

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—111th Cong., 2d Sess.

H. R. 4994

To amend the Internal Revenue Code of 1986 to reduce taxpayer burdens and enhance taxpayer protections, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT In the Nature of a Substitute intended to be
proposed by Mr. REID (for himself, Mr. McCONNELL,
Mr. BAUCUS, and Mr. GRASSLEY)

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Medicare and Medicaid Extenders Act of 2010”.

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

Sec. 1. Short title; table of contents.

TITLE I—EXTENSIONS

Sec. 101. Physician payment update.

Sec. 102. Extension of MMA section 508 reclassifications.

Sec. 103. Extension of Medicare work geographic adjustment floor.

Sec. 104. Extension of exceptions process for Medicare therapy caps.

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- Sec. 105. Extension of payment for technical component of certain physician pathology services.
- Sec. 106. Extension of ambulance add-ons.
- Sec. 107. Extension of physician fee schedule mental health add-on payment.
- Sec. 108. Extension of outpatient hold harmless provision.
- Sec. 109. Extension of Medicare reasonable costs payments for certain clinical diagnostic laboratory tests furnished to hospital patients in certain rural areas.
- Sec. 110. Extension of the qualifying individual (QI) program.
- Sec. 111. Extension of Transitional Medical Assistance (TMA).
- Sec. 112. Special diabetes programs.

TITLE II—OTHER PROVISIONS

- Sec. 201. Clarification of effective date of part B special enrollment period for disabled TRICARE beneficiaries.
- Sec. 202. Repeal of delay of RUG–IV.
- Sec. 203. Clarification for affiliated hospitals for distribution of additional residency positions.
- Sec. 204. Continued inclusion of orphan drugs in definition of covered outpatient drugs with respect to children’s hospitals under the 340B drug discount program.
- Sec. 205. Medicaid and CHIP technical corrections.
- Sec. 206. Funding for claims reprocessing.
- Sec. 207. Revision to the Medicare Improvement Fund.
- Sec. 208. Limitations on aggregate amount recovered on reconciliation of the health insurance tax credit and the advance of that credit.
- Sec. 209. Determination of budgetary effects.

1 **TITLE I—EXTENSIONS**2 **SEC. 101. PHYSICIAN PAYMENT UPDATE.**

3 Section 1848(d) of the Social Security Act (42 U.S.C.

4 1395w–4(d)) is amended by adding at the end the fol-

5 lowing new paragraph:

6 “(12) UPDATE FOR 2011.—

7 “(A) IN GENERAL.—Subject to paragraphs

8 (7)(B), (8)(B), (9)(B), (10)(B), and (11)(B), in

9 lieu of the update to the single conversion fac-

10 tor established in paragraph (1)(C) that would

11 otherwise apply for 2011, the update to the sin-

12 gle conversion factor shall be 0 percent.

1 “(B) NO EFFECT ON COMPUTATION OF
2 CONVERSION FACTOR FOR 2012 AND SUBSE-
3 QUENT YEARS.—The conversion factor under
4 this subsection shall be computed under para-
5 graph (1)(A) for 2012 and subsequent years as
6 if subparagraph (A) had never applied.”.

7 **SEC. 102. EXTENSION OF MMA SECTION 508 RECLASSIFICA-**
8 **TIONS.**

9 (a) EXTENSION.—

10 (1) IN GENERAL.—Section 106(a) of division B
11 of the Tax Relief and Health Care Act of 2006 (42
12 U.S.C. 1395 note), as amended by section 117 of
13 the Medicare, Medicaid, and SCHIP Extension Act
14 of 2007 (Public Law 110–173), section 124 of the
15 Medicare Improvements for Patients and Providers
16 Act of 2008 (Public Law 110–275), and sections
17 3137(a) and 10317 of the Patient Protection and
18 Affordable Care Act (Public Law 111–148), is
19 amended by striking “September 30, 2010” and in-
20 serting “September 30, 2011”.

21 (2) SPECIAL RULE FOR FISCAL YEAR 2011.—

22 (A) IN GENERAL.—Subject to subpara-
23 graph (B), for purposes of implementation of
24 the amendment made by paragraph (1), includ-
25 ing (notwithstanding paragraph (3) of section

117(a) of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (Public Law 110–173), as amended by section 124(b) of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law 110–275)) for purposes of the implementation of paragraph (2) of such section 117(a), during fiscal year 2011, the Secretary of Health and Human Services shall use the hospital wage index that was promulgated by the Secretary of Health and Human Services in the Federal Register on August 16, 2010 (75 Fed. Reg. 50042), and any subsequent corrections.

(B) EXCEPTION.—Beginning on April 1, 2011, in determining the wage index applicable to hospitals that qualify for wage index reclassification, the Secretary shall include the average hourly wage data of hospitals whose reclassification was extended pursuant to the amendment made by paragraph (1) only if including such data results in a higher applicable reclassified wage index. Any revision to hospital wage indexes made as a result of this subparagraph shall not be effected in a budget neutral manner.

1 (3) ADJUSTMENT FOR CERTAIN HOSPITALS IN
2 FISCAL YEAR 2011.—

3 (A) IN GENERAL.—In the case of a sub-
4 section (d) hospital (as defined in subsection
5 (d)(1)(B) of section 1886 of the Social Security
6 Act (42 U.S.C. 1395ww)) with respect to
7 which—

8 (i) a reclassification of its wage index
9 for purposes of such section was extended
10 pursuant to the amendment made by para-
11 graph (1); and

12 (ii) the wage index applicable for such
13 hospital for the period beginning on Octo-
14 ber 1, 2010, and ending on March 31,
15 2011, was lower than for the period begin-
16 ning on April 1, 2011, and ending on Sep-
17 tember 30, 2011, by reason of the applica-
18 tion of paragraph (2)(B);

19 the Secretary shall pay such hospital an addi-
20 tional payment that reflects the difference be-
21 tween the wage index for such periods.

22 (B) TIMEFRAME FOR PAYMENTS.—The
23 Secretary shall make payments required under
24 subparagraph (A) by not later than December
25 31, 2011.

1 (b) CONFORMING AMENDMENT.—Section 117(a)(3)
2 of the Medicare, Medicaid, and SCHIP Extension Act of
3 2007 (Public Law 110–173) is amended by inserting “in
4 fiscal years 2008 and 2009” after “For purposes of imple-
5 mentation of this subsection”.

6 **SEC. 103. EXTENSION OF MEDICARE WORK GEOGRAPHIC**
7 **ADJUSTMENT FLOOR.**

8 Section 1848(e)(1)(E) of the Social Security Act (42
9 U.S.C. 1395w–4(e)(1)(E)) is amended by striking “before
10 January 1, 2011” and inserting “before January 1,
11 2012”.

12 **SEC. 104. EXTENSION OF EXCEPTIONS PROCESS FOR MEDI-**
13 **CARE THERAPY CAPS.**

14 Section 1833(g)(5) of the Social Security Act (42
15 U.S.C. 1395l(g)(5)) is amended by striking “and ending
16 on” and all that follows through “2010” and inserting
17 “and ending on December 31, 2011”.

18 **SEC. 105. EXTENSION OF PAYMENT FOR TECHNICAL COM-**
19 **PONENT OF CERTAIN PHYSICIAN PATHOL-**
20 **OGY SERVICES.**

21 Section 542(c) of the Medicare, Medicaid, and
22 SCHIP Benefits Improvement and Protection Act of 2000
23 (as enacted into law by section 1(a)(6) of Public Law 106–
24 554), as amended by section 732 of the Medicare Prescrip-
25 tion Drug, Improvement, and Modernization Act of 2003

1 (42 U.S.C. 1395w–4 note), section 104 of division B of
2 the Tax Relief and Health Care Act of 2006 (42 U.S.C.
3 1395w–4 note), section 104 of the Medicare, Medicaid,
4 and SCHIP Extension Act of 2007 (Public Law 110–
5 173), section 136 of the Medicare Improvements for Pa-
6 tients and Providers Act of 2008 (Public Law 110–275),
7 and section 3104 of the Patient Protection and Affordable
8 Care Act (Public Law 111–148) is amended by striking
9 “and 2010” and inserting “2010, and 2011”.

10 **SEC. 106. EXTENSION OF AMBULANCE ADD-ONS.**

11 (a) GROUND AMBULANCE.—Section 1834(l)(13)(A)
12 of the Social Security Act (42 U.S.C. 1395m(l)(13)(A))
13 is amended—

14 (1) in the matter preceding clause (i), by strik-
15 ing “2011” and inserting “2012,”; and

16 (2) in each of clauses (i) and (ii), by striking
17 “January 1, 2011” and inserting “January 1,
18 2012” each place it appears.

19 (b) AIR AMBULANCE.—Section 146(b)(1) of the
20 Medicare Improvements for Patients and Providers Act of
21 2008 (Public Law 110–275), as amended by sections
22 3105(b) and 10311(b) of Public Law 111–148, is amend-
23 ed by striking “December 31, 2010” and inserting “De-
24 cember 31, 2011”.

1 (c) SUPER RURAL AMBULANCE.—Section
2 1834(l)(12)(A) of the Social Security Act (42 U.S.C.
3 1395m(l)(12)(A)) is amended by striking “2011” and in-
4 serting “2012”.

5 **SEC. 107. EXTENSION OF PHYSICIAN FEE SCHEDULE MEN-**
6 **TAL HEALTH ADD-ON PAYMENT.**

7 Section 138(a)(1) of the Medicare Improvements for
8 Patients and Providers Act of 2008 (Public Law 110–
9 275), as amended by section 3107 of the Patient Protec-
10 tion and Affordable Care Act (Public Law 111–148), is
11 amended by striking “December 31, 2010” and inserting
12 “December 31, 2011”.

13 **SEC. 108. EXTENSION OF OUTPATIENT HOLD HARMLESS**
14 **PROVISION.**

15 Section 1833(t)(7)(D)(i) of the Social Security Act
16 (42 U.S.C. 1395l(t)(7)(D)(i)), as amended by section
17 3121(a) of the Patient Protection and Affordable Care Act
18 (Public Law 111–148), is amended—

19 (1) in subclause (II)—

20 (A) in the first sentence, by striking
21 “2011” and inserting “2012”; and

22 (B) in the second sentence, by striking “or
23 2010” and inserting “2010, or 2011”; and

24 (2) in subclause (III), by striking “January 1,
25 2011” and inserting “January 1, 2012”.

1 **SEC. 109. EXTENSION OF MEDICARE REASONABLE COSTS**
2 **PAYMENTS FOR CERTAIN CLINICAL DIAG-**
3 **NOSTIC LABORATORY TESTS FURNISHED TO**
4 **HOSPITAL PATIENTS IN CERTAIN RURAL**
5 **AREAS.**

6 Section 416(b) of the Medicare Prescription Drug,
7 Improvement, and Modernization Act of 2003 (42 U.S.C.
8 1395l–4), as amended by section 105 of division B of the
9 Tax Relief and Health Care Act of 2006 (42 U.S.C. 1395l
10 note), section 107 of the Medicare, Medicaid, and SCHIP
11 Extension Act of 2007 (42 U.S.C. 1395l note), and section
12 3122 of the Patient Protection and Affordable Care Act
13 (Public Law 111–148), is amended by striking “the 1-year
14 period beginning on July 1, 2010” and inserting “the 2-
15 year period beginning on July 1, 2010”.

16 **SEC. 110. EXTENSION OF THE QUALIFYING INDIVIDUAL (QI)**
17 **PROGRAM.**

18 (a) EXTENSION.—Section 1902(a)(10)(E)(iv) of the
19 Social Security Act (42 U.S.C. 1396a(a)(10)(E)(iv)) is
20 amended by striking “December 2010” and inserting “De-
21 cember 2011”.

22 (b) EXTENDING TOTAL AMOUNT AVAILABLE FOR
23 ALLOCATION.—Section 1933(g) of such Act (42 U.S.C.
24 1396u–3(g)) is amended—

25 (1) in paragraph (2)—

1 (A) by striking “and” at the end of sub-
2 paragraph (M);

3 (B) in subparagraph (N), by striking the
4 period at the end and inserting a semicolon;
5 and

6 (C) by adding at the end the following new
7 subparagraphs:

8 “(O) for the period that begins on January
9 1, 2011, and ends on September 30, 2011, the
10 total allocation amount is \$720,000,000; and

11 “(P) for the period that begins on October
12 1, 2011, and ends on December 31, 2011, the
13 total allocation amount is \$280,000,000.”; and

14 (2) in paragraph (3), in the matter preceding
15 subparagraph (A), by striking “or (N)” and insert-
16 ing “(N), or (P)”.

17 **SEC. 111. EXTENSION OF TRANSITIONAL MEDICAL ASSIST-**
18 **ANCE (TMA).**

19 Sections 1902(e)(1)(B) and 1925(f) of the Social Se-
20 curity Act (42 U.S.C. 1396a(e)(1)(B), 1396r-6(f)) are
21 each amended by striking “December 31, 2010” and in-
22 serting “December 31, 2011”.

23 **SEC. 112. SPECIAL DIABETES PROGRAMS.**

24 (1) SPECIAL DIABETES PROGRAMS FOR TYPE I
25 DIABETES.—Section 330B(b)(2)(C) of the Public

1 Health Service Act (42 U.S.C. 254c–2(b)(2)(C)) is
2 amended by striking “2011” and inserting “2013”.

3 (2) SPECIAL DIABETES PROGRAMS FOR INDI-
4 ANS.—Section 330C(c)(2)(C) of the Public Health
5 Service Act (42 U.S.C. 254c–3(c)(2)(C)) is amended
6 by striking “2011” and inserting “2013”.

7 **TITLE II—OTHER PROVISIONS**

8 **SEC. 201. CLARIFICATION OF EFFECTIVE DATE OF PART B**

9 **SPECIAL ENROLLMENT PERIOD FOR DIS-** 10 **ABLED TRICARE BENEFICIARIES.**

11 Effective as if included in the enactment of Public
12 Law 111–148, section 3110(a)(2) of such Act is amended
13 to read as follows:

14 “(2) EFFECTIVE DATE.—The amendment made
15 by paragraph (1) shall apply to elections made on
16 and after the date of the enactment of this Act.”.

17 **SEC. 202. REPEAL OF DELAY OF RUG–IV.**

18 Effective as if included in the enactment of Public
19 Law 111–148, section 10325 of such Act is repealed.

20 **SEC. 203. CLARIFICATION FOR AFFILIATED HOSPITALS FOR**

21 **DISTRIBUTION OF ADDITIONAL RESIDENCY** 22 **POSITIONS.**

23 Effective as if included in the enactment of section
24 5503(a) of Public Law 111–148, section 1886(h)(8) of the
25 Social Security Act (42 U.S.C. 1395ww(h)(8)), as added

1 by such section 5503(a), is amended by adding at the end
2 the following new subparagraph:

3 “(I) AFFILIATION.—The provisions of this
4 paragraph shall be applied to hospitals which
5 are members of the same affiliated group (as
6 defined by the Secretary under paragraph
7 (4)(H)(ii)) and the reference resident level for
8 each such hospital shall be the reference resi-
9 dent level with respect to the cost reporting pe-
10 riod that results in the smallest difference be-
11 tween the reference resident level and the other-
12 wise applicable resident limit.”.

13 **SEC. 204. CONTINUED INCLUSION OF ORPHAN DRUGS IN**
14 **DEFINITION OF COVERED OUTPATIENT**
15 **DRUGS WITH RESPECT TO CHILDREN’S HOS-**
16 **PITALS UNDER THE 340B DRUG DISCOUNT**
17 **PROGRAM.**

18 (a) DEFINITION OF COVERED OUTPATIENT DRUG.—

19 (1) AMENDMENT.—Subsection (e) of section
20 340B of the Public Health Service Act (42 U.S.C.
21 256b) is amended by striking “covered entities de-
22 scribed in subparagraph (M)” and inserting “cov-
23 ered entities described in subparagraph (M) (other
24 than a children’s hospital described in subparagraph
25 (M))”.

1 (2) EFFECTIVE DATE.—The amendment made
2 by paragraph (1) shall take effect as if included in
3 the enactment of section 2302 of the Health Care
4 and Education Reconciliation Act of 2010 (Public
5 Law 111–152).

6 (b) TECHNICAL AMENDMENT.—Subparagraph (B) of
7 section 1927(a)(5) of the Social Security Act (42 U.S.C.
8 1396r–8(a)(5)) is amended by striking “and a children’s
9 hospital” and all that follows through the end of the sub-
10 paragraph and inserting a period.

11 **SEC. 205. MEDICAID AND CHIP TECHNICAL CORRECTIONS.**

12 (a) REPEAL OF EXCLUSION OF CERTAIN INDIVID-
13 UALS AND ENTITIES FROM MEDICAID.—Section 1902(a)
14 of the Social Security Act (42 U.S.C. 1396a(a)) is amend-
15 ed by striking paragraph (78).

16 (b) INCOME LEVEL FOR CERTAIN CHILDREN UNDER
17 MEDICAID.—Section 1902(l)(2)(C) of the Social Security
18 Act (42 U.S.C. 1396a(l)(2)(C)) is amended by striking
19 “133 percent” and inserting “100 percent (or, beginning
20 January 1, 2014, 133 percent)”.

21 (c) CALCULATION AND PUBLICATION OF PAYMENT
22 ERROR RATE MEASUREMENT FOR CERTAIN YEARS.—
23 Section 601(b) of the Children’s Health Insurance Pro-
24 gram Reauthorization Act of 2009 (Public Law 111–3)
25 is amended by adding at the end the following: “The Sec-

1 retary is not required under this subsection to calculate
2 or publish a national or a State-specific error rate for fis-
3 cal year 2009 or fiscal year 2010.”.

4 (d) CORRECTIONS TO EXCEPTIONS TO EXCLUSION
5 OF CHILDREN OF CERTAIN EMPLOYEES.—Section
6 2110(b)(6) of the Social Security Act (42 U.S.C.
7 1397jj(b)(6)) is amended—

8 (1) in subparagraph (B)—

9 (A) by striking “PER PERSON” in the
10 heading; and

11 (B) by striking “each employee” and in-
12 serting “employees”; and

13 (2) in subparagraph (C), by striking “, on a
14 case-by-case basis,”.

15 (e) ELECTRONIC HEALTH RECORDS.—Effective as if
16 included in the enactment of section 4201(a)(2) of the
17 American Recovery and Reinvestment Act of 2009 (Public
18 Law 111–5), section 1903(t) of the Social Security Act
19 (42 U.S.C. 1396b(t)) is amended—

20 (1) in paragraph (3)(E), by striking “reduced
21 by any payment that is made to such Medicaid pro-
22 vider from any other source (other than under this
23 subsection or by a State or local government)” and
24 inserting “reduced by the average payment the Sec-
25 retary estimates will be made to such Medicaid pro-

1 viders (determined on a percentage or other basis
2 for such classes or types of providers as the Sec-
3 retary may specify) from other sources (other than
4 under this subsection, or by the Federal government
5 or a State or local government)”; and

6 (2) in paragraph (6)(B), by inserting before the
7 period the following: “and shall be determined to
8 have met such responsibility to the extent that the
9 payment to the Medicaid provider is not in excess of
10 85 percent of the net average allowable cost”.

11 (f) CORRECTIONS OF DESIGNATIONS.—

12 (1) Section 1902 of the Social Security Act (42
13 U.S.C. 1396a) is amended—

14 (A) in subsection (a)(10), in the matter
15 following subparagraph (G), by striking “and”
16 before “(XVI) the medical” and by striking
17 “(XVI) if” and inserting “(XVII) if”;

18 (B) in subsection (a)(23), by striking
19 “(ii)” and inserting “(kk)”;

20 (C) in subsection (a)(77), by striking “(ii)”
21 and inserting “(kk)”;

22 (D) in subsection (ii)(2), as added by sec-
23 tion 2303(a)(2) of Public Law 111–148, by
24 striking “(XV)” and inserting “(XVI)”;

1 (E) by redesignating subsection (ii), as
2 added by section 6401(b)(1)(B) of Public Law
3 111–148, as subsection (kk) and transferring
4 such subsection so as to appear after subsection
5 (jj) of that section.

6 (2) Section 2107(e)(1) of the Social Security
7 Act (42 U.S.C. 1397gg(e)(1)) is amended—

8 (A) in subparagraph (D), as added by sec-
9 tion 6401(c) of Public Law 111–148, by strik-
10 ing “(ii)” and inserting “(kk)”; and

11 (B) by redesignating the subparagraph (N)
12 of that section added by 2101(e) of Public Law
13 111–148 as subparagraph (O).

14 **SEC. 206. FUNDING FOR CLAIMS REPROCESSING.**

15 For purposes of carrying out the provisions of, and
16 amendments made by, this Act that relate to title XVIII
17 of the Social Security Act, and other provisions of, or re-
18 lating to, such title that ensure appropriate payment of
19 claims, there are appropriated to the Secretary of Health
20 and Human Services for the Centers for Medicare & Med-
21 icaid Services Program Management Account, from
22 amounts in the general fund of the Treasury not otherwise
23 appropriated, \$200,000,000. Amounts appropriated under
24 the preceding sentence shall be in addition to any other
25 funds available for such purposes, shall remain available

1 until expended, and shall not be used to implement
2 changes to title XVIII of the Social Security Act made
3 by Public Laws 111-148 and 111-152.

4 **SEC. 207. REVISION TO THE MEDICARE IMPROVEMENT**
5 **FUND.**

6 Section 1898(b)(1)(B) of the Social Security Act (42
7 U.S.C. 1395iii(b)(1)(B)) is amended by striking
8 “\$550,000,000” and inserting “\$275,000,000”.

9 **SEC. 208. LIMITATIONS ON AGGREGATE AMOUNT RECOV-**
10 **ERED ON RECONCILIATION OF THE HEALTH**
11 **INSURANCE TAX CREDIT AND THE ADVANCE**
12 **OF THAT CREDIT.**

13 (a) IN GENERAL.—So much of section 36B(f)(2)(B)
14 of the Internal Revenue Code of 1986 as precedes clause
15 (ii) thereof is amended to read as follows:

16 “(B) LIMITATION ON INCREASE.—

17 “(i) IN GENERAL.—In the case of a
18 taxpayer whose household income is less
19 than 500 percent of the poverty line for
20 the size of the family involved for the tax-
21 able year, the amount of the increase
22 under subparagraph (A) shall in no event
23 exceed the applicable dollar amount deter-
24 mined in accordance with the following
25 table (one-half of such amount in the case

1 of a taxpayer whose tax is determined
2 under section 1(c) for the taxable year):

“If the household income (expressed as a percent of poverty line) is:	The applicable dollar amount is:
Less than 200%	\$600
At least 200% but less than 250%	\$1,000
At least 250% but less than 300%	\$1,500
At least 300% but less than 350%	\$2,000
At least 350% but less than 400%	\$2,500
At least 400% but less than 450%	\$3,000
At least 450% but less than 500%	\$3,500”.

3 (b) CONFORMING AMENDMENT.—Section
4 36B(f)(2)(B)(ii) of such Code is amended by inserting “in
5 the table contained” after “each of the dollar amounts”.

6 (c) EFFECTIVE DATE.—The amendments made by
7 this section shall apply to taxable years beginning after
8 December 31, 2013.

9 **SEC. 209. DETERMINATION OF BUDGETARY EFFECTS.**

10 (a) IN GENERAL.—The budgetary effects of this Act,
11 for the purpose of complying with the Statutory Pay-As-
12 You-Go Act of 2010, shall be determined by reference to
13 the latest statement titled “Budgetary Effects of PAYGO
14 Legislation” for this Act, submitted for printing in the
15 Congressional Record by the Chairman of the Senate
16 Budget Committee, provided that such statement has been
17 submitted prior to the vote on passage.

18 (b) EMERGENCY DESIGNATION FOR CONGRESSIONAL
19 ENFORCEMENT.—In the House of Representatives, this

- 1 Act, with the exception of section 101, is designated as
- 2 an emergency for purposes of pay-as-you-go principles.