

108TH CONGRESS
1ST SESSION

S. 1206

To amend title XVIII of the Social Security Act to provide for special treatment for certain drugs and biologicals under the prospective payment system for hospital outpatient department services under the medicare program.

IN THE SENATE OF THE UNITED STATES

JUNE 9, 2003

Mr. BOND 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 provide for special treatment for certain drugs and biologicals under the prospective payment system for hospital outpatient department services under the medicare program.

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.**

4 This Act may be cited as the “Beneficiary Access to
5 Care Act of 2003”.

1 **SEC. 2. TREATMENT OF DRUGS AND BIOLOGICALS UNDER**
2 **THE MEDICARE OUTPATIENT HOSPITAL PRO-**
3 **SPECTIVE PAYMENT SYSTEM.**

4 (a) SEPARATE APCs FOR MOST DRUGS AND
5 BIOLOGICALS.—

6 (1) IN GENERAL.—Section 1833(t)(2) of the
7 Social Security Act (42 U.S.C. 1395l(t)(2)) is
8 amended—

9 (A) by striking “and” at the end of sub-
10 paragraph (F);

11 (B) by striking the period at the end of
12 subparagraph (G) and inserting “; and”; and

13 (C) by adding at the end the following:

14 “(H) the Secretary shall treat as a sepa-
15 rate group of covered OPD services—

16 “(i) any drug or biological that was
17 treated as such a group as of December
18 31, 2002; and

19 “(ii) any drug or biological that has
20 ceased to be eligible for transitional, pass-
21 through payments under paragraph (6) by
22 reason of the limited period of payment
23 specified in paragraph (6)(C)(i).”.

24 (2) EFFECTIVE DATE.—The amendments made
25 by paragraph (1) shall apply to items and services
26 furnished on or after January 1, 2004.

1 (b) PAYMENT RATES FOR NON-PASS-THROUGH
2 DRUGS AND BIOLOGICALS.—

3 (1) PROGRAM PAYMENTS.—Section 1833(t) of
4 the Social Security Act (42 U.S.C. 1395l(t)) is
5 amended—

6 (A) in paragraph (3), by amending sub-
7 paragraph (D) to read as follows:

8 “(D) CALCULATION OF MEDICARE OPD
9 FEE SCHEDULE AMOUNTS.—

10 “(i) IN GENERAL.—The Secretary
11 shall compute a medicare OPD fee sched-
12 ule amount for each covered OPD service
13 (or group of such services) furnished in a
14 year, in an amount that (except as pro-
15 vided in clause (ii)) is equal to the product
16 of—

17 “(I) the conversion factor com-
18 puted under subparagraph (C) for the
19 year; and

20 “(II) the relative payment weight
21 (determined under paragraph (2)(C)
22 or paragraph (9)(A)) for the service
23 or group.

24 “(ii) SPECIAL RULES FOR 2004.—

1 “(I) IN GENERAL.—Notwith-
2 standing clause (i), the medicare OPD
3 fee schedule amount for 2004 for a
4 drug or biological that is treated as a
5 separate group of covered OPD serv-
6 ices and is—

7 “(aa) a single-source drug
8 (as defined in section
9 1927(k)(7)(A)(iv));

10 “(bb) an innovator multiple
11 source drug (as defined in section
12 1927(k)(7)(A)(ii)); or

13 “(cc) a biological product
14 approved for marketing under
15 section 351 of the Public Health
16 Service Act (including any such
17 product that is marketed by any
18 cross-licensed producers or dis-
19 tributors),

20 may not be less than 87.37 percent of
21 the payment rate for the drug or bio-
22 logical under paragraph (6) as of De-
23 cember 31, 2002 (determined without
24 regard to any reduction under sub-
25 paragraph (E)(iii) of such paragraph).

1 “(II) NO REVISION OF RELATIVE
2 PAYMENT WEIGHTS.—The relative
3 payment weights established under
4 paragraph (9)(A) for 2004 for groups
5 of covered OPD services other than
6 those to which subclause (I) applies
7 shall not be revised to take into ac-
8 count the application of such sub-
9 clause (I).”;

10 (B) in paragraph (4)—

11 (i) in subparagraph (A), by striking
12 “Secretary, as computed under paragraphs
13 (2)(D) and (2)(E)” and inserting “Sec-
14 retary (as computed under paragraphs
15 (2)(D) and (2)(E)), except that the medi-
16 care OPD fee schedule amount determined
17 under paragraph (3)(D) for a drug or bio-
18 logical that is treated as a separate group
19 of covered OPD services shall not be ad-
20 justed for relative differences in the cost of
21 labor”; and

22 (ii) in subparagraph (B), by striking
23 “adjusted”; and

24 (C) in paragraph (9), by adding at the end
25 the following:

1 “(D) USE OF EXTERNAL DATA.—In deter-
2 mining the relative payment weight for any
3 drug or biological that is treated as a separate
4 group of covered OPD services for any year
5 after 2003, the Secretary shall adjust the
6 weight otherwise determined under this para-
7 graph with respect to the drug or biological to
8 the extent that reliable and valid data collected
9 and submitted by entities and organizations
10 other than the Department of Health and
11 Human Services (including data submitted in
12 public comments on the proposed rule promul-
13 gated with respect to the system established
14 under this subsection for 2004) demonstrate
15 that such payment weight is inadequate or inac-
16 curate. In the case of any adjustments made
17 pursuant to the preceding sentence for 2004,
18 the Secretary shall not revise the relative pay-
19 ment weights for other groups of covered OPD
20 services for such year to take into account such
21 adjustments, and the medicare OPD fee sched-
22 ule amount determined under paragraph (3)(D)
23 using a relative weight resulting from such an
24 adjustment shall be subject to the minimum

1 amount described in clause (ii)(I) of such para-
2 graph.”.

3 (2) COPAYMENTS.—Section 1833(t)(8)(E) of
4 the Social Security Act (42 U.S.C. 1395l(t)(8)(E))
5 is amended—

6 (A) in the heading, by striking “OUTLIER
7 AND PASS-THROUGH” and inserting “CERTAIN”;
8 and

9 (B) by striking “paragraphs (5) and (6)”
10 and inserting “paragraphs (3)(D)(ii), (5), and
11 (6)”.

12 (3) EXCEPTIONS TO BUDGET NEUTRALITY RE-
13 QUIREMENT.—Section 1833(t)(9)(B) of the Social
14 Security Act (42 U.S.C. 1395l(t)(9)(B)) is amended
15 by adding at the end the following: “In determining
16 the budget neutrality adjustment required by the
17 preceding sentence, the Secretary shall not take into
18 account—

19 “(i) any expenditures that would not
20 have been made but for the application of
21 clause (ii) of paragraph (3)(D); or

22 “(ii) any expenditures made by reason
23 of an adjustment required by subpara-
24 graph (D) for 2004.”.

1 (c) STUDY OF PHARMACY SERVICES USED TO PRO-
2 VIDE CANCER DRUG THERAPIES IN HOSPITAL OUT-
3 PATIENT SETTING.—

4 (1) IN GENERAL.—The Comptroller General
5 shall conduct a study of payments under part B of
6 title XVIII of the Social Security Act for pharmacy
7 service costs and related costs that are incurred in
8 acquiring chemotherapy and supportive care drugs
9 and providing these therapies to cancer patients in
10 hospital outpatient departments. The study shall—

11 (A) identify pharmacy costs, including the
12 costs of storage, handling, processing, quality
13 control, disposal, compliance with safety proto-
14 cols and regulations, establishing dosage regi-
15 mens that avoid drug interactions and contra-
16 indications, and pharmacy overhead;

17 (B) include a review of the adequacy of the
18 current payment methodology for pharmacy
19 service costs and related costs (including the
20 adequacy of the methodology used to estimate
21 costs); and

22 (C) identify any changes to that method-
23 ology that are necessary to ensure recognition
24 of, and appropriate payment for, all of the serv-

1 ices and functions inherent in the provision of
2 cancer treatment in hospital outpatient settings.

3 (2) REPORT TO CONGRESS.—Not later than 12
4 months after the date of enactment of this Act, the
5 Comptroller General shall submit to Congress a re-
6 port on the results of the study under paragraph
7 (1), including any recommendations for legislation
8 that is necessary to implement the changes identified
9 under paragraph (1)(C).

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