

111TH CONGRESS  
1ST SESSION

# S. 2838

To give critical access hospitals priority in receiving grants to implement health information technology, to expand participation in the drug pricing agreement program under section 340B of the Public Health Service Act, to provide for a study and report on pharmacy dispensing fees under Medicaid, to provide for continuing funding for operation of State offices of rural health, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

DECEMBER 4, 2009

Mr. BENNET introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To give critical access hospitals priority in receiving grants to implement health information technology, to expand participation in the drug pricing agreement program under section 340B of the Public Health Service Act, to provide for a study and report on pharmacy dispensing fees under Medicaid, to provide for continuing funding for operation of State offices of rural health, 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.**

2 This Act may be cited as the “Rural Health Access  
3 and Improvement Act of 2009”.

4 **SEC. 2. GRANTS TO PROMOTE HOSPITAL HEALTH INFOR-**  
5 **MATION TECHNOLOGY.**

6 Section 3013 of the Public Health Service Act (42  
7 U.S.C. 300jj–33) is amended by adding at the end the  
8 following:

9 “(j) PRIORITY.—In awarding a grant under this sec-  
10 tion, the Secretary shall give priority to qualified State-  
11 designated entities that are critical access hospitals, as de-  
12 fined in section 1861(mm) of the Social Security Act.”.

13 **SEC. 3. EXPANDED PARTICIPATION IN SECTION 340B PRO-**  
14 **GRAM.**

15 Section 340B(a)(4) of the Public Health Service Act  
16 (42 U.S.C. 256b(a)(4)) is amended by adding at the end  
17 the following:

18 “(M) A children’s hospital excluded from  
19 the Medicare prospective payment system pur-  
20 suant to section 1886(d)(1)(B)(iii) of the Social  
21 Security Act, or a free-standing cancer hospital  
22 excluded from the Medicare prospective pay-  
23 ment system pursuant to section  
24 1886(d)(1)(B)(v) of the Social Security Act,  
25 that would meet the requirements of subpara-  
26 graph (L), including the disproportionate share

1 adjustment percentage requirement under  
2 clause (ii) of such subparagraph, if the hospital  
3 were a subsection (d) hospital as defined by sec-  
4 tion 1886(d)(1)(B) of the Social Security Act.

5 “(N) An entity that is a critical access hos-  
6 pital (as determined under section 1820(c)(2)  
7 of the Social Security Act), and that meets the  
8 requirements of subparagraph (L)(i).

9 “(O) An entity that is a rural referral cen-  
10 ter, as defined in section 1886(d)(5)(C)(i) of  
11 the Social Security Act, or a sole community  
12 hospital, as defined by section  
13 1886(d)(5)(C)(iii) of such Act, and that both  
14 meets the requirements of subparagraph (L)(i)  
15 and has a disproportionate share adjustment  
16 percentage equal to or greater than 8 percent.

17 “(P) An entity that is a rural health clinic,  
18 as defined in section 1861(aa)(2) of the Social  
19 Security Act.”.

20 **SEC. 4. GAO STUDY AND REPORT ON DISPENSING FEES.**

21 (a) STUDY.—The Comptroller General of the United  
22 States shall conduct a study of the cost in each State of  
23 dispensing prescription drugs under the Medicaid program  
24 under title XIX of the Social Security Act (42 U.S.C.  
25 1396a et seq.), which shall consider—

1           (1) any reasonable costs associated with phar-  
2           macists—

3                   (A) checking for information regarding  
4           Medicaid coverage of individuals; and

5                   (B) performing necessary clinical review  
6           and quality assurance activities, such as—

7                           (i) activities to identify and reduce the  
8                           frequency of patterns of fraud, abuse,  
9                           gross overuse, and inappropriate or medi-  
10                          cally unnecessary care among physicians,  
11                          pharmacists, and patients;

12                           (ii) activities associated with specific  
13                          drugs or groups of drugs, including poten-  
14                          tial and actual severe adverse reactions to  
15                          drugs, including education on therapeutic  
16                          appropriateness, over-utilization and  
17                          under-utilization of drugs, appropriate use  
18                          of generic products, therapeutic duplica-  
19                          tion, drug-disease contraindications, drug  
20                          interactions, incorrect drug dosage or du-  
21                          ration of drug treatment, drug-allergy  
22                          interactions, and clinical abuse or misuse;  
23                          and

1 (iii) any other clinical review and  
2 quality assurance activities required under  
3 Federal or State law;

4 (2) the costs incurred by a pharmacy that are  
5 associated with—

6 (A) the measurement or mixing of a drug  
7 covered by Medicaid;

8 (B) filling the container for such a drug;

9 (C) physically transferring the prescription  
10 to the patient, including any costs of delivering  
11 the medication to the home of such patient;

12 (D) special packaging of drugs;

13 (E) overhead costs of the pharmacy, or the  
14 section of the facility that is devoted to a phar-  
15 macy, and maintenance of the pharmacy or sec-  
16 tion of the facility (including the equipment  
17 necessary to operate such pharmacy or such  
18 section and the salaries of pharmacists and  
19 other pharmacy workers);

20 (F) geographic factors that impact oper-  
21 ational costs;

22 (G) compounding such prescription if nec-  
23 essary; and

24 (H) uncollectability of Medicaid prescrip-  
25 tion copayments;

1           (3) the variation in costs described in para-  
2 graph (2) based on—

3           (A) whether a product dispensed is a rural  
4 or urban pharmacy;

5           (B) whether the product dispensed is a  
6 specialty pharmacy product; and

7           (C) whether the pharmacy is located in, or  
8 contracts with, a long-term care facility; and

9           (4) the increase in dispensing fees, including  
10 the costs described in paragraphs (1), (2), and (3),  
11 that would be sufficient to create an incentive for a  
12 pharmacist to promote the substitution of covered  
13 general alternative therapies.

14       (b) REPORT.—Not later than December 1, 2010, the  
15 Comptroller General of the United States shall submit to  
16 the Secretary of Health and Human Services and to each  
17 State a report describing the study conducted under sub-  
18 section (a). The report shall include—

19           (1) the average cost in each State of dispensing  
20 a prescription drug under Medicaid;

21           (2) the findings of the study conducted under  
22 subsection (a) with respect to—

23           (A) the variation in costs studied under  
24 subparagraphs (A) and (B) of paragraph (3) of  
25 such subsection; and

1 (B) the increase in dispensing fees de-  
2 scribed in paragraph (4) of such subsection.

3 (c) USE OF STUDY.—Each State shall use the report  
4 described in subsection (b) to assess the adequacy of Med-  
5 icaid pharmacy dispensing fees. The Secretary of Health  
6 and Human Services shall use such report to approve  
7 State plan amendments for States that submit such  
8 amendments for the purposes of increasing Medicaid phar-  
9 macy dispensing fees.

10 **SEC. 5. STATE OFFICES OF RURAL HEALTH.**

11 Section 338J of the Public Health Service Act (42  
12 U.S.C. 254r) is amended by striking subsection (k).

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