

106TH CONGRESS  
1ST SESSION

# H. R. 2115

To establish a demonstration project to authorize the Secretary of Health and Human Services to selectively contract for the provision of medical care to Medicare beneficiaries.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 9, 1999

Mr. STARK introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To establish a demonstration project to authorize the Secretary of Health and Human Services to selectively contract for the provision of medical care to Medicare beneficiaries.

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 Purchasing  
5       Flexibility Act of 1999”.

1 **SEC. 2. AUTHORITY TO SELECTIVELY CONTRACT UNDER**  
2 **THE MEDICARE PROGRAM.**

3 (a) DEMONSTRATION PROJECTS.—

4 (1) IN GENERAL.—The Secretary of Health and  
5 Human Services (in this section referred to as the  
6 “Secretary”) shall conduct demonstration projects  
7 under which the Secretary may use any or all of the  
8 additional authorities described in subsection (b)  
9 that—

10 (A) improves the quality of items and serv-  
11 ices furnished under the medicare program; and

12 (B) reduces expenditures under the medi-  
13 care program for such items and services.

14 (2) DURATION OF PROJECTS.—A demonstration  
15 project under this section shall be carried out for a  
16 period of five years. The Secretary may provide for  
17 the project to be carried out for additional five-year  
18 periods.

19 (3) PUBLICATION OF NOTICE OF DEMONSTRA-  
20 TION PROJECTS.—By not later than 90 days after  
21 the date of the enactment of this Act and annually  
22 thereafter, the Secretary shall publish notice in the  
23 Federal Register of the demonstration projects to be  
24 carried out under this section. The Secretary shall  
25 specify the process for—

1 (A) the consideration of comments of inter-  
2 ested parties and the public;

3 (B) the process for applications by pro-  
4 viders of services, physicians, and suppliers of  
5 items and services to participate in such a dem-  
6 onstration project;

7 (C) the particular additional authorities  
8 under subsection (b) that the Secretary con-  
9 sider the highest priority;

10 (D) determination of priorities for approval  
11 of demonstration projects based on the poten-  
12 tial of the proposed innovations under the dem-  
13 onstration project to improve health outcomes  
14 and be cost effective relative to those services  
15 otherwise available under parts A and B of the  
16 medicare program.

17 (b) ADDITIONAL AUTHORITIES.—For the purposes of  
18 carrying out a demonstration project under subsection (a),  
19 the Secretary may employ any of the following new au-  
20 thorities:

21 (1) CASE MANAGEMENT AUTHORITY.—In order  
22 to promote cost effective delivery of items and serv-  
23 ices under the medicare program, the Secretary may  
24 provide for case management with respect to types  
25 of conditions or illnesses identified by the Secretary

1 as appropriate for case management. The case man-  
2 agement authority under this paragraph may be  
3 used alone or in conjunction with the authority  
4 under paragraph (2) to bundle payments for items  
5 and services furnished under the program.

6 (2) BUNDLED PAYMENTS.—

7 (A) IN GENERAL.—Subject to subpara-  
8 graph (B), in order to promote cost effective  
9 delivery of items and services furnished under  
10 the medicare program, the Secretary may pro-  
11 vide for bundled payments for the treatment of  
12 types of conditions or illnesses identified by the  
13 Secretary as appropriate for bundled payments.

14 (B) The authority under subparagraph (A)  
15 shall not apply if the Secretary determines that  
16 the use of that authority with respect to such  
17 condition or illness would substantially impair a  
18 medicare beneficiary's access to items and serv-  
19 ices of adequate quality when medically nec-  
20 essary.

21 (3) CONTRACTING AUTHORITY.—

22 (A) COST EFFECTIVE DELIVERY OF SERV-  
23 ICES.—

24 (i) IN GENERAL.—In order to promote  
25 the cost effective delivery of items and

1 services, the Secretary may enter into con-  
2 tracts with providers of services, suppliers,  
3 and physicians furnishing items or services  
4 under the medicare program for the provi-  
5 sion of certain items and services (identi-  
6 fied by the Secretary) at a rate of payment  
7 that is less than rate otherwise applicable  
8 to that item or service under the medicare  
9 program.

10 (ii) MAINTAINING QUALITY.—The  
11 Secretary shall take such steps as are nec-  
12 essary to ensure the standards and condi-  
13 tions of quality applicable under the medi-  
14 care program to such item or service apply  
15 under any contract entered into under  
16 clause (i).

17 (iii) PASSING ON SAVINGS TO BENE-  
18 FICIARIES.—In the case of any savings to  
19 the medicare program by reason of a con-  
20 tract entered into under clause (i), the Sec-  
21 retary may provide for such reduction, as  
22 the Secretary determines appropriate, in  
23 the amount of coinsurance payable by  
24 medicare beneficiaries under the medicare

1 program receiving items and services under  
2 such contract.

3 (B) IMPROVING COORDINATION OF SERV-  
4 ICES.—In order to promote better coordination  
5 of services available, the Secretary may contract  
6 with any of the following:

7 (i) MEDICAID.—The Secretary may  
8 enter into contracts for the provision of  
9 items and services under the medicare pro-  
10 gram with a State or local government, or  
11 with a person who is not a governmental  
12 entity, to coordinate the provision of such  
13 items and services by such governments or  
14 persons with the provision of items and  
15 services furnished under the medicare pro-  
16 gram. In determining whether to enter into  
17 a contract under this clause, the Secretary  
18 shall give priority to coordination of items  
19 and services for individuals who are enti-  
20 tled to benefits both under the medicare  
21 program and under a State plan under  
22 title XIX of such Act.

23 (ii) LOCAL MARKETS.—In order to  
24 promote better coordination of utilization  
25 of items and services furnished under the

1 medicare program, the Secretary may  
2 enter into contracts, directly or through a  
3 third party, for the provision of items and  
4 services furnished within a local market.

5 (C) IMPROVING BENEFICIARY HEALTH  
6 EDUCATION.—In order to improve knowledge of  
7 medicare beneficiaries with respect to health  
8 care and to provide for increased control of  
9 health care utilization by such beneficiaries, the  
10 Secretary may contract with entities or organi-  
11 zations to provide prevention services and man-  
12 agement of demand for particular conditions  
13 and illnesses identified by the Secretary as ap-  
14 propriate for such purpose.

15 (D) QUALITY AND COST EFFECTIVE  
16 CARE.—In order to promote access to high  
17 quality, cost effective care, the Secretary may  
18 do the following:

19 (i) INCENTIVES TO BENEFICIARIES.—  
20 The Secretary may provide incentives to  
21 medicare beneficiaries who utilize providers  
22 that demonstrate quality medical outcomes  
23 while maintaining cost effectiveness, and  
24 who have entered into a contract with the  
25 Secretary to provide items and services

1 under the medicare program to medicare  
2 beneficiaries.

3 (ii) SHARING OF PATIENT OUTCOMES  
4 INFORMATION.—The Secretary may estab-  
5 lish a mechanism by which information on  
6 patient outcomes and patient unitization of  
7 services is made available as appropriate,  
8 in a manner that protects patient privacy,  
9 to all providers of services, physicians, and  
10 suppliers of items and services under the  
11 medicare program.

12 (c) PROVISION OF ADDITIONAL ITEMS AND SERV-  
13 ICES.—To the extent that a demonstration project carried  
14 out under this section utilizing the additional authorities  
15 described in subsection (b) results in the provision of items  
16 or services not otherwise provided for under the medicare  
17 program, such items and services shall be deemed to be  
18 covered under such program for purposes of the dem-  
19 onstration project if the provision of such items and serv-  
20 ices conforms with the standards and requirements under  
21 such program.

22 (d) LIMITATIONS ON DEMONSTRATION PROJECTS.—  
23 (1) NO REDUCTION IN CURRENT MEDICARE  
24 BENEFITS.—No demonstration project may be estab-  
25 lished under this section if the establishment of the



1 demonstration project would result in a reduction in  
2 the type or amount of items and services provided  
3 for under the medicare program.

4 (2) FREEDOM OF CHOICE OF PROVIDERS.—

5 (A) IN GENERAL.—No demonstration  
6 project may be established under this section if  
7 the establishment of the demonstration project  
8 mandates a greater limitation on the ability of  
9 a medicare beneficiary to choose a provider of  
10 services, physician, or supplier than those in ef-  
11 fect under the medicare program.

12 (B) BENEFICIARY ELECTION.—Notwith-  
13 standing subparagraph (A), the Secretary may  
14 provide for limitation on the ability of a medi-  
15 care beneficiary if the beneficiary makes an  
16 election to participate in a demonstration  
17 project under such greater limitations, under  
18 such conditions established prescribed the Sec-  
19 retary in regulations.

20 (3) LIMITATION ON QUANTITY OF PRO-  
21 VIDERS.—Notwithstanding paragraph (2), the Sec-  
22 retary may establish a demonstration project under  
23 this section under which the Secretary, in a limited  
24 geographic area (as determined by the Secretary),  
25 limits the quantity of providers or services, physi-

1 cians, or suppliers of items and services furnishing  
2 items and services to medicare beneficiaries under  
3 a contract. In establishing such a demonstration  
4 project, the Secretary shall consider the following  
5 factors:

6 (A) The need to maintain medicare bene-  
7 ficiaries' access to a broad range of providers of  
8 services, physicians, and suppliers.

9 (B) The need to maintain enough viable  
10 providers of services, physicians, and suppliers  
11 in the geographic area to assure an effective  
12 procurement process.

13 (e) AUTHORITY TO COLLECT DATA.—The Secretary  
14 may require providers of services, physicians, and sup-  
15 pliers of items and services furnishing services to medicare  
16 beneficiaries under a demonstration project under this sec-  
17 tion to submit such information that the Secretary con-  
18 siders necessary for—

19 (1) the evaluation of demonstration projects  
20 carried out under this section;

21 (2) the improvement of such demonstration  
22 projects;

23 (3) the establishment of additional demonstra-  
24 tion projects under this section; and

1           (4) the feasibility of integrating components of  
2       such demonstration projects into the medicare pro-  
3       gram.

4       (f) IMPLEMENTATION OF DEMONSTRATION PROJECT  
5 RESULTS.—The Secretary may issue regulations to imple-  
6 ment, on a permanent basis, the components of a dem-  
7 onstration project that is beneficial to the medicare pro-  
8 gram if a report under subsection (g)(2)(F) contains an  
9 evaluation that a demonstration project under this  
10 section—

11           (1) reduces expenditures under the medicare  
12       program; or

13           (2) does not increase expenditures under the  
14       medicare program and increases the quality of  
15       health care services furnished to medicare bene-  
16       ficiaries and satisfaction of beneficiaries and health  
17       care providers.

18       (g) REPORT TO CONGRESS.—

19           (1) IN GENERAL.—Not less frequently than an-  
20       nually after the Secretary implements demonstration  
21       projects under this section, the Secretary shall sub-  
22       mit to Congress a report regarding the demonstra-  
23       tion projects conducted under this section.

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

1 (A) A description of the demonstration  
2 projects conducted under this section.

3 (B) A description of any demonstration  
4 project under consideration by the Secretary for  
5 approval.

6 (C) A description of the methods by which  
7 any demonstration project meets the applicable  
8 standards for additional authority under sub-  
9 section (b).

10 (D) A description of the measures imple-  
11 mented under the demonstration project to pro-  
12 tect the health and welfare of medicare bene-  
13 ficiaries participating in or to whom items and  
14 services are furnished under the demonstration  
15 project. Such description shall include informa-  
16 tion with respect to standards for participation  
17 of providers or services, physicians, and sup-  
18 pliers of items and services applicable under the  
19 demonstration project.

20 (E) A description of the methods by which  
21 the Secretary shall assure the financial account-  
22 ability of funds expended under the demonstra-  
23 tion projects with respect to items and services  
24 furnished under the project.

25 (F) An evaluation of—

1 (i) the cost-effectiveness of the dem-  
2 onstration projects;

3 (ii) the quality of the health care serv-  
4 ices provided to target individuals under  
5 the demonstration projects; and

6 (iii) beneficiary and health care pro-  
7 vider satisfaction under the demonstration  
8 project.

9 (G) Any other information regarding the  
10 demonstration projects conducted under this  
11 section that the Secretary determines to be ap-  
12 propriate.

13 (3) MEDPAC REVIEW.—The Medicare Payment  
14 Advisory Commission shall review such report and  
15 submit to Congress its comments on such report not  
16 later than 60 days after the date of the report is  
17 submitted to Congress. Such comments shall include  
18 the effectiveness and appropriateness of the ap-  
19 proved and proposed demonstration projects, and  
20 recommendations to Congress with respect to modi-  
21 fications to the authority under this section that the  
22 commission determines appropriate.

23 (h) WAIVER AUTHORITY.—The Secretary shall waive  
24 compliance with the requirements of the medicare pro-

1 gram to such extent and for such period as the Secretary  
2 determines is necessary to conduct demonstration projects.

3 (i) FUNDING.—

4 (1) IN GENERAL.—The Secretary shall provide  
5 for the transfer from the Federal Hospital Insurance  
6 Trust Fund and the Federal Supplementary Insur-  
7 ance Trust Fund under title XVIII of the Social Se-  
8 curity Act (42 U.S.C. 1395i, 1395t), in such propor-  
9 tions as the Secretary determines to be appropriate,  
10 of such funds as are necessary for the costs of car-  
11 rying out the demonstration projects under this sec-  
12 tion.

13 (2) LIMITATION.—In conducting demonstration  
14 projects under this section, the Secretary shall en-  
15 sure that the aggregate payments made by the Sec-  
16 retary do not exceed the amount which the Secretary  
17 would have paid if the demonstration projects under  
18 this section were not implemented.

19 (j) DEFINITIONS.—In this section:

20 (1) MEDICARE BENEFICIARY.—The term  
21 “medicare beneficiary” means an individual entitled  
22 to benefits under part A of the medicare program,  
23 and enrolled under part B of such program, or a  
24 person enrolled only under part B of such program.

1           (2) MEDICARE PROGRAM.—The term “medicare  
2           program” means the program established under title  
3           XVIII of the Social Security Act (42 U.S.C. 1395 et  
4           seq.).

5           (3) PROVIDER OF SERVICES.—The term “pro-  
6           vider of services” has the meaning given that term  
7           under section 1861(u) of the Social Security Act (42  
8           U.S.C. 1395x(u)).

9           (4) PHYSICIAN.—The term “physician” has the  
10          meaning given that term under section 1861(r) of  
11          such Act (42 U.S.C. 1395x(r)).

12   **SEC. 3. LEGISLATIVE PROPOSALS TO CHANGE PAYMENT**  
13                           **METHODOLOGY FOR CERTAIN SERVICES.**

14          (a) PROPOSAL TO IMPOSE SUSTAINABLE GROWTH  
15   RATE LIMITATIONS ON PAYMENT FOR CERTAIN MEDI-  
16   CARE ITEMS AND SERVICES.—In the case of unusual in-  
17   creases in costs to the medicare program (as determined  
18   by the Secretary of Health and Human Services) attrib-  
19   utable to unjustified increases in the amount or intensity  
20   of items and services furnished under the program, the  
21   Secretary shall modify the payment update and/or meth-  
22   odology with respect to such items and services from the  
23   update and/or methodology which resulted in such unusual  
24   increases in costs to an update and/or methodology that  
25   imposes a sustainable growth rate for such items and serv-

1 ices similar to the sustainable growth rate applied with  
 2 respect to payment for physicians services under section  
 3 1848(f) of the Social Security Act (42 U.S.C. 1395w–  
 4 4(f)).

5 (b) **AUTHORITY TO VARY BY REGION.**—Any sustain-  
 6 able growth rate recommended by the Secretary may pro-  
 7 vide for the determination of such rate on a uniform na-  
 8 tional basis, by Metropolitan Statistical Area, by State,  
 9 or by any other region that the Secretary determines ap-  
 10 propriate.

11 **SECTION 4. AUTHORITY TO NEGOTIATE PAYMENT RATES**  
 12 **IN CERTAIN AREAS.**

13 (a) **AUTHORITY TO NEGOTIATE.**—In the case of a  
 14 service area (as determined by the Secretary of Health  
 15 and Human Services) in which payments made by the Sec-  
 16 retary to a health care provider during a fiscal year for  
 17 items and services furnished under the medicare program  
 18 represent the largest single source of payment to the  
 19 health care provider for such items and services in that  
 20 area, the Secretary may negotiate a preferred customer  
 21 rate with such health care provider for such items and  
 22 services under the medicare program.

23 (b) **MANDATE TO NEGOTIATE.**—In the case of a  
 24 service area described in subsection (a) where payment  
 25 rates under the medicare program for items and services



1 furnished exceed the rates charged by such health care  
2 provider for such items and services for which payment  
3 is made other than under the medicare program, the Sec-  
4 retary shall negotiate a preferred customer rate with such  
5 health care provider for such items and services under the  
6 medicare program.

7 (c) ADJUSTMENT.—In negotiating a preferred cus-  
8 tomer rate under subsection (a), the Secretary shall take  
9 into account costs uniquely associated with the provision  
10 of items and services under the medicare program.

11 (d) WAIVER AUTHORITY.—The Secretary may waive  
12 such requirements of title XVIII of the Social Security Act  
13 as may be necessary for the purposes of carrying out this  
14 Act.

15 (e) DEFINITIONS.—In this section:

16 (1) MEDICARE PROGRAM.—The term “medicare  
17 program” means the program established under title  
18 XVIII of the Social Security Act (42 U.S.C. 1395 et  
19 seq.).

20 (2) PREFERRED CUSTOMER RATE.—The term  
21 “preferred customer rate” means, with respect to  
22 payment to a provider of services, physician, or sup-  
23 plier for an item or service furnished under the  
24 medicare program, a rate lower than the rate gen-

1 erally charged in the service area for such item or  
2 service.

3 (3) HEALTH CARE PROVIDER.—The term  
4 “health care provider” means a provider of services,  
5 a physician, or a supplier who furnishes items or  
6 services for which payment is made under the medi-  
7 care program.

8 (4) PROVIDER OF SERVICES.—The term “pro-  
9 vider of services” has the meaning given that term  
10 under section 1861(u) of the Social Security Act (42  
11 U.S.C. 1395x(u)).

12 (5) PHYSICIAN.—The term “physician” has the  
13 meaning given that term under section 1861(r) of  
14 such Act (42 U.S.C. 1395x(r)).

15 (f) Section 1842(b)(8) is amended to strike “15 per-  
16 cent” each place it appears and substitute “30 percent”.

17 **SEC. 5. BASING MEDICARE PAYMENT FOR HOSPITAL OUT-**  
18 **PATIENT DEPARTMENT SERVICES ON PAY-**  
19 **MENT RATES FOR SIMILAR SERVICES PRO-**  
20 **VIDED OUTSIDE THE HOSPITAL SETTING.**

21 (a) IN GENERAL.—Section 1833(t)(1) of the Social  
22 Security Act (42 U.S.C. 1395l(t)(1)) is amended—

23 (1) in subparagraph (A), by inserting  
24 “subject to subparagraph (C),” after “1999,”  
25 and

1                   (2) by adding at the end the following new  
2                   subparagraph:

3                   “(C) USE OF RATES IN NON-HOSPITAL  
4                   SETTINGS.—With respect to covered OPD serv-  
5                   ices furnished on or after January 1, 2001, if  
6                   payment may be made under this part for simi-  
7                   lar services (such as physicians’ services) fur-  
8                   nished outside the hospital setting, in accord-  
9                   ance with regulations of the Secretary, the total  
10                  amount of payment under this part for such  
11                  covered OPD services (including any facility-re-  
12                  lated component to such services) shall be de-  
13                  termined on the same basis on which payment  
14                  may be made for such similar services furnished  
15                  outside the hospital setting.”.

16               (b) CONFORMING AMENDMENT.—The fifth sentence  
17               of section 1866(a)(2)(A) of such Act (42 U.S.C.  
18               1395cc(a)(2)(A)) is amended by inserting “, or in the case  
19               described in section 1833(t)(1)(C), the coinsurance  
20               amount that would otherwise apply with respect to the  
21               provision of the similar services referred to in such sec-  
22               tion” before the period at the end.

1 **SEC. 6. MEDICARE PAYMENTS FOR INPATIENT HOSPITAL**  
2 **SERVICES INVOLVING EMERGENCY CARE.**

3 (a) MEDPAC REPORT ON DRG WEIGHTING FAC-  
4 TORS.—The Medicare Payment Advisory Commission  
5 shall submit a report to Congress and the Secretary of  
6 Health and Human Services, by January 1, 2000, on  
7 whether the DRG weighting factors under section  
8 1886(d)(4)(B) of the Social Security Act for diagnosis-re-  
9 lated groups associated with emergency care are adequate  
10 to cover the costs of emergency room use within discharges  
11 classified within such groups.

12 (b) ADJUSTMENT OF WEIGHTING FACTORS.—Taking  
13 into account the report submitted under subsection (a),  
14 the Secretary of Health and Human Services shall make  
15 appropriate adjustments in the DRG weighting factors de-  
16 scribed in subsection (a) for discharges occurring on or  
17 after January 1, 2001, as may be appropriate to ensure  
18 that hospital emergency room costs attributable to medi-  
19 care patients are appropriately covered.

20 **SEC. 7. PROMOTING THE USE OF COST EFFECTIVE MEDI-**  
21 **CARE NONINSTITUTIONAL SERVICES**  
22 **THROUGH WAIVER OF BENEFIT LIMITA-**  
23 **TIONS.**

24 (a) IN GENERAL.—If the Secretary of Health and  
25 Human Services estimates that treatment in a non-hos-  
26 pital or non-institutional setting under the medicare pro-

1 gram under title XVIII of the Social Security Act is likely  
2 to provide similar or better quality care and outcomes at  
3 a lower cost to the program, the Secretary of Health and  
4 Human Services may waive requirements described in sub-  
5 section (b) which discourage or prevent treatment in such  
6 a setting.

7 (b) REQUIREMENTS WAIVABLE.—

8 (1) IN GENERAL.—Subject to paragraph (2),  
9 the requirements that may be waived include the fol-  
10 lowing:

11 (A) The requirement, for the receipt of  
12 benefits for extended care services, that the  
13 services be post-hospital extended care services.

14 (B) Cost sharing (including deductibles,  
15 coinsurance, and copayments) that may be ap-  
16 plicable.

17 (2) NONWAIVABLE PROVISIONS.—The Secretary  
18 of Health and Human Services may not under this  
19 section provide for coverage of services for which no  
20 payment is otherwise provided under the medicare  
21 program.

22 (c) LIMITATION.—The Secretary may not provide for  
23 such a waiver in the case of an individual unless there  
24 are satisfactory assurances that the medicare beneficiary  
25 has not received (and is not likely to receive) medicare

- 1 benefits for hospital services for the treatment with re-
- 2 spect to which the waiver applies.

○