To improve the understanding of, and promote access to treatment for, chronic kidney disease, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 28, 2017

Mr. CARDIN (for himself, Mr. BLUNT, and Mr. NELSON) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To improve the understanding of, and promote access to treatment for, chronic kidney disease, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Chronic Kidney Disease Improvement in Research and Treatment Act of 2017”.

SEC. 2. TABLE OF CONTENTS.

The table of contents of this Act is as follows:

Sec. 1. Short title.
Sec. 2. Table of contents.

TITLE I—IMPROVING PATIENT LIVES AND QUALITY OF CARE THROUGH RESEARCH AND INNOVATION
Sec. 101. Improving patient lives and quality of care through research and innovation.
Sec. 102. Enhancing care through new technologies.
Sec. 103. Understanding current utilization of palliative care services.
Sec. 104. Understanding the progression of kidney disease and treatment of kidney failure in minority populations.

TITLE II—EMPOWER PATIENT DECISION MAKING AND CHOICE

Sec. 201. Providing individuals with kidney failure access to managed care.
Sec. 202. Medigap coverage for beneficiaries with end-stage renal disease.
Sec. 203. Promoting access to home dialysis treatments.

TITLE III—IMPROVING PATIENT CARE AND ENSURING QUALITY OUTCOMES

Sec. 301. Maintain an economically stable dialysis infrastructure.
Sec. 302. Improve patient decision making and transparency by consolidating and modernizing quality programs.
Sec. 303. Increasing access to Medicare kidney disease education benefit.
Sec. 304. Certification of new facilities.
Sec. 305. Improving access in underserved areas.

TITLE I—IMPROVING PATIENT LIVES AND QUALITY OF CARE THROUGH RESEARCH AND INNOVATION

SEC. 101. IMPROVING PATIENT LIVES AND QUALITY OF CARE THROUGH RESEARCH AND INNOVATION.

(a) STUDY.—The Secretary of Health and Human Services (in this section referred to as the “Secretary”) shall conduct a study on increasing kidney transplantation rates. Such study shall include an analysis of each of the following:

(1) Any disincentives in the payment systems under the Medicare program under title XVIII of the Social Security Act that create barriers to kid-
ney transplants and post-transplant care for beneficiaries with end-stage renal disease.

(2) The practices used by States with higher than average donation rates and whether those practices and policies could be successfully utilized in other States.

(3) Practices and policies that could increase deceased donation rates of minority populations.

(4) Whether cultural and policy barriers exist to increasing living donation rates, including an examination of how to better facilitate chained donations.

(5) Other areas determined appropriate by the Secretary.

(b) REPORT.—Not later than 18 months after the date of the enactment of this Act, the Secretary shall submit to Congress a report on the study conducted under subsection (a), together with such recommendations as the Secretary determines to be appropriate.

SEC. 102. ENHANCING CARE THROUGH NEW TECHNOLOGIES.

(a) AGREEMENT WITH NATIONAL ACADEMY OF SCIENCES.—The Secretary of Health and Human Services shall seek to enter into an agreement with the National Academy of Sciences within six months of the date of the enactment of this Act under which the National Academy
of Sciences will conduct a study on the design of payments for renal dialysis services under the Medicare program under title XVIII of the Social Security Act, including an analysis of whether adjustments to such payments are needed to allow for the incorporation of new technologies and therapies.

(b) CONTENTS.—In conducting the study under subsection (a), the National Academy of Sciences shall evaluate the current payment system for renal dialysis services under the Medicare program, identify barriers to adopting innovative items, services, and therapies, and make recommendations as to how to eliminate such barriers.

SEC. 103. UNDERSTANDING CURRENT UTILIZATION OF PALLIATIVE CARE SERVICES.

(a) STUDY.—

(1) IN GENERAL.—The Comptroller General of the United States (in this section referred to as the “Comptroller General”) shall conduct a study on the utilization of palliative care in treating individuals with advanced kidney disease, from stage 4 through stage 5, including individuals with kidney failure on dialysis through any progression of the disease. Such study shall include an analysis of—

(A) how palliative care can be utilized to improve the quality of life of those with kidney
disease and facilitate care tailored to their individual goals and values;

(B) the successful use of palliative care in the care of patients with other chronic diseases and serious illnesses;

(C) the utilization of palliative care at any point in an illness, including when used at the same time as curative treatment; and

(D) other areas determined appropriate by the Comptroller General.

(2) Definition of Palliative Care.—In this section, the term “palliative care” means patient and family centered care that optimizes quality of life by anticipating, preventing, and treating suffering. Such term includes care that is furnished throughout the continuum of the illness that addresses physical, intellectual, emotional, social, and spiritual needs and that facilitates patient autonomy, access to information and choice.

(b) Report.—Not later than 1 year after the date of the enactment of this Act, the Comptroller General shall submit to the Congress a report on the study conducted under subsection (a), together with such recommendations as the Comptroller General determines to be appropriate.
SEC. 104. UNDERSTANDING THE PROGRESSION OF KIDNEY DISEASE AND TREATMENT OF KIDNEY FAILURE IN MINORITY POPULATIONS.

(a) Study.—The Secretary of Health and Human Services (in this section referred to as the “Secretary”) shall conduct a study on—

(1) the social, behavioral, and biological factors leading to kidney disease;

(2) efforts to slow the progression of kidney disease in minority populations that are disproportionately affected by such disease; and

(3) treatment patterns associated with providing care, under the Medicare program under title XVIII of the Social Security Act, the Medicaid program under title XIX of such Act, and through private health insurance, to minority populations that are disproportionately affected by kidney failure.

(b) Report.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit to Congress a report on the study conducted under subsection (a), together with such recommendations as the Secretary determines to be appropriate.
TITLE II—EMPOWER PATIENT DECISION MAKING AND CHOICE

SEC. 201. PROVIDING INDIVIDUALS WITH KIDNEY FAILURE ACCESS TO MANAGED CARE.

(a) Permanent Extension of Medicare Advantage ESRD Special Needs Plans Authority.—Section 1859(f)(1) of the Social Security Act (42 U.S.C. 1395w–28(f)(1)) is amended by inserting “, in the case of a specialized MA plan for special needs individuals who have not been determined to have end stage renal disease,” before “for periods before January 1, 2019”.

(b) Accelerated Access to Medicare Advantage.—Section 17006(a)(3) of the 21st Century Cures Act (Public Law 114–255) is amended by striking “2021” and inserting “2020”.

(c) Accelerated MedPAC Risk Adjustment Report.—Section 17006(f)(2)(A)(i)(II) of the 21st Century Cures Act (Public Law 114–255) is amended by striking “2020” and inserting “2019”.

SEC. 202. MEDIGAP COVERAGE FOR BENEFICIARIES WITH END-STAGE RENAL DISEASE.

(a) Guaranteed Availability of Medigap Policies to All ESRD Medicare Beneficiaries.—
(1) **IN GENERAL.**—Section 1882(s) of the Social Security Act (42 U.S.C. 1395ss(s)) is amended—

(A) in paragraph (2)—

(i) in subparagraph (A), by striking “is 65” and inserting the following: “is—

“(i) 65 years of age or older and is enrolled for benefits under part B; or

“(ii) is entitled to benefits under 226A(b) and is enrolled for benefits under part B.”; and

(ii) in subparagraph (D), in the matter preceding clause (i), by inserting “(or is entitled to benefits under 226A(b))” after “is 65 years of age or older”; and

(B) in paragraph (3)(B)—

(i) in clause (ii), by inserting “(or is entitled to benefits under 226A(b))” after “is 65 years of age or older”; and

(ii) in clause (vi), by inserting “(or under 226A(b))” after “at age 65”.

(2) **EFFECTIVE DATE.**—The amendments made by paragraph (1) shall apply to Medicare supplemental policies effective on or after January 1, 2020.
(b) ADDITIONAL ENROLLMENT PERIOD FOR CERTAIN INDIVIDUALS.—

(1) ONE-TIME ENROLLMENT PERIOD.—

(A) IN GENERAL.—In the case of an individual described in subparagraph (B), the Secretary of Health and Human Services shall establish a one-time enrollment period during which such an individual may enroll in any Medicare supplemental policy under section 1882 of the Social Security Act (42 U.S.C. 1395ss) of the individual’s choosing.

(B) ENROLLMENT PERIOD.—The enrollment period established under subparagraph (A) shall begin on January 1, 2020, and shall end June 30, 2020.

(2) INDIVIDUAL DESCRIBED.—An individual described in this paragraph is an individual who—

(A) is entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act under section 226A(b) of such Act (42 U.S.C. 426–1);

(B) is enrolled for benefits under part B of such title XVIII; and

(C) would not, but for the provisions of, and amendments made by, subsection (a) be eli-
gible for the guaranteed issue of a Medicare
supplemental policy under paragraph (2) or (3)
of section 1882(s) of such Act (42 U.S.C. 1395ss(s)).

SEC. 203. PROMOTING ACCESS TO HOME DIALYSIS TREAT-
MENTS.

(a) IN GENERAL.—Section 1881(b)(3) of the Social
Security Act (42 U.S.C. 1395rr(b)(3)) is amended—

(1) by redesignating subparagraphs (A) and
(B) as clauses (i) and (ii), respectively;

(2) in clause (ii), as redesignated by subpara-
graph (A), by striking “on a comprehensive” and in-
serting “subject to subparagraph (B), on a com-
prehensive”;

(3) by striking “With respect to” and inserting
“(A) With respect to”; and

(4) by adding at the end the following new sub-
paragraph:

“(B) For purposes of subparagraph (A)(ii), an indi-
vidual determined to have end-stage renal disease receiv-
ing home dialysis may choose to receive the monthly end-
stage renal disease-related visits furnished on or after
January 1, 2018, via telehealth if the individual receives
a face-to-face visit, without the use of telehealth, at least
once every three consecutive months.”.
(b) ORIGINATING SITE REQUIREMENTS.—

(1) IN GENERAL.—Section 1834(m) of the Social Security Act (42 U.S.C. 1395m(m)) is amended—

(A) in paragraph (4)(C)(ii), by adding at the end the following new subclauses:

“(IX) A renal dialysis facility, but only for purposes of section 1881(b)(3)(B).

“(X) The home of an individual, but only for purposes of section 1881(b)(3)(B).”; and

(B) by adding at the end the following new paragraph:

“(5) TREATMENT OF HOME DIALYSIS MONTHLY ESRD-RELATED VISIT.—The geographic requirements described in paragraph (4)(C)(i) shall not apply with respect to telehealth services furnished on or after January 1, 2018, for purposes of section 1881(b)(3)(B), at an originating site described in subclause (VI), (IX), or (X) of paragraph (4)(C)(ii).”.

(2) NO FACILITY FEE IF ORIGINATING SITE FOR HOME DIALYSIS THERAPY IS THE HOME.—Sec-
tion 1834(m)(2)(B) of the Social Security Act (42 U.S.C. 1395m(m)(2)(B)) is amended—

(A) by redesignating clauses (i) and (ii) as subclauses (I) and (II), and indenting appropriately;

(B) in subclause (II), as redesignated by subparagraph (A), by striking “clause (i) or this clause” and inserting “subclause (I) or this subclause”;

(C) by striking “SITE.—With respect to” and inserting “SITE.—

“(i) IN GENERAL.—Subject to clause (ii), with respect to”; and

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

“(ii) NO FACILITY FEE IF ORIGINATING SITE FOR HOME DIALYSIS THERAPY IS THE HOME.—No facility fee shall be paid under this subparagraph to an originating site described in paragraph (4)(C)(ii)(X).”.

(c) CONFORMING AMENDMENT.—Section 1881(b)(1) of the Social Security Act (42 U.S.C. 1395rr(b)(1)) is amended by striking “paragraph (3)(A)” and inserting “paragraph (3)(A)(i)”.
(d) Exclusion From Remuneration for Purposes of Applying Civil Monetary Penalties.—

(1) In General.—Section 1128A(i)(6) of the Social Security Act (42 U.S.C. 1320a–7a(i)(6)) is amended—

(A) in subparagraph (H)(iv), by striking ‘‘; or’’ at the end;

(B) in subparagraph (I), by striking the period at the end and inserting ‘‘; or’’; and

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

‘‘(J) the provision of telehealth or remote patient monitoring technologies to individuals under title XVIII by a health care provider for the purpose of furnishing telehealth or remote patient monitoring services.’’.

(2) Effective Date.—The amendments made by this subsection shall apply to services furnished on or after the date of the enactment of this Act.
TITLE III—IMPROVING PATIENT CARE AND ENSURING QUALITY OUTCOMES

SEC. 301. MAINTAIN AN ECONOMICALLY STABLE DIALYSIS INFRASTRUCTURE.

(a) In General.—Section 1881(b)(14) of the Social Security Act (42 U.S.C. 1395rr(b)(14)) is amended—

(1) in subparagraph (D), in the matter preceding clause (i), by striking “Such system” and inserting “Subject to subparagraph (J), such system”;

and

(2) by adding at the end the following new sub-paragraph:

“(J) For payment for renal dialysis services furnished on or after January 1, 2018, under the system under this paragraph—

“(i) the payment adjustment described in clause (i) of subparagraph (D)—

“(I) shall not take into account comorbidities; and

“(II) shall only take into account age for purposes of distinguishing between individuals who are under 18 years of age and those who are 18
years of age and older but shall not include any other adjustment for age;

“(ii) the Secretary shall reassess any adjustments related to patient weight under such clause;

“(iii) the payment adjustment described in clause (ii) of such subparagraph shall not be included;

“(iv) the standardization factor described in the final rule published in the Federal Register on November 8, 2012 (77 Fed. Reg. 67470), shall be established using the most currently available data (and not historical data) and adjusted on an annual basis, based on such available data, to account for any change in utilization of drugs and any modification in adjustors applied under this paragraph; and

“(v) take into account reasonable costs for determining the payment rate consistent with paragraph (2)(B).”.

(b) INCLUSION OF NETWORK FEE AS AN ALLOWABLE COST.—Section 1881(b)(14) of the Social Security Act (42 U.S.C. 1395rr(b)(14)), as amended by subsection
(a), is amended by adding at the end the following new subparagraph:

“(K) Not later than January 1, 2018, the Secretary shall amend the ESRD facility cost report to include the per treatment network fee (as described in paragraph (7)) as an allowable cost or offset to revenue.”.

SEC. 302. IMPROVE PATIENT DECISION MAKING AND TRANSPARENCY BY CONSOLIDATING AND MODERNIZING QUALITY PROGRAMS.

(a) MEASURES.—Section 1881(h)(2) of the Social Security Act (42 U.S.C. 1395rr(h)(2)) is amended by adding at the end the following new subparagraphs:

“(F) WEIGHTING LIMITATION.—No single measure specified by the Secretary or individual measure within a composite measure so specified may be weighted less than 10 percent of the total performance score.

“(G) STATISTICALLY VALID AND RELIABLE.—In specifying measures under subparagraph (A), the Secretary shall only specify measures that have been shown to be statistically valid and reliable through testing.”.
(b) ENDORSEMENT.—Section 1881(h)(2)(B) of the Social Security Act (42 U.S.C. 1395rr(h)(2)(B)) is amended—

(1) in clause (ii), by adding at the end the following new sentence: “The exception under the preceding sentence shall not apply to a measure that the entity with a contract under section 1890(a) (or a similar entity) considered but failed to endorse.”;

and

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

“(iii) COMPOSITE MEASURES.—Clauses (i) and (ii) shall apply to composite measures in the same manner as such clauses apply to individual measures.”.

(c) REQUIREMENTS FOR DIALYSIS FACILITY COMPARE STAR RATING PROGRAM.—Section 1881(h)(6) of the Social Security Act (42 U.S.C. 1395rr(h)(6)) is amended by adding at the end the following new subparagraph:

“(E) REQUIREMENTS FOR ANY DIALYSIS FACILITY COMPARE STAR RATING PROGRAM.—To the extent that the Secretary maintains a
dialysis facility compare star rating program,
under such a program the Secretary—

“(i) shall assign stars using the same
methodology and total performance score
results from the quality incentive program
under this subsection;

“(ii) shall determine the stars using
the same methodology used under such
quality incentive program; and

“(iii) shall not use a forced bell curve
when determining the stars or rebaselining
the stars.”.

(d) HOSPITALS REQUIRED TO PROVIDE INFORMATION.—Section 1881 of the Social Security Act (42 U.S.C. 1395rr) is amended by adding at the end the following new subsection:

“(i) HOSPITALS REQUIRED TO PROVIDE INFORMATION.—

“(1) IN GENERAL.—The Secretary shall estab-

lish a process under which a hospital or a critical ac-

cess hospital shall provide a renal dialysis facility

with health and treatment information with respect
to an individual who is discharged from the hospital
or critical access hospital and who subsequently re-

cieves treatment at facility.
“(2) ELEMENTS.—Under the process established under paragraph (1)—

“(A) the request for the health information may be initiated by the individual prior to discharge or upon request by the renal dialysis facility after the patient is discharged; and

“(B) the information must be provided to the facility within 7 days of the request being made.”.

(e) INCENTIVE PAYMENTS.—Section 1881(h)(1) of the Social Security Act (42 U.S.C. 1395rr(h)(1)) is amended by adding at the end the following new subparagraph:

“(D) INCENTIVE PAYMENTS.—

“(i) IN GENERAL.—In the case of a provider of services or a renal dialysis facility that the Secretary determines exceeds the attainment performance standards under paragraph (4) with respect to a year, the Secretary may make a bonus payment to the provider or facility (pursuant to a process established by the Secretary).

“(ii) FUNDING.—The total amount of bonus payments under clause (i) in a year
shall be equal to the total amount of reduced payments in a year under subparagraph (A).

“(iii) No effect in subsequent years.—The provisions of subparagraph (C) shall apply to a bonus payment under this subparagraph in the same manner subparagraph (C) applies to a reduction under such subparagraph.”.

(f) Effective date.—The amendments made by this section shall apply to items and services furnished on or after January 1, 2019.

SEC. 303. INCREASING ACCESS TO MEDICARE KIDNEY DISEASE EDUCATION BENEFIT.

(a) In general.—Section 1861(ggg) of the Social Security Act (42 U.S.C. 1395x(ggg)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (A), by inserting “or stage V” after “stage IV”; and

(B) in subparagraph (B), by inserting “or of a physician assistant, nurse practitioner, or clinical nurse specialist (as defined in section 1861(aa)(5)) assisting in the treatment of the individual’s kidney condition” after “kidney condition”; and
(2) in paragraph (2)—

(A) by striking subparagraph (B); and

(B) in subparagraph (A)—

(i) by striking “(A)” after “(2)”;

(ii) by striking “and” at the end of clause (i);

(iii) by striking the period at the end of clause (ii) and inserting “; and”;

(iv) by redesignating clauses (i) and (ii) as subparagraphs (A) and (B), respectively; and

(v) by adding at the end the following:

“(C) a renal dialysis facility subject to the requirements of section 1881(b)(1) with personnel who—

“(i) provide the services described in paragraph (1); and

“(ii) is a physician (as defined in subsection (r)(1)) or a physician assistant, nurse practitioner, or clinical nurse specialist (as defined in subsection (aa)(5)).”.

(b) PAYMENT TO RENAL DIALYSIS FACILITIES.—

Section 1881(b) of the Social Security Act (42 U.S.C. 1395rr(b)) is amended by adding at the end the following new paragraph:
“(15) For purposes of paragraph (14), the single payment for renal dialysis services under such paragraph shall not take into account the amount of payment for kidney disease education services (as defined in section 1861(ggg)). Instead, payment for such services shall be made to the renal dialysis facility on an assignment-related basis under section 1848.”.

(e) Effective Date.—The amendments made by this section apply to kidney disease education services furnished on or after January 1, 2018.

SEC. 304. CERTIFICATION OF NEW FACILITIES.

(a) Certification.—

(1) In general.—Section 1865(a)(1) of the Social Security Act (42 U.S.C. 1395bb(a)(1)) is amended by striking “or the conditions and requirements under section 1881(b)”.

(2) Effective date.—The amendment made by paragraph (1) shall take effect on the date of enactment of this Act and apply to a finding made on or after such date.

(b) Timing for Acceptance of Requests From Accreditation Organizations.—Not later than 6 months after the date of the enactment of this Act, the Secretary of Health and Human Services shall accept a
completed application from any national accreditation body for providers and facilities that provide services under 1881(b), in accordance with section 1865(3)(A)). Any application received pursuant to the preceding sentence shall be deemed approved unless the Secretary, within 90 days after the date of the submission of the application to the Secretary, either denies such request in writing or informs the applicant in writing with respect to any additional information that is needed in order to make a final determination with respect to the application. If the Secretary requests additional information pursuant to the preceding sentence and the applicant submits such information, the application shall be deemed approved unless the Secretary, within 90 days of the date of receiving such information, denies such request.

SEC. 305. IMPROVING ACCESS IN UNDERSERVED AREAS.

(a) Definition of Primary Care Services.—Section 331(a)(3)(D) of the Public Health Service Act (42 U.S.C. 254d(a)(3)(D)) is amended by inserting “and includes renal dialysis services” before the period at the end.

(b) National Health Service Corps Scholarship Program.—Section 338A(a)(2) of the Public Health Service Act (42 U.S.C. 254l(a)(2)) is amended by inserting “, including nephrology health professionals” before the period at the end.
National Health Service Corps Loan Repayment Program.—Section 338B(a)(2) of the Public Health Service Act (42 U.S.C. 254l–1(a)(2)) is amended by inserting ‘‘, including nephrology health professionals’’ before the period at the end.