassification of its wage index for pur-
5 poses of such section was extended for the period be-
6 ginning on April 1, 2007, and ending on September
7 30, 2007, pursuant to subsection (a) of section 106
8 of division B of the Tax Relief and Health Care Act
9 of 2006 (42 U.S.C. 1395 note); and

10 (2) the wage index applicable for such hospital
11 during such period was lower than the wage index
12 applicable for such hospital during the period begin-
13 ning on October 1, 2006, and ending on March 31,
14 2007,

15 the Secretary shall apply the higher wage index that was
16 applicable for such hospital during the period beginning
17 on October 1, 2006, and ending on March 31, 2007, for
18 the entire fiscal year 2007. If the Secretary determines
19 that the application of the preceding sentence to a hospital
20 will result in a hospital being owed additional reimburse-
21 ment, the Secretary shall make such payments within 90
22 days after the settlement of the applicable cost report.

1 **SEC. 118. ADDITIONAL FUNDING FOR STATE HEALTH IN-**
2 **SURANCE ASSISTANCE PROGRAMS, AREA**
3 **AGENCIES ON AGING, AND AGING AND DIS-**
4 **ABILITY RESOURCE CENTERS.**

5 (a) STATE HEALTH INSURANCE ASSISTANCE PRO-
6 GRAMS.—

7 (1) IN GENERAL.—The Secretary of Health and
8 Human Services shall use amounts made available
9 under paragraph (2) to make grants to States for
10 State health insurance assistance programs receiving
11 assistance under section 4360 of the Omnibus Budg-
12 et Reconciliation Act of 1990.

13 (2) FUNDING.—For purposes of making grants
14 under this subsection, the Secretary shall provide for
15 the transfer, from the Federal Hospital Insurance
16 Trust Fund under section 1817 of the Social Secu-
17 rity Act (42 U.S.C. 1395i) and the Federal Supple-
18 mentary Medical Insurance Trust Fund under sec-
19 tion 1841 of such Act (42 U.S.C. 1395t), in the
20 same proportion as the Secretary determines under
21 section 1853(f) of such Act (42 U.S.C. 1395w–
22 23(f)), of \$15,000,000 to the Centers for Medicare
23 & Medicaid Services Program Management Account
24 for fiscal year 2008.

25 (b) AREA AGENCIES ON AGING AND AGING AND DIS-
26 ABILITY RESOURCE CENTERS.—

1 (1) IN GENERAL.—The Secretary of Health and
2 Human Services shall use amounts made available
3 under paragraph (2) to make grants—

4 (A) to States for area agencies on aging
5 (as defined in section 102 of the Older Ameri-
6 cans Act of 1965 (42 U.S.C. 3002)); and

7 (B) to Aging and Disability Resource Cen-
8 ters under the Aging and Disability Resource
9 Center grant program.

10 (2) FUNDING.—For purposes of making grants
11 under this subsection, the Secretary shall provide for
12 the transfer, from the Federal Hospital Insurance
13 Trust Fund under section 1817 of the Social Secu-
14 rity Act (42 U.S.C. 1395i) and the Federal Supple-
15 mentary Medical Insurance Trust Fund under sec-
16 tion 1841 of such Act (42 U.S.C. 1395t), in the
17 same proportion as the Secretary determines under
18 section 1853(f) of such Act (42 U.S.C. 1395w-
19 23(f)), of \$5,000,000 to the Centers for Medicare &
20 Medicaid Services Program Management Account
21 for the period of fiscal years 2008 through 2009.

1 **TITLE II—MEDICAID AND SCHIP**

2 **SEC. 201. EXTENDING SCHIP FUNDING THROUGH MARCH**

3 **31, 2009.**

4 (a) THROUGH THE SECOND QUARTER OF FISCAL
5 YEAR 2009.—

6 (1) IN GENERAL.—Section 2104 of the Social
7 Security Act (42 U.S.C. 1397dd) is amended—

8 (A) in subsection (a)—

9 (i) by striking “and” at the end of
10 paragraph (9);

11 (ii) by striking the period at the end
12 of paragraph (10) and inserting “; and”;
13 and

14 (iii) by adding at the end the fol-
15 lowing new paragraph:

16 “(11) for each of fiscal years 2008 and 2009,
17 \$5,000,000,000.”; and

18 (B) in subsection (c)(4)(B), by striking
19 “for fiscal year 2007” and inserting “for each
20 of fiscal years 2007 through 2009”.

21 (2) AVAILABILITY OF EXTENDED FUNDING.—

22 Funds made available from any allotment made
23 from funds appropriated under subsection (a)(11) or
24 (c)(4)(B) of section 2104 of the Social Security Act
25 (42 U.S.C. 1397dd) for fiscal year 2008 or 2009

1 shall not be available for child health assistance for
2 items and services furnished after March 31, 2009,
3 or, if earlier, the date of the enactment of an Act
4 that provides funding for fiscal years 2008 and
5 2009, and for one or more subsequent fiscal years
6 for the State Children’s Health Insurance Program
7 under title XXI of the Social Security Act.

8 (3) END OF FUNDING UNDER CONTINUING RES-
9 OLUTION.—Section 136(a)(2) of Public Law 110–92
10 is amended by striking “after the termination date”
11 and all that follows and inserting “after the date of
12 the enactment of the Medicare, Medicaid, and
13 SCHIP Extension Act of 2007.”.

14 (4) CLARIFICATION OF APPLICATION OF FUND-
15 ING UNDER CONTINUING RESOLUTION.—Section 107
16 of Public Law 110–92 shall apply with respect to ex-
17 penditures made pursuant to section 136(a)(1) of
18 such Public Law.

19 (b) EXTENSION OF TREATMENT OF QUALIFYING
20 STATES; RULES ON REDISTRIBUTION OF UNSPENT FIS-
21 CAL YEAR 2005 ALLOTMENTS MADE PERMANENT.—

22 (1) IN GENERAL.—Section 2105(g)(1)(A) of the
23 Social Security Act (42 U.S.C. 1397ee(g)(1)(A)), as
24 amended by subsection (d) of section 136 of Public

1 Law 110–92, is amended by striking “or 2008” and
2 inserting “2008, or 2009”.

3 (2) APPLICABILITY.—The amendment made by
4 paragraph (1) shall be in effect through March 31,
5 2009.

6 (3) CERTAIN RULES MADE PERMANENT.—Sub-
7 section (e) of section 136 of Public Law 110–92 is
8 repealed.

9 (c) ADDITIONAL ALLOTMENTS TO ELIMINATE RE-
10 MAINING FUNDING SHORTFALLS THROUGH MARCH 31,
11 2009.—

12 (1) IN GENERAL.—Section 2104 of the Social
13 Security Act (42 U.S.C. 1397dd) is amended by
14 adding at the end the following new subsections:

15 “(j) ADDITIONAL ALLOTMENTS TO ELIMINATE
16 FUNDING SHORTFALLS FOR FISCAL YEAR 2008.—

17 “(1) APPROPRIATION; ALLOTMENT AUTHOR-
18 ITY.—For the purpose of providing additional allot-
19 ments described in subparagraphs (A) and (B) of
20 paragraph (3), there is appropriated, out of any
21 money in the Treasury not otherwise appropriated,
22 such sums as may be necessary, not to exceed
23 \$1,600,000,000 for fiscal year 2008.

24 “(2) SHORTFALL STATES DESCRIBED.—For
25 purposes of paragraph (3), a shortfall State de-

1 scribed in this paragraph is a State with a State
2 child health plan approved under this title for which
3 the Secretary estimates, on the basis of the most re-
4 cent data available to the Secretary as of November
5 30, 2007, that the Federal share amount of the pro-
6 jected expenditures under such plan for such State
7 for fiscal year 2008 will exceed the sum of—

8 “(A) the amount of the State’s allotments
9 for each of fiscal years 2006 and 2007 that will
10 not be expended by the end of fiscal year 2007;

11 “(B) the amount, if any, that is to be re-
12 distributed to the State during fiscal year 2008
13 in accordance with subsection (i); and

14 “(C) the amount of the State’s allotment
15 for fiscal year 2008.

16 “(3) ALLOTMENTS.—In addition to the allot-
17 ments provided under subsections (b) and (c), sub-
18 ject to paragraph (4), of the amount available for
19 the additional allotments under paragraph (1) for
20 fiscal year 2008, the Secretary shall allot—

21 “(A) to each shortfall State described in
22 paragraph (2) not described in subparagraph
23 (B), such amount as the Secretary determines
24 will eliminate the estimated shortfall described
25 in such paragraph for the State; and

“(B) to each commonwealth or territory described in subsection (c)(3), an amount equal to the percentage specified in subsection (c)(2) for the commonwealth or territory multiplied by 1.05 percent of the sum of the amounts determined for each shortfall State under subparagraph (A).

“(4) PRORATION RULE.—If the amounts available for additional allotments under paragraph (1) are less than the total of the amounts determined under subparagraphs (A) and (B) of paragraph (3), the amounts computed under such subparagraphs shall be reduced proportionally.

“(5) RETROSPECTIVE ADJUSTMENT.—The Secretary may adjust the estimates and determinations made to carry out this subsection as necessary on the basis of the amounts reported by States not later than November 30, 2008, on CMS Form 64 or CMS Form 21, as the case may be, and as approved by the Secretary.

“(6) ONE-YEAR AVAILABILITY; NO REDISTRIBUTION OF UNEXPENDED ADDITIONAL ALLOTMENTS.—Notwithstanding subsections (e) and (f), amounts allotted to a State pursuant to this subsection for fiscal year 2008, subject to paragraph (5), shall only

1 remain available for expenditure by the State
2 through September 30, 2008. Any amounts of such
3 allotments that remain unexpended as of such date
4 shall not be subject to redistribution under sub-
5 section (f).

6 “(k) REDISTRIBUTION OF UNUSED FISCAL YEAR
7 2006 ALLOTMENTS TO STATES WITH ESTIMATED FUND-
8 ING SHORTFALLS DURING THE FIRST 2 QUARTERS OF
9 FISCAL YEAR 2009.—

10 “(1) IN GENERAL.—Notwithstanding subsection
11 (f) and subject to paragraphs (3) and (4), with re-
12 spect to months beginning during the first 2 quar-
13 ters of fiscal year 2009, the Secretary shall provide
14 for a redistribution under such subsection from the
15 allotments for fiscal year 2006 under subsection (b)
16 that are not expended by the end of fiscal year
17 2008, to a fiscal year 2009 shortfall State described
18 in paragraph (2), such amount as the Secretary de-
19 termines will eliminate the estimated shortfall de-
20 scribed in such paragraph for such State for the
21 month.

22 “(2) FISCAL YEAR 2009 SHORTFALL STATE DE-
23 SCRIBED.—A fiscal year 2009 shortfall State de-
24 scribed in this paragraph is a State with a State
25 child health plan approved under this title for which

1 the Secretary estimates, on a monthly basis using
2 the most recent data available to the Secretary as of
3 such month, that the Federal share amount of the
4 projected expenditures under such plan for such
5 State for the first 2 quarters of fiscal year 2009 will
6 exceed the sum of—

7 “(A) the amount of the State’s allotments
8 for each of fiscal years 2007 and 2008 that was
9 not expended by the end of fiscal year 2008;
10 and

11 “(B) the amount of the State’s allotment
12 for fiscal year 2009.

13 “(3) FUNDS REDISTRIBUTED IN THE ORDER IN
14 WHICH STATES REALIZE FUNDING SHORTFALLS.—

15 The Secretary shall redistribute the amounts avail-
16 able for redistribution under paragraph (1) to fiscal
17 year 2009 shortfall States described in paragraph
18 (2) in the order in which such States realize monthly
19 funding shortfalls under this title for fiscal year
20 2009. The Secretary shall only make redistributions
21 under this subsection to the extent that there are
22 unexpended fiscal year 2006 allotments under sub-
23 section (b) available for such redistributions.

24 “(4) PRORATION RULE.—If the amounts avail-
25 able for redistribution under paragraph (1) are less

1 than the total amounts of the estimated shortfalls
2 determined for the month under that paragraph, the
3 amount computed under such paragraph for each
4 fiscal year 2009 shortfall State for the month shall
5 be reduced proportionally.

6 “(5) RETROSPECTIVE ADJUSTMENT.—The Sec-
7 retary may adjust the estimates and determinations
8 made to carry out this subsection as necessary on
9 the basis of the amounts reported by States not
10 later than May 31, 2009, on CMS Form 64 or CMS
11 Form 21, as the case may be, and as approved by
12 the Secretary.

13 “(6) AVAILABILITY; NO FURTHER REDISTRIBU-
14 TION.—Notwithstanding subsections (e) and (f),
15 amounts redistributed to a State pursuant to this
16 subsection for the first 2 quarters of fiscal year
17 2009 shall only remain available for expenditure by
18 the State through March 31, 2009, and any
19 amounts of such redistributions that remain unex-
20 pended as of such date, shall not be subject to redis-
21 tribution under subsection (f).

22 “(1) ADDITIONAL ALLOTMENTS TO ELIMINATE
23 FUNDING SHORTFALLS FOR THE FIRST 2 QUARTERS OF
24 FISCAL YEAR 2009.—

1 “(1) APPROPRIATION; ALLOTMENT AUTHOR-
2 ITY.—For the purpose of providing additional allot-
3 ments described in subparagraphs (A) and (B) of
4 paragraph (3), there is appropriated, out of any
5 money in the Treasury not otherwise appropriated,
6 such sums as may be necessary, not to exceed
7 \$275,000,000 for the first 2 quarters of fiscal year
8 2009.

9 “(2) SHORTFALL STATES DESCRIBED.—For
10 purposes of paragraph (3), a shortfall State de-
11 scribed in this paragraph is a State with a State
12 child health plan approved under this title for which
13 the Secretary estimates, on the basis of the most re-
14 cent data available to the Secretary, that the Fed-
15 eral share amount of the projected expenditures
16 under such plan for such State for the first 2 quar-
17 ters of fiscal year 2009 will exceed the sum of—

18 “(A) the amount of the State’s allotments
19 for each of fiscal years 2007 and 2008 that will
20 not be expended by the end of fiscal year 2008;

21 “(B) the amount, if any, that is to be re-
22 distributed to the State during fiscal year 2009
23 in accordance with subsection (k); and

24 “(C) the amount of the State’s allotment
25 for fiscal year 2009.

1 “(3) ALLOTMENTS.—In addition to the allot-
2 ments provided under subsections (b) and (c), sub-
3 ject to paragraph (4), of the amount available for
4 the additional allotments under paragraph (1) for
5 the first 2 quarters of fiscal year 2009, the Sec-
6 retary shall allot—

7 “(A) to each shortfall State described in
8 paragraph (2) not described in subparagraph
9 (B) such amount as the Secretary determines
10 will eliminate the estimated shortfall described
11 in such paragraph for the State; and

12 “(B) to each commonwealth or territory
13 described in subsection (c)(3), an amount equal
14 to the percentage specified in subsection (c)(2)
15 for the commonwealth or territory multiplied by
16 1.05 percent of the sum of the amounts deter-
17 mined for each shortfall State under subpara-
18 graph (A).

19 “(4) PRORATION RULE.—If the amounts avail-
20 able for additional allotments under paragraph (1)
21 are less than the total of the amounts determined
22 under subparagraphs (A) and (B) of paragraph (3),
23 the amounts computed under such subparagraphs
24 shall be reduced proportionally.

“(5) RETROSPECTIVE ADJUSTMENT.—The Secretary may adjust the estimates and determinations made to carry out this subsection as necessary on the basis of the amounts reported by States not later than May 31, 2009, on CMS Form 64 or CMS Form 21, as the case may be, and as approved by the Secretary.

“(6) AVAILABILITY; NO REDISTRIBUTION OF UNEXPENDED ADDITIONAL ALLOTMENTS.—Notwithstanding subsections (e) and (f), amounts allotted to a State pursuant to this subsection for fiscal year 2009, subject to paragraph (5), shall only remain available for expenditure by the State through March 31, 2009. Any amounts of such allotments that remain unexpended as of such date shall not be subject to redistribution under subsection (f).”.

SEC. 202. EXTENSION OF TRANSITIONAL MEDICAL ASSISTANCE (TMA) AND ABSTINENCE EDUCATION PROGRAM.

Section 401 of division B of the Tax Relief and Health Care Act of 2006 (Public Law 109–432, 120 Stat. 2994), as amended by section 1 of Public Law 110–48 (121 Stat. 244) and section 2 of the TMA, Abstinence, Education, and QI Programs Extension Act of 2007 (Public Law 110–90, 121 Stat. 984), is amended—

1 (1) by striking “December 31, 2007” and in-
2 serting “June 30, 2008”; and

3 (2) by striking “first quarter” and inserting
4 “third quarter” each place it appears.

5 **SEC. 203. EXTENSION OF QUALIFYING INDIVIDUAL (QI)**
6 **PROGRAM.**

7 (a) EXTENSION.—Section 1902(a)(10)(E)(iv) of the
8 Social Security Act (42 U.S.C. 1396a(a)(10)(E)(iv)) is
9 amended by striking “December 2007” and inserting
10 “June 2008”.

11 (b) EXTENDING TOTAL AMOUNT AVAILABLE FOR
12 ALLOCATION.—Section 1933(g)(2) of the Social Security
13 Act (42 U.S.C. 1396u–3(g)(2)) is amended—

14 (1) in subparagraph (G), by striking “and” at
15 the end;

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

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

20 “(I) for the period that begins on January
21 1, 2008, and ends on June 30, 2008, the total
22 allocation amount is \$200,000,000.”.

23 **SEC. 204. MEDICAID DSH EXTENSION.**

24 Section 1923(f)(6) of the Social Security Act (42
25 U.S.C. 1396r–4(f)(6)) is amended—

(1) in the heading, by inserting “AND PORTIONS OF FISCAL YEAR 2008” after “FISCAL YEAR 2007”; and

(2) in subparagraph (A)—

(A) in clause (i), by adding at the end (after and below subclause (II)) the following:

“Only with respect to fiscal year 2008 for the period ending on June 30, 2008, the DSH allotment for Tennessee for such portion of the fiscal year, notwithstanding such table or terms, shall be $\frac{3}{4}$ of the amount specified in the previous sentence for fiscal year 2007.”;

(B) in clause (ii)—

(i) by inserting “or for a period in fiscal year 2008 described in clause (i)” after “fiscal year 2007”; and

(ii) by inserting “or period” after “such fiscal year”; and

(C) in clause (iv)—

(i) in the heading, by inserting “AND FISCAL YEAR 2008” after “FISCAL YEAR 2007”;

(ii) in subclause (I)—

1 (I) by inserting “or for a period
 2 in fiscal year 2008 described in clause
 3 (i)” after “fiscal year 2007”; and

4 (II) by inserting “or period”
 5 after “for such fiscal year”; and
 6 (iii) in subclause (II)—

7 (I) by inserting “or for a period
 8 in fiscal year 2008 described in clause
 9 (i)” after “fiscal year 2007”; and

10 (II) by inserting “or period”
 11 after “such fiscal year” each place it
 12 appears; and

13 (3) in subparagraph (B)(i), by adding at the
 14 end the following: “Only with respect to fiscal year
 15 2008 for the period ending on June 30, 2008, the
 16 DSH allotment for Hawaii for such portion of the
 17 fiscal year, notwithstanding the table set forth in
 18 paragraph (2), shall be \$7,500,000.”.

19 **SEC. 205. IMPROVING DATA COLLECTION.**

20 Section 2109(b)(2) of the Social Security Act (42
 21 U.S.C. 1397ii(b)(2)) is amended by inserting before the
 22 period at the end the following “(except that only with
 23 respect to fiscal year 2008, there are appropriated
 24 \$20,000,000 for the purpose of carrying out this sub-
 25 section, to remain available until expended)”.

1 **SEC. 206. MORATORIUM ON CERTAIN PAYMENT RESTRIC-**
 2 **TIONS.**

3 Notwithstanding any other provision of law, the Sec-
 4 retary of Health and Human Services shall not, prior to
 5 June 30, 2008, take any action (through promulgation of
 6 regulation, issuance of regulatory guidance, use of Federal
 7 payment audit procedures, or other administrative action,
 8 policy, or practice, including a Medical Assistance Manual
 9 transmittal or letter to State Medicaid directors) to im-
 10 pose any restrictions relating to coverage or payment
 11 under title XIX of the Social Security Act for rehabilita-
 12 tion services or school-based administration and school-
 13 based transportation if such restrictions are more restric-
 14 tive in any aspect than those applied to such areas as of
 15 July 1, 2007.

16 **TITLE III—MISCELLANEOUS**

17 **SEC. 301. MEDICARE PAYMENT ADVISORY COMMISSION**
 18 **STATUS.**

19 Section 1805(a) of the Social Security Act (42 U.S.C.
 20 1395b–6(a)) is amended by inserting “as an agency of
 21 Congress” after “established”.

22 **SEC. 302. SPECIAL DIABETES PROGRAMS FOR TYPE I DIA-**
 23 **BETES AND INDIANS.**

24 (a) SPECIAL DIABETES PROGRAMS FOR TYPE I DIA-
 25 BETES.—Section 330B(b)(2)(C) of the Public Health

1 Service Act (42 U.S.C. 254c-2(b)(2)(C)) is amended by
2 striking “2008” and inserting “2009”.

3 (b) SPECIAL DIABETES PROGRAMS FOR INDIANS.—
4 Section 330C(c)(2)(C) of the Public Health Service Act
5 (42 U.S.C. 254c-3(c)(2)(C)) is amended by striking
6 “2008” and inserting “2009”.

Passed the Senate December 18, 2007.

Attest:

Secretary.

110TH CONGRESS
1ST Session

S. 2499

AN ACT

To amend titles XVIII, XIX, and XXI of the Social Security Act to extend provisions under the Medicare, Medicaid, and SCHIP programs, and for other purposes.