

111TH CONGRESS  
1ST SESSION

# H. R. 3961

To amend title XVIII of the Social Security Act to reform the Medicare SGR payment system for physicians.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 29, 2009

Mr. DINGELL (for himself, Mr. RANGEL, Mr. WAXMAN, Mr. GEORGE MILLER of California, Mr. STARK, Mr. PALLONE, and Mr. ANDREWS) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, 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

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## A BILL

To amend title XVIII of the Social Security Act to reform the Medicare SGR payment system for physicians.

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 Physician  
5 Payment Reform Act of 2009”.

6 **SEC. 2. MEDICARE SUSTAINABLE GROWTH RATE REFORM.**

7 (a) **TRANSITIONAL UPDATE FOR 2010.**—Section  
8 1848(d) of the Social Security Act (42 U.S.C. 1395w–

1 4(d)) is amended by adding at the end the following new  
2 paragraph:

3 “(10) UPDATE FOR 2010.—The update to the  
4 single conversion factor established in paragraph  
5 (1)(C) for 2010 shall be the percentage increase in  
6 the MEI (as defined in section 1842(i)(3)) for that  
7 year.”.

8 (b) REBASING SGR USING 2009; LIMITATION ON  
9 CUMULATIVE ADJUSTMENT PERIOD.—Section 1848(d)(4)  
10 of such Act (42 U.S.C. 1395w-4(d)(4)) is amended—

11 (1) in subparagraph (B), by striking “subpara-  
12 graph (D)” and inserting “subparagraphs (D) and  
13 (G)”; and

14 (2) by adding at the end the following new sub-  
15 paragraph:

16 “(G) REBASING USING 2009 FOR FUTURE  
17 UPDATE ADJUSTMENTS.—In determining the  
18 update adjustment factor under subparagraph  
19 (B) for 2011 and subsequent years—

20 “(i) the allowed expenditures for 2009  
21 shall be equal to the amount of the actual  
22 expenditures for physicians’ services during  
23 2009; and

24 “(ii) the reference in subparagraph  
25 (B)(ii)(I) to ‘April 1, 1996’ shall be treat-

1 ed as a reference to ‘January 1, 2009 (or,  
2 if later, the first day of the fifth year be-  
3 fore the year involved)’.”.

4 (c) LIMITATION ON PHYSICIANS’ SERVICES IN-  
5 CLUDED IN TARGET GROWTH RATE COMPUTATION TO  
6 SERVICES COVERED UNDER PHYSICIAN FEE SCHED-  
7 ULE.—Effective for services furnished on or after January  
8 1, 2009, section 1848(f)(4)(A) of such Act is amended by  
9 striking “(such as clinical” and all that follows through  
10 “in a physician’s office” and inserting “for which payment  
11 under this part is made under the fee schedule under this  
12 section, for services for practitioners described in section  
13 1842(b)(18)(C) on a basis related to such fee schedule,  
14 or for services described in section 1861(p) (other than  
15 such services when furnished in the facility of a provider  
16 of services)”.

17 (d) ESTABLISHMENT OF SEPARATE TARGET  
18 GROWTH RATES FOR CATEGORIES OF SERVICES.—

19 (1) ESTABLISHMENT OF SERVICE CAT-  
20 EGORIES.—Subsection (j) of section 1848 of the So-  
21 cial Security Act (42 U.S.C. 1395w-4) is amended  
22 by adding at the end the following new paragraph:

23 “(5) SERVICE CATEGORIES.—For services fur-  
24 nished on or after January 1, 2009, each of the fol-  
25 lowing categories of physicians’ services (as defined

1 in paragraph (3)) shall be treated as a separate  
2 ‘service category’:

3 “(A) Evaluation and management services  
4 that are procedure codes (for services covered  
5 under this title) for—

6 “(i) services in the category des-  
7 igned Evaluation and Management in the  
8 Health Care Common Procedure Coding  
9 System (established by the Secretary under  
10 subsection (c)(5) as of December 31, 2009,  
11 and as subsequently modified by the Sec-  
12 retary); and

13 “(ii) preventive services (as defined in  
14 section 1861(iii)) for which payment is  
15 made under this section.

16 “(B) All other services not described in  
17 subparagraph (A).

18 Service categories established under this paragraph  
19 shall apply without regard to the specialty of the  
20 physician furnishing the service.”.

21 (2) ESTABLISHMENT OF SEPARATE CONVER-  
22 SION FACTORS FOR EACH SERVICE CATEGORY.—  
23 Subsection (d)(1) of section 1848 of the Social Secu-  
24 rity Act (42 U.S.C. 1395w-4) is amended—

25 (A) in subparagraph (A)—

1 (i) by designating the sentence begin-  
2 ning “The conversion factor” as clause (i)  
3 with the heading “APPLICATION OF SIN-  
4 GLE CONVERSION FACTOR.—” and with  
5 appropriate indentation;

6 (ii) by striking “The conversion fac-  
7 tor” and inserting “Subject to clause (ii),  
8 the conversion factor”; and

9 (iii) by adding at the end the fol-  
10 lowing new clause:

11 “(ii) APPLICATION OF MULTIPLE CON-  
12 VERSION FACTORS BEGINNING WITH  
13 2011.—

14 “(I) IN GENERAL.—In applying  
15 clause (i) for years beginning with  
16 2011, separate conversion factors  
17 shall be established for each service  
18 category of physicians’ services (as de-  
19 fined in subsection (j)(5)) and any  
20 reference in this section to a conver-  
21 sion factor for such years shall be  
22 deemed to be a reference to the con-  
23 version factor for each of such cat-  
24 egories.

1                   “(II) INITIAL CONVERSION FAC-  
2                   TORS.—Such factors for 2011 shall be  
3                   based upon the single conversion fac-  
4                   tor for the previous year multiplied by  
5                   the update established under para-  
6                   graph (11) for such category for  
7                   2011.

8                   “(III) UPDATING OF CONVER-  
9                   SION FACTORS.—Such factor for a  
10                  service category for a subsequent year  
11                  shall be based upon the conversion  
12                  factor for such category for the pre-  
13                  vious year and adjusted by the update  
14                  established for such category under  
15                  paragraph (11) for the year in-  
16                  volved.”; and

17                  (B) in subparagraph (D), by striking  
18                  “other physicians’ services” and inserting “for  
19                  physicians’ services described in the service cat-  
20                  egory described in subsection (j)(5)(B)”.

21                  (3) ESTABLISHING UPDATES FOR CONVERSION  
22                  FACTORS FOR SERVICE CATEGORIES.—Section  
23                  1848(d) of the Social Security Act (42 U.S.C.  
24                  1395w-4(d)), as amended by subsection (a), is  
25                  amended—

1 (A) in paragraph (4)(C)(iii), by striking  
2 “The allowed” and inserting “Subject to para-  
3 graph (11)(B), the allowed”; and

4 (B) by adding at the end the following new  
5 paragraph:

6 “(11) UPDATES FOR SERVICE CATEGORIES BE-  
7 GINNING WITH 2011.—

8 “(A) IN GENERAL.—In applying paragraph  
9 (4) for a year beginning with 2011, the fol-  
10 lowing rules apply:

11 “(i) APPLICATION OF SEPARATE UP-  
12 DATE ADJUSTMENTS FOR EACH SERVICE  
13 CATEGORY.—Pursuant to paragraph  
14 (1)(A)(ii)(I), the update shall be made to  
15 the conversion factor for each service cat-  
16 egory (as defined in subsection (j)(5))  
17 based upon an update adjustment factor  
18 for the respective category and year and  
19 the update adjustment factor shall be com-  
20 puted, for a year, separately for each serv-  
21 ice category.

22 “(ii) COMPUTATION OF ALLOWED AND  
23 ACTUAL EXPENDITURES BASED ON SERV-  
24 ICE CATEGORIES.—In computing the prior  
25 year adjustment component and the cumu-

1           relative adjustment component under clauses  
2           (i) and (ii) of paragraph (4)(B), the fol-  
3           lowing rules apply:

4                   “(I) APPLICATION BASED ON  
5                   SERVICE CATEGORIES.—The allowed  
6                   expenditures and actual expenditures  
7                   shall be the allowed and actual ex-  
8                   penditures for the service category, as  
9                   determined under subparagraph (B).

10                   “(II) APPLICATION OF CATEGORY  
11                   SPECIFIC TARGET GROWTH RATE.—  
12                   The growth rate applied under clause  
13                   (ii)(II) of such paragraph shall be the  
14                   target growth rate for the service cat-  
15                   egory involved under subsection (f)(5).

16                   “(B) DETERMINATION OF ALLOWED EX-  
17                   PENDITURES.—In applying paragraph (4) for a  
18                   year beginning with 2010, notwithstanding sub-  
19                   paragraph (C)(iii) of such paragraph, the al-  
20                   lowed expenditures for a service category for a  
21                   year is an amount computed by the Secretary  
22                   as follows:

23                   “(i) FOR 2010.—For 2010:

24                           “(I) TOTAL 2009 ACTUAL EX-  
25                           PENDITURES FOR ALL SERVICES IN-



1 CLUDED IN SGR COMPUTATION FOR  
2 EACH SERVICE CATEGORY.—Compute  
3 total actual expenditures for physi-  
4 cians’ services (as defined in sub-  
5 section (f)(4)(A)) for 2009 for each  
6 service category.

7 “(II) INCREASE BY GROWTH  
8 RATE TO OBTAIN 2010 ALLOWED EX-  
9 PENDITURES FOR SERVICE CAT-  
10 EGORY.—Compute allowed expendi-  
11 tures for the service category for 2010  
12 by increasing the allowed expenditures  
13 for the service category for 2009 com-  
14 puted under subclause (I) by the tar-  
15 get growth rate for such service cat-  
16 egory under subsection (f) for 2010.

17 “(ii) FOR SUBSEQUENT YEARS.—For  
18 a subsequent year, take the amount of al-  
19 lowed expenditures for such category for  
20 the preceding year (under clause (i) or this  
21 clause) and increase it by the target  
22 growth rate determined under subsection  
23 (f) for such category and year.”.

24 (4) APPLICATION OF SEPARATE TARGET  
25 GROWTH RATES FOR EACH CATEGORY.—

1           (A) IN GENERAL.—Section 1848(f) of the  
2           Social Security Act (42 U.S.C. 1395w-4(f)) is  
3           amended by adding at the end the following  
4           new paragraph:

5           “(5) APPLICATION OF SEPARATE TARGET  
6           GROWTH RATES FOR EACH SERVICE CATEGORY BE-  
7           GINNING WITH 2010.—The target growth rate for a  
8           year beginning with 2010 shall be computed and ap-  
9           plied separately under this subsection for each serv-  
10          ice category (as defined in subsection (j)(5)) and  
11          shall be computed using the same method for com-  
12          puting the target growth rate except that the factor  
13          described in paragraph (2)(C) for—

14                 “(A) the service category described in sub-  
15                 section (j)(5)(A) shall be increased by 0.02; and

16                 “(B) the service category described in sub-  
17                 section (j)(5)(B) shall be increased by 0.01.”.

18           (B) USE OF TARGET GROWTH RATES.—  
19           Section 1848 of such Act is further amended—

20                 (i) in subsection (d)—

21                         (I) in paragraph (1)(E)(ii), by in-  
22                         serting “or target” after “sustain-  
23                         able”; and

1 (II) in paragraph (4)(B)(ii)(II),  
2 by inserting “or target” after “sus-  
3 tainable”;

4 (ii) in the heading of subsection (f),  
5 by inserting “AND TARGET GROWTH  
6 RATE” after “SUSTAINABLE GROWTH  
7 RATE”;

8 (iii) in subsection (f)(1)—

9 (I) by striking “and” at the end  
10 of subparagraph (A);

11 (II) in subparagraph (B), by in-  
12 serting “before 2010” after “each  
13 succeeding year” and by striking the  
14 period at the end and inserting “;  
15 and”;

16 (III) by adding at the end the  
17 following new subparagraph:

18 “(C) November 1 of each succeeding year  
19 the target growth rate for such succeeding year  
20 and each of the 2 preceding years.”; and

21 (iv) in subsection (f)(2), in the matter  
22 before subparagraph (A), by inserting after  
23 “beginning with 2000” the following: “and  
24 ending with 2009”.

1           (e) APPLICATION TO HEALTH CARE GROUP DEM-  
2 ONSTRATION PROGRAM AND SUCCESSOR ACCOUNTABLE  
3 CARE ORGANIZATION PILOT PROGRAM.—In applying the  
4 target growth rate under subsections (d) and (f) of section  
5 1848 of the Social Security Act to services furnished by  
6 a practitioner to beneficiaries who are attributable to a  
7 health care group under the demonstration program pro-  
8 vided under section 1886A of such Act (or to an account-  
9 able care organization under a pilot program that is a  
10 successor to such demonstration program under a section  
11 of such Act), the Secretary of Health and Human Services  
12 shall develop, not later than January 1, 2012, for applica-  
13 tion beginning with 2012, a method that—

14           (1) allows each such group or organization to  
15       have its own expenditure targets and updates for  
16       such practitioners, with respect to beneficiaries who  
17       are attributable to that group or organization, that  
18       are consistent with the methodologies described in  
19       such subsection (f); and

20           (2) provides that the target growth rate appli-  
21       cable to other physicians shall not apply to such  
22       physicians to the extent that the physicians' services  
23       are furnished through the group or organization.

24 In applying paragraph (1), the Secretary of Health and  
25 Human Services may apply the difference in the update

- 1 under such paragraph on a claim-by-claim or lump sum
- 2 basis and such a payment shall be taken into account
- 3 under the demonstration or pilot program.

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