107TH CONGRESS
2D SESSION

S. 2970

To amend title XVIII of the Social Security Act to assure fair and adequate payment for high-risk medicare beneficiaries and to establish payment incentives and to evaluate clinical methods for assuring quality services to people with serious and disabling chronic conditions.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 19, 2002

Mr. FEINGOLD 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 assure fair and adequate payment for high-risk medicare beneficiaries and to establish payment incentives and to evaluate clinical methods for assuring quality services to people with serious and disabling chronic conditions.

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 ''Promoting Care for the Frail Elderly Act of 2002''.

SEC. 2. PROMOTION OF CARE FOR THE FRAIL ELDERLY.

(a) REVISIONS TO RISK ADJUSTMENT METHODOLOGY.—

(1) IN GENERAL.—The Secretary shall revise the risk adjustment methodology under section 1853(a)(3) of the Social Security Act (42 U.S.C. 1395w–23(a)(3)) applicable to payments to Medicare+Choice organizations offering, whether directly or under a contract, specialized programs for frail elderly or at-risk beneficiaries to take into account variations in costs incurred by such organizations.

(2) METHODS CONSIDERED.—In revising the risk adjustment methodology under paragraph (1), the Secretary shall consider—

(A) hybrid risk adjustment payment systems, such as partial capitation;

(B) new diagnostic and service markers that accurately predict high risk;

(C) including structural components to reduce payment lag and to account for specific risk factors, such as high end-of-life costs and high death rates;

(D) providing for adjustments to payment amounts for beneficiaries with comorbidities;

(E) testing concurrent risk adjustment methodologies;

(F) testing payment methods using data from specialized programs for frail elderly or at-risk beneficiaries; and

(G) the recommendations contained in the report required to be submitted under subsection (e)(2).

(3) IMPLEMENTATION.—The Secretary shall implement the revisions required under paragraph (1) not later than January 1, 2006.

(b) INTERIM CONTINUATION OF BLENDED RATE FOR SPECIALIZED PROGRAMS FOR FRAIL ELDERLY AND AT-RISK MEDICARE BENEFICIARIES RESIDING IN INSTITUTIONS.—In the case of a Medicare+Choice organization that offers a Medicare+Choice plan that offers, either directly or under a contract, a specialized program for frail elderly or at-risk beneficiaries that exclusively serves beneficiaries in institutions or beneficiaries who are entitled to medical assistance under a State plan under title XIX, notwithstanding section 1853(a)(3)(C)(ii) of the Social Security Act (42 U.S.C. 1395w–23(a)(3)(C)(ii)), such organization shall be paid according to the method described in subclause (I) of such section until such time as the Sec-

retary has implemented the revised risk adjustment methodology required under subsection (a).

(c) INTERIM CONTINUATION OF PAYMENT METHODOLOGIES FOR DEMONSTRATION PROGRAMS.—Notwithstanding any other provision of law, payment methodologies for medicare demonstration programs for specialized programs for frail elderly or at-risk beneficiaries (as defined in subsection (f)) shall continue under the terms and conditions of the demonstration authority for such programs in effect during 2002, including the risk adjustment factors and formula used for paying such demonstration programs. Such terms and conditions shall continue to apply with respect to each specialized program for frail elderly or at-risk beneficiaries offered by a Medicare+Choice organization that participated in a demonstration program after the termination of such program until such time as the Secretary has implemented the revised risk adjustment methodology required under subsection (a).

(d) DEMONSTRATION PROGRAM FOR MEDICARE+CHOICE PAYMENT REFORM FOR SPECIALIZED PROGRAMS.—

(1) IN GENERAL.—The Secretary shall establish a 5-year demonstration program to develop and evaluate—

(A) payment models that pay appropriately for specialized Medicare+Choice plans that exclusively serve, or serve a disproportionate number of, frail elderly or at-risk beneficiaries (either directly or under a contract); and

(B) clinical models that improve outcomes.

(2) REQUIREMENTS.—A Medicare+Choice organization that offers, either directly or under a contract, a specialized program for frail elderly or at-risk beneficiaries may participate in the demonstration program under this subsection if such Medicare+Choice organization meets the following requirements:

(A) PLAN COMPOSITION.—The specialized program for frail elderly or at-risk beneficiaries shall—

(i) serve frail elderly or at-risk beneficiaries exclusively;

(ii) serve a disproportionate number of frail or at-risk beneficiaries; or

(iii) serve a disproportionate number of frail or at-risk beneficiaries who are also entitled to benefits under a State plan under title XIX.

(B) CLINICAL CAPACITY.—The specialized program for frail elderly or at-risk beneficiaries shall employ a clinical delivery system that meets the needs of frail elderly or at-risk beneficiaries, including—

(i) initiatives to prevent, delay, or minimize the progression of chronic disease and disabilities;

(ii) high-risk screening to identify risk of hospitalization, nursing home placement, functional decline, death, and other factors that increase the costs of care provided;

(iii) staff with special training in chronic care and geriatric care such as geriatricians, geriatric nurse practitioners, and geriatric care managers;

(iv) initiatives for promoting integration of care, financing, and administrative functions across health care settings; and

(v) clinical protocols for specific high cost conditions identified by the Secretary for which outcomes will be evaluated as part of the demonstration program under this subsection.

(C) DATA COLLECTION.—Each Medicare+Choice organization that participates in the demonstration program under this subsection shall collect such data in such format as the Secretary may require to monitor the quality of services provided, outcomes, and costs, including functional and diagnostic data and information collected through the Health Outcomes Survey or another appropriate mechanism.

(D) QUALITY ASSURANCE.—Each Medicare+Choice organization that participates in the demonstration program under this section shall employ such quality standards and track such quality indicators as the Secretary may specify that are relevant to the special needs of enrollees. The Secretary shall identify such quality standards and indicators prior to implementing the demonstration program under this subsection.

(3) PAYMENT.—

(A) MINIMUM AMOUNT.—The Secretary shall ensure that each Medicare+Choice organization that participates in the demonstration program under this subsection is not paid less

than the amount that would have been paid with respect to each frail elderly or at-risk beneficiary enrolled in a specialized program for frail elderly or at-risk beneficiaries offered by such organization than would have been paid with respect to such beneficiaries if such beneficiaries received benefits under the original medicare fee-for-service program under parts A and B of title XVIII of the Social Security Act.

(B) MODEL.—The Secretary shall establish a payment model applicable under the demonstration program that is based upon the CMS–HCC 61 significant condition model.

(C) PAYMENT FOR STANDARD BENEFITS.—The Secretary shall pay Medicare+Choice organizations participating in the demonstration program under the standard CMS–HCC 61-condition model for nonfrail members and under a special frailty-adjusted payment for the frail or at-risk members based on requirements under parts A and B of title XVIII of the Social Security Act.

(D) PAYMENT FOR ADDITIONAL BENEFITS.—Medicare+Choice organizations that participate in the demonstration program and

that agree to an additional mandate for benefits exceeding those required under parts A and B of title XVIII of the Social Security Act shall be compensated separately for providing such benefits.

(E) FRAILTY ADJUSTER.—The Secretary shall establish and apply a frailty adjuster that is structured as an add-on payment in relation to the amount of underpayment resulting from the standard formula.

(F) REINSURANCE.—The Secretary shall provide reinsurance above a specified threshold.

(G) FINANCIAL INCENTIVES.—The Secretary shall provide for financial incentives for Medicare+Choice organizations that participate in the demonstration program, including bonus payments that shall be made in relation to meeting predefined outcome targets.

(4) WAIVER AUTHORITY.—The Secretary may waive such requirements of titles XI and XVIII of the Social Security Act as may be necessary to carry out the demonstration program under this subsection.

(5) FUNDING.—From the sums already authorized to be appropriated for demonstration projects to

be conducted by the Secretary, $25,000,000 may be appropriated to carry out the demonstration program under this subsection.

(6) BUDGET NEUTRALITY ADJUSTMENT FACTOR.—Upon enactment of this subsection, the Secretary shall provide for an adjustment to Medicare+Choice payment rates for the year to ensure that the aggregate payments under this part in that year shall be equal to aggregate payments that would have been made under the Medicare+Choice program in that year if this subsection had not been enacted.

(e) MEDPAC STUDY TO IDENTIFY FRAILTY INDICATORS AND DEVELOP FRAILTY ADJUSTMENT TO MEDICARE+CHOICE PAYMENTS.—

(1) STUDY.—

(A) IN GENERAL.—The Medicare Payment Advisory Commission, in consultation with private organizations representing Medicare+Choice organizations that offer specialized programs for frail elderly or at-risk beneficiaries, shall conduct a study on the feasibility and advisability of establishing a frailty adjustment to the Medicare+Choice risk adjustment methodology that ensures that an ap-

propriate level of payment is made to Medicare+Choice plans that serve a disproportionate number of frail or at-risk beneficiaries.

(B) STUDY PARAMETERS.—The study shall identify indicators of frailty, medical complexity, or risk that result in higher costs for certain risk groups within the medicare population such as institutionalized residents, nursing home certifiable residents living in the community, beneficiaries with multiple complex chronic conditions, beneficiaries with late-stage diseases or conditions, medicare beneficiaries with functional or cognitive impairments that limit the ability of such beneficiaries to live independently, and other indicators of higher health care utilization.

(C) FRAILTY INDICATORS.—The indicators of frailty described in subparagraph (B) may include—

(i) specific diagnoses or clusters of diagnoses;

(ii) the presence of multiple serious chronic conditions;

(iii) certain groupings of chronic conditions;

(iv) the presence of functional impairments or, alone or in combination with diagnostic factors, a specific hierarchy of functional loss; or

(v) other factors that result in the need for complex medical care or higher medical costs.

(2) REPORT.—Not later than the date that is 2 years after the date of enactment of this Act, the Medicare Payment Advisory Commission shall submit to Congress and the Secretary a report on the study conducted under paragraph (1) together with such recommendations for legislation or administrative action as the Secretary determines appropriate.

(f) DEFINITIONS.—In this section:

(1) ACTIVITIES OF DAILY LIVING.—The term ''activities of daily living'' means each of the following:

(A) Eating.

(B) Toileting.

(C) Transferring.

(D) Bathing.

(E) Dressing.

(F) Continence.

(2) DISPROPORTIONATE.—The term ''disproportionate'' means, in relation to the composition of a Medicare+Choice plan, a higher percentage of frail or at-risk beneficiaries than the national average for all Medicare+Choice plans.

(3) FRAIL OR AT-RISK BENEFICIARY.—The term ''frail or at-risk beneficiary'' means an individual who—

(A) has a level of disability such that the individual is unable to perform for a period of at least 90 days due to a loss of functional capacity—

(i) at least 2 activities of daily living; or

(ii) such number of instrumental activities of daily living that is equivalent (as determined by the Secretary) to the level of disability described in clause (i);

(B) requires substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment;

(C) has multiple medically complex chronic conditions;

(D) is at risk of hospitalization, nursing home placement, functional decline, or death

within 12 months or other factors that increase the costs of medical care; and

(E) has a severity of condition that makes the individual frail or disabled (as determined under guidelines approved by the Secretary).

(4) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

(5) SPECIALIZED PROGRAMS FOR FRAIL ELDERLY OR AT-RISK BENEFICIARIES.—The term ''specialized programs for frail elderly or at-risk beneficiaries'' means—

(A) demonstrations approved by the Secretary for purposes of testing the integration of acute and expanded care services under prepaid financing which include prescription drugs and other noncovered ancillary services, care coordination, and home and community-based services, such as the social health maintenance organization demonstration project authorized under section 2355 of the Deficit Reduction Act of 1984 and expanded under section 4207(b)(4)(B)(i) of the Omnibus Reconciliation Act of 1990;

(B) demonstrations approved by the Secretary for purposes of improving quality of care

and preventing hospitalizations for nursing home residents, such as the EverCare demonstration project;

(C) demonstrations approved by the Secretary for purposes of testing methods for integrating medicare and medicaid benefits for the dually eligible, such as the Minnesota Senior Health Options program, the Wisconsin Partnership program, the Massachusetts Senior Care Organization program, and the Rochester Continuing Care Network program (Seniors Health Plus);

(D) demonstrations approved by the Secretary under subsection (d);

(E) specialized provider-based programs that focus on improving the quality of care provided to, and preventing the hospitalizations of, residents of skilled nursing facilities; and

(F) such other demonstrations or programs approved by the Secretary for similar purposes, as determined by the Secretary.

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