114TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPT. 114–696
Part 1

CONTINUING ACCESS TO HOSPITALS ACT OF 2016

JULY 21, 2016.—Ordered to be printed

Mr. BRADY of Texas, from the Committee on Ways and Means, submitted the following

R E P O R T

[To accompany H.R. 5613]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 5613) to provide for the extension of the enforcement instruction on supervision requirements for outpatient therapeutic services in critical access and small rural hospitals through 2016, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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59–006

The amendment is as follows:

Strike all after the enactment clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Continuing Access to Hospitals Act of 2016" or the "CAH Act of 2016".

SEC. 2. EXTENSION OF ENFORCEMENT INSTRUCTION ON SUPERVISION REQUIREMENTS FOR OUTPATIENT THERAPEUTIC SERVICES IN CRITICAL ACCESS AND SMALL RURAL HOSPITALS THROUGH 2016.

Section 1 of Public Law 113–198, as amended by section 1 of Public Law 114–112, is amended—

(1) in the heading, by striking "**2014 AND 2015**" and inserting "**2016**"; and

(2) by striking "and 2015" and inserting ", 2015, and 2016".

SEC. 3. REPORT.

Not later than one year after the date of the enactment of this Act, the Medicare Payment Advisory Commission (established under section 1805 of the Social Security Act (42 U.S.C. 1395b–6)) shall submit to Congress a report analyzing the effect of the extension of the enforcement instruction under section 1 of Public Law 113–198, as amended by section 1 of Public Law 114–112 and section 2 of this Act, on the access to health care by Medicare beneficiaries and on the quality of health care furnished to such beneficiaries.

I. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

The bill, H.R. 5613, the "Continuing Access to Hospitals Act of 2016" ("CAH"), as reported by the Committee on Ways and Means on July 7, 2016, requires the department of Health and Human Services to continue to instruct Medicare contractors not to enforce requirements for direct physician supervision of outpatient therapeutic services in critical access and small rural hospitals through 2016.

B. BACKGROUND AND NEED FOR LEGISLATION

On July 1, 2016, Representative Jenkins (R–KS) and Representative Loebsack (D–IA) introduced H.R. 5613, to provide regulatory relief to Critical Access Hospitals (CAHs) by temporarily prohibiting the Secretary from enforcing the physician supervision requirement.

The Centers for Medicare & Medicaid Services (CMS) finalized its regulation requiring direct physician supervision in November 2009. Direct supervision, as defined by 42 Code of Federal Regulations (CFR) 410.32, means that a physician or non-physician practitioner must be immediately available to furnish assistance and direction throughout the performance of a procedure. In its manuals, CMS defines services and supplies in which the direct supervision requirement applies as those non-diagnostic therapeutic services including: clinical services, emergency room services and observation services.

CMS initially proposed to enforce the direct physician supervision requirement, where it would ensure CAHs were in compliance, beginning January 1, 2014. However, Congress acted separately in 2014 and 2015 to override enforcement of the requirement. Congress has previously acted, and continues to act with this bill, because we are concerned that such stringent regulatory requirements may threaten access to care for beneficiaries in rural

areas. The CAH Act would continue temporary relief from enforcement of the requirement for 2016.

C. Legislative History

Background

H.R. 5613 was introduced on July 1, 2016, and was referred to the Committee on Energy and Commerce and additionally to the Committee on Ways and Means.

Committee hearings

On July 28, 2015, the Committee on Ways and Means Subcommittee on Health held a hearing on the status of rural health for Medicare beneficiaries and highlighted Member priorities.

On June 8, 2016, the Committee on Ways and Means Subcommittee on Health held a Member day hearing on issues in the Medicare program, including CAH issues.

Committee action

The Committee on Ways and Means marked up H.R. 5613, the CAH Act on July 7, 2016, and ordered the bill favorably reported to the House of Representatives as amended by a voice vote (with a quorum being present).

In addition to the amendment in the nature of the substitute to H.R. 5613 that was favorably reported, the Committee on Ways and Means also favorably reported out an amendment by Mr. Becerra to the amendment in the nature of a substitute, which added a study by the Medicare Payment Advisory Commission to analyze the effect of delaying the enforcement of the physician supervision requirement on access to, and quality of, health care for Medicare beneficiaries.

II. EXPLANATION OF THE BILL

Continuing Access to Hospitals Act of 2016

PRESENT LAW

Under current law, the CMS is enforcing its regulations, where CAHs are required to provide for the direct supervision, by a physician or non-physician practitioner, over delivery of outpatient services.

REASONS FOR CHANGE

Congress acted separately in 2014 (P.L. 113–198) and 2015 (P.L. 114–112) to override the enforcement of the requirement. Congress has previously acted, and continues to act with this bill, out of concern that these regulatory requirements may threaten access to care for beneficiaries in rural areas.

CAHs have reported uncertainty in the interpretation of "immediately available" and wide variation in CMS enforcement of the definition. Additionally, CAHs have reported uncertainty in the definition of "clinical services" that would be covered by the direct supervision rule.

EXPLANATION OF PROVISION

The legislation prohibits the Secretary from enforcing the direct supervision regulations under 42 CFR 410.27 for calendar year 2016. 42 CFR 410.27 requires that services and supplies, furnished in Critical Access Hospitals (CAHs), that assist clinicians in the treatment of patients must be provided with direct physician supervision.

EFFECTIVE DATE

The CAH Act would continue temporary relief from enforcement of the requirement for 2016.

III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the vote of the Committee on Ways and Means in its consideration of H.R. 5613, the "Continuing Access to Hospitals Act of 2016," ("CAH") on July 7, 2016.

The Chairman's amendment in the nature of a substitute was adopted by a voice vote (with a quorum being present).

The amendment by Mr. Becerra to the amendment in the nature of the substitute to H.R. 5613, which added a study by the Medicare Payment Advisory Commission to analyze the effect of delaying the enforcement of the physician supervision requirement, was agreed to by a voice vote (with a quorum being present).

The bill, H.R. 5613, was ordered favorably reported as amended by voice vote (with a quorum being present).

IV. BUDGET EFFECTS OF THE BILL

A. Committee Estimate of Budgetary Effects

In compliance with clause 3(d) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the bill, H.R. 5613, as reported. The Committee agrees with the estimate prepared by the Congressional Budget Office (CBO), which is included below.

B. Statement Regarding New Budget Authority and Tax Expenditures Budget Authority

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the bill involves no new or increased budget authority. The Committee states further that the bill involves no new or increased tax expenditures.

C. Cost Estimate Prepared by the Congressional Budget Office

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the CBO, the following statement by CBO is provided.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 20, 2016.

Hon. KEVIN BRADY,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5613, the Continuing Access to Hospitals Act of 2016.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Lori Housman.

Sincerely,

THERESA GULLO
(For Keith Hall, Director).

Enclosure.

H.R. 5613—Continuing Access to Hospitals Act of 2016

H.R. 5613 would require the Secretary of Health and Human Services to continue to apply an exception to the requirement that certain outpatient therapeutic services be provided under the direct supervision of a physician when they are furnished in critical access and small rural hospitals. This exception would apply through calendar year 2016. The Centers for Medicare and Medicaid Services (CMS) currently does not enforce the federal requirement related to direct supervision for those services and CBO does not anticipate that CMS will begin enforcing the requirement in the near future under current law. (Those services are subject to supervision requirements established under state laws.)

Because CBO expects that H.R. 5613 would not change how CMS enforces the direct supervision requirement, we estimate that enacting H.R. 5613 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. Additionally, CBO estimates that enacting H.R. 5613 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

H.R. 5613 would require the Medicare Payment Advisory Commission to analyze and report to Congress on how enforcing the requirement for direct supervision would affect health care provided to beneficiaries. CBO estimates that the cost of this study would be less than $500,000; that spending would be subject to the availability of appropriated funds.

The bill would not impose intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Lori Housman. The estimate was approved by Holly Harvey, Deputy Assistant Director for Budget Analysis.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings

and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report. Statement of General Performance Goals and Objectives.

B. Statement of General Performance Goals and Objectives

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill contains no measure that authorizes funding, so no statement of general performance goals and objectives for which any measure authorizes funding is required.

C. Information Relating to Unfunded Mandates

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104–4).

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

D. Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

E. Duplication of Federal Programs

In compliance with Sec. 3(g)(2) of H. Res. 5 (114th Congress), the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program; (2) a program included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139; or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to the Federal Program Information Act (Pub. L. No. 95–220, as amended by Pub. L. No. 98–169).

F. Disclosure of Directed Rule Makings

In compliance with Sec. 3(i) of H. Res. 5 (114th Congress), the following statement is made concerning directed rule makings: The Committee estimates that the bill requires no directed rule makings within the meaning of such section.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

A. TEXT OF EXISTING LAW AMENDED OR REPEALED BY THE BILL, AS REPORTED

In compliance with clause 3(e)(1)(A) of rule XIII of the Rules of the House of Representatives, the text of each section proposed to be amended or repealed by the bill, as reported, is shown below:

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e)(1)(A) of rule XIII of the Rules of the House of Representatives, the text of each section proposed to be amended or repealed by the bill, as reported, is shown below:

PUBLIC LAW 113–198

* * * * * * *

SECTION 1. EXTENSION OF ENFORCEMENT INSTRUCTION ON SUPERVISION REQUIREMENTS FOR OUTPATIENT THERAPEUTIC SERVICES IN CRITICAL ACCESS AND SMALL RURAL HOSPITALS THROUGH 2014 AND 2015.

The Secretary of Health and Human Services shall continue to apply through calendar years 2014 and 2015 the enforcement instruction described in the notice of the Centers for Medicare & Medicaid Services entitled "Enforcement Instruction on Supervision Requirements for Outpatient Therapeutic Services in Critical Access and Small Rural Hospitals for CY 2013", dated November 1, 2012 (providing for an exception to the restatement and clarification under the final rulemaking changes to the Medicare hospital outpatient prospective payment system and calendar year 2009 payment rates (published in the Federal Register on November 18, 2008, 73 Fed. Reg. 68702 through 68704) with respect to requirements for direct supervision by physicians for therapeutic hospital outpatient services).

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B. CHANGES IN EXISTING LAW PROPOSED BY THE BILL, AS REPORTED

In compliance with clause 3(e)(1)(B) of rule XIII of the Rules of the House of Representatives, changes in existing law proposed by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e)(1)(B) of rule XIII of the Rules of the House of Representatives, changes in existing law proposed by the bill, as reported, are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

PUBLIC LAW 113–198

* * * * * * *

SECTION 1. EXTENSION OF ENFORCEMENT INSTRUCTION ON SUPERVISION REQUIREMENTS FOR OUTPATIENT THERAPEUTIC SERVICES IN CRITICAL ACCESS AND SMALL RURAL HOSPITALS THROUGH [2014 AND 2015] *2016*.

The Secretary of Health and Human Services shall continue to apply through calendar years 2014 [and 2015]*, 2015, and 2016* the enforcement instruction described in the notice of the Centers for Medicare & Medicaid Services entitled "Enforcement Instruction on Supervision Requirements for Outpatient Therapeutic Services in Critical Access and Small Rural Hospitals for CY 2013", dated November 1, 2012 (providing for an exception to the restatement and clarification under the final rulemaking changes to the Medicare hospital outpatient prospective payment system and calendar year 2009 payment rates (published in the Federal Register on November 18, 2008, 73 Fed. Reg. 68702 through 68704) with respect to requirements for direct supervision by physicians for therapeutic hospital outpatient services).

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