

1 [Insert in Title ___ of the bill]

2 **SUBTITLE _ - INDEPENDENT MEDICARE**
3 **ADVISORY COUNCIL**

4 **SECTION _01. SHORT TITLE.**

5 This subtitle may be cited as the “Independent Medicare Advisory Council Act of 2009.”

6 **SEC. _02. INDEPENDENT MEDICARE ADVISORY COUNCIL.**

7 (a) IN GENERAL.—Title XVIII of the Social Security Act is amended by adding at the
8 end the following new section:

9 **"INDEPENDENT MEDICARE ADVISORY COUNCIL**

10 **"SEC. 18__.** (a) DEFINITIONS.—As used in this Act—

11 "(1) the term 'Council' means the entity established by subsection (b); and

12 "(2) the term 'Member' means a member of the Council.

13 "(b) ESTABLISHMENT; MEMBERSHIP; TERMS OF OFFICE; CHAIRMAN;
14 LIMITATIONS ON MEMBERS; QUORUM; SALARY.

15 "(1) ESTABLISHMENT.—An independent council is hereby created and
16 established, to be known as the Independent Medicare Advisory Council.

17 "(2) MEMBERSHIP.— The Council shall be composed of five Members, who
18 shall be appointed by the President, by and with the advice and consent of the Senate,
19 from among individuals who are physicians or have specialized expertise in medicine or
20 health care policy. Not more than three of the Members shall be members of the same
21 political party.

1 "(3) TERM OF OFFICE.—Each Member shall hold office for a term of five years
2 except that—

3 "(A) a Member appointed to fill a vacancy occurring prior to the
4 expiration of the term for which that Member's predecessor was appointed shall
5 be appointed for the remainder of such term;

6 "(B) a Member may continue to serve after the expiration of the Member's
7 term until a successor has taken office, except that the Member may not continue
8 to serve more than one year after that expiration; and

9 "(C) the first five Members shall continue in office for terms of one, two,
10 three, four, and five years, respectively, from the January 1 first occurring after
11 this Act takes effect, the term of each to be designated by the President at the time
12 of nomination.

13 "(4) CHAIRMAN.—The President shall designate a member of the Council as
14 Chairman of the Council. The Chairman's term shall be concurrent with the term of the
15 member so designated. The Chairman of the Council shall be the principal executive
16 officer of the Council and shall exercise all of the executive and administrative functions
17 of the Council, including with respect to—

18 "(A) the appointment and supervision of personnel employed under the
19 Council (other than personnel employed regularly and full time in the immediate
20 offices of members other than the Chairman);

21 "(B) the distribution of business among personnel appointed and
22 supervised by the Chairman and among administrative units of the Council; and

1 "(C) the use and expenditure of funds.

2 In carrying out any of these functions, the Chairman shall be governed by the general
3 policies established by the Council and by the decisions, findings, and determinations the
4 Council shall by law be authorized to make. The Council shall annually elect a Vice
5 Chairman to act in the absence or disability of the Chairman or in case of a vacancy in the
6 office of the Chairman.

7 "(5) REMOVAL.—Any Member of the Council may be removed by the President
8 for neglect of duty or malfeasance in office but for no other cause.

9 "(6) QUORUM.—Three members of the Council shall constitute a quorum for the
10 exercise of the Council's powers, except that if there are only three members serving on
11 the Council, two members of the Council shall constitute a quorum, and if there are only
12 two members serving on the Council, two members shall constitute a quorum for the six-
13 month period beginning on the date of the vacancy that caused the number of Council
14 members to decline to two.

15 "(7) VOTING ON REPORTS.—Any report of the Council under subsection (c)
16 or (d) must be approved by the majority of Members present.

17 "(8) SALARIES OF MEMBERS.—

18 "(A) EXECUTIVE SCHEDULE LEVEL II.—Section 5313 of title 5,
19 United States Code, is amended by adding at the end the following new item:
20 'Chairman of the Independent Medicare Advisory Council.'

1 "(B) EXECUTIVE SCHEDULE LEVEL III.—Section 5314 of title 5,
2 United States Code, is amended by adding at the end the following new item:

3 'Member of the Independent Medicare Advisory Council.'

4 "(c) AUTHORITY OF THE COUNCIL TO RECOMMEND ANNUAL PAYMENT
5 UPDATES.—

6 "(1) RECOMMENDATIONS REGARDING CALENDAR YEAR
7 PROVISIONS.—Not later than December 31 of each year, the Council shall transmit to
8 the President a report containing recommendations, with respect to the next calendar year
9 starting more than a year after the report, for—

10 "(A) the update to the single conversion factor applicable to payments for
11 physicians' services, in lieu of the update otherwise provided under section
12 1848(d);

13 "(B) the percentage adjustment applicable to payments for home health
14 services, in lieu of the applicable home health increase percentage otherwise
15 provided under section 1895(b)(3)(B)(i);

16 "(C) the percentage adjustment applicable to payments for durable medical
17 equipment, in lieu of the covered item update otherwise provided under section
18 1834(a)(14);

19 "(D) the percentage adjustment applicable to payments for prosthetic
20 devices and orthotics and prosthetics, in lieu of the applicable percentage increase
21 otherwise provided under section 1834(h)(4)(A);

1 "(E) the percentage adjustment applicable to payments for renal dialysis
2 services, in lieu of the ESRD market basket percentage increase factor otherwise
3 provided under section 1881(b)(14)(F);

4 "(F) the percentage adjustment applicable to payment for covered OPD
5 services, in lieu of the OPD fee schedule increase factor otherwise provided under
6 section 1833(t)(3)(C)(iv);

7 "(G) the percentage adjustment applicable to payments for clinical
8 diagnostic laboratory tests as defined under section 1833(h), in lieu of the
9 percentage increase or decrease otherwise provided under section 1833(h)(2)(A);

10 "(H) the percentage adjustment applicable to payments for specified items
11 as defined in section 1842(s)(2), in lieu of the applicable percentage increase
12 otherwise provided under the first sentence of section 1842(s)(1);

13 "(I) the percentage adjustment applicable to payments for ambulance
14 services, in lieu of the applicable percentage increase otherwise provided under
15 the section 1834(l)(3)(B); and

16 "(J) the percentage adjustment applicable to the approved FTE resident
17 amounts for purposes of graduate medical education payments as defined under
18 section 1886(h), in lieu of the percentage increase or decrease otherwise provided
19 under section 1886(h)(2)(D)(i).

20 "(2) RECOMMENDATIONS REGARDING FISCAL YEAR PROVISIONS.—

21 Not later than October 1 of each year, the Council shall transmit to the President a report

1 containing recommendations, with respect to the fiscal year starting October 1 of the next
2 calendar year, for—

3 "(A) the percentage adjustment applicable to payments for hospitals, in
4 lieu of the market basket update otherwise provided under section 1886(b)(3)(B);

5 "(B) the percentage adjustment applicable to payments for skilled nursing
6 facilities, in lieu of the skilled nursing facility market basket update otherwise
7 provided under section 1888(e)(4)(E);

8 "(C) the percentage adjustment applicable to payments for inpatient
9 rehabilitation services as defined under section 1886(j), in lieu of the increase
10 factor otherwise provided under section 1886(j)(3)(C);

11 "(D) the percentage adjustment applicable to payments for hospice care as
12 defined under section 1861(dd)(1), in lieu of the increase factor otherwise
13 provided under section 1814(i)(1)(C)(ii); and

14 "(E) to the extent that an annual percentage increase factor applies to
15 payments for long term care hospitals as defined under section 1886(d)(1)(B)(iv),
16 in lieu of such factor.

17 "(3) OPTION TO RECOMMEND NO CHANGE.—In making recommendations
18 under paragraph (1) or (2), the Council may propose that an annual payment update
19 continue to be calculated as otherwise provided under this Act or other applicable law.

20 "(4) REPORT TO INCLUDE EXPLANATION.—The Council shall explain and
21 justify its recommendations in a report submitted to the President under paragraph (1) or
22 (2).

1 "(5) NO INCREASE IN AGGREGATE MEDICARE EXPENDITURES.—A
2 report of the Council under paragraph (1) or (2) shall be designed in such a manner that
3 the implementation of the package of recommendations contained in such report would
4 not be expected to result, over the ten-year period starting with the next fiscal year, in an
5 increase in the aggregate level of net expenditures under the Medicare program relative to
6 the aggregate level that would have occurred absent such implementation.

7 "(6) REVIEW BY CHIEF ACTUARY.—Not later than 20 days after the
8 transmission by the Council of a report under paragraph (1) or (2), the Chief Actuary of
9 the Centers for Medicare & Medicaid Services shall submit a report to the President and
10 the Secretary determining whether implementation of the package of recommendations in
11 such report would be expected to have the result described by paragraph (5). If the Chief
12 Actuary's report determines that a report of the Council does not satisfy that requirement,
13 the recommendations contained in that report shall be null and void, and the annual
14 payment updates covered by that report shall continue to be calculated as otherwise
15 provided under this Act or other applicable law.

16 "(d) AUTHORITY OF THE COUNCIL TO RECOMMEND PAYMENT REFORMS.—

17 "(1) IN GENERAL.—Concurrently with its report under subsection (c)(2), the
18 Council may submit, under separate cover, a report containing recommendations for
19 reforms to the Medicare program, subject to paragraph (2).

20 "(2) EXCLUSIONS.—In exercising its authority under paragraph (1), the Council
21 may not recommend any changes to the following aspects of the Medicare program:

1 "(A) Provisions under section 1801 prohibiting federal interference and
2 provisions under section 1802 providing for certain specified beneficiary
3 protections and free choice by patients.

4 "(B) Financing and existence of the hospital insurance and supplemental
5 medical insurance trust funds under sections 1811, 1817, 1831, and 1841, and the
6 appropriations to cover government contributions and the contingency reserve for
7 SMI trust fund under section 1844.

8 "(C) The following requirements for providers to receive Medicare
9 payment: conditions and limitations on payment for services under section
10 1814(a); requirements and timing of payment to providers of services under
11 section 1815; requirements for and assuring quality of care in skilled nursing
12 facilities under section 1819(b)-(d); conditions for coverage of religious
13 nonmedical health care institutional services under section 1821; intermediate
14 sanctions for providers or suppliers of clinical diagnostic laboratory tests that no
15 longer meet conditions of participation under section 1846; conditions of
16 participation for home health agencies under section 1891; accreditation
17 requirements for independent diagnostic testing facilities under section 1834(e);
18 and consultation with States to develop conditions of participation under section
19 1863.

20 "(D) The following provisions for administering the Medicare program:
21 section 1808; interest rates under section 1833(j); procedures for payment of
22 claims of providers of services under section 1835; required information from a

1 referring physician under section 1833(q); definition of a radiologist under section
2 1834(b)(6); definition of a qualified professional under section 1834(h);
3 requirement that suppliers have a supplier number under section 1834(j);
4 definitions of the types of providers and suppliers under section 1861; use of State
5 agencies to determine compliance by providers with conditions of participation
6 under section 1864; effect of accreditation under section 1865; agreements with
7 providers under section 1866; the Practicing Physicians Advisory Council for
8 Technology and Innovation under section 1868; determinations and appeals
9 (including local coverage determinations) under section 1869; other
10 administrative provisions (including those concerning Medicare Administrative
11 Contractors) under sections 1870 through 1875; the Provider Reimbursement
12 Review Board under section 1878; the withholding of payments for certain
13 Medicaid providers (with overpayments) under section 1885; provider education
14 and technical assistance under section 1889; offsets of payments to individuals to
15 collect past-due obligations arising from breach of scholarship and loan contract
16 under section 1892; administration of the Medicare Integrity Program under
17 section 1893; the Health Care Fraud and Abuse Control Account under section
18 1817(k); implementation and measures for physician quality reporting under
19 section 1848(k); definition of an eligible profession for physician e-prescribing
20 under section 1848(m); definition of meaningful user of certified EHR technology
21 under sections 1848(o) and 1886(n); inpatient hospital capital payments under
22 section 1886(g); hospital reporting of quality measures under section

1 1886(b)(3)(viii); prohibition on duplication of payment under section 1833(d);
2 requirements for the submission of documents under section 1833(e);
3 establishment and duties of the Medicare Payment Advisory Commission under
4 section 1805; and provisions relating to judicial review, including those under
5 sections 1847A(g), 1847B(g), and 1848(i).

6 "(E) The following Medicare Advantage provisions: the process and
7 information for exercising choice under sections 1851(c) and (d); and solvency
8 and other specified standards under section 1856.

9 "(F) The following Medicare Prescription Drug Plan (Medicare Part D)
10 provisions: flexibility of risk assumed and the application of fallback plan under
11 section 1860D-3(b); beneficiary protections under section 1860D-4(b)(2) and
12 1860D-4(b)(3)(G)(iii); establishment and administration of regional prescription
13 drug plans under section 1860D-11; submission of bids and Plan approval under
14 section 1860D-11 (except for non-interference in 1860D-11(i) and section 1860D-
15 11(c)(6)); risk adjustment and disclosure of information under 1860D-15(c) and
16 1860D-15(f); placement of the Part D account in the SMI trust fund under section
17 1860D-16; application to Medicare Advantage program and related managed care
18 programs under section 1860D-21(c), except for section 1860D-21(d)(4);
19 application of Medicare Advantage waiver authority under 1860D-22(b);
20 coordination with State pharmaceutical assistance programs and other
21 coordination requirements under sections 1860D-23 and D-24; and definitions
22 and miscellaneous provisions under sections 1860D-41 and 42.

1 "(3) NO INCREASE IN AGGREGATE MEDICARE EXPENDITURES.—Each
2 report under paragraph (1) shall—

3 "(A) be designed in such a manner that its implementation would not be
4 expected to result, over the ten-year period starting with the next fiscal year, in
5 any increase in the aggregate level of net expenditures under the Medicare
6 program relative to the aggregate level that would have occurred absent such
7 implementation; and

8 "(B) either—

9 "(i) improve the quality of medical care received by the
10 beneficiaries of the Medicare program; or

11 "(ii) improve the efficiency of the Medicare program's operation.

12 "(4) REVIEW BY CHIEF ACTUARY.—Not later than 20 days after the
13 transmission of a report under paragraph (1), the Chief Actuary of the Centers for
14 Medicare & Medicaid Services shall submit a report to the President and the Secretary
15 determining whether implementation of the package of recommendations in such report
16 would be expected to have the result described by paragraph (3)(A). If the Chief
17 Actuary's report determines that the report of the Council does not satisfy that
18 requirement, the recommendations contained in that report of the Council shall be null
19 and void, and the aspects of Medicare covered by that report shall continue to apply as
20 otherwise provided under this Act or other applicable law.

1 "(5) IMPLEMENTATION ADVICE.—Not later than 20 days after the
2 transmission of a report under paragraph (1), the Secretary shall submit a report to the
3 President containing the Secretary's advice regarding—

4 "(A) the period of time necessary to implement the recommendations,
5 including necessary systems changes; and

6 "(B) the administrative resources needed for implementation.

7 "(e) FIVE-YEAR START-UP PERIOD.—The Council may not make a recommendation
8 under subsection (c) or (d) before September 15, 2014.

9 "(f) REVIEW BY THE PRESIDENT.—

10 "(1) IN GENERAL.—After transmittal of a report under subsection (c) or (d), the
11 President shall transmit to the Council and to the Congress, no later than the time
12 specified in paragraph (2), a message stating whether the President approves or
13 disapproves of the report and all the recommendations contained therein. Presidential
14 approval of some, but not all, of the recommendations included in a report of the Council
15 shall be deemed to be disapproval of that report and all the recommendations contained
16 therein. The President's message under this section shall include a copy of the Council's
17 report being approved or disapproved, and either—

18 "(A) a certification of approval of the Council's recommendations
19 contained in that report; or

20 "(B) the reasons for disapproval of that report.

21 "(2) TIMING.—The time specified in this paragraph is—

1 "(A) in the case of a report under subsection (c), 30 days after transmittal
2 of the report; and

3 "(B) in the case of a report under subsection (d), 30 days after submittal of
4 the reports required under paragraphs (4) and (5) of such subsection, or after the
5 expiration of the time for submitting such reports.

6 "(g) REVIEW BY CONGRESS.—

7 "(1) IN GENERAL.—The Secretary may not implement any recommendation of
8 the Council approved by the President under subsection (f)—

9 "(A) until the end of the 30-day period beginning on the date on which the
10 President transmits a report to the Congress containing a certification of approval
11 of such recommendation under subsection (f); or

12 "(B) if a joint resolution of Congress is enacted disapproving the report of
13 the Council containing such recommendation.

14 "(2) CALCULATION OF PERIOD.—For purposes of this subsection, the days
15 on which either House of Congress is not in session because of adjournment of more than
16 three days to a day certain shall be excluded in the computation of a period.

17 "(h) AUTHORITY OF THE SECRETARY TO IMPLEMENT COUNCIL'S
18 RECOMMENDATIONS.—

19 "(1) ANNUAL PAYMENT UPDATE RECOMMENDATIONS.—If, under
20 subsection (f) and subject to subsection (g), the President approves the recommendations
21 submitted by the Council under subsection (c), the Secretary shall promulgate such
22 regulations as may be necessary to implement those recommendations.

1 "(2) PAYMENT REFORM RECOMMENDATIONS.—If, under subsection (f)
2 and subject to subsection (g), the President approves the recommendations submitted by
3 the Council under subsection (d), the Secretary shall promulgate such regulations as may
4 be necessary to implement those recommendations, notwithstanding any provisions of
5 this Act or any other provisions governing the Medicare program, other than the
6 provisions enumerated in subsection (d)(2).

7 "(i) ANNUAL REPORT.—Not later than March 1 of each year (beginning in the year
8 2016), the Council shall submit to the Congress a report on all recommendations made by the
9 Council during the preceding eighteen months, including the performance of the Secretary in
10 implementing the recommendations approved by the President under subsection (f).

11 "(j) LIMITATION ON JUDICIAL REVIEW.—A person adversely affected by a
12 recommendation of the Council that is approved by the President under subsection (f) may file a
13 petition for review, not later than 30 days after such approval, in the United States Court of
14 Appeals for the District of Columbia. Review shall be limited to the question whether the
15 Council's recommendation exceeded the Council's authority under subsection (c) or (d).
16 Notwithstanding the previous sentence, a determination by the Chief Actuary under subsections
17 (c)(6) and (d)(4) shall serve as conclusive evidence that the requirements of subsections (c)(5)
18 and (d)(3)(A), respectively, have been met, and no further review of the Council's compliance
19 with those requirements shall be available. Review under this subsection shall be heard and
20 decided expeditiously. Other than as stated in this subsection, no court shall have jurisdiction to
21

1 review a recommendation of the Council, or the President's approval or disapproval of such a
2 recommendation.

3 "(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be
4 appropriated to the Council for each fiscal year such sums as may be necessary to carry out its
5 duties and functions. Sixty percent of such appropriations shall be derived by transfer from the
6 Federal Hospital Insurance Trust Fund, and 40 percent of such appropriation shall be derived by
7 transfer from the Federal Supplementary Medical Insurance Trust Fund."

8 (b) CONFORMING AMENDMENTS.—

9 (1) Section 1848(d) of such Act (42 U.S.C. 1395w-4(d)) is amended by adding at
10 the end the following new paragraph:

11 "(10) UPDATES DETERMINED BY INDEPENDENT MEDICARE
12 ADVISORY COUNCIL.—

13 "(A) IN GENERAL—Notwithstanding the foregoing provisions of this
14 subsection, if, under section 18__(f), the President approves an update to the
15 single conversion factor recommended by the Independent Medicare Advisory
16 Council under subsection (c) of that section, then the Secretary shall replace the
17 update that would otherwise apply under paragraph (1)(A) with the update so
18 approved for the year to which the recommendation applies.

19 "(B) NO EFFECT ON COMPUTATION OF CONVERSION FACTOR
20 FOR SUBSEQUENT YEARS—The conversion factor under this subsection shall
21 be computed under paragraph (1)(A) for each year following the year for which

1 an update under subparagraph (A) applies as if subparagraph (A) had never
2 applied.".

3 (2) Section 1833 of such Act (42 U.S.C. 13951) is amended in subsection

4 (h)(2)(A)(ii)—

5 (1) by striking “and” at the end of (h)(2)(A)(ii)(III);

6 (2) by striking the period at the end of (h)(2)(A)(ii)(IV) and inserting “;
7 and” at the end; and

8 (3) by inserting at the end the following new subclause:

9 "(V) notwithstanding the foregoing provisions of
10 this subparagraph, if, under section 18__(f), the President
11 approves a percentage adjustment (which may be a
12 negative percentage or zero) recommended by the
13 Independent Medicare Advisory Council under subsection
14 (d) of that section, then the Secretary shall replace the
15 annual percentage adjustment in the fee schedules that
16 would otherwise apply under clause (i) with the adjustment
17 so approved for the year to which the recommendation
18 applies, except that the Secretary maintains discretion to
19 make such other adjustments as the Secretary determines
20 are justified by technological changes.”.

21 (3) Section 1833 of such Act (42 U.S.C. 13951) is amended in subsection

22 (t)(3)(C)(iv)—

1 (1) by inserting “(I)” before the phrase “For purposes of this
2 subparagraph”; and

3 (2) by inserting at the end, the following new subclause:

4 “(II) If, under section 18__ (f), the President
5 approves a percentage adjustment (which may be a
6 negative percentage or zero) recommended by the
7 Independent Medicare Advisory Council under subsection
8 (c) of that section, the Secretary shall replace the OPD fee
9 schedule increase factor that would otherwise apply under
10 subclause (I) with the percentage adjustment so approved
11 for the year to which the recommendation applies, which
12 shall be subject to paragraph (17).”.

13 (4) Section 1834 of such Act (42 U.S.C. 1395m) is amended—

14 (1) in subsection (a)(14),—

15 (A) in subparagraph (L) by striking the “and” at the end;

16 (B) in subparagraph (M) by striking the period at the end and
17 replacing it with “; and”; and

18 (C) by inserting the following new subparagraph:

19 “(N) Notwithstanding the foregoing provisions of this paragraph,
20 if, under section 18__ (f), the President approves a percentage adjustment
21 (which may be a negative percentage or zero) recommended by the
22 Independent Medicare Advisory Council under subsection (c) of that

1 section, the Secretary shall replace the covered item update that would
2 otherwise apply under this paragraph with the percentage adjustment so
3 approved for the year to which the recommendation applies.”; and

4 (2) in subsection (h)(4)(A)(x),—

5 (A) by inserting “(I)” after “for a subsequent year.”;

6 (B) by inserting “or” at the end; and

7 (C) by inserting at the end the following new subclause:

8 “(II) notwithstanding the foregoing provisions of
9 this subparagraph, if, under section 18__(f), the President
10 approves a percentage adjustment (which may be a
11 negative percentage or zero) recommended by the
12 Independent Medicare Advisory Council under subsection
13 (c) of that section, the Secretary shall replace the applicable
14 percentage adjustment that would otherwise apply under
15 this subparagraph with the percentage so approved for the
16 year to which the recommendation applies.”.

17 (5) Section 1881 of such Act (42 U.S.C. 1395rr) is amended—

18 (1) in subsection (b)(14)(F)(i),—

19 (A) by inserting “(I)” before “an ESRD market basket percentage”;

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

21 (C) by inserting the following new subclause:

1 “(II) notwithstanding the foregoing provisions of
2 this clause, if, under section 18__(f), the President approves
3 a percentage adjustment (which may be a negative
4 percentage or zero) recommended by the Independent
5 Medicare Advisory Council under subsection (c) of that
6 section, the Secretary shall replace the adjustment that
7 would otherwise apply under this clause with the
8 percentage adjustment so approved for the year to which
9 the recommendation applies.”; and

10 (2) in subsection (b)(14)(F)(ii)(II), by striking the period at the end; and
11 inserting the following at the end: “; or notwithstanding the foregoing provisions
12 of this clause, if, under section 18__(f), the President approves a percentage
13 adjustment (which may be a negative percentage or zero) recommended by the
14 Independent Medicare Advisory Council under subsection (c) of that section, the
15 Secretary shall replace the adjustment that would otherwise apply under this
16 clause with the percentage adjustment so approved for the year to which the
17 recommendation applies.”.

18 (6) Section 1886 of such Act (42 U.S.C. 1395ww) is amended—

19 (1) in subsection (b)(3)(B)(i),—

20 (A) in subclause (XIX), by striking “and”;

21 (B) in subclause (XX), by striking “for each subsequent fiscal
22 year”; by striking the period at the end and replacing it with “; and”; and

1 by inserting at the beginning of the subclause “for each of fiscal years
2 2004 through the year for which the Independent Medicare Advisory
3 Council first makes annual update recommendations, which shall be
4 subject to clause (viii), under section 18__; and

5 (C) by inserting after subclause (XX) the following new subclause:

6 “(XXI) for each subsequent fiscal year, the market
7 basket percentage increase for hospitals in all areas.

8 Notwithstanding the preceding sentence, if, under section
9 18__(f), the President approves a percentage adjustment
10 (which may be a negative percentage or zero)

11 recommended by the Independent Medicare Advisory
12 Council under subsection (c) of that section, the Secretary
13 shall replace the market basket percentage increase that
14 would otherwise apply under the preceding sentence with
15 the percentage adjustment (which shall be subject to clause
16 (viii)) so approved for the fiscal year to which the
17 recommendation applies.”;

18 (2) in subsection (b)(3)(B)(ii),—

19 (A) in subclause (VII), by striking “and”;

20 (B) in subclause (VIII), by striking “subsequent fiscal years”; by
21 striking the period at the end and replacing it with “; and”; and by

1 inserting at the beginning of the subclause “for each of fiscal years 2003
2 through 2015”; and

3 (C) by inserting after subclause (VIII) the following new
4 subclause:

5 “(IX) for each subsequent fiscal year, is the market
6 basket percentage increase. Notwithstanding the preceding
7 sentence, if, under section 18__(f), the President approves a
8 percentage adjustment (which may be a negative
9 percentage or zero) recommended by the Independent
10 Medicare Advisory Council under subsection (c) of that
11 section, the Secretary shall replace the market basket
12 percentage increase that would otherwise apply under the
13 preceding sentence with the percentage adjustment so
14 approved for the fiscal year to which the recommendation
15 applies.”;

16 (3) in subsection (j),

17 (A) by inserting “(I)” before the phrase “For purposes of this
18 subparagraph”; and

19 (B) by inserting at the end, the following new subclause:

20 “(II) If, under section 18__(f), the President
21 approves a percentage adjustment (which may be a
22 negative percentage or zero) recommended by the

1 Independent Medicare Advisory Council under subsection
2 (c) of that section, the Secretary shall replace the increase
3 factor that would otherwise apply under subclause (I) with
4 the percentage adjustment so approved for the year to
5 which the recommendation applies.”.

6 (7) Section 1888(e)(4)(E)(ii) of such Act (42 U.S.C. 1395yy(e)(4)(ii)) is
7 amended—

8 (1) in subclause (III), by striking “and”; and

9 (2) in subclause (IV), by inserting at the end after “for the fiscal year
10 involved.” the following: “Notwithstanding the preceding sentence, if, under
11 section 18__ (f), the President approves a percentage adjustment (which may be a
12 negative percentage or zero) recommended by the Independent Medicare
13 Advisory Council under subsection (c) of that section, the Secretary shall replace
14 the skilled nursing facility market basket percentage change that would otherwise
15 apply under the preceding sentence with the percentage adjustment so approved
16 for the year to which the recommendation applies.”.

17 (8) Section 1895(b)(3)(B)(i) of such Act (42 U.S.C. 1395fff) is amended—

18 (1) in subsection (b)(3)(B)(i),—

19 (A) by inserting “in the following manner: (I)” before the phrase,

20 “for fiscal year 2002”;

21 (B) by striking the period at the end and replacing it with “; or”;

22 and

1 (C) by inserting at the end, the following new subclause:

2 “(II) notwithstanding the foregoing provisions of
3 this clause, if, under section 18__(f), the President approves
4 a percentage adjustment (which may be a negative
5 percentage or zero) recommended by the Independent
6 Medicare Advisory Council under subsection (c) of that
7 section, the Secretary shall replace the adjustment that
8 would otherwise apply under clause (i)(I) with the
9 percentage adjustment so approved for the year to which
10 the recommendation applies, and such adjustment shall be
11 subject to clause (v) of this subparagraph.”; and

12 (2) in subsection (b)(3)(B)(v)(I),—

13 (A) by inserting “and (i)(II)” after “For purposes of clause (ii)(V)”;

14 and

15 (B) by inserting “(or the adjustment adopted under clause (i)(II))”
16 after “the home health market basket percentage increase applicable under
17 such clause”.