

**SEC. 3401. REVISION OF CERTAIN MARKET BASKET UPDATES AND INCORPORATION OF PRODUCTIVITY IMPROVEMENTS INTO MARKET BASKET UPDATES THAT DO NOT ALREADY INCORPORATE SUCH IMPROVEMENTS.**

(a) INPATIENT ACUTE HOSPITALS.—Section 1886(b)(3)(B) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(B)), as amended by section 3001(a)(3), is further amended—

(1) in clause (i)(XX), by striking “clause (viii)” and inserting “clauses (viii), (ix), (xi), and (xii)”;

(2) in the first sentence of clause (viii), by inserting “of such applicable percentage increase (determined without regard to clause (ix), (xi), or (xii))” after “one-quarter”;

(3) in the first sentence of clause (ix)(I), by inserting “(determined without regard to clause (viii), (xi), or (xii))” after “clause (i)” the second time it appears; and

(4) by adding at the end the following new clauses:

“(xi)(I) For 2012 and each subsequent fiscal year, after determining the applicable percentage increase described in clause (i) and after application of clauses (viii) and (ix), such percentage increase shall be reduced by the productivity adjustment described in subclause (II).

“(II) The productivity adjustment described in this subclause, with respect to a percentage, factor, or update for a fiscal year, year, cost reporting period, or other annual period, is a productivity adjustment equal to the 10-year moving average of changes in annual economy-wide private nonfarm business multi-factor productivity (as projected by the Secretary for the 10-year period ending with the applicable fiscal year, year, cost reporting period, or other annual period).

“(III) The application of subclause (I) may result in the applicable percentage increase described in clause (i) being less than 0.0 for a fiscal year, and may result in payment rates under this section for a fiscal year being less than such payment rates for the preceding fiscal year.

“(xii) After determining the applicable percentage increase described in clause (i), and after application of clauses (viii), (ix), and (xi), the Secretary shall reduce such applicable percentage increase—**[As revised by section 10319(a)]**

“(I) for each of fiscal years 2010 and 2011, by 0.25 percentage point;

“(II) for each of fiscal years 2012 and 2013, by 0.1 percentage point;

“(III) for fiscal year 2014, by 0.3 percentage point;

“(IV) for each of fiscal years 2015 and 2016, by 0.2 percentage point; and

“(V) for each of fiscal years 2017, 2018, and 2019, by 0.75 percentage point.

The application of this clause may result in the applicable percentage increase described in clause (i) being less than 0.0 for a fiscal year, and may result in payment rates under this section for a fis-

cal year being less than such payment rates for the preceding fiscal year. **[As revised by section 1105(a)(2) of HCERA]**".

(b) SKILLED NURSING FACILITIES.—Section 1888(e)(5)(B) of the Social Security Act (42 U.S.C. 1395yy(e)(5)(B)) is amended—

(1) by striking "PERCENTAGE.—The term" and inserting "PERCENTAGE.—

"(i) IN GENERAL.—Subject to clause (ii), the term"; and

(2) by adding at the end the following new clause:

"(ii) ADJUSTMENT.—For fiscal year 2012 and each subsequent fiscal year, after determining the percentage described in clause (i), the Secretary shall reduce such percentage by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II). The application of the preceding sentence may result in such percentage being less than 0.0 for a fiscal year, and may result in payment rates under this subsection for a fiscal year being less than such payment rates for the preceding fiscal year."

(c) LONG-TERM CARE HOSPITALS.—Section 1886(m) of the Social Security Act (42 U.S.C. 1395ww(m)) is amended by adding at the end the following new paragraphs:

"(3) IMPLEMENTATION FOR RATE YEAR 2010 AND SUBSEQUENT YEARS.—

"(A) IN GENERAL.—In implementing the system described in paragraph (1) for rate year 2010 and each subsequent rate year, any annual update to a standard Federal rate for discharges for the hospital during the rate year, shall be reduced—

"(i) for rate year 2012 and each subsequent rate year, by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II); and

"(ii) for each of rate years 2010 through 2019, by the other adjustment described in paragraph (4).

"(B) SPECIAL RULE.—The application of this paragraph may result in such annual update being less than 0.0 for a rate year, and may result in payment rates under the system described in paragraph (1) for a rate year being less than such payment rates for the preceding rate year.

"(4) OTHER ADJUSTMENT.—**[As revised by section 10319(b) and section 1105(b) of HCERA]** For purposes of paragraph (3)(A)(ii), the other adjustment described in this paragraph is—

"(A) for rate year 2010, 0.25 percentage point;

"(B) for rate year 2011, 0.50 percentage point;

"(C) for each of the rate years beginning in 2012 and 2013, 0.1 percentage point;

"(D) for rate year 2014, 0.3 percentage point;

"(E) for each of rate years 2015 and 2016, 0.2 percentage point; and

"(F) for each of rate years 2017, 2018, and 2019, 0.75 percentage point."

(d) INPATIENT REHABILITATION FACILITIES.—Section 1886(j)(3) of the Social Security Act (42 U.S.C. 1395ww(j)(3)) is amended—

(1) in subparagraph (C)—

(A) by striking “FACTOR.—For purposes” and inserting “FACTOR.—

“(i) IN GENERAL.—For purposes”;

(B) by inserting “subject to clause (ii)” before the period at the end of the first sentence of clause (i), as added by paragraph (1); and

(C) by adding at the end the following new clause:

“(ii) PRODUCTIVITY AND OTHER ADJUSTMENT.—

After establishing the increase factor described in clause (i) for a fiscal year, the Secretary shall reduce such increase factor—

“(I) for fiscal year 2012 and each subsequent fiscal year, by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II); and

“(II) for each of fiscal years 2010 through 2019, by the other adjustment described in subparagraph (D).

The application of this clause may result in the increase factor under this subparagraph being less than 0.0 for a fiscal year, and may result in payment rates under this subsection for a fiscal year being less than such payment rates for the preceding fiscal year.”; and

(2) by adding at the end the following new subparagraph:

“(D) OTHER ADJUSTMENT.—*[As revised by section 10319(b) and section 1105(b) of HCERA]* For purposes of subparagraph (C)(ii)(II), the other adjustment described in this subparagraph is—

“(i) for each of fiscal years 2010 and 2011, 0.25 percentage point;

“(ii) for each of fiscal years 2012 and 2013, 0.1 percentage point;

“(iii) for fiscal year 2014, 0.3 percentage point;

“(iv) for each of fiscal years 2015 and 2016, 0.2 percentage point; and

“(v) for each of fiscal years 2017, 2018, and 2019, 0.75 percentage point.”.

(e) HOME HEALTH AGENCIES.—Section 1895(b)(3)(B) of the Social Security Act (42 U.S.C. 1395fff(b)(3)(B)) is amended—

(1) in clause (ii)(V), by striking “clause (v)” and inserting “clauses (v) and (vi)”;

(2) by adding at the end the following new clause:

“(vi) ADJUSTMENTS.—After determining the home health market basket percentage increase under clause (iii), and after application of clause (v), the Secretary shall reduce such percentage—

“(I) for 2015 and each subsequent year, by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II); and

“(II) for each of 2011, 2012, and 2013, by 1 percentage point. *[As revised by section 10319(d)]*

The application of this clause may result in the home health market basket percentage increase under clause (iii) being less than 0.0 for a year, and may result in payment rates under the system under this

subsection for a year being less than such payment rates for the preceding year.”.

(f) PSYCHIATRIC HOSPITALS.—Section 1886 of the Social Security Act, as amended by sections 3001, 3008, 3025, and 3133, is amended by adding at the end the following new subsection:

“(s) PROSPECTIVE PAYMENT FOR PSYCHIATRIC HOSPITALS.—

“(1) REFERENCE TO ESTABLISHMENT AND IMPLEMENTATION OF SYSTEM.—For provisions related to the establishment and implementation of a prospective payment system for payments under this title for inpatient hospital services furnished by psychiatric hospitals (as described in clause (i) of subsection (d)(1)(B)) and psychiatric units (as described in the matter following clause (v) of such subsection), see section 124 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999.

“(2) IMPLEMENTATION FOR RATE YEAR BEGINNING IN 2010 AND SUBSEQUENT RATE YEARS.—

“(A) IN GENERAL.—In implementing the system described in paragraph (1) for the rate year beginning in 2010 and any subsequent rate year, any update to a base rate for days during the rate year for a psychiatric hospital or unit, respectively, shall be reduced—

“(i) for the rate year beginning in 2012 and each subsequent rate year, by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II); and

“(ii) for each of the rate years beginning in 2010 through 2019, by the other adjustment described in paragraph (3).

“(B) SPECIAL RULE.—The application of this paragraph may result in such update being less than 0.0 for a rate year, and may result in payment rates under the system described in paragraph (1) for a rate year being less than such payment rates for the preceding rate year.

“(3) OTHER ADJUSTMENT.—*[As revised by section 10319(e) and section 1105(d) of HCERA]* For purposes of paragraph (2)(A)(ii), the other adjustment described in this paragraph is—

“(A) for each of the rate years beginning in 2010 and 2011, 0.25 percentage point;

“(B) for each of the rate years beginning in 2012 and 2013, 0.1 percentage point;

“(C) for the rate year beginning in 2014, 0.3 percentage point;

“(D) for each of the rate years beginning in 2015 and 2016, 0.2 percentage point; and

“(E) for each of the rate years beginning in 2017, 2018, and 2019, 0.75 percentage point.

“(4) QUALITY REPORTING.—*[As added by section 10322(a)]*

“(A) REDUCTION IN UPDATE FOR FAILURE TO REPORT.—

“(i) IN GENERAL.—Under the system described in paragraph (1), for rate year 2014 and each subsequent rate year, in the case of a psychiatric hospital or psychiatric unit that does not submit data to the Secretary in accordance with subparagraph (C) with respect to such a rate year, any annual update to a

standard Federal rate for discharges for the hospital during the rate year, and after application of paragraph (2), shall be reduced by 2 percentage points.

“(ii) SPECIAL RULE.—The application of this subparagraph may result in such annual update being less than 0.0 for a rate year, and may result in payment rates under the system described in paragraph (1) for a rate year being less than such payment rates for the preceding rate year.

“(B) NONCUMULATIVE APPLICATION.—Any reduction under subparagraph (A) shall apply only with respect to the rate year involved and the Secretary shall not take into account such reduction in computing the payment amount under the system described in paragraph (1) for a subsequent rate year.

“(C) SUBMISSION OF QUALITY DATA.—For rate year 2014 and each subsequent rate year, each psychiatric hospital and psychiatric unit shall submit to the Secretary data on quality measures specified under subparagraph (D). Such data shall be submitted in a form and manner, and at a time, specified by the Secretary for purposes of this subparagraph.

“(D) QUALITY MEASURES.—

“(i) IN GENERAL.—Subject to clause (ii), any measure specified by the Secretary under this subparagraph must have been endorsed by the entity with a contract under section 1890(a).

“(ii) EXCEPTION.—In the case of a specified area or medical topic determined appropriate by the Secretary for which a feasible and practical measure has not been endorsed by the entity with a contract under section 1890(a), the Secretary may specify a measure that is not so endorsed as long as due consideration is given to measures that have been endorsed or adopted by a consensus organization identified by the Secretary.

“(iii) TIME FRAME.—Not later than October 1, 2012, the Secretary shall publish the measures selected under this subparagraph that will be applicable with respect to rate year 2014.

“(E) PUBLIC AVAILABILITY OF DATA SUBMITTED.—The Secretary shall establish procedures for making data submitted under subparagraph (C) available to the public. Such procedures shall ensure that a psychiatric hospital and a psychiatric unit has the opportunity to review the data that is to be made public with respect to the hospital or unit prior to such data being made public. The Secretary shall report quality measures that relate to services furnished in inpatient settings in psychiatric hospitals and psychiatric units on the Internet website of the Centers for Medicare & Medicaid Services.”

(g) HOSPICE CARE.—Section 1814(i)(1)(C) of the Social Security Act (42 U.S.C. 1395f(i)(1)(C)), as amended by section 3132, is

amended by adding at the end the following new clauses: **[As revised by section 10319(f)]**

“(iv) After determining the market basket percentage increase under clause (ii)(VII) or (iii), as applicable, with respect to fiscal year 2013 and each subsequent fiscal year, the Secretary shall reduce such percentage—

“(I) for 2013 and each subsequent fiscal year, by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II); and

“(II) subject to clause (v), for each of fiscal years 2013 through 2019, by 0.3 percentage point.

The application of this clause may result in the market basket percentage increase under clause (ii)(VII) or (iii), as applicable, being less than 0.0 for a fiscal year, and may result in payment rates under this subsection for a fiscal year being less than such payment rates for the preceding fiscal year.

“(v) Clause (iv)(II) shall be applied with respect to any of fiscal years 2014 through 2019 by substituting ‘0.0 percentage points’ for ‘0.3 percentage point’, if for such fiscal year—

“(I) the excess (if any) of—

“(aa) the total percentage of the non-elderly insured population for the preceding fiscal year (based on the most recent estimates available from the Director of the Congressional Budget Office before a vote in either House on the Patient Protection and Affordable Care Act that, if determined in the affirmative, would clear such Act for enrollment); over

“(bb) the total percentage of the non-elderly insured population for such preceding fiscal year (as estimated by the Secretary); exceeds

“(II) 5 percentage points.”.

(h) DIALYSIS.—Section 1881(b)(14)(F) of the Social Security Act (42 U.S.C. 1395rr(b)(14)(F)) is amended—

(1) in clause (i)—

(A) by inserting “(I)” after “(F)(i)”

(B) in subclause (I), as inserted by subparagraph (A)—

(i) by striking “clause (ii)” and inserting “subclause (II) and clause (ii)”; and

(ii) by striking “minus 1.0 percentage point”; and

(C) by adding at the end the following new subclause:

“(II) For 2012 and each subsequent year, after determining the increase factor described in subclause (I), the Secretary shall reduce such increase factor by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II). The application of the preceding sentence may result in such increase factor being less than 0.0 for a year, and may result in payment rates under the payment system under this paragraph for a year being less than such payment rates for the preceding year.”; and

(2) in clause (ii)(II)—

(A) by striking “The” and inserting “Subject to clause (i)(II), the”; and

(B) by striking “clause (i) minus 1.0 percentage point” and inserting “clause (i)(I)”.

(i) OUTPATIENT HOSPITALS.—Section 1833(t)(3) of the Social Security Act (42 U.S.C. 1395l(t)(3)) is amended—

(1) in subparagraph (C)(iv), by inserting “and subparagraph (F) of this paragraph” after “(17)”; and

(2) by adding at the end the following new subparagraphs:

“(F) PRODUCTIVITY AND OTHER ADJUSTMENT.—After determining the OPD fee schedule increase factor under subparagraph (C)(iv), the Secretary shall reduce such increase factor—

“(i) for 2012 and subsequent years, by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II); and

“(ii) for each of 2010 through 2019, by the adjustment described in subparagraph (G).

The application of this subparagraph may result in the increase factor under subparagraph (C)(iv) being less than 0.0 for a year, and may result in payment rates under the payment system under this subsection for a year being less than such payment rates for the preceding year.

“(G) OTHER ADJUSTMENT.—*[As revised by section 10319(g) and section 1105(e) of HCERA]* For purposes of subparagraph (F)(ii), the adjustment described in this subparagraph is—

“(i) for each of 2010 and 2011, 0.25 percentage point;

“(ii) for each of 2012 and 2013, 0.1 percentage point;

“(iii) for 2014, 0.3 percentage point;

“(iv) for each of 2015 and 2016, 0.2 percentage point; and

“(v) for each of 2017, 2018, and 2019, 0.75 percentage point.”.

(j) AMBULANCE SERVICES.—Section 1834(l)(3) of the Social Security Act (42 U.S.C. 1395m(l)(3)) is amended—

(1) in subparagraph (A), by striking “and” at the end;

(2) in subparagraph (B)—

(A) by inserting “, subject to subparagraph (C) and the succeeding sentence of this paragraph,” after “increased”; and

(B) by striking the period at the end and inserting “; and”;

(3) by adding at the end the following new subparagraph:

“(C) for 2011 and each subsequent year, after determining the percentage increase under subparagraph (B) for the year, reduce such percentage increase by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II).”; and

(4) by adding at the end the following flush sentence:

“The application of subparagraph (C) may result in the percentage increase under subparagraph (B) being less than 0.0 for a year, and may result in payment rates under the fee schedule under this subsection for a year being less than such payment rates for the preceding year.”.

(k) AMBULATORY SURGICAL CENTER SERVICES.—Section 1833(i)(2)(D) of the Social Security Act (42 U.S.C. 1395l(i)(2)(D)) is amended—

- (1) by redesignating clause (v) as clause (vi); and
- (2) by inserting after clause (iv) the following new clause:

“(v) In implementing the system described in clause (i) for 2011 and each subsequent year, any annual update under such system for the year, after application of clause (iv), shall be reduced by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II). The application of the preceding sentence may result in such update being less than 0.0 for a year, and may result in payment rates under the system described in clause (i) for a year being less than such payment rates for the preceding year.”.

(l) LABORATORY SERVICES.—Section 1833(h)(2)(A) of the Social Security Act (42 U.S.C. 1395l(h)(2)(A)) is amended—

- (1) in clause (i)—
  - (A) by inserting “, subject to clause (iv),” after “year by”; and
  - (B) by striking “through 2013” and inserting “and 2010”; and
- (2) by adding at the end the following new clause:

“(iv) After determining the adjustment to the fee schedules under clause (i), the Secretary shall reduce such adjustment—

“(I) for 2011 and each subsequent year, by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II); and

“(II) for each of 2011 through 2015, by 1.75 percentage points.

Subclause (I) shall not apply in a year where the adjustment to the fee schedules determined under clause (i) is 0.0 or a percentage decrease for a year. The application of the productivity adjustment under subclause (I) shall not result in an adjustment to the fee schedules under clause (i) being less than 0.0 for a year. The application of subclause (II) may result in an adjustment to the fee schedules under clause (i) being less than 0.0 for a year, and may result in payment rates for a year being less than such payment rates for the preceding year.”.

(m) CERTAIN DURABLE MEDICAL EQUIPMENT.—Section 1834(a)(14) of the Social Security Act (42 U.S.C. 1395m(a)(14)) is amended—

- (1) in subparagraph (K)—
  - (A) by striking “2011, 2012, and 2013,”; and
  - (B) by inserting “and” after the semicolon at the end;
- (2) by striking subparagraphs (L) and (M) and inserting the following new subparagraph:

“(L) for 2011 and each subsequent year—  
“(i) the percentage increase in the consumer price index for all urban consumers (United States city av-

erage) for the 12-month period ending with June of the previous year, reduced by—

“(ii) the productivity adjustment described in section 1886(b)(3)(B)(xi)(II).”; and

(3) by adding at the end the following flush sentence:

“The application of subparagraph (L)(ii) may result in the covered item update under this paragraph being less than 0.0 for a year, and may result in payment rates under this subsection for a year being less than such payment rates for the preceding year.”.

(n) PROSTHETIC DEVICES, ORTHOTICS, AND PROSTHETICS.—Section 1834(h)(4) of the Social Security Act (42 U.S.C. 1395m(h)(4)) is amended—

(1) in subparagraph (A)—

(A) in clause (ix), by striking “and” at the end;

(B) in clause (x)—

(i) by striking “a subsequent year” and inserting “for each of 2007 through 2010”; and

(ii) by inserting “and” after the semicolon at the end;

(C) by adding at the end the following new clause:

“(xi) for 2011 and each subsequent year—

“(I) the percentage increase in the consumer price index for all urban consumers (United States city average) for the 12-month period ending with June of the previous year, reduced by—

“(II) the productivity adjustment described in section 1886(b)(3)(B)(xi)(II).”; and

(D) by adding at the end the following flush sentence:

“The application of subparagraph (A)(xi)(II) may result in the applicable percentage increase under subparagraph (A) being less than 0.0 for a year, and may result in payment rates under this subsection for a year being less than such payment rates for the preceding year.”.

(o) OTHER ITEMS.—Section 1842(s)(1) of the Social Security Act (42 U.S.C. 1395u(s)(1)) is amended—

(1) in the first sentence, by striking “Subject to” and inserting “(A) Subject to”;

(2) by striking the second sentence and inserting the following new subparagraph:

“(B) Any fee schedule established under this paragraph for such item or service shall be updated—

“(i) for years before 2011—

“(I) subject to subclause (II), by the percentage increase in the consumer price index for all urban consumers (United States city average) for the 12-month period ending with June of the preceding year; and

“(II) for items and services described in paragraph (2)(D) for 2009, section 1834(a)(14)(J) shall apply under this paragraph instead of the percentage increase otherwise applicable; and

“(ii) for 2011 and subsequent years—

“(I) the percentage increase in the consumer price index for all urban consumers (United States city average) for the 12-month period ending with June of the previous year, reduced by—

“(II) the productivity adjustment described in section 1886(b)(3)(B)(xi)(II).”; and

(3) by adding at the end the following flush sentence:

“The application of subparagraph (B)(ii)(II) may result in the update under this paragraph being less than 0.0 for a year, and may result in payment rates under any fee schedule established under this paragraph for a year being less than such payment rates for the preceding year.”.

(p) NO APPLICATION PRIOR TO APRIL 1, 2010.—Notwithstanding the preceding provisions of this section, the amendments made by subsections (a), (c), and (d) shall not apply to discharges occurring before April 1, 2010.