

110TH CONGRESS  
2D SESSION

# S. 2962

To amend title XVIII of the Social Security Act to improve the provision of items and services provided to Medicare beneficiaries residing in States with more cost-effective health care delivery systems.

---

IN THE SENATE OF THE UNITED STATES

MAY 1, 2008

Mrs. MURRAY (for herself and Ms. CANTWELL) introduced the following bill;  
which was read twice and referred to the Committee on Finance

---

## A BILL

To amend title XVIII of the Social Security Act to improve the provision of items and services provided to Medicare beneficiaries residing in States with more cost-effective health care delivery systems.

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 “MediFair Act of  
5       2008”.

6       **SEC. 2. FINDINGS.**

7       Congress makes the following findings:

1           (1) Regional inequities in Medicare reimburse-  
2           ment have created barriers to care for seniors and  
3           the disabled.

4           (2) The regional inequities in Medicare reim-  
5           bursement penalize States that have cost-effective  
6           health care delivery systems and reward those States  
7           with high utilization rates and that provide ineffi-  
8           cient care.

9           (3) Comparatively, in 2003, per capita spending  
10          under traditional Medicare was \$5,661 for bene-  
11          ficiaries in Seattle, \$9,752 for those in Los Angeles,  
12          and \$11,340 for those in Miami.

13          (4) Over a lifetime, regional inequities can  
14          mean as much as a \$125,000 difference in the cost  
15          of care provided per beneficiary.

16          (5) Regional inequities have resulted in creating  
17          very different Medicare programs and amount of  
18          care received for seniors and the disabled based on  
19          where they live.

20          (6) Because the Medicare Advantage rate is  
21          based on the fee-for-service reimbursement rate, re-  
22          gional inequities have allowed some Medicare bene-  
23          ficiaries access to plans with significantly more bene-  
24          fits and reduced cost sharing. Beneficiaries in States  
25          with lower reimbursement rates have not benefitted

1 to the same degree as beneficiaries in other parts of  
2 the country.

3 (7) Regional inequities in Medicare reimburse-  
4 ment have created an unfair competitive advantage  
5 for hospitals and other health care providers in  
6 States that receive above average payments. Higher  
7 payments mean that those providers can pay higher  
8 salaries in a tight, competitive market.

9 (8) Regional inequities in Medicare reimburse-  
10 ment are not just a rural versus urban problem.  
11 Many States with large urban centers are at the bot-  
12 tom of the national average for per beneficiary costs.

13 **SEC. 3. IMPROVING FAIRNESS OF PAYMENTS TO PRO-**  
14 **VIDERS UNDER THE MEDICARE FEE-FOR-**  
15 **SERVICE PROGRAM.**

16 Title XVIII of the Social Security Act (42 U.S.C.  
17 1395 et seq.) is amended by adding at the end the fol-  
18 lowing new section:

19 “IMPROVING PAYMENT EQUITY UNDER THE ORIGINAL  
20 MEDICARE FEE-FOR-SERVICE PROGRAM

21 “SEC. 1898. (a) ESTABLISHMENT OF SYSTEM.—Not-  
22 withstanding any other provision of law, the Secretary  
23 shall establish a system for making adjustments to the  
24 amount of payment made to entities and individuals for  
25 items and services provided under the original Medicare  
26 fee-for-service program under parts A and B.

1 “(b) SYSTEM REQUIREMENTS.—

2 “(1) INCREASE FOR STATES BELOW THE NA-  
3 TIONAL AVERAGE.—Under the system established  
4 under subsection (a), if a State average per bene-  
5 ficiary amount for a year is less than the national  
6 average per beneficiary amount for such year, then  
7 the Secretary (beginning in 2009) shall increase the  
8 amount of applicable payments in such a manner as  
9 will result (as estimated by the Secretary) in the  
10 State average per beneficiary amount for the subse-  
11 quent year being equal to the national average per  
12 beneficiary amount for such subsequent year.

13 “(2) REDUCTION FOR CERTAIN STATES ABOVE  
14 THE NATIONAL AVERAGE TO ENHANCE QUALITY  
15 CARE AND MAINTAIN BUDGET NEUTRALITY.—

16 “(A) IN GENERAL.—The Secretary shall  
17 ensure that the increase in payments under  
18 paragraph (1) does not cause the estimated  
19 amount of expenditures under this title for a  
20 year to increase or decrease from the estimated  
21 amount of expenditures under this title that  
22 would have been made in such year if this sec-  
23 tion had not been enacted by reducing the  
24 amount of applicable payments in each State  
25 that the Secretary determines has—

1           “(i) a State average per beneficiary  
2           amount for a year that is greater than the  
3           national average per beneficiary amount  
4           for such year; and

5           “(ii) healthy outcome measurements  
6           or quality care measurements that indicate  
7           that a reduction in applicable payments  
8           would encourage more efficient use of, and  
9           reduce overuse of, items and services for  
10          which payment is made under this title.

11          “(B) LIMITATION.—The Secretary shall  
12          not reduce applicable payments under subpara-  
13          graph (A) to a State that—

14               “(i) has a State average per bene-  
15               ficiary amount for a year that is greater  
16               than the national average per beneficiary  
17               amount for such year; and

18               “(ii) has healthy outcome measure-  
19               ments or quality care measurements that  
20               indicate that the applicable payments are  
21               being used to improve the access of bene-  
22               ficiaries to quality care.

23          “(3) DETERMINATION OF AVERAGES.—

24               “(A) STATE AVERAGE PER BENEFICIARY  
25          AMOUNT.—Each year (beginning in 2008), the

1 Secretary shall determine a State average per  
2 beneficiary amount for each State which shall  
3 be equal to the Secretary's estimate of the aver-  
4 age amount of expenditures under the original  
5 Medicare fee-for-service program under parts A  
6 and B for the year for a beneficiary enrolled  
7 under such parts that resides in the State.

8 “(B) NATIONAL AVERAGE PER BENE-  
9 FICIARY AMOUNT.—Each year (beginning in  
10 2008), the Secretary shall determine the na-  
11 tional average per beneficiary amount which  
12 shall be equal to the average of the State aver-  
13 age per beneficiary amount determined under  
14 subparagraph (A) for the year.

15 “(4) DEFINITIONS.—In this section:

16 “(A) APPLICABLE PAYMENTS.—The term  
17 ‘applicable payments’ means payments made to  
18 entities and individuals for items and services  
19 provided under the original Medicare fee-for-  
20 service program under parts A and B to bene-  
21 ficiaries enrolled under such parts that reside in  
22 the State.

23 “(B) STATE.—The term ‘State’ has the  
24 meaning given such term in section 210(h).

1       “(c) **BENEFICIARIES HELD HARMLESS.**—The provi-  
2 sions of this section shall not affect—

3               “(1) the entitlement to items and services of a  
4 beneficiary under this title, including the scope of  
5 such items and services; or

6               “(2) any liability of the beneficiary with respect  
7 to such items and services.

8       “(d) **REGULATIONS.**—

9               “(1) **IN GENERAL.**—The Secretary, in consulta-  
10 tion with the Medicare Payment Advisory Commis-  
11 sion, shall promulgate regulations to carry out this  
12 section.

13               “(2) **PROTECTING RURAL COMMUNITIES.**—In  
14 promulgating the regulations pursuant to paragraph  
15 (1), the Secretary shall give special consideration to  
16 rural areas.”.

17 **SEC. 4. MEDPAC RECOMMENDATIONS ON HEALTHY OUT-**  
18 **COMES AND QUALITY CARE.**

19       (a) **RECOMMENDATIONS.**—The Medicare Payment  
20 Advisory Commission established under section 1805 of  
21 the Social Security Act (42 U.S.C. 1395b–6) shall develop  
22 recommendations on policies and practices that, if imple-  
23 mented, would encourage—

24               (1) healthy outcomes and quality care under the  
25 Medicare program in States with respect to which

1 payments are reduced under section 1898(b)(2) of  
2 such Act (as added by section 3); and

3 (2) the efficient use of payments made under  
4 the Medicare program in such States.

5 (b) SUBMISSION.—Not later than the date that is 9  
6 months after the date of enactment of this Act, the Com-  
7 mission shall submit to Congress the recommendations de-  
8 veloped under subsection (a).

○