

AMENDMENT NO. _____ Calendar No. _____

Purpose: To protect and preserve rural hospitals from reducing services or closure, and for other purposes.

IN THE SENATE OF THE UNITED STATES—119th Cong., 2d Sess.

S. 1383

To establish the Veterans Advisory Committee on Equal Access, 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 intended to be proposed by Mr. DURBIN

Viz:

1 At the appropriate place, insert the following:

2 **SEC. ____ . RESTORING STATE AUTHORITY TO WAIVE THE**
 3 **35-MILE RULE FOR CERTAIN MEDICARE**
 4 **CRITICAL ACCESS HOSPITAL DESIGNATIONS.**

5 (a) IN GENERAL.—Section 1820 of the Social Secu-
 6 rity Act (42 U.S.C. 1395i-4) is amended—

7 (1) in subsection (c)(2)—

8 (A) in subparagraph (B)(i)—

9 (i) in subclause (I), by striking “or”
 10 at the end;

11 (ii) in subclause (II), by inserting
 12 “or” at the end; and

1 (iii) by adding at the end the fol-
2 lowing new subclause:

3 “(III) subject to subparagraph
4 (G), is a hospital described in sub-
5 paragraph (F) and is certified, on or
6 after the date of the enactment of this
7 subclause, and before the date that is
8 9 years after the date of enactment of
9 this subclause, by the State as being
10 a necessary provider of health care
11 services to residents in the area;”;

12 (B) by adding at the end the following new
13 subparagraphs:

14 “(F) HOSPITAL DESCRIBED.—For pur-
15 poses of subparagraph (B)(i)(III), a hospital
16 described in this subparagraph is a hospital
17 that—

18 “(i) is a sole community hospital (as
19 defined in section 1886(d)(5)(D)(iii)), a
20 medicare dependent, small rural hospital
21 (as defined in section 1886(d)(5)(G)(iv)), a
22 low-volume hospital that in 2021 receives a
23 payment adjustment under section
24 1886(d)(12), or a subsection (d) hospital
25 (as defined in section 1886(d)(1)(B));

1 “(ii) is located in a rural area, as de-
2 fined in section 1886(d)(2)(D), or a rural
3 census tract of a metropolitan statistical
4 area (as determined under the most recent
5 modification of the Goldsmith Modifica-
6 tion, originally published in the Federal
7 Register on February 27, 1992 (57 Fed.
8 Reg. 6725));

9 “(iii)(I) is located—

10 “(aa) in a county that has a per-
11 centage of individuals with income at
12 or below the Federal poverty level in
13 2023 or 2024 that is higher than the
14 national or statewide average in that
15 year; or

16 “(bb) in a health professional
17 shortage area (as defined in section
18 332(a)(1)(A) of the Public Health
19 Service Act); or

20 “(II) has a percentage of inpatient
21 days of individuals entitled to benefits
22 under part A of this title in 2023 or 2024
23 that is higher than the national or state-
24 wide average in that year;

1 “(iv) has attested to the Secretary
2 that the hospital—

3 “(I) was operating as of the date
4 of enactment of this subparagraph;
5 and

6 “(II) had 2 consecutive years of
7 negative operating margins preceding
8 the date of certification described in
9 subparagraph (B)(i)(III), as defined
10 by the Secretary in the regulations or
11 program instruction issued pursuant
12 to subparagraph (I); and

13 “(v) submits to the Secretary, at such
14 time and in such manner as the Secretary
15 may require, an application for certifi-
16 cation of the facility as a critical access
17 hospital, including an attestation out-
18 lining—

19 “(I) the good governance quali-
20 fications and strategic plan for multi-
21 year financial solvency of the hospital;
22 and

23 “(II) the hospital’s commitment
24 to open and maintain, for the dura-
25 tion of the hospital’s designation as a

1 critical access hospital under this sec-
2 tion, a new service line or expanded
3 service capacity for a service that is in
4 high demand or limited supply in the
5 hospital's service area (determined
6 based on the hospital's most recent
7 community health needs assessment
8 under section 501(r)(3) of the Inter-
9 nal Revenue Code of 1986 (or other
10 comparable assessment)), such as ob-
11 stetrics or behavioral health care serv-
12 ices.

13 “(G) LIMITATION ON CERTAIN DESIGNA-
14 TIONS.—

15 “(i) IN GENERAL.—Subject to clauses
16 (ii) and (iii), the Secretary may not under
17 subsection (e) certify pursuant to a certifi-
18 cation by a State under subparagraph
19 (B)(i)(III)—

20 “(I) more than a total of 120 fa-
21 cilities as critical access hospitals; and

22 “(II) within any one State, more
23 than 5 facilities as critical access hos-
24 pitals.

1 “(ii) PROCESS.—The Secretary shall
2 follow the following process in carrying out
3 clause (i) with respect to each year in
4 which the Secretary determines that the
5 limitation under clause (i)(I) has not been
6 reached:

7 “(I) INITIAL ASSESSMENT.—The
8 Secretary shall conduct an initial as-
9 sessment of the total number of hos-
10 pitals described in paragraph (2)(F).

11 “(II) INITIAL ALLOCATION.—Of
12 the total number of designations avail-
13 able under clause (i), the Secretary
14 shall allocate 1 for a hospital in each
15 State that the Secretary determines
16 (based on the initial assessment under
17 subclause (I)) has one or more hos-
18 pitals described in paragraph (2)(F).

19 “(III) REMAINING ALLOCA-
20 TION.—Of the total number of des-
21 ignations available under clause (i),
22 after application of subclause (II), the
23 Secretary shall allocate the remaining
24 number on a proportional basis based
25 on the total number of hospitals de-

1 scribed in paragraph (2)(F) in each
2 State that are eligible (as determined
3 based on the initial assessment under
4 subclause (I)).

5 “(iii) SUNSET.—Effective beginning
6 on the date that is 9 years after the date
7 of enactment of this subparagraph, the
8 Secretary may not certify a hospital as a
9 critical access hospital pursuant to a cer-
10 tification by a State under subparagraph
11 (B)(i)(III).

12 “(H) INFORMATION SUBMISSION REQUIRE-
13 MENTS FOR HOSPITALS CERTIFIED PURSUANT
14 TO RURAL HOSPITAL CLOSURE RELIEF ACT.—

15 “(i) IN GENERAL.—A critical access
16 hospital that is certified under subsection
17 (e) pursuant to a certification by a State
18 under subparagraph (B)(i)(III) shall sub-
19 mit to the Secretary the following at a
20 time, and in a manner, specified by the
21 Secretary:

22 “(I) REPORTS.—Reports con-
23 taining such information as the Sec-
24 retary may specify with respect to
25 items and services furnished as part

1 of the new service line or expanded
2 service capacity for a service as de-
3 scribed in the attestation submitted
4 by the critical access hospital under
5 subparagraph (F)(v)(II). To the ex-
6 tent practicable, the Secretary shall
7 align such reporting with other report-
8 ing requirements applicable to critical
9 access hospitals under this subsection.

10 “(II) NOTICE.—If the critical ac-
11 cess hospital materially changes the
12 new service line or expanded capacity
13 for a service as so described, notice of
14 such changes along with a plan to sat-
15 isfactorily maintain access to care (as
16 determined by the Secretary).

17 “(ii) REVOCATION OF CERTIFICATION
18 FOR NONCOMPLIANCE.—If the Secretary
19 determines that a critical access hospital
20 described in clause (i) has failed to submit
21 an annual report required under subclause
22 (I) of such clause or a notice required
23 under subclause (II) of such clause, the
24 Secretary may, as the Secretary deter-
25 mines appropriate, revoke the certification

1 of the critical access hospital under sub-
2 section (e).

3 “(I) IMPLEMENTATION.—Not later than 1
4 year after the date of the enactment of this
5 subparagraph, the Secretary shall issue final
6 regulations or program instruction to carry out
7 subparagraphs (B)(i)(III), (F), (G), and (H).”;
8 and

9 (2) in subsection (e), by inserting “, subject to
10 subsection (c)(2)(G),” after “The Secretary shall”.

11 (b) CLARIFICATION REGARDING FACILITIES THAT
12 MEET DISTANCE OR OTHER CRITERIA AND APPLICATION
13 OF OTHER CRITERIA.—Nothing in this section shall af-
14 fect—

15 (1) the application of criteria for designation as
16 a critical access hospital described in subclause (I)
17 or (II) of section 1820(c)(2)(B)(i) of the Social Se-
18 curity Act (42 U.S.C. 1395i-4(c)(2)(B)(i)); or

19 (2) the application of criteria for designation as
20 a critical access hospital described in clauses (ii)
21 through (v) of section 1820(c)(2)(B) of the Social
22 Security Act (42 U.S.C. 1395i-4(c)(2)(B)).

23 (c) GAO STUDY AND REPORT.—

24 (1) STUDY.—The Comptroller General of the
25 United States (in this section referred to as the

1 “Comptroller General”) shall conduct a study on the
2 implementation of the amendments made by sub-
3 section (a). To the extent such data are available
4 and reliable, such study shall include—

5 (A) an analysis of—

6 (i) the characteristics of facilities des-
7 ignated as critical access hospitals pursu-
8 ant to section 1820(c)(2)(B)(i)(III) of the
9 Social Security Act, as added by subsection
10 (a);

11 (ii) an analysis of the financial status
12 and outlook for such facilities based on
13 their designation as a critical access hos-
14 pital pursuant to such section; and

15 (iii) an analysis of any increase in ex-
16 penditures under the Medicare program
17 under title XVIII of the Social Security
18 Act (42 U.S.C. 1395 et seq.) as a result of
19 such designation, relative to the expected
20 baseline expenditures under the Medicare
21 program if such facilities had not received
22 such designation; and

23 (B) an assessment of whether the author-
24 ity to designate facilities as critical access hos-
25 pitals pursuant to such section

1 1820(c)(2)(B)(i)(III) promotes access to care in
2 rural areas.

3 (2) REPORT.—Not later than 6 years after the
4 date of the enactment of this Act, the Comptroller
5 General shall submit to Congress a report containing
6 the results of the study conducted under subsection
7 (a), together with recommendations for such legisla-
8 tion and administrative action as the Comptroller
9 General determines appropriate.

10 (d) MEDPAC STUDY AND REPORT ON PAYMENT
11 SYSTEMS FOR RURAL HOSPITALS.—

12 (1) STUDY.—The Medicare Payment Advisory
13 Commission (in this subsection referred to as the
14 “Commission”) shall conduct a study, using data
15 from 2018 through 2028, on payment systems for
16 rural hospitals under the Medicare program under
17 title XVIII of the Social Security Act (42 U.S.C.
18 1395 et seq.). Such study shall include an analysis
19 of—

20 (A) facilities designated as critical access
21 hospitals pursuant to section
22 1820(c)(2)(B)(i)(III) of the Social Security Act,
23 as added by subsection (a);

1 (B) features of payment systems for rural
2 hospitals, including value-based payment sys-
3 tems, that would—

4 (i) ensure financial sustainability for
5 the Medicare program; and

6 (ii) preserve access to care for Medi-
7 care beneficiaries; and

8 (C) if the Commission recommends any
9 new payment system for rural hospitals under
10 the Medicare program, to the extent feasible,
11 the impacts of transition from existing payment
12 systems to such new payment system.

13 (2) REPORT.—Not later than 8 years after the
14 date of enactment of this Act, the Commission shall
15 submit to Congress a report on the study conducted
16 under paragraph (1), together with recommenda-
17 tions for such legislation and administrative action
18 as the Commission determines appropriate.

19 (3) DEFINITION OF RURAL HOSPITAL.—In this
20 subsection, the term “rural hospital” means—

21 (A) a critical access hospital (as defined in
22 section 1861(mm)(1) of the Social Security Act
23 (42 U.S.C. 1395x(mm)(1)));

24 (B) a subsection (d) hospital (as defined in
25 section 1886(d)(1)(B) of the Social Security

1 Act (42 U.S.C. 1395ww(d)(1)(B))) that is lo-
2 cated in a rural census tract of a metropolitan
3 statistical area (as determined under the most
4 recent modification of the Goldsmith Modifica-
5 tion, originally published in the Federal Reg-
6 ister on February 27, 1992 (57 Fed. Reg.
7 6725));

8 (C) a sole community hospital (as defined
9 in section 1886(d)(5)(D)(iii)) of the Social Se-
10 curity Act (42 U.S.C. 1395ww(d)(5)(D)(iii));

11 (D) a medicare dependent, small rural hos-
12 pital (as defined in section 1886(d)(5)(G)(iv) of
13 the Social Security Act (42 U.S.C.
14 1395ww(d)(5)(G)(iv))); and

15 (E) a low-volume hospital (as defined in
16 section 1886(d)(12)(C)(i) of the Social Security
17 Act (42 U.S.C. 1395ww(d)(12)(C)(i))).

18 (e) SUNSET.—Not later than 9 years after the date
19 of enactment of this Act, the Secretary shall establish a
20 mechanism and provide guidance and technical assistance
21 under which any facility that was designated as a critical
22 access hospital pursuant to a certification by a State
23 under section 1820(e)(2)(B)(i)(III) of the Social Security
24 Act, as added by subsection (a), may transition within 1
25 year to one of the following payment models:

1 (1) Such new model or models recommended by
2 the Medicare Payment Advisory Commission in the
3 report submitted under subsection d.

4 (2) The prospective payment model (or models)
5 under which the facility received payment under title
6 XVIII of the Social Security Act (42 U.S.C. 1395 et
7 seq.) prior to being so designated pursuant to such
8 certification.

9 (3) Payment as a rural emergency hospital
10 under section 1834(x) of the Social Security Act (42
11 U.S.C. 1395m(x)).

12 **SEC. ____ . REPEAL OF OBBBA HEALTH PROVISIONS.**

13 Subtitle B of title VII of the Act titled “An Act to
14 provide for reconciliation pursuant to title II of H. Con.
15 Res. 14” (Public Law 119–21) (other than sections 71202
16 and 71401 of such subtitle) is repealed and any law or
17 regulation referred to in such subtitle shall be applied as
18 if such subtitle and the amendments made by such subtitle
19 (other than such sections) had not been enacted.