105TH CONGRESS
1ST SESSION

# S. 359

To amend title XVIII of the Social Security Act to change the payment system for health maintenance organizations and competitive medical plans.

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 26, 1997

Mr. THOMAS (for himself, Mr. GRASSLEY, Mr. BURNS, Mr. KEMPTHORNE, Mr. GRAMS, and Mr. ROBERTS) introduced the following bill; which was read twice and referred to the Committee on Finance

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# A BILL

To amend title XVIII of the Social Security Act to change the payment system for health maintenance organizations and competitive medical plans.

*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 ''Medicare Payment Equity Act of 1997''.

**SEC. 2. PAYMENTS TO HEALTH MAINTENANCE ORGANIZATIONS AND COMPETITIVE MEDICAL PLANS.**

(a) IN GENERAL.—Section 1876(a) of the Social Security Act (42 U.S.C. 1395mm(a)) is amended to read as follows:

''(a)(1)(A) The Secretary shall annually determine, and shall announce (in a manner intended to provide notice to interested parties) not later than August 1 before the calendar year concerned—

''(i) a per capita rate of payment for individuals who are enrolled under this section with an eligible organization which has entered into a risk-sharing contract and who are entitled to benefits under part A and enrolled under part B, and

''(ii) a per capita rate of payment for individuals who are so enrolled with such an organization and who are enrolled under part B only.

For purposes of this section, the term ''risk-sharing contract'' means a contract entered into under subsection (g) and the term ''reasonable cost reimbursement contract'' means a contract entered into under subsection (h).

''(B) The annual per capita rate of payment for each medicare payment area (as defined in paragraph (5)) shall be equal to the adjusted capitation rate (as defined in paragraph (4)), adjusted by the Secretary for—

''(i) individuals who are enrolled under this section with an eligible organization which has entered into a risk-sharing contract and who are enrolled under part B only; and

''(ii) such risk factors as age, disability status, gender, institutional status, and such other factors as the Secretary determines to be appropriate so as to ensure actuarial equivalence. The Secretary may add to, modify, or substitute for such factors, if such changes will improve the determination of actuarial equivalence.

''(C) In the case of an eligible organization with a risk-sharing contract, the Secretary shall make monthly payments in advance and in accordance with the rate determined under subparagraph (B) and except as provided in subsection (g)(2), to the organization for each individual enrolled with the organization under this section.

''(D) The Secretary shall establish a separate rate of payment to a eligible organization with respect to any individual determined to have end-stage renal disease and enrolled with the organization. Such rate of payment shall be actuarially equivalent to rates paid to other enrollees in the payment area (or such other area as specified by the Secretary).

''(E)(i) The amount of payment under this paragraph may be retroactively adjusted to take into account any difference between the actual number of individuals enrolled in the plan under this section and the number of such individuals estimated to be so enrolled in determining the amount of the advance payment.

''(ii)(I) Subject to subclause (II), the Secretary may make retroactive adjustments under clause (i) to take into account individuals enrolled during the period beginning on the date on which the individual enrolls with an eligible organization (which has a risk-sharing contract under this section) under a health benefit plan operated, sponsored, or contributed to by the individual's employer or former employer (or the employer or former employer of the individual's spouse) and ending on the date on which the individual is enrolled in the plan under this section, except that for purposes of making such retroactive adjustments under this clause, such period may not exceed 90 days.

''(II) No adjustment may be made under subclause (I) with respect to any individual who does not certify that the organization provided the individual with the explanation described in subsection (c)(3)(E) at the time the individual enrolled with the organization.

''(F)(i) At least 45 days before making the announcement under subparagraph (A) for a year, the Secretary

shall provide for notice to eligible organizations of proposed changes to be made in the methodology or benefit coverage assumptions from the methodology and assumptions used in the previous announcement and shall provide such organizations an opportunity to comment on such proposed changes.

''(ii) In each announcement made under subparagraph (A) for a year, the Secretary shall include an explanation of the assumptions (including any benefit coverage assumptions) and changes in methodology used in the announcement in sufficient detail so that eligible organizations can compute per capita rates of payment for individuals located in each county (or equivalent medicare payment area) which is in whole or in part within the service area of such an organization.

''(2) With respect to any eligible organization which has entered into a reasonable cost reimbursement contract, payments shall be made to such plan in accordance with subsection (h)(2) rather than paragraph (1).

''(3) Subject to subsections (c)(2)(B)(ii) and (c)(7), payments under a contract to an eligible organization under paragraph (1) or (2) shall be instead of the amounts which (in the absence of the contract) would be otherwise payable, pursuant to sections 1814(b) and 1833(a), for

services furnished by or through the organization to individuals enrolled with the organization under this section.

''(4)(A) For purposes of this section, the 'adjusted capitation rate' for a medicare payment area (as defined in paragraph (5)) is equal to the greatest of the following:

''(i) The sum of—

''(I) the area-specific percentage for the year (as specified under subparagraph (B) for the year) of the area-specific adjusted capitation rate for the year for the medicare payment area, as determined under subparagraph (C), and

''(II) the national percentage (as specified under subparagraph (B) for the year) of the input-price-adjusted national adjusted capitation rate for the year, as determined under subparagraph (D),

multiplied by a budget neutrality adjustment factor determined under subparagraph (E).

''(ii) An amount equal to—

''(I) in the case of 1998, 80 percent of the input-price-adjusted national adjusted capitation rate for the year, as determined under subparagraph (D); and

''(II) in the case of a succeeding year, the amount specified in this clause for the preceding year increased by the national average per capita growth percentage specified under subparagraph (F) for that succeeding year.

''(iii) An amount equal to—

''(I) in the case of 1998, 102 percent of the annual per capita rate of payment for 1997 for the medicare payment area (determined under this subsection, as in effect on the day before the date of enactment of the Medicare Payment Equity Act of 1997; and

''(II) in the case of a subsequent year, 102 percent of the adjusted capitation rate under this subsection for the area for the previous year.

''(B) For purposes of subparagraph (A)(i)—

''(i) for 1998, the 'area-specific percentage' is 85 percent and the 'national percentage' is 15 percent,

''(ii) for 1999, the 'area-specific percentage' is 75 percent and the 'national percentage' is 25 percent,

''(iii) for 2000, the 'area-specific percentage' is 65 percent and the 'national percentage' is 35 percent,

''(iv) for 2001, the 'area-specific percentage' is 55 percent and the 'national percentage' is 45 percent, and

''(v) for a year after 2001, the 'area-specific percentage' is 50 percent and the 'national percentage' is 50 percent.

''(C) For purposes of subparagraph (A)(i), the area-specific adjusted capitation rate for a medicare payment area—

''(i) for 1998, is the average of the annual per capita rates of payment for the area for 1995 through 1997, after adjusting the 1995 and 1996 rates of payment to 1997 dollars, increased by the national average per capita growth percentage for 1998 (as defined in subparagraph (F)); or

''(ii) for a subsequent year, is the area-specific adjusted capitation rate for the previous year determined under this subparagraph for the area, increased by the national average per capita growth percentage for such subsequent year.

''(D)(i) For purposes of subparagraph (A)(i) and subparagraph (A)(ii), the input-price-adjusted national

adjusted capitation rate for a medicare payment area for a year is equal to the sum, for all the types of medicare services (as classified by the Secretary), of the product (for each such type of service) of—

''(I) the national standardized adjusted capitation rate (determined under clause (ii)) for the year,

''(II) the proportion of such rate for the year which is attributable to such type of services, and

''(III) an index that reflects (for that year and that type of services) the relative input price of such services in the area compared to the national average input price of such services.

In applying subclause (III), the Secretary shall, subject to clause (iii), apply those indices under this title that are used in applying (or updating) national payment rates for specific areas and localities.

''(ii) In clause (i)(I), the 'national standardized adjusted capitation rate' for a year is equal to—

''(I) the sum (for all medicare payment areas) of the product of (aa) the area-specific adjusted capitation rate for that year for the area under subparagraph (C), and (bb) the average number of standardized medicare beneficiaries residing in that area in the year; divided by

''(II) the total average number of standardized medicare beneficiaries residing in all the medicare payment areas for that year.

''(iii) In applying this subparagraph for 1998—

''(I) medicare services shall be divided into 2 types of services: part A services and part B services;

''(II) the proportions described in clause (i)(II) for such types of services shall be—

''(aa) for part A services, the ratio (expressed as a percentage) of the national average annual per capita rate of payment for part A for 1997 to the total average annual per capita rate of payment for parts A and B for 1997, and

''(bb) for part B services, 100 percent minus the ratio described in item (aa);

''(III) for part A services, 70 percent of payments attributable to such services shall be adjusted by the index used under section 1886(d)(3)(E) to adjust payment rates for relative hospital wage levels for hospitals located in the payment area involved; and

''(IV) for part B services—

''(aa) 66 percent of payments attributable to such services shall be adjusted by the index of the geographic area factors under section 1848(e) used to adjust payment rates for physicians' services furnished in the payment area, and

''(bb) of the remaining 34 percent of the amount of such payments, 70 percent shall be adjusted by the index described in subclause (III).

The Secretary may continue to apply the rules described in this clause (or similar rules) for 1999.

''(E) For each year, the Secretary shall compute a budget neutrality adjustment factor so that the aggregate of the payments under this section shall be equal to the aggregate payments that would have been made under this section if the area-specific percentage for the year had been 100 percent and the national percentage had been 0 percent.

''(F) In this section, the 'national average per capita growth percentage' is equal to the percentage growth in medicare fee-for-service per capita expenditures, which the Secretary shall project for each year.

''(5)(A) In this section, except as provided in subparagraph (C), the term 'medicare payment area' means a county, or equivalent area specified by the Secretary.

''(B) In the case of individuals who are determined to have end stage renal disease, the medicare payment area shall be specified by the Secretary.

''(C)(i) Upon written request of the Chief Executive Officer of a State for a contract year (beginning after 1998) made at least 7 months before the beginning of the year, the Secretary shall adjust the system under which medicare payment areas in the State are otherwise determined under subparagraph (A) to a system which—

''(I) has a single statewide medicare payment area,

''(II) is a metropolitan based system described in clause (iii), or

''(III) which consolidates into a single medicare payment area noncontiguous counties (or equivalent areas described in subparagraph (A)) within a State.

Such adjustment shall be effective for payments for months beginning with January of the year following the year in which the request is received.

''(ii) In the case of a State requesting an adjustment under this subparagraph, the Secretary shall adjust the payment rates otherwise established under this section for

medicare payment areas in the State in a manner so that the aggregate of the payments under this section in the State shall be equal to the aggregate payments that would have been made under this section for medicare payment areas in the State in the absence of the adjustment under this subparagraph.

''(iii) The metropolitan based system described in this clause is one in which—

''(I) all the portions of each metropolitan statistical area in the State or in the case of a consolidated metropolitan statistical area, all of the portions of each primary metropolitan statistical area within the consolidated area within the State, are treated as a single medicare payment area, and

''(II) all areas in the State that do not fall within a metropolitan statistical area are treated as a single medicare payment area.

''(iv) In clause (iii), the terms 'metropolitan statistical area', 'consolidated metropolitan statistical area', and 'primary metropolitan statistical area' mean any area designated as such by the Secretary of Commerce.

''(6) The payment to an eligible organization under this section for individuals enrolled under this section with the organization and entitled to benefits under part A and enrolled under part B shall be made from the Federal

Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund. The portion of that payment to the organization for a month to be paid by each trust fund shall be determined as follows:

''(A) In regard to expenditures by eligible organizations having risk-sharing contracts, the allocation shall be determined each year by the Secretary based on the relative weight that benefits from each fund contribute to the adjusted average per capita cost.

''(B) In regard to expenditures by eligible organizations operating under a reasonable cost reimbursement contract, the initial allocation shall be based on the plan's most recent budget, such allocation to be adjusted, as needed, after cost settlement to reflect the distribution of actual expenditures.

The remainder of that payment shall be paid by the former trust fund.

''(7) Subject to subsections (c)(2)(B)(ii) and (c)(7), if an individual is enrolled under this section with an eligible organization having a risk-sharing contract, only the eligible organization shall be entitled to receive payments from the Secretary under this title for services furnished to the individual.

''(8) In computing the adjusted capitation rate under paragraph (4), the Secretary shall exclude from that computation any additional payment by reason of section 1886(d)(5)(B), section 1886(d)(5)(F), or section 1886(h).''.

(b) EFFECTIVE DATE.—The amendment made by this section takes effect on October 1, 1997.

**SEC. 3. MANAGED CARE COMPETITIVE PRICING DEMONSTRATION PROJECTS.**

(a) DEMONSTRATION PROJECTS.—

(1) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall conduct demonstration projects in every applicable area, as defined in paragraph (2), for the purpose of establishing competitive pricing for eligible organizations with risk-sharing contracts under section 1876 of the Social Security Act (42 U.S.C. 1395mm).

(2) APPLICABLE AREA DEFINED.—

(A) IN GENERAL.—In paragraph (1), the term ''applicable area'' means—

(i) the 5 medicare payment areas with the highest adjusted capitation rates in 1998; and

(ii) any other medicare payment area that the Secretary determines to be appropriate for conducting a demonstration project under this section in.

(B) MEDICARE PAYMENT AREA; ADJUSTED CAPITATION RATE.—In subparagraph (A), the terms ''medicare payment area'' and ''adjusted capitation rate'' have the meaning given those terms in section 1876(a) of the Social Security Act (42 U.S.C. 1395mm(a)), as added by section 2 of this Act.

(b) REPORT TO CONGRESS.—

(1) IN GENERAL.—Not later than December 31, 2001, the Secretary shall submit to Congress a report regarding the demonstration projects conducted under subsection (a).

(2) CONTENTS OF REPORT.—The report described in paragraph (1) shall include the following:

(A) A description of the demonstration projects conducted pursuant to subsection (a).

(B) Recommendations for establishing a new payment methodology for eligible organizations with risk-sharing contracts under section 1876 of the Social Security Act (42 U.S.C.

1395mm), based on the results of the demonstration projects conducted pursuant subsection (a).

(C) Any other information regarding the demonstration projects conducted pursuant to subsection (a) that the Secretary determines would assist Congress in revising the payment methodology for eligible organizations with risk-sharing contracts under section 1876 of the Social Security Act (42 U.S.C. 1395mm).

(c) WAIVER OF MEDICARE REQUIREMENTS.—The Secretary shall waive compliance with the requirements of title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) to such extent and for such period as the Secretary determines is necessary to conduct demonstration projects under this section.

(d) NO ADDITIONAL FUNDING.—The Secretary shall conduct demonstration projects under this section with funds otherwise available to the Secretary.

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