110TH CONGRESS
1ST SESSION

S. 691

To amend title XVIII of the Social Security Act to improve the benefits under the Medicare program for beneficiaries with kidney disease, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 27, 2007

Mr. CONRAD 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 improve the benefits under the Medicare program for beneficiaries with kidney disease, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Kidney Care Quality and Education Act of 2007''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—IMPROVING QUALITY THROUGH PATIENT EDUCATION, ACCESS, AND SAFETY INITIATIVES

Sec. 101. Support of public and patient education initiatives regarding kidney disease.
Sec. 102. Medicare coverage of kidney disease patient education services.
Sec. 103. Blood flow monitoring demonstration projects.
Sec. 104. Institute of Medicine Evaluation and report on treatment modalities for patients with kidney failure.
Sec. 105. Required training for patient care dialysis technicians.

TITLE II—ASSURING QUALITY OF CARE FOR PROVIDERS, FACILITIES, AND PHYSICIANS THAT PROVIDE SERVICES TO INDIVIDUALS WITH END-STAGE RENAL DISEASE WHO ARE ENROLLED IN PART B

Sec. 201. Establishment of the End-Stage Renal Disease (ESRD) Advisory Committee.
Sec. 202. Update for the Medicare ESRD composite rate for 2008, 2009, and 2010.
Sec. 203. Continuous quality improvement initiative in the Medicare end-stage renal disease program.
Sec. 204. Extension of Medicare secondary payer.

TITLE I—IMPROVING QUALITY THROUGH PATIENT EDUCATION, ACCESS, AND SAFETY INITIATIVES

SEC. 101. SUPPORT OF PUBLIC AND PATIENT EDUCATION INITIATIVES REGARDING KIDNEY DISEASE.

(a) CHRONIC KIDNEY DISEASE DEMONSTRATION PROJECTS.—

(1) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall establish demonstration projects to—

(A) increase public awareness about the factors that lead to chronic kidney disease, how to prevent it, how to treat it, and how to avoid kidney failure; and

(B) enhance surveillance systems and expand research to better assess the prevalence and incidence of chronic kidney disease.

(2) SCOPE AND DURATION.—

(A) SCOPE.—The Secretary shall select at least 3 States in which to conduct demonstration projects under this subsection. In selecting the States under this subparagraph, the Secretary shall take into account the size of the population of individuals with end-stage renal disease who are enrolled in part B of title XVIII of the Social Security Act and ensure the participation of individuals who reside in rural and urban areas.

(B) DURATION.—The demonstration projects under this subsection shall be conducted for a period that is not longer than 5 years that begins on January 1, 2009.

(3) EVALUATION AND REPORT.—

(A) EVALUATION.—The Secretary shall conduct an evaluation of the demonstration projects conducted under this subsection.

(B) REPORT.—Not later than 6 months after the date on which the demonstration projects under this subsection are completed,

the Secretary shall submit to Congress a report on the evaluation conducted under subparagraph (A) together with recommendations for such legislation and administrative action as the Secretary determines appropriate.

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection $2,000,000 for each of fiscal years 2009 through 2013.

(b) ESRD SELF-MANAGEMENT DEMONSTRATION PROJECTS.—

(1) IN GENERAL.—The Secretary shall establish demonstration projects to enable individuals with end-stage renal disease to develop self-management skills.

(2) APPLICATION.—The provisions of paragraph (2) (relating to scope and duration) and paragraph (3) (relating to an evaluation and a report) of subsection (a) shall apply to the demonstration projects under this subsection in the same manner as such provisions apply to the demonstration projects under subsection (a).

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out

this subsection $2,000,000 for each of fiscal years 2009 through 2013.

SEC. 102. MEDICARE COVERAGE OF KIDNEY DISEASE PATIENT EDUCATION SERVICES.

(a) COVERAGE OF KIDNEY DISEASE EDUCATION SERVICES.—

(1) COVERAGE.—Section 1861(s)(2) of the Social Security Act (42 U.S.C. 1395x(s)(2)) is amended—

(A) in subparagraph (Z), by striking ''and'' after the semicolon at the end;

(B) in subparagraph (AA), by adding ''and'' after the semicolon at the end; and

(C) by adding at the end the following new subparagraph:

''(BB) kidney disease education services (as defined in subsection (ccc));''.

(2) SERVICES DESCRIBED.—Section 1861 of the Social Security Act (42 U.S.C. 1395x) is amended by adding at the end the following new subsection:

''Kidney Disease Education Services

''(ccc)(1) The term 'kidney disease education services' means educational services that are—

''(A) furnished to an individual with kidney disease who, according to accepted clinical guidelines identified by the Secretary, will require dialysis or a kidney transplant;

''(B) furnished, upon the referral of the physician managing the individual's kidney condition, by a qualified person (as defined in paragraph (2)); and

''(C) designed—

''(i) to provide comprehensive information regarding—

''(I) the management of comorbidities;

''(II) the prevention of uremic complications; and

''(III) each option for renal replacement therapy (including home and in-center as well as vascular access options and transplantation); and

''(ii) to ensure that the individual has the opportunity to actively participate in the choice of therapy.

''(2) The term 'qualified person' means—

''(A) a physician (as described in subsection (r)(1));

''(B) an individual who—

''(i) is—

"(I) a registered nurse;

"(II) a registered dietitian or nutrition professional (as defined in subsection (vv)(2));

"(III) a clinical social worker (as defined in subsection (hh)(1));

"(IV) a physician assistant, nurse practitioner, or clinical nurse specialist (as those terms are defined in subsection (aa)(5)); or

"(V) a transplant coordinator; and

"(ii) meets such requirements related to experience and other qualifications that the Secretary finds necessary and appropriate for furnishing the services described in paragraph (1); or

"(C) a renal dialysis facility subject to the requirements of section 1881(b)(1) with personnel who—

"(i) provide the services described in paragraph (1); and

"(ii) meet the requirements of subparagraph (A) or (B).

"(3) The Secretary shall develop the information to be provided under paragraph (1)(C)(i) and the require-

ments under (2)(B)(ii) after consulting with physicians, health educators, professional organizations, accrediting organizations, kidney patient organizations, dialysis facilities, transplant centers, network organizations described in section 1881(c)(2), and other knowledgeable persons.

''(4) In promulgating regulations to carry out this subsection, the Secretary shall ensure that each beneficiary who is entitled to kidney disease education services under this title receives such services in a timely manner to maximize the benefit of those services.

''(5) The Secretary shall monitor the implementation of this subsection to ensure that beneficiaries who are eligible for kidney disease education services receive such services in the manner described in paragraph (4).

''(6) No individual shall be eligible to be provided more than 6 sessions of kidney disease education services under this title.''.

(3) PAYMENT UNDER THE PHYSICIAN FEE SCHEDULE.—Section 1848(j)(3) of the Social Security Act (42 U.S.C. 1395w–4(j)(3)) is amended by inserting ''(2)(BB),'' after ''(2)(AA),''.

(4) PAYMENT TO RENAL DIALYSIS FACILITIES.—Section 1881(b) of the Social Security Act (42 U.S.C. 1395rr(b)) is amended by adding at the end the following new paragraph:

''(14) For purposes of paragraph (12), the single composite weighted formulas determined under such paragraph shall not take into account the amount of payment for kidney disease education services (as defined in section 1861(ccc)). Instead, payment for such services shall be made to the renal dialysis facility on an assignment-related basis under section 1848.''.

(5) LIMITATION ON NUMBER OF SESSIONS.—Section 1862(a)(1) of the Social Security Act (42 U.S.C. 1395y(a)(1)) is amended—

(A) in subparagraph (M), by striking ''and'' at the end;

(B) in subparagraph (N), by striking the semicolon at the end and inserting '', and''; and

(C) by adding at the end the following new subparagraph:

''(O) in the case of kidney disease education services (as defined in section 1861(ccc)), which are performed in excess of the number of sessions covered under such section;''.

(6) ANNUAL REPORT TO CONGRESS.—Not later than April 1, 2009, and annually thereafter, the Secretary of Health and Human Services shall sub-

mit a report to Congress on the number of Medicare beneficiaries who are entitled to kidney disease education services (as defined in section 1861(ccc) of the Social Security Act, as added by paragraph (2)) under title XVIII of such Act and who receive such services, together with such recommendations for legislative and administrative action as the Secretary determines to be appropriate to fulfill the legislative intent that resulted in the enactment of that subsection.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after January 1, 2009.

SEC. 103. BLOOD FLOW MONITORING DEMONSTRATION PROJECTS.

(a) ESTABLISHMENT.—The Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall establish demonstration projects to evaluate how blood flow monitoring affects the quality and cost of care for Medicare beneficiaries with end-stage renal disease.

(b) DURATION.—The demonstration projects under this section shall be conducted for a period of not longer than 5 years that begins on January 1, 2009.

(c) EVALUATION AND REPORT.—

(1) EVALUATION.—The Secretary shall conduct an evaluation of the demonstration projects conducted under this section.

(2) REPORT.—Not later than 6 months after the date on which the demonstration projects under this section are completed, the Secretary shall submit to Congress a report on the evaluation conducted under paragraph (1) together with recommendations for such legislation and administrative action as the Secretary determines appropriate.

(d) WAIVER AUTHORITY.—The Secretary shall waive compliance with the requirements of title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) to the extent, and for such period as, the Secretary determines is necessary to conduct the demonstration projects.

(e) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—Payments for the costs of carrying out the demonstration projects under this section shall be made from the Federal Supplementary Medical Insurance Trust Fund under section 1841 of the Social Security Act (42 U.S.C. 1395t).

(2) AMOUNT.—There are authorized to be appropriated from such Trust Fund $1,000,000 for

each of fiscal years 2009 through 2013 to carry out this section.

SEC. 104. INSTITUTE OF MEDICINE EVALUATION AND REPORT ON TREATMENT MODALITIES FOR PATIENTS WITH KIDNEY FAILURE.

(a) EVALUATION.—

(1) IN GENERAL.—Not later than 2 months after the date of enactment of this Act, the Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall enter into an arrangement under which the Institute of Medicine of the National Academy of Sciences (in this section referred to as the ''Institute'') shall conduct an evaluation of the barriers that exist to increasing the number of individuals with end-stage renal disease who elect to receive home dialysis services or other treatment modalities under the Medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(2) SPECIFIC MATTERS EVALUATED.—In conducting the evaluation under paragraph (1), the Institute shall—

(A) compare current Medicare home dialysis costs and payments with current in-center and hospital dialysis costs and payments;

(B) catalogue and evaluate the incentives and disincentives in the current reimbursement system that influence whether patients receive home dialysis services or other treatment modalities;

(C) evaluate patient education services and how such services impact the treatment choices made by patients; and

(D) consider such other matters as the Institute determines appropriate.

(3) SCOPE OF REVIEW.—In conducting the evaluation under paragraph (1), the Institute shall consider a variety of perspectives, including the perspectives of physicians, other health care professionals, hospitals, dialysis facilities, health plans, purchasers, and patients.

(b) REPORT.—Not later than 19 months after the date of enactment of this Act, the Institute shall submit to the Secretary and to Congress a report on the evaluation conducted under subsection (a)(1). Such report shall contain a detailed description of the findings of such evaluation and recommendations for implementing incentives to encourage patients to elect to receive home dialysis services or other treatment modalities under the Medicare program.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary for the purposes of conducting the evaluation and preparing the report required by this section.

SEC. 105. REQUIRED TRAINING FOR PATIENT CARE DIALYSIS TECHNICIANS.

(a) IN GENERAL.—Section 1881 of the Social Security Act (42 U.S.C. 1395rr) is amended by adding the following new subsection:

''(h)(1) Except as provided in paragraph (3), beginning January 1, 2009, a provider of services or a renal dialysis facility may not use any individual as a patient care dialysis technician for more than 4 months unless the individual—

''(A) has completed a training program in the care and treatment of an individual with chronic kidney failure who is undergoing dialysis treatment;

''(B) has been certified by a nationally recognized certification entity for dialysis technicians; and

''(C) is competent to provide dialysis-related services.

''(2) Beginning January 1, 2010, a provider of services or a renal dialysis facility may not use on a temporary, per diem, leased, or on any basis other than as a permanent employee, any individual as a patient care

dialysis technician unless the individual meets the requirements described in subparagraphs (A), (B), and (C) of paragraph (1).

''(3) A provider of services or a renal dialysis facility may permit an individual enrolled in a training program described in paragraph (1)(A) to serve as a patient care dialysis technician while they are so enrolled.

''(4) For purposes of paragraph (1), if, since the most recent completion by an individual of a training program described in paragraph (1)(A), there has been a period of 24 consecutive months during which the individual has not performed dialysis-related services for monetary compensation, such individual shall be required to complete a new training program or become recertified as described in paragraph (1)(B).

''(5) A provider of services or a renal dialysis facility shall provide such regular performance review and regular in-service education as assures that individuals serving as patient care dialysis technicians for the provider or facility are competent to perform dialysis-related services.''.

TITLE II—ASSURING QUALITY OF CARE FOR PROVIDERS, FACILITIES, AND PHYSICIANS THAT PROVIDE SERVICES TO INDIVIDUALS WITH END-STAGE RENAL DISEASE WHO ARE ENROLLED IN PART B

SEC. 201. ESTABLISHMENT OF THE END-STAGE RENAL DISEASE (ESRD) ADVISORY COMMITTEE.

(a) IN GENERAL.—Pursuant to section 222 of the Public Health Service Act (42 U.S.C. 217a), the Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall establish within 1 year of the date of enactment of this Act an independent, multidisciplinary, nonpartisan End-Stage Renal Disease Advisory Committee (in this section referred to as the ''Committee'').

(b) MEMBERSHIP.—

(1) IN GENERAL.—The Committee shall consist of such members as the Secretary may appoint who shall serve for such term as the Secretary may specify. The Secretary shall ensure that a representative of the Centers for Medicare & Medicaid Services is included among the members of the Committee.

(2) CONSULTATION.—In appointing members of the Committee, the Secretary shall consult with patients, facilities and providers, physicians, nurses, a representative from the pediatric community, payers and insurers, manufacturers, and a representative of the Centers for Medicare & Medicaid Services who coordinates activities related to end-stage renal disease within the Centers.

(c) PURPOSE OF THE COMMITTEE.—

(1) DUTIES.—The Committee shall provide a forum for expert discussion and deliberation and the formulation of advice and recommendations to the Secretary regarding Medicare coverage for individuals with end-stage renal disease, as described under section 1881 of the Social Security Act (42 U.S.C. 1395rr).

(2) RECOMMENDATIONS.—

(A) ANNUAL RECOMMENDATIONS.—The Committee shall provide annual recommendations to the Secretary regarding—

(i) selecting, modifying, and updating clinical and quality of life measures;

(ii) modifying the payment structure;

(iii) determining hardship criteria to exempt certain facilities and providers from the program; and

(iv) other issues related to implementation of a quality initiative by the Secretary.

(B) PERIODIC RECOMMENDATIONS.—The Committee shall provide periodic advice and recommendations to the Secretary regarding Medicare coverage for individuals with end-stage renal disease, as described in such section 1881.

SEC. 202. UPDATE FOR THE MEDICARE ESRD COMPOSITE RATE FOR 2008, 2009, AND 2010.

Section 1881(b)(12)(G) of the Social Security Act (42 U.S.C. 1395rr(b)(12)(G)), as amended by section 103 of the Tax Relief and Health Care Act of 2006 (Public Law 109–432), is amended—

(1) in clause (i), by striking ''and'' at the end;

(2) in clause (ii)—

(A) by inserting ''and before January 1, 2008,'' after ''April 1, 2007''; and

(B) by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following new clauses:

''(iii) furnished during 2008, by the amount equal to the ESRD market basket (as developed pursuant to section 422(b) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (Public Law 106–554), as enacted into law by section 1(a)(6) of Public Law 106-554) percentage increase for 2008 above the amount of such composite rate component for such services furnished on December 31, 2007;

''(iv) furnished during 2009, by the amount equal to the ESRD market basket (as so developed) percentage increase for 2009 above the amount of such composite rate component for such services furnished on December 31, 2008; and

''(v) furnished on or after January 1, 2010, by the amount equal to the ESRD market basket (as so developed) percentage increase for 2010 above the amount of such composite rate component for such services furnished on December 31, 2009.''.

SEC. 203. CONTINUOUS QUALITY IMPROVEMENT INITIATIVE IN THE MEDICARE END-STAGE RENAL DISEASE PROGRAM.

(a) ESTABLISHMENT OF THE PROGRAM.—Section 1881 of the Social Security Act (42 U.S.C. 1395rr), as amended by section 105, is amended by adding at the end the following new subsection:

''(i) CONTINUOUS QUALITY IMPROVEMENT INITIATIVE IN THE END-STAGE RENAL DISEASE PROGRAM.—

''(1) IN GENERAL.—Not later than January 1, 2008, the Secretary shall establish a 3-year continuous quality improvement initiative (in this section referred to as the 'quality initiative') under which quality payments are provided to renal dialysis facilities, providers of services, and physicians that provide items and services to individuals with end-stage renal disease who are enrolled under part B and that meet quality benchmarks and demonstrate quality improvements.

''(2) PARTICIPATION.—

''(A) FACILITIES AND PROVIDERS.—

''(i) IN GENERAL.—Except as provided in subparagraph (C)(i) and subject to clause (ii), all independent dialysis facilities and hospital-based dialysis providers that provide items and services to

individuals with end-stage renal disease who are enrolled in part B shall participate in the quality initiative.

''(ii) POSITIVE UPDATE REQUIRED.—The quality initiative shall not apply to facilities and providers in a year unless the ESRD market basket percentage increase described in subsection (b)(12)(G) for such year is positive.

''(B) PHYSICIANS.—

''(i) IN GENERAL.—Except as provided in subparagraph (C)(i) and subject to clause (ii), all physicians who receive the monthly capitated payment under this title with respect to end-stage renal disease items and services shall participate in the quality initiative.

''(ii) POSITIVE UPDATE REQUIRED.—The quality initiative shall not apply to physicians in a year unless the update to the conversion factor under section 1848(d) for such year is positive.

''(C) PEDIATRIC FACILITIES, PROVIDERS, AND PHYSICIANS.—

''(i) IN GENERAL.—Subject to clause (ii), a pediatric facility, provider, or physician who provides items and services to individuals with end-stage renal disease who are enrolled in part B and with at least 50 percent of its patients being individuals under 18 years of age shall be required to report data for pediatric-specific measures under this subsection in order to receive the full market basket update during 2008, 2009, and 2010 under subsection (b)(12)(G) or the full update under section 1848(d).

''(ii) POSITIVE UPDATE REQUIRED.—The reporting requirement under clause (i) shall not apply to—

''(I) pediatric facilities and providers in a year unless the ESRD market basket percentage increase described in subsection (b)(12)(G) for such year is positive; and

''(II) to pediatric physicians in a year unless the update to the conversion factor under section 1848(d) for such year is positive.

''(iii) EVALUATION.—The Secretary, in consultation with the End-Stage Renal Disease Advisory Committee established under section 201 of the Kidney Care Quality and Education Act of 2007 (in this subsection referred to as the 'ESRD Advisory Committee'), shall evaluate and make recommendations to Congress regarding the feasibility of incorporating pediatric facilities, providers, and physicians described in clause (i) fully into the quality initiative if the initiative were to extend beyond 2010.

''(3) DURATION.—The quality initiative shall be conducted during a period of 3 years beginning January 1, 2008.

''(4) FUNDING.—

''(A) BONUS POOL FOR PROVIDERS AND FACILITIES.—During 2008, 2009, and 2010, the Secretary shall set aside at least ¼, but no more than ½, of the ESRD market basket amount under subsection (b)(12)(G) for each year, respectively, to establish a bonus pool to be used to provide bonus payments for providers and facilities described in paragraph

(2)(A) that demonstrate improvements in quality or attainment of quality benchmarks.

''(B) BONUS POOL FOR PHYSICIANS.—During 2008, 2009, and 2010, the Secretary shall set aside at least ¼, but no more than ½, of the portion of the physician fee schedule update under section 1848(d) that applies to physicians who receive the monthly capitated payment under this title with respect to end-stage renal disease items and services for each year respectively to establish a bonus pool to be used to provide bonus payments for physicians described in paragraph (2)(B) that demonstrate improvements in quality or attainment of quality benchmarks.

''(5) ESTABLISHMENT OF QUALITY INCENTIVE PAYMENTS.—

''(A) INCENTIVES FOR REPORTING IN 2008.—

''(i) IN GENERAL.—During 2008, the Secretary shall make quality incentive payments from the bonus pool described in paragraph (4)(A) to facilities and providers and from the bonus pool described in paragraph (4)(B) to physicians described in

subparagraphs (A) and (B) of paragraph (2) for reporting data about clinical and quality of life measures adopted by the Secretary in consultation with the ESRD Advisory Committee.

''(ii) EXTENSION.—If the Secretary determines that there are problems associated with reporting that should be resolved before implementing the quality payment system under subparagraph (B), the Secretary may extend the reporting period an additional year.

''(iii) EXCEPTION TO REPORTING REQUIREMENT.—The Secretary shall establish criteria for an application for a hardship exception that would allow small or rural facilities and providers to receive the full update under subsection (b)(12)(G) even if they are not able to report data.

''(B) QUALITY INCENTIVE PAYMENTS IN 2009 AND 2010.—

''(i) IN GENERAL.—During 2009 and 2010, the Secretary shall make quality incentive payments from their respective bonus pools under paragraph (4) to facili-

ties, providers, and physicians described in subparagraphs (A) and (B) of paragraph (2) with respect to a year if the Secretary determines that the quality of care provided in that year by the facility, provider, or physician to individuals with end-stage renal disease who are enrolled under part B—

"(I) has substantially improved (as determined by the Secretary in consultation with the ESRD Advisory Committee) over the prior year; or

"(II) exceeds a threshold established by the Secretary in consultation with the ESRD Advisory Committee.

"(ii) REQUIREMENTS.—In determining which facilities, providers, or physicians qualify for the quality incentive payments under clause (i), the Secretary shall do the following:

"(I) Adopt clinical and quality of life measures in consultation with the ESRD Advisory Committee.

"(II) For 2008, ensure that payments will be based on the reporting

of data regarding clinical and quality of life measures adopted by the Secretary in consultation with the ESRD Advisory Committee.

''(III) For 2009 and 2010, subject to subparagraph (C), ensure that payments will be based upon the composite score awarded to the facilities, providers, and physicians. The composite score will be based upon the submission of data about clinical and quality of life measures adopted by the Secretary in consultation with the ESRD Advisory Committee.

''(C) DETERMINATION OF AMOUNT OF INCENTIVE PAYMENT.—

''(i) IN GENERAL.—Subject to clause (ii), the Secretary shall determine the amount of a quality incentive payment to a facility, provider, or physician based upon a quintile scale of a weighted composite score of clinical and quality of life measures.

''(ii) LIMITATION.—The Secretary shall establish the quality incentive pay-

ments so that the total amount of such payments made in a year—

"(I) to facilities and providers from the bonus pool under paragraph (4)(A) is equal to the total amount available for such payments for the year under such paragraph; and

"(II) to physicians from the bonus pool under paragraph (4)(B) is equal to the total amount available for such payments for the year under such paragraph.

"(D) REQUIREMENTS FOR ESTABLISHMENT OF THE COMPOSITE SCORE.—In establishing the composite score under this subsection, the Secretary shall—

"(i) consult with the ESRD Advisory Committee to develop the clinical and quality of life measures and formula used to calculate the weighted composite score;

"(ii) use a transparent process consistent with the requirements of chapter 5 of title 5, United States Code (commonly referred to as the 'Administrative Procedure Act') to develop the measures and the

formula used to calculate the weighted composite score; and

''(iii) assure that the payments reward facilities, providers, and physicians for—

''(I) the attainment of minimum quality targets; and

''(II) substantial improvement over the previous year, as demonstrated by the movement of a facility, provider, or physician from 1 quintile to another.

''(6) REQUIREMENTS FOR INCENTIVE PAYMENTS.—

''(A) IN GENERAL.—In order for a facility, provider, or physician to be eligible for quality incentive payments described in paragraph (5) for a year, the provider, facility, or physician must have provided for the submission of data in accordance with subparagraph (B) with respect to that year.

''(B) SUBMISSION OF DATA.—For 2008, 2009, and 2010, each facility, provider, and physician described in subparagraphs (A) and (B) of paragraph (2) shall submit to the Secretary such data that the Secretary determines

are appropriate for the measurement of health outcomes and other indices of quality, including data necessary for the operation of the continuous quality improvement initiative under this subsection. Such data shall be submitted in a form and manner, and at a time, specified by the Secretary for purposes of this subsection.

''(C) ATTESTATION REGARDING DATA.—In order for a facility, provider, or physician to be eligible for a quality incentive payment under this subsection for a year, the facility, provider, or physician must have provided the Secretary (under procedures established by the Secretary in consultation with the ESRD Advisory Committee) with an attestation that the data submitted under this subsection for the year are complete and accurate.

''(7) PAYMENT METHODS AND TIMING OF PAYMENT.—

''(A) IN GENERAL.—Subject to subparagraph (B), the payment of quality incentive payments shall be based on such method as the Secretary, in consultation with the ESRD Advisory Committee, determines appropriate.

''(B) TIMING.—The Secretary shall ensure that quality incentive payments with respect to a year are made by no later than June 30 of the subsequent year.

''(8) FEEDBACK.—The Secretary shall provide quality incentive payments and feedback to facilities, providers, and physicians as frequently as possible and as close to the date on which such facilities, providers, and physicians submitted quality data.

''(9) TECHNICAL ASSISTANCE.—The Secretary shall identify or establish an appropriately skilled group or organization, such as the ESRD Networks, to provide technical assistance to consistently low-performing facilities, providers, or physicians that are in the bottom quintile.

''(10) STREAMLINE REPORTING.—The Secretary shall—

''(A) evaluate the current data systems used by facilities, providers, and physicians to submit data; and

''(B) eliminate redundant reporting by consolidating all current data reporting into a new web-based system in order to minimize redundancy and reduce regulatory and administrative demands.

''(11) PUBLIC REPORTING.—

''(A) AVAILABILITY TO THE PUBLIC.—The Secretary shall establish procedures for making weighted composite scores calculated under this subsection available to the public in a clear and understandable form, including through its website and the Medicare.gov comparison tool. Such procedures shall ensure that a facility, provider, or physician has the opportunity to review the data that is to be made public with respect to the facility, provider, or physician prior to such data being made public.

''(B) CERTIFICATES.—The Secretary shall provide certificates to facilities, providers, and physicians who provide services to individuals with end-stage renal disease under this title to display in patient areas. The certificate shall indicate the weighted composite score obtained by the facility, provider, or physician under the quality initiative.

''(C) WEB-BASED QUALITY LIST.—The Secretary shall establish a web-based quality list for facilities, providers, and physicians who provide items and services to individuals with end-stage renal disease who are enrolled under

part B that indicates whether measures were met or not.

''(12) EVALUATIONS.—

''(A) EVALUATION BY THE SECRETARY.—

''(i) RECOGNIZING PART A SAVINGS FROM CONTINUOUS QUALITY IMPROVEMENT INITIATIVE.—Not later than January 1, 2010, the Secretary shall evaluate and make recommendations to Congress regarding the feasibility of continuing the quality initiative by funding an annual increase to the composite rate by the ESRD market basket amount under subsection (b)(12)(G) through reduced expenditures under the Federal Hospital Insurance Trust Fund as a result of the quality initiative.

''(ii) RECOMMENDATIONS FOR AN ANNUAL UPDATE MECHANISM.—Not later than 12 months after the date of enactment of this subsection, the Secretary, acting through the Administrator of the Centers for Medicare & Medicaid Services, shall submit a report to Congress using the data collected as part of the quality initia-

tive to make recommendations about establishing a permanent update mechanism for the composite rate under this section.

''(B) EVALUATION BY MEDPAC.—

''(i) STUDY.—The Medicare Payment Advisory Commission shall conduct a study on the advisability and feasibility of making the quality initiative permanent.

''(ii) REPORT.—Not later than June 1, 2009, the Commission shall submit a report to Congress and the Secretary on the study conducted under clause (i) together with recommendations for such legislation and administrative actions as the Commission considers appropriate, including the need for establishing an annual update mechanism for the composite rate under this section.

''(C) EVALUATION BY THE INSTITUTE OF MEDICINE.—

''(i) IN GENERAL.—Not later than 2 years after the date of enactment of this subsection, the Secretary shall enter into an arrangement under which the Institute of Medicine of the National Academy of

Sciences (in this section referred to as the 'Institute') shall conduct an evaluation of the effectiveness of the quality initiative.

''(ii) SCOPE OF REVIEW.—The Institute shall consider a variety of perspectives, including the perspectives of facilities, providers, physicians, nurses, other health care professionals, and patients.

''(iii) REPORT.—Not later than 3 years after the date of enactment of this subsection, the Institute shall submit to the Secretary and to Congress a report on the evaluation conducted under clause (i). Such report shall contain a detailed description of the findings of such evaluation and recommendations for implementing on an ongoing basis the quality initiative.

''(iv) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary for the purpose of conducting the evaluation and preparing the report required by this subparagraph.''.

SEC. 204. EXTENSION OF MEDICARE SECONDARY PAYER.

(a) EXTENSION.—

(1) IN GENERAL.—Section 1862(b)(1)(C) of the Social Security Act (42 U.S.C. 1395y(b)(1)(C)) is amended—

(A) in the last sentence, by inserting ", and before January 1, 2008" after "prior to such date)"; and

(B) by adding at the end the following new sentence: "Effective for items and services furnished on or after January 1, 2008 (with respect to periods beginning on or after the date that is 42 months prior to such date), clauses (i) and (ii) shall be applied by substituting '42-month' for '12-month' each place it appears in the first sentence.".

(2) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the date of enactment of this Act. For purposes of determining an individual's status under section 1862(b)(1)(C) of the Social Security Act (42 U.S.C. 1395y(b)(1)(C)), as amended by paragraph (1), an individual who is within the coordinating period as of the date of enactment of this Act shall have that period extended to the full 42 months described in the last sentence of such section, as added by the amendment made by paragraph (1)(B).

(b) OIG STUDY AND REPORT.—

(1) STUDY.—The Inspector General of the Department of Health and Human Services shall conduct a study on—

(A) the enforcement of the provisions of section 1862(b)(1)(C)(ii) of the Social Security Act (42 U.S.C. 1395y(b)(1)(C)(ii)); and

(B) how effective such provisions are at protecting individuals on dialysis from receiving differential treatment by health plans once the individual is diagnosed with end stage renal disease.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Inspector General of the Department of Health and Human Services shall submit to Congress a report on the study conducted under paragraph (1), together with such recommendations as the Inspector General determines appropriate.

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