

105TH CONGRESS
2D SESSION

H. R. 3139

To amend title XVIII of the Social Security Act to stop overpayment for drugs and biologicals under the Medicare Program.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 3, 1998

Mr. BERRY (for himself, Mr. BROWN of Ohio, Mr. NEAL of Massachusetts, Mr. STARK, Mr. FILNER, Mr. LEWIS of Georgia, Ms. DELAURO, Mr. FROST, Mr. BAESLER, Mr. PETERSON of Minnesota, Mr. SANDLIN, Ms. SLAUGHTER, Mr. STENHOLM, Mr. TANNER, Mr. SCHUMER, Mr. PASCRELL, and Mr. DAVIS of Illinois) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title XVIII of the Social Security Act to stop overpayment for drugs and biologicals 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 “Stop Medicare Over-
5 payment Act of 1998”.

1 **SEC. 2. MEDICARE PAYMENT FOR DRUGS AND**
2 **BIOLOGICALS.**

3 (a) IN GENERAL.—Section 1842(o) of the Social Se-
4 curity Act (42 U.S.C. 1395u(o)), as inserted by section
5 4556(a) of the Balanced Budget Act of 1997, is amend-
6 ed—

7 (1) by redesignating paragraph (2) as para-
8 graph (4);

9 (2) in paragraph (1), by striking “95 percent of
10 the average wholesale price.” and inserting “the low-
11 est of the following:

12 “(A) The actual acquisition cost, as defined in
13 paragraph (2), to the person submitting the claim
14 for payment for the drug or biological.

15 “(B) 95 percent of the average wholesale price
16 of such drug or biological, as determined by the Sec-
17 retary.

18 “(C) For payments for drugs or biologicals fur-
19 nished on or after January 1, 2000, the median ac-
20 tual acquisition cost of all claims for payment for
21 such drugs or biologicals for the 12-month period
22 beginning July 1, 1998 (and adjusted annually, as
23 the Secretary determines appropriate, to reflect
24 changes in the cost of such drugs or biologicals due
25 to inflation and such other factors as the Secretary
26 determines appropriate).

1 “(D) The amount otherwise determined under
2 this part.

3 “(2) For purposes of paragraph (1)(A), the term ‘ac-
4 tual acquisition cost’ means, with respect to such drugs
5 or biologicals, the cost of the drugs or biologicals based
6 on the most economical case size in inventory on the date
7 of dispensing or, if less, the most economical case size pur-
8 chased within six months of the date of dispensing wheth-
9 er or not that specific drug or biological was furnished
10 to an individual whether or not enrolled under this part.
11 Such term includes appropriate adjustments, as deter-
12 mined by the Secretary, for all discounts, rebates, or any
13 other benefit in cash or in kind (including travel, equip-
14 ment, or free products). The Secretary may include an ad-
15 ditional payment for administrative, storage, and handling
16 costs.

17 “(3)(A) No payment shall be made under this part
18 for drugs or biologicals to a person whose bill or request
19 for payment for such drugs or biologicals does not include
20 a statement of the person’s actual acquisition cost.

21 “(B) A person may not bill an individual enrolled
22 under this part—

23 “(i) any amount other than the payment
24 amount specified in paragraph (1) or (4) (plus any
25 applicable deductible and coinsurance amounts), or

1 “(ii) any amount for such drugs or biologicals
2 for which payment may not be made pursuant to
3 subparagraph (A).

4 “(C) If a person knowingly and willfully in repeated
5 cases bills one or more individuals in violation of subpara-
6 graph (B), the Secretary may apply sanctions against that
7 person in accordance with subsection (j)(2).”; and

8 (3) in paragraph 4, as so redesignated in para-
9 graph (1) of this subsection, by striking “the Sec-
10 retary may pay a dispensing fee” and inserting “the
11 Secretary shall pay a dispensing fee”.

12 (b) EFFECTIVE DATE.—The amendments made by
13 subsection (a) apply to drugs and biologicals furnished on
14 or after January 1, 1998.

15 (c) CONFORMING AMENDMENT TO REPORT.—Section
16 4556(c) of the Balanced Budget Act of 1997 is amended
17 by striking “of the amendments made by subsection (a)”
18 and inserting “the application of section 1842(o) of the
19 Social Security Act”.

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