

116TH CONGRESS
1ST SESSION

S. 966

To amend title XVIII of the Social Security Act to modernize the physician self-referral prohibitions to promote care coordination in the merit-based incentive payment system and to facilitate physician practice participation in alternative payment models under the Medicare program, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 1, 2019

Mr. PORTMAN (for himself and Mr. BENNET) introduced the following bill;
which was read twice and referred to the Committee on Finance

A BILL

To amend title XVIII of the Social Security Act to modernize the physician self-referral prohibitions to promote care coordination in the merit-based incentive payment system and to facilitate physician practice participation in alternative payment models under the Medicare program, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Medicare Care Coordi-
5 nation Improvement Act of 2019”.

1 **SEC. 2. MODERNIZATION OF LIMITATIONS ON PHYSICIAN**
2 **SELF-REFERRAL.**

3 (a) FACILITATION OF PARTICIPATION IN ALTER-
4 NATIVE PAYMENT MODELS.—

5 (1) IN GENERAL.—Section 1833 of the Social
6 Security Act (42 U.S.C. 1395l) is amended—

7 (A) in subsection (z), as added by section
8 101(e)(2) of the Medicare Access and CHIP
9 Reauthorization Act of 2015 (Public Law 114–
10 10), by adding at the end the following para-
11 graph:

12 “(5) WAIVER AUTHORITY.—

13 “(A) IN GENERAL.—The provisions of sub-
14 section (f) of section 1899 shall apply with re-
15 spect to covered APM entities to the same ex-
16 tent and in the same manner as such provisions
17 apply with respect to accountable care organiza-
18 tions under such section.

19 “(B) COVERED APM ENTITIES.—

20 “(i) IN GENERAL.—For purposes of
21 subparagraph (A), the term ‘covered APM
22 entity’ means, subject to clause (ii) of this
23 subparagraph and subparagraph (C), each
24 of the following:

1 “(I) An eligible alternative pay-
2 ment entity as defined in paragraph
3 (3)(D).

4 “(II) An entity participating in
5 an alternative payment model as de-
6 fined in paragraph (3)(C), including
7 such participation that qualifies as a
8 clinical practice improvement activity
9 under section 1848(q)(2)(B)(iii)(VI).

10 “(III) An entity participating in
11 a physician-focused payment model
12 for which comments and recommenda-
13 tions have, under subparagraph (C) of
14 section 1868(c)(2), been submitted in-
15 dicating that such model meets the
16 criteria described in subparagraph (A)
17 of such section.

18 “(IV) An entity participating in
19 any other model that the Secretary
20 determines is a covered APM entity
21 for purposes of subparagraph (A), in-
22 cluding such a determination made
23 pursuant to one or more physicians
24 submitting a proposal to the Secretary
25 for an alternative payment model.

1 “(ii) INCLUSION OF CERTAIN ENTI-
2 TIES.—Such term may include an entity
3 engaging in activities that the Secretary
4 has determined constitute significant
5 progress toward establishing a model re-
6 ferred to in any of subclauses (I) through
7 (IV). Any waiver under this paragraph
8 with respect to an entity described in the
9 preceding sentence may only be approved
10 for three years.

11 “(C) CERTAIN REQUIREMENTS.—A model
12 referred to in any of subclauses (I) through
13 (IV) of subparagraph (B)(i) may not be consid-
14 ered a covered APM entity for purposes of sub-
15 paragraph (A) unless the model meets the re-
16 quirements described in section
17 1877(b)(6)(B).”;

18 (B) by redesignating subsection (z), as
19 added by section 514(a) of the Medicare Access
20 and CHIP Reauthorization Act of 2015 (Public
21 Law 114–10), as subsection (aa).

22 (2) CONFORMING AMENDMENT.—Section
23 514(c)(1) of the Medicare Access and CHIP Reau-
24 thorization Act of 2015 (Public Law 114–10) is

1 amended by striking “subsection (z)” and inserting
2 “subsection (aa)”.

3 (b) EXCEPTION FACILITATING THE DEVELOPMENT
4 AND OPERATION OF ALTERNATIVE PAYMENT MODELS.—
5 Section 1877(b) of the Social Security Act (42 U.S.C.
6 1395m(b)) is amended by adding at the end the following
7 new paragraph:

8 “(6) DEVELOPMENT AND OPERATION OF AL-
9 TERNATIVE PAYMENT MODELS.—

10 “(A) IN GENERAL.—In the case of items
11 and services furnished pursuant to an arrange-
12 ment that meets the requirements described in
13 subparagraph (B) entered into for the purpose
14 of developing or operating a covered APM enti-
15 ty (as defined in section 1833(z)(5)(B)), includ-
16 ing—

17 “(i) an advanced alternative payment
18 model described in section 1833(z) (includ-
19 ing a physician-focused payment model re-
20 ferred to in section 1868(c));

21 “(ii) a MIPS APM (as defined by the
22 Secretary); and

23 “(iii) any other alternative payment
24 model that the Secretary may, by regula-
25 tion, specify.

1 “(B) REQUIREMENTS.—

2 “(i) IN GENERAL.—Subject to clause
3 (ii), the requirements described in this sub-
4 paragraph with respect to an arrangement
5 relating to an alternative payment model
6 are as follows:

7 “(I) The arrangement is in writ-
8 ing, identifies the services, items, or
9 actions subject to the arrangement
10 and is signed by the parties to the ar-
11 rangement.

12 “(II) The arrangement includes a
13 description of the alternative payment
14 model.

15 “(III) Under the arrangement
16 written reports are submitted to the
17 Secretary on a semi-annual basis on
18 the progress achieved in the develop-
19 ment and operation of the alternative
20 payment model.

21 “(IV) The arrangement meets
22 such other requirements as the Sec-
23 retary may impose by regulation as
24 needed to protect against a significant
25 risk of program or patient abuse.

1 “(ii) CLARIFICATION.—The Secretary
2 shall not prohibit or restrict an arrange-
3 ment from meeting the requirements de-
4 scribed in this subparagraph on the basis
5 that the arrangement takes into account
6 the volume or value of referrals if such ar-
7 rangement otherwise meets the require-
8 ments described in clause (i).”

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