

110TH CONGRESS  
2D SESSION

# S. 3656

To preserve access to healthcare under the Medicare and Medicaid programs.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 30 (legislative day, SEPTEMBER 17), 2008

Mr. SCHUMER (for himself and Mrs. CLINTON) introduced the following bill;  
which was read twice and referred to the Committee on Finance

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## A BILL

To preserve access to healthcare under the Medicare and  
Medicaid programs.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the  
5 “Preserving Access to Healthcare (PATH) Act of 2008”.

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

Sec. 1. Short title; table of contents.

Sec. 2. Temporary non-application of Medicare phased-out indirect medical edu-  
cation adjustment factor.

Sec. 3. Delay in implementation of Medicaid outpatient hospital services regula-  
tion.

Sec. 4. Delay in phase out of the Medicare hospice budget neutrality adjust-  
ment factor.

Sec. 5. Treatment of certain Medicaid family demonstration project.

Sec. 6. Delay in implementation of certain provisions relating to Medicare rural health clinics and federally qualified health centers.

Sec. 7. Mandatory State use of National Correct Coding Initiative.

Sec. 8. Medicaid Improvement Fund technical correction.

Sec. 9. Funding for the Medicare Improvement Fund.

1 **SEC. 2. TEMPORARY NON-APPLICATION OF MEDICARE**  
 2 **PHASED-OUT INDIRECT MEDICAL EDU-**  
 3 **CATION ADJUSTMENT FACTOR.**

4 (a) IN GENERAL.—Notwithstanding any other provi-  
 5 sion of law, during the period beginning on October 1,  
 6 2008, and ending on March 31, 2009, section 412.322 of  
 7 title 42, Code of Federal Regulations, shall be applied  
 8 without regard to paragraph (c) of such section.

9 (b) NO EFFECT ON SUBSEQUENT PERIODS.—Noth-  
 10 ing in subsection (a) shall be construed as having any ef-  
 11 fect on the application of section 412.322 of title 42, Code  
 12 of Federal Regulations, after March 31, 2009.

13 **SEC. 3. DELAY IN IMPLEMENTATION OF MEDICAID OUT-**  
 14 **PATIENT HOSPITAL SERVICES REGULATION.**

15 Notwithstanding any other provision of law, during  
 16 the 6-month period that begins on the date of enactment  
 17 of this Act, the Secretary of Health and Human Services  
 18 shall not finalize or otherwise implement provisions con-  
 19 tained in the proposed rule published on September 28,  
 20 2007, on pages 55158 through 55166 of volume 72, Fed-  
 21 eral Register (relating to parts 440 and 447 of title 42,  
 22 Code of Federal Regulations).

1 **SEC. 4. DELAY IN PHASE OUT OF THE MEDICARE HOSPICE**  
2 **BUDGET NEUTRALITY ADJUSTMENT FACTOR.**

3 Notwithstanding any other provision of law, including  
4 the provisions contained in the final rule published on Au-  
5 gust 8, 2008, on pages 46464 through 46522 of volume  
6 73, Federal Register (relating to part 418 of title 42, Code  
7 of Federal Regulations), the Secretary of Health and  
8 Human Services shall not phase out or eliminate the budg-  
9 et neutrality adjustment factor in the Medicare hospice  
10 wage index prior to April 1, 2009.

11 **SEC. 5. TREATMENT OF CERTAIN MEDICAID FAMILY DEM-**  
12 **ONSTRATION PROJECT.**

13 The Secretary of Health and Human Services, acting  
14 through the Administer of the Centers for Medicare &  
15 Medicaid Services and upon the request of the State of  
16 California, shall extend approval, and full Federal finan-  
17 cial participation, of the State's Medicaid family planning  
18 demonstration project, which was approved under a waiver  
19 pursuant to section 1115 of the Social Security Act, until  
20 June 30, 2009, under the eligibility requirements and  
21 processes that were in place for such project as of the date  
22 before the first extension period for such project.

1 **SEC. 6. DELAY IN IMPLEMENTATION OF CERTAIN PROVI-**  
2 **SIONS RELATING TO MEDICARE RURAL**  
3 **HEALTH CLINICS AND FEDERALLY QUALI-**  
4 **FIED HEALTH CENTERS.**

5 Notwithstanding any other provision of law, the Sec-  
6 retary of Health and Human Services shall not, prior to  
7 April 1, 2009, take any action (through promulgation of  
8 regulation, issuance of regulatory guidance, or other ad-  
9 ministrative action) to—

10 (1) finalize or otherwise implement provisions  
11 contained in the proposed rule published on June  
12 27, 2008, on pages 36696 through 36719 of volume  
13 73, Federal Register, that relate to—

14 (A) decertifying rural health clinics under  
15 the Medicare program under title XVIII of the  
16 Social Security Act that are determined to no  
17 longer be in nonurbanized areas; and

18 (B) changes in the payment methodology  
19 for rural health clinics and federally qualified  
20 health centers under the Medicare program as  
21 described in sections 405.2410 and  
22 405.2466(b)(1)(iii) of title 42, Code of Federal  
23 Regulations; or

24 (2) promulgate or implement any rule or provi-  
25 sions similar to the provisions described in para-  
26 graph (1).

1 **SEC. 7. MANDATORY STATE USE OF NATIONAL CORRECT**  
2 **CODING INITIATIVE.**

3 (a) IN GENERAL.—Section 1903(r) of the Social Se-  
4 curity Act (42 U.S.C. 1396b(r)) is amended—

5 (1) in paragraph (1)(B)—

6 (A) in clause (ii), by striking “and” at the  
7 end;

8 (B) in clause (iii), by adding “and” after  
9 the semicolon; and

10 (C) by adding at the end the following new  
11 clause:

12 “(iv) effective for claims filed on or  
13 after October 1, 2009, incorporate compat-  
14 ible methodologies of the National Correct  
15 Coding Initiative administered by the Sec-  
16 retary (or any successor initiative to pro-  
17 mote correct coding and to control im-  
18 proper coding leading to inappropriate pay-  
19 ment) and such other methodologies of  
20 that Initiative (or such other national cor-  
21 rect coding methodologies) as the Sec-  
22 retary identifies in accordance with para-  
23 graph (3);” and

24 (2) by adding at the end the following new  
25 paragraph:

1       “(3) Not later than September 1, 2009, the Secretary  
2 shall do the following:

3           “(A) Identify those methodologies of the Na-  
4 tional Correct Coding Initiative administered by the  
5 Secretary (or any successor initiative to promote cor-  
6 rect coding and to control improper coding leading  
7 to inappropriate payment) which are compatible to  
8 claims filed under this title.

9           “(B) Identify those methodologies of such Ini-  
10 tiative (or such other national correct coding meth-  
11 odologies) that should be incorporated into claims  
12 filed under this title with respect to items or services  
13 for which States provide medical assistance under  
14 this title and no national correct coding methodolo-  
15 gies have been established under such Initiative with  
16 respect to title XVIII.

17           “(C) Notify States of—

18           “(i) the methodologies identified under  
19 subparagraphs (A) and (B) (and of any other  
20 national correct coding methodologies identified  
21 under subparagraph (B)); and

22           “(ii) how States are to incorporate such  
23 methodologies into claims filed under this title.

24           “(D) Submit a report to Congress that includes  
25 the notice to States under subparagraph (C) and an

1 analysis supporting the identification of the meth-  
2 odologies made under subparagraphs (A) and (B).”.

3 (b) **EXTENSION FOR STATE LAW AMENDMENT.**—In  
4 the case of a State plan under title XIX of the Social Se-  
5 curity Act (42 U.S.C. 1396 et seq.) which the Secretary  
6 of Health and Human Services determines requires State  
7 legislation in order for the plan to meet the additional re-  
8 quirements imposed by the amendment made by sub-  
9 section (a)(1)(C), the State plan shall not be regarded as  
10 failing to comply with the requirements of such title solely  
11 on the basis of its failure to meet these additional require-  
12 ments before the first day of the first calendar quarter  
13 beginning after the close of the first regular session of the  
14 State legislature that begins after the date of enactment  
15 of this Act. For purposes of the previous sentence, in the  
16 case of a State that has a 2-year legislative session, each  
17 year of the session is considered to be a separate regular  
18 session of the State legislature.

19 **SEC. 8. MEDICAID IMPROVEMENT FUND TECHNICAL COR-**  
20 **RECTION.**

21 (a) **IN GENERAL.**—Section 1941(b)(1)(B) of the So-  
22 cial Security Act, as added by section 7002(b) of the Sup-  
23 plemental Appropriations Act, 2008, is amended by insert-  
24 ing “each of” after “for”.

1 (b) EFFECTIVE DATE.—The amendment made by  
2 subsection (a) shall take effect as if included in the enact-  
3 ment of the Supplemental Appropriations Act, 2008 (Pub-  
4 lic Law 110–252).

5 **SEC. 9. FUNDING FOR THE MEDICARE IMPROVEMENT**  
6 **FUND.**

7 Section 1898(b)(1) of the Social Security Act, as  
8 added by section 7002(a) of the Supplemental Appropria-  
9 tions Act, 2008 (Public Law 110–252) and as amended  
10 by section 188(a)(2) of the Medicare Improvements for  
11 Patients and Providers Act of 2008 (Public Law 110–275)  
12 and by section 6 of the QI Program Supplemental Fund-  
13 ing Act of 2008, is amended by striking “\$2,290,000,000”  
14 and inserting “\$2,590,000,000”.

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