

106TH CONGRESS
2D SESSION

S. _____

IN THE SENATE OF THE UNITED STATES

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

A BILL

To require the Secretary of Health and Human Services to apply aggregate upper payment limits to non-State publicly owned or operated facilities under the medicaid 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 “Medicaid Protection
5 Act”.

1 **SEC. 2. APPLICATION OF AGGREGATE UPPER PAYMENT**
2 **LIMITS TO NON-STATE PUBLICLY OWNED OR**
3 **OPERATED FACILITIES.**

4 (a) ISSUANCE OF FINAL REGULATION.—Not later
5 than 30 days after the date of enactment of this Act, the
6 Secretary of Health and Human Services (in this section
7 referred to as the “Secretary”), notwithstanding any re-
8 quirement of the Administrative Procedures Act under
9 chapter 5 of title 5, United States Code, or any other pro-
10 vision of law, shall issue a final regulation that provides
11 as follows (in addition to any other limitations established
12 under part 447 of title 42, Code of Federal Regulations):

13 (1) APPLICATION OF UPPER PAYMENT LIM-
14 ITS.—Except as provided in paragraph (3), aggre-
15 gate payments to each group of non-State publicly
16 owned or operated facilities described in paragraph
17 (2) under the medicaid program under title XIX of
18 the Social Security Act (42 U.S.C. 1396 et seq.) (in
19 this section referred to as the “medicaid program”)
20 may not exceed the amount that can reasonably be
21 estimated would have been paid under medicare rea-
22 sonable cost payment principles under title XVIII of
23 such Act (42 U.S.C. 1395 et seq.).

24 (2) GROUPS DESCRIBED.—For purposes of this
25 subsection, each of the following is a group of facili-
26 ties:

1 (A) Hospitals with respect to their provi-
2 sion of inpatient hospital services (as such
3 terms are used for purposes of the medicaid
4 program).

5 (B) Hospitals with respect to their provi-
6 sion of outpatient hospital services (as so used).

7 (C) Nursing facilities (as so used).

8 (D) Intermediate care facilities for the
9 mentally retarded (as so used).

10 (3) DISPROPORTIONATE SHARE.—The upper
11 payment limitation established under paragraph (1)
12 does not apply to payment adjustments made under
13 a State plan to hospitals found to serve a dispro-
14 portionate number of low-income patients with special
15 needs as provided in section 1923 of the Social Se-
16 curity Act (42 U.S.C.1396r-4).

17 (4) IMMEDIATE APPLICATION.—Except as pro-
18 vided in paragraph (5), the regulation is effective
19 upon publication, applies to services furnished on or
20 after that date, and requires States to immediately
21 apply payment rates under the medicaid program to
22 each group of non-State publicly owned or operated
23 facilities described in paragraph (2) in compliance
24 with the regulation.

1 (5) TRANSITION PERIOD FOR PRIOR APPROVED
2 AMENDMENTS.—In the case of any State plan
3 amendment under the medicaid program that, as of
4 the date of enactment of this section, has been ap-
5 proved on a basis other than a deemed approval
6 basis as a result of an expired deadline for approval
7 by the Secretary, and that provides for payments
8 that are in excess of the payment limitation estab-
9 lished under the regulation, the regulation provides
10 that a State shall be considered to be in compliance
11 with the regulation so long as the State makes spe-
12 cific payment reductions on a timeline specified in
13 the regulation so that, for any period (or portion of
14 a period) that occurs on or after October 1, 2002,
15 payments made by the State under the medicaid
16 program comply with the regulation.

17 (b) DISAPPROVAL OF PLAN AMENDMENTS.—Upon
18 the publication of the final regulation under subsection
19 (a), the Secretary shall disapprove any pending proposed
20 State plan amendment under the medicaid program inso-
21 far as such amendment would permit payments under the
22 medicaid program in excess of payments permitted under
23 the final regulation required under subsection (a).