

111TH CONGRESS
2^D SESSION

S. _____

To amend title XVIII of the Social Security Act to improve the recruitment and retention of physicians under the Medicare program.

IN THE SENATE OF THE UNITED STATES

Mrs. LINCOLN introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend title XVIII of the Social Security Act to improve the recruitment and retention of physicians 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 “Medicare Rural Physi-
5 cian Recruitment and Retention Act of 2010”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

8 (1) The United States is facing shortages in a
9 wide range of health workforce professions, including
10 as many as 91,500 physicians, consisting of 46,100

1 specialists and 45,400 primary care physicians, by
2 2020. Many rural and other underserved areas con-
3 tinue to experience chronic shortages.

4 (2) These shortages will be exacerbated as mil-
5 lions of previously uninsured Americans gain access
6 to health insurance and the “Baby Boomer” genera-
7 tion enters the Medicare program in greater num-
8 bers.

9 (3) To address the physician shortage, United
10 States medical schools have already started fulfilling
11 their commitment to expanding class size by 30 per-
12 cent by the year 2015. However, the Medicare pro-
13 gram has not yet increased the number of approved
14 medical residency training positions it helps support
15 in order to accommodate a 30 percent increase in
16 medical school graduates.

17 (4) From 1966 through 1991, Medicare physi-
18 cian payments reflected physician charges for health
19 care services. The Omnibus Budget Reconciliation
20 Act of 1989 (Public Law 101–239) mandated the
21 creation of a national Medicare physician fee sched-
22 ule, which was implemented in 1992.

23 (5) As mandated by the Balanced Budget Act
24 of 1997 (Public Law 105–33), the statutory method
25 for determining annual updates to the Medicare phy-

1 sician fee schedule, known as the sustainable growth
2 rate system, has resulted in a reduction in physician
3 reimbursement rates each year since 2002. With the
4 exception of 2002, when a 4.8 percent decrease was
5 applied, Congress has passed a series of bills to over-
6 ride the reductions.

7 (6) Although a number of modifications to the
8 Medicare sustainable growth rate system have been
9 proposed, Congress has yet to pass legislation that
10 would provide for a long-term alternative to the cur-
11 rent system.

12 (7) The Medicare physician fee schedule estab-
13 lishes payment rates for more than 7,000 services.
14 Payments for each service on the fee schedule is
15 based on 3 relative value units that correspond to
16 the 3 physician payment components of physician
17 work, practice expense, and malpractice expense.

18 (8) Each relative value unit is geographically
19 adjusted to reflect the cost of providing a particular
20 service in a particular location (a “locality”). Physi-
21 cian payment localities are primarily consolidations
22 of the carrier-defined localities established in 1966.

23 (9) Medicare’s geographic adjustment for a par-
24 ticular physician payment locality is determined
25 using 3 Geographic Practice Cost Indices that also

1 correspond to the 3 Medicare physician payment
2 components of physician work, practice expense, and
3 malpractice expense.

4 (10) In general, Medicare Geographic Practice
5 Cost Indices (and thus, reimbursements) are less in
6 rural areas than in urban areas largely because rural
7 cost-of-living is estimated to be lower.

8 (11) Medicare Geographic Practice Cost Indices
9 are based on 1990 earnings of professionals with 5
10 or more years of post high school education, not cur-
11 rent physician earnings, and the office rent portion
12 of the practice expense Geographic Practice Cost
13 Index is based on 2000 residential apartment rental
14 data from the Department of Housing and Urban
15 Development, proxy data used in place of actual na-
16 tional data for physician office rents.

17 (12) Rural physician employers and rural com-
18 munities recruiting physicians must pay salaries that
19 are competitive in regional and national, not local,
20 markets.

21 (13) Though the percentage difference may
22 seem small, the elderly represent a higher percent of
23 the rural population. Consequently, Medicare pa-
24 tients will represent a greater percentage of a rural
25 physician's practice, and differences in payment due

1 to variation in Medicare Geographic Practice Cost
2 Indices represent many thousands of reimbursement
3 dollars.

4 (14) Furthermore, commercial insurers often
5 reimburse physicians at rates directly related to
6 Medicare’s fee schedule. As a result, the impact of
7 any Medicare payment disparity is potentially ex-
8 tended to non-Medicare payors as well.

9 (15) Recruitment and retention of rural physi-
10 cians remains problematic.

11 **TITLE I—RURAL PHYSICIAN**
12 **RETENTION IN MEDICARE**

13 **SEC. 101. MEDICARE PHYSICIAN FEE SCHEDULE UPDATE.**

14 (a) UPDATE.—

15 (1) REMAINING PORTION OF 2010.—Section
16 1848(d)(11) of the Social Security Act (42 U.S.C.
17 1395w–4(d)(11)) is amended—

18 (A) in the heading, by striking “NOVEM-
19 BER” and inserting “DECEMBER”;

20 (B) in subparagraph (A), by striking “No-
21 vember 30” and inserting “December 31”; and

22 (C) in subparagraph (B)—

23 (i) in the heading, by striking “RE-
24 MAINING PORTION OF 2010” and inserting
25 “2011”; and

1 (ii) by striking “the period beginning
2 on December 1, 2010, and ending on De-
3 cember 31, 2010, and for”.

4 (2) FOR 2011 AND SUBSEQUENT YEARS.—Sec-
5 tion 1848(d) of the Social Security Act (42 U.S.C.
6 1395w-4(d)) is amended by adding at the end the
7 following new paragraph:

8 “(12) UPDATE FOR 2011 AND SUBSEQUENT
9 YEARS.—The update to the single conversion factor
10 established in paragraph (1)(C) for 2011 and each
11 subsequent year shall be the percentage increase in
12 the MEI (as defined in section 1842(i)(3)) for that
13 year.”.

14 (b) CONFORMING SUNSET OF SUSTAINABLE
15 GROWTH RATE.—Section 1848(f)(1)(B) of the Social Se-
16 curity Act (42 U.S.C. 1395w-4(f)(1)(B)) is amended by
17 inserting “(ending with 2008)” after “each succeeding
18 year”.

19 **SEC. 102. RECOGNITION OF EQUALITY OF PHYSICIAN WORK**
20 **IN ALL GEOGRAPHIC AREAS UNDER THE**
21 **MEDICARE PHYSICIAN FEE SCHEDULE.**

22 Section 1848(e)(1) of the Social Security Act (42
23 U.S.C. 1395w-4(e)(1)) is amended—

24 (1) in subparagraph (A), in the matter pre-
25 ceding clause (i), by striking “subparagraphs (B)”

1 through “the Secretary” and inserting “the suc-
2 ceeding provisions of this paragraph, the Secretary”;
3 and

4 (2) in subparagraph (E)—

5 (A) by striking “and before January 1,
6 2011,”; and

7 (B) by adding at the end the following new
8 sentence. “For services furnished on or after
9 January 1, 2011, the preceding sentence shall
10 not be applied in a budget neutral manner.”.

11 **SEC. 103. REVISIONS TO THE PRACTICE EXPENSE GEO-**
12 **GRAPHIC ADJUSTMENT UNDER THE MEDI-**
13 **CARE PHYSICIAN FEE SCHEDULE.**

14 (a) **REPEAL.**—Effective as if included in the enact-
15 ment of the Patient Protection and Affordable Care Act
16 (Public Law 111–148), the provisions of, and amendments
17 made by, sections 3102(b) and 10324(c) of such Act and
18 section 1108 of the Health Care and Education Reconcili-
19 ation Act of 2010 (Public Law 111–152) are repealed.

20 (b) **ESTABLISHMENT OF FLOOR.**—Section
21 1848(e)(1) of the Social Security Act (42 U.S.C. 1395w–
22 4(e)(1)) is amended by adding at the end the following
23 new subparagraph:

24 “(F) **FLOOR AT 1.0 ON PRACTICE EXPENSE**
25 **GEOGRAPHIC INDEX.**—After calculating the

1 practice expense geographic index in subpara-
2 graph (A)(i), for purposes of payment for serv-
3 ices furnished on or after January 1, 2010, the
4 Secretary shall increase the practice expense ge-
5 ographic index to 1.0 for any locality for which
6 such practice expense geographic index is less
7 than 1.0. The preceding sentence shall not be
8 applied in a budget neutral manner.”.

9 **TITLE II—RURAL PHYSICIAN**
10 **RECRUITMENT IN MEDICARE**

11 **SEC. 201. DISTRIBUTION OF ADDITIONAL RESIDENCY POSI-**
12 **TIONS.**

13 (a) IN GENERAL.—Section 1886(h) of the Social Se-
14 curity Act (42 U.S.C. 1395ww(h)) is amended—

15 (1) in paragraph (4)(F)(i), by striking “and
16 (8)” and inserting “, (8), and (9)”;

17 (2) in paragraph (4)(H)(i), by striking “and
18 (8)” and inserting “, (8), and (9)”;

19 (3) in paragraph (7)(E), by striking “this para-
20 graph, paragraph (8),” and inserting “paragraph,
21 paragraph (8), paragraph (9),”; and

22 (4) by adding at the end the following new
23 paragraph:

24 “(9) DISTRIBUTION OF ADDITIONAL RESIDENCY
25 POSITIONS.—

1 “(A) NUMBER AVAILABLE FOR DISTRIBUTION.—The number of additional residency positions available for distribution under subparagraph (B) shall be an amount that the Secretary determines would result in a 15 percent increase in the aggregate number of full-time equivalent residents in approved medical residency training programs (as determined based on the most recent cost reports available at the time of distribution).

11 “(B) DISTRIBUTION.—The Secretary shall increase the otherwise applicable resident limit for each qualifying hospital that submits an application under this subparagraph by such number as the Secretary may approve for portions of cost reporting periods occurring on or after July 1, 2011. The aggregate number of increases in the otherwise applicable resident limit under this subparagraph shall be equal to the number of additional residency positions available for distribution under subparagraph (A).

23 “(C) CONSIDERATIONS IN DISTRIBUTION.—In determining for which hospitals the increase in the otherwise applicable resident

1 limit is provided under subparagraph (B), the
2 Secretary shall take into account the dem-
3 onstrated likelihood of the hospital filling the
4 positions within the first 3 cost reporting peri-
5 ods beginning on or after July 1, 2011, made
6 available under this paragraph, as determined
7 by the Secretary.

8 “(D) PRIORITY FOR CERTAIN AREAS.—

9 “(i) IN GENERAL.—In determining for
10 which hospitals the increase in the other-
11 wise applicable resident limit is provided
12 under subparagraph (B), the Secretary
13 shall give preference to hospitals located in
14 States that are in the lowest quartile of ac-
15 tive physician-to-population ratio.

16 “(ii) HOSPITALS IN OTHER STATES.—

17 In the case where the Secretary does not
18 distribute all of the positions available for
19 distribution under subparagraph (A) to
20 hospitals located in States described in
21 clause (i), the Secretary shall distribute
22 the remaining positions available to quali-
23 fying hospitals in other States.

24 “(E) APPLICATION OF PER RESIDENT
25 AMOUNTS FOR PRIMARY CARE AND NONPRI-

1 MARY CARE.—With respect to additional resi-
2 dency positions in a hospital attributable to the
3 increase provided under this paragraph, the ap-
4 proved FTE resident amounts are deemed to be
5 equal to the hospital per resident amounts for
6 primary care and nonprimary care computed
7 under paragraph (2)(D) for that hospital.

8 “(F) DEFINITIONS.—In this paragraph:

9 “(i) REFERENCE RESIDENT LEVEL.—

10 “(I) IN GENERAL.—Except as
11 otherwise provided in subclause (II),
12 the reference resident level specified in
13 this clause for a hospital is the resi-
14 dent level for the most recent cost re-
15 porting period of the hospital ending
16 on or before the date of enactment of
17 this paragraph, for which a cost re-
18 port has been settled (or, if not, sub-
19 mitted (subject to audit)), as deter-
20 mined by the Secretary.

21 “(II) USE OF MOST RECENT AC-
22 COUNTING PERIOD TO RECOGNIZE EX-
23 PANSION OF EXISTING PROGRAM OR
24 ESTABLISHMENT OF NEW PRO-
25 GRAM.—If a hospital submits a timely

1 request to increase its resident level
2 due to an expansion of an existing
3 residency training program or the es-
4 tablishment of a new residency train-
5 ing program that is not reflected on
6 the most recent cost report that has
7 been settled (or, if not, submitted
8 (subject to audit)), after audit and
9 subject to the discretion of the Sec-
10 retary, the reference resident level for
11 such hospital is the resident level for
12 the cost reporting period that includes
13 the additional residents attributable to
14 such expansion or establishment, as
15 determined by the Secretary.

16 “(ii) RESIDENT LEVEL.—The term
17 ‘resident level’ has the meaning given such
18 term in paragraph (7)(C)(i).

19 “(iii) OTHERWISE APPLICABLE RESI-
20 DENT LEVEL.—The term ‘otherwise appli-
21 cable resident limit’ means, with respect to
22 a hospital, the limit otherwise applicable
23 under subparagraphs (F)(i) and (H) of
24 paragraph (4) on the resident level for the
25 hospital determined without regard to this

1 paragraph but taking into account para-
2 graphs (7)(A) and (8)(A)”.

3 (b) IME.—

4 (1) IN GENERAL.—The second sentence of sec-
5 tion 1886(d)(5)(B)(v) of the Social Security Act (42
6 U.S.C. 1395ww(d)(5)(B)(v)) is amended to read as
7 follows: “The provisions of subsections (h)(4)(H)(vi),
8 (h)(7), (h)(8), and (h)(9) shall apply with respect to
9 the first sentence of this clause in the same manner
10 as they apply with respect to subsection
11 (h)(4)(F)(i).”.

12 (2) CONFORMING AMENDMENT.—Section
13 1886(d)(5)(B)(x) of the Social Security Act (42
14 U.S.C. 1395ww(d)(5)(B)(x)), as added by section
15 5503(b)(2) of the Patient Protection and Affordable
16 Care Act (Public Law 111–148) is redesignated as
17 clause (xi) and amended by striking “subsection
18 (h)(8)(B)” and inserting “subsection (h)(8)(B) or
19 (h)(9)(B)”.

20 (c) CONFORMING AMENDMENT.—Section 422(b)(2)
21 of the Medicare Prescription Drug, Improvement, and
22 Modernization Act of 2003 (Public Law 108–173) is
23 amended by striking “paragraphs (7) and (8)” and in-
24 serting “paragraphs (7), (8), and (9)”.