

1 (A) facilitating pooling mechanisms, in-
2 cluding pooling across State lines, and

3 (B) providing assistance to small busi-
4 nesses and individuals, including financial as-
5 sistance and tax incentives, for the purchase of
6 private insurance coverage.

7 **SEC. 623. LIMITATION ON MEDICARE EXCEPTION TO THE**
8 **PROHIBITION ON CERTAIN PHYSICIAN RE-**
9 **FERRALS FOR HOSPITALS.**

10 (a) IN GENERAL.—Section 1877 (42 U.S.C. 1395nn)
11 is amended—

12 (1) in subsection (d)(2)—

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

15 (B) in subparagraph (B), by striking the
16 period at the end and inserting “; and”; and

17 (C) by adding at the end the following new
18 subparagraph:

19 “(C) in the case where the entity is a hos-
20 pital, the hospital meets the requirements of
21 paragraph (3)(D).”;

22 (2) in subsection (d)(3)—

23 (A) in subparagraph (B), by striking
24 “and” at the end;

1 (B) in subparagraph (C), by striking the
2 period at the end and inserting “; and”; and

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

5 “(D) the hospital meets the requirements
6 described in subsection (i)(1).”; and

7 (3) by adding at the end the following new sub-
8 section:

9 “(i) REQUIREMENTS FOR HOSPITALS TO QUALIFY
10 FOR RURAL PROVIDER AND HOSPITAL EXCEPTION TO
11 OWNERSHIP OR INVESTMENT PROHIBITION.—

12 “(1) REQUIREMENTS DESCRIBED.—For pur-
13 poses of subsection (d)(3)(D), the requirements de-
14 scribed in this paragraph for a hospital are as fol-
15 lows:

16 “(A) PROVIDER AGREEMENT.—The hos-
17 pital had—

18 “(i) physician ownership or invest-
19 ment on January 1, 2009; and

20 “(ii) a provider agreement under sec-
21 tion 1866 in effect on such date.

22 “(B) PROHIBITION ON PHYSICIAN OWNER-
23 SHIP OR INVESTMENT.—The percentage of the
24 total value of the ownership or investment in-
25 terests held in the hospital, or in an entity

1 whose assets include the hospital, by physician
2 owners or investors in the aggregate does not
3 exceed such percentage as of the date of enact-
4 ment of this subsection.

5 “(C) PROHIBITION ON EXPANSION OF FA-
6 CILITY CAPACITY.—Except as provided in para-
7 graph (3), the number of operating rooms, pro-
8 cedure rooms, and beds of the hospital at any
9 time on or after the date of the enactment of
10 this subsection are no greater than the number
11 of operating rooms, procedure rooms, and beds
12 as of such date.

13 “(D) PREVENTING CONFLICTS OF INTER-
14 EST.—

15 “(i) The hospital submits to the Sec-
16 retary an annual report containing a de-
17 tailed description of—

18 “(I) the identity of each physi-
19 cian owner and physician investor and
20 any other owners or investors of the
21 hospital; and

22 “(II) the nature and extent of all
23 ownership and investment interests in
24 the hospital.

1 “(ii) The hospital has procedures in
2 place to require that any referring physi-
3 cian owner or investor discloses to the pa-
4 tient being referred, by a time that permits
5 the patient to make a meaningful decision
6 regarding the receipt of care, as deter-
7 mined by the Secretary—

8 “(I) the ownership or investment
9 interest, as applicable, of such refer-
10 ring physician in the hospital; and

11 “(II) if applicable, any such own-
12 ership or investment interest of the
13 treating physician.

14 “(iii) The hospital does not condition
15 any physician ownership or investment in-
16 terests either directly or indirectly on the
17 physician owner or investor making or in-
18 fluencing referrals to the hospital or other-
19 wise generating business for the hospital.

20 “(iv) The hospital discloses the fact
21 that the hospital is partially owned by phy-
22 sicians—

23 “(I) on any public website for the
24 hospital; and

1 “(II) in any public advertising
2 for the hospital.

3 “(E) ENSURING BONA FIDE OWNERSHIP
4 AND INVESTMENT.—

5 “(i) Any ownership or investment in-
6 terests that the hospital offers to a physi-
7 cian owner or investor are not offered on
8 more favorable terms than the terms of-
9 fered to a person who is not a physician
10 owner or investor.

11 “(ii) The hospital (or any investors in
12 the hospital) does not directly or indirectly
13 provide loans or financing for any physi-
14 cian owner or investor in the hospital.

15 “(iii) The hospital (or any investors in
16 the hospital) does not directly or indirectly
17 guarantee a loan, make a payment toward
18 a loan, or otherwise subsidize a loan, for
19 any individual physician owner or investor
20 or group of physician owners or investors
21 that is related to acquiring any ownership
22 or investment interest in the hospital.

23 “(iv) Ownership or investment returns
24 are distributed to each owner or investor in
25 the hospital in an amount that is directly

1 proportional to the ownership or invest-
2 ment interest of such owner or investor in
3 the hospital.

4 “(v) Physician owners and investors
5 do not receive, directly or indirectly, any
6 guaranteed receipt of or right to purchase
7 other business interests related to the hos-
8 pital, including the purchase or lease of
9 any property under the control of other
10 owners or investors in the hospital or lo-
11 cated near the premises of the hospital.

12 “(vi) The hospital does not offer a
13 physician owner or investor the oppor-
14 tunity to purchase or lease any property
15 under the control of the hospital or any
16 other owner or investor in the hospital on
17 more favorable terms than the terms of-
18 fered to an individual who is not a physi-
19 cian owner or investor.

20 “(F) PATIENT SAFETY.—The hospital has
21 the capacity to—

22 “(i) provide assessment and initial
23 treatment for patients; and

1 “(ii) refer and transfer patients to
2 hospitals with the capability to treat the
3 needs of the patient involved.

4 “(G) LIMITATION ON APPLICATION TO
5 CERTAIN CONVERTED FACILITIES.—The hos-
6 pital was not converted from an ambulatory
7 surgical center to a hospital on or after the date
8 of enactment of this subsection.

9 “(2) PUBLICATION OF INFORMATION RE-
10 PORTED.—The Secretary shall publish, and update
11 on an annual basis, the information submitted by
12 hospitals under paragraph (1)(D)(i) on the public
13 Internet website of the Centers for Medicare & Med-
14 icaid Services.

15 “(3) EXCEPTION TO PROHIBITION ON EXPAN-
16 SION OF FACILITY CAPACITY.—

17 “(A) PROCESS.—

18 “(i) ESTABLISHMENT.—The Secretary
19 shall establish and implement a process
20 under which an applicable hospital (as de-
21 fined in subparagraph (E)) may apply for
22 an exception from the requirement under
23 paragraph (1)(C).

24 “(ii) OPPORTUNITY FOR COMMUNITY
25 INPUT.—The process under clause (i) shall

1 provide individuals and entities in the com-
2 munity in which the applicable hospital ap-
3 plying for an exception is located with the
4 opportunity to provide input with respect
5 to the application.

6 “(iii) TIMING FOR IMPLEMENTA-
7 TION.—The Secretary shall implement the
8 process under clause (i) on July 1, 2010.

9 “(iv) REGULATIONS.—Not later than
10 June 1, 2010, the Secretary shall promul-
11 gate regulations to carry out the process
12 under clause (i).

13 “(B) FREQUENCY.—The process described
14 in subparagraph (A) shall permit an applicable
15 hospital to apply for an exception up to once
16 every 2 years.

17 “(C) PERMITTED INCREASE.—

18 “(i) IN GENERAL.—Subject to clause
19 (ii) and subparagraph (D), an applicable
20 hospital granted an exception under the
21 process described in subparagraph (A) may
22 increase the number of operating rooms,
23 procedure rooms, and beds of the applica-
24 ble hospital above the baseline number of
25 operating rooms, procedure rooms, and

1 beds of the applicable hospital (or, if the
2 applicable hospital has been granted a pre-
3 vious exception under this paragraph,
4 above the number of operating rooms, pro-
5 cedure rooms, and beds of the hospital
6 after the application of the most recent in-
7 crease under such an exception).

8 “(ii) 100 PERCENT INCREASE LIMITA-
9 TION.—The Secretary shall not permit an
10 increase in the number of operating rooms,
11 procedure rooms, and beds of an applicable
12 hospital under clause (i) to the extent such
13 increase would result in the number of op-
14 erating rooms, procedure rooms, and beds
15 of the applicable hospital exceeding 200
16 percent of the baseline number of oper-
17 ating rooms, procedure rooms, and beds of
18 the applicable hospital.

19 “(iii) BASELINE NUMBER OF OPER-
20 ATING ROOMS, PROCEDURE ROOMS, AND
21 BEDS.—In this paragraph, the term ‘base-
22 line number of operating rooms, procedure
23 rooms, and beds’ means the number of op-
24 erating rooms, procedure rooms, and beds

1 of the applicable hospital as of the date of
2 enactment of this subsection.

3 “(D) INCREASE LIMITED TO FACILITIES
4 ON THE MAIN CAMPUS OF THE HOSPITAL.—
5 Any increase in the number of operating rooms,
6 procedure rooms, and beds of an applicable hos-
7 pital pursuant to this paragraph may only occur
8 in facilities on the main campus of the applica-
9 ble hospital.

10 “(E) APPLICABLE HOSPITAL.—In this
11 paragraph, the term ‘applicable hospital’ means
12 a hospital—

13 “(i) that is located in a county in
14 which the percentage increase in the popu-
15 lation during the most recent 5-year period
16 (as of the date of the application under
17 subparagraph (A)) is at least 150 percent
18 of the percentage increase in the popu-
19 lation growth of the State in which the
20 hospital is located during that period, as
21 estimated by Bureau of the Census and
22 available to the Secretary;

23 “(ii) whose annual percent of total in-
24 patient admissions that represent inpatient
25 admissions under the program under title

1 XIX is equal to or greater than the aver-
2 age percent with respect to such admis-
3 sions for all hospitals located in the county
4 in which the hospital is located;

5 “(iii) that does not discriminate
6 against beneficiaries of Federal health care
7 programs and does not permit physicians
8 practicing at the hospital to discriminate
9 against such beneficiaries;

10 “(iv) that is located in a State in
11 which the average bed capacity in the
12 State is less than the national average bed
13 capacity; and

14 “(v) that has an average bed occu-
15 pancy rate that is greater than the average
16 bed occupancy rate in the State in which
17 the hospital is located.

18 “(F) PROCEDURE ROOMS.—In this sub-
19 section, the term ‘procedure rooms’ includes
20 rooms in which catheterizations, angiographies,
21 angiograms, and endoscopies are performed, ex-
22 cept such term shall not include emergency
23 rooms or departments (exclusive of rooms in
24 which catheterizations, angiographies,
25 angiograms, and endoscopies are performed).

1 “(G) PUBLICATION OF FINAL DECISIONS.—Not later than 60 days after receiving
2 a complete application under this paragraph,
3 the Secretary shall publish in the Federal Register the final decision with respect to such ap-
4 plication.
5 plication.

6 “(H) LIMITATION ON REVIEW.—There
7 shall be no administrative or judicial review
8 under section 1869, section 1878, or otherwise
9 of the process under this paragraph (including
10 the establishment of such process).
11 the establishment of such process).

12 “(4) COLLECTION OF OWNERSHIP AND INVESTMENT INFORMATION.—For purposes of subpara-
13 graphs (A)(i) and (B) of paragraph (1), the Sec-
14 retary shall collect physician ownership and invest-
15 ment information for each hospital.
16 ment information for each hospital.

17 “(5) PHYSICIAN OWNER OR INVESTOR DEFINED.—For purposes of this subsection, the term
18 ‘physician owner or investor’ means a physician (or
19 an immediate family member of such physician) with
20 a direct or an indirect ownership or investment in-
21 terest in the hospital.
22 interest in the hospital.

23 “(6) PATIENT SAFETY REQUIREMENT.—In the
24 case of a hospital to which the requirements of para-
25 graph (1) apply, insofar as the hospital described in

1 this subsection admits a patient and does not have
2 any physician available on the premises to provide
3 services during all hours in which the hospital is
4 providing services to such patient, before admitting
5 the patient—

6 “(A) the hospital shall disclose such fact to
7 a patient; and

8 “(B) following such disclosure, the hospital
9 shall receive from the patient a signed acknowl-
10 edgment that the patient understands such fact.

11 “(7) CLARIFICATION.—Nothing in this sub-
12 section shall be construed as preventing the Sec-
13 retary from revoking a hospital’s provider agreement
14 if not in compliance with regulations implementing
15 section 1866.”.

16 (b) ENFORCEMENT.—

17 (1) ENSURING COMPLIANCE.—The Secretary of
18 Health and Human Services shall establish policies
19 and procedures to ensure compliance with the re-
20 quirements described in subsections (i)(1) and (i)(7)
21 of section 1877 of the Social Security Act, as added
22 by subsection (a)(3), beginning on the date such re-
23 quirements first apply. Such policies and procedures
24 may include unannounced site reviews of hospitals.