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

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.
 - 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; TABLE OF CONTENTS.

- 4 (a) SHORT TITLE.—This Act may be cited as the
- 5 "Kidney Care Quality and Education Act of 2007".
- 6 (b) TABLE OF CONTENTS.—The table of contents for
- 7 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, FACILI-TIES, AND PHYSICIANS THAT PROVIDE SERVICES TO INDIVID-UALS 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 EDU CATION, ACCESS, AND SAFETY INITIATIVES

5 SEC. 101. SUPPORT OF PUBLIC AND PATIENT EDUCATION

6

INITIATIVES REGARDING KIDNEY DISEASE.

7 (a) CHRONIC KIDNEY DISEASE DEMONSTRATION8 PROJECTS.—

9 (1) IN GENERAL.—The Secretary of Health and 10 Human Services (in this section referred to as the 11 "Secretary") shall establish demonstration projects 12 to—

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

1 (B) enhance surveillance systems and ex-2 pand research to better assess the prevalence 3 and incidence of chronic kidney disease. 4 (2) Scope and duration.— (A) SCOPE.—The Secretary shall select at 5 6 least 3 States in which to conduct demonstra-7 tion projects under this subsection. In selecting 8 the States under this subparagraph, the Sec-9 retary shall take into account the size of the 10 population of individuals with end-stage renal 11 disease who are enrolled in part B of title 12 XVIII of the Social Security Act and ensure the 13 participation of individuals who reside in rural 14 and urban areas. 15 (B) DURATION.—The demonstration 16 projects under this subsection shall be con-17 ducted for a period that is not longer than 5 18 years that begins on January 1, 2009. 19 (3) EVALUATION AND REPORT.— 20 EVALUATION.—The Secretary shall (\mathbf{A}) 21 conduct an evaluation of the demonstration 22 projects conducted under this subsection. 23 (B) REPORT.—Not later than 6 months

after the date on which the demonstrationprojects under this subsection are completed,

1	the Secretary shall submit to Congress a report
2	on the evaluation conducted under subpara-
3	graph (A) together with recommendations for
4	such legislation and administrative action as the
5	Secretary determines appropriate.
6	(4) Authorization of appropriations.—
7	There are authorized to be appropriated to carry out
8	this subsection \$2,000,000 for each of fiscal years
9	2009 through 2013.
10	(b) ESRD Self-Management Demonstration
11	Projects.—
12	(1) IN GENERAL.—The Secretary shall establish
13	demonstration projects to enable individuals with
14	end-stage renal disease to develop self-management
15	skills.
16	(2) Application.—The provisions of para-
17	graph (2) (relating to scope and duration) and para-
18	graph (3) (relating to an evaluation and a report) of
19	subsection (a) shall apply to the demonstration
20	projects under this subsection in the same manner
21	as such provisions apply to the demonstration
22	projects under subsection (a).
23	(3) AUTHORIZATION OF APPROPRIATIONS.—

24 There are authorized to be appropriated to carry out

1	this subsection \$2,000,000 for each of fiscal years
2	2009 through 2013.
3	SEC. 102. MEDICARE COVERAGE OF KIDNEY DISEASE PA-
4	TIENT EDUCATION SERVICES.
5	(a) Coverage of Kidney Disease Education
6	Services.—
7	(1) COVERAGE.—Section $1861(s)(2)$ of the So-
8	cial Security Act (42 U.S.C. $1395x(s)(2)$) is amend-
9	ed—
10	(A) in subparagraph (Z), by striking
11	"and" after the semicolon at the end;
12	(B) in subparagraph (AA), by adding
13	"and" after the semicolon at the end; and
14	(C) by adding at the end the following new
15	subparagraph:
16	"(BB) kidney disease education services
17	(as defined in subsection (ccc));".
18	(2) SERVICES DESCRIBED.—Section 1861 of
19	the Social Security Act (42 U.S.C. 1395x) is amend-
20	ed by adding at the end the following new sub-
21	section:
22	"Kidney Disease Education Services
23	((ccc)(1) The term 'kidney disease education serv-
24	ices' means educational services that are—

1	"(A) furnished to an individual with kidney dis-
2	ease who, according to accepted clinical guidelines
3	identified by the Secretary, will require dialysis or a
4	kidney transplant;
5	"(B) furnished, upon the referral of the physi-
6	cian managing the individual's kidney condition, by
7	a qualified person (as defined in paragraph (2)); and
8	"(C) designed—
9	"(i) to provide comprehensive information
10	regarding-
11	"(I) the management of comorbidities;
12	"(II) the prevention of uremic com-
13	plications; and
14	"(III) each option for renal replace-
15	ment therapy (including home and in-cen-
16	ter as well as vascular access options and
17	transplantation); and
18	"(ii) to ensure that the individual has the
19	opportunity to actively participate in the choice
20	of therapy.
21	"(2) The term 'qualified person' means—
22	"(A) a physician (as described in subsection
23	(r)(1));
24	"(B) an individual who—
25	"(i) is—

1	"(I) a registered nurse;
2	"(II) a registered dietitian or nutri-
3	tion professional (as defined in subsection
4	(vv)(2));
5	"(III) a clinical social worker (as de-
6	fined in subsection (hh)(1));
7	"(IV) a physician assistant, nurse
8	practitioner, or clinical nurse specialist (as
9	those terms are defined in subsection
10	(aa)(5)); or
11	"(V) a transplant coordinator; and
12	"(ii) meets such requirements related to
13	experience and other qualifications that the
14	Secretary finds necessary and appropriate for
15	furnishing the services described in paragraph
16	(1); or
17	"(C) a renal dialysis facility subject to the re-
18	quirements of section $1881(b)(1)$ with personnel
19	who—
20	"(i) provide the services described in para-
21	graph (1) ; and
22	"(ii) meet the requirements of subpara-
23	graph (A) or (B).
24	"(3) The Secretary shall develop the information to
25	be provided under paragraph $(1)(C)(i)$ and the require-

ments under (2)(B)(ii) after consulting with physicians, 1 2 health educators, professional organizations, accrediting 3 organizations, kidney patient organizations, dialysis facili-4 ties, transplant centers, network organizations described 5 in section 1881(c)(2), and other knowledgeable persons. 6 "(4) In promulgating regulations to carry out this 7 subsection, the Secretary shall ensure that each bene-8 ficiary who is entitled to kidney disease education services 9 under this title receives such services in a timely manner 10 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).

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

18 (3) PAYMENT UNDER THE PHYSICIAN FEE
19 SCHEDULE.—Section 1848(j)(3) of the Social Secu20 rity Act (42 U.S.C. 1395w-4(j)(3)) is amended by
21 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:

1	"(14) For purposes of paragraph (12), the sin-
2	gle composite weighted formulas determined under
3	such paragraph shall not take into account the
4	amount of payment for kidney disease education
5	services (as defined in section 1861(ccc)). Instead,
6	payment for such services shall be made to the renal
7	dialysis facility on an assignment-related basis under
8	section 1848.".
9	(5) Limitation on number of sessions.—
10	Section $1862(a)(1)$ of the Social Security Act (42)
11	U.S.C. 1395y(a)(1)) is amended—
12	(A) in subparagraph (M), by striking
13	"and" at the end;
14	(B) in subparagraph (N), by striking the
15	semicolon at the end and inserting ", and"; and
16	(C) by adding at the end the following new
17	subparagraph:
18	"(O) in the case of kidney disease edu-
19	cation services (as defined in section
20	1861(ccc)), which are performed in excess of
21	the number of sessions covered under such sec-
22	tion;".
23	(6) ANNUAL REPORT TO CONGRESS.—Not later
24	than April 1, 2009, and annually thereafter, the
25	Secretary of Health and Human Services shall sub-

1 mit a report to Congress on the number of Medicare 2 beneficiaries who are entitled to kidney disease edu-3 cation services (as defined in section 1861(ccc) of 4 the Social Security Act, as added by paragraph (2)) under title XVIII of such Act and who receive such 5 6 services, together with such recommendations for 7 legislative and administrative action as the Secretary 8 determines to be appropriate to fulfill the legislative 9 intent that resulted in the enactment of that sub-10 section.

(b) EFFECTIVE DATE.—The amendments made bythis section shall apply to services furnished on or afterJanuary 1, 2009.

14 SEC. 103. BLOOD FLOW MONITORING DEMONSTRATION 15 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.

25 (c) EVALUATION AND REPORT.—

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

4 (2) REPORT.—Not later than 6 months after 5 the date on which the demonstration projects under 6 this section are completed, the Secretary shall sub-7 mit to Congress a report on the evaluation con-8 ducted under paragraph (1) together with rec-9 ommendations for such legislation and administra-10 tive action as the Secretary determines appropriate. 11 (d) WAIVER AUTHORITY.—The Secretary shall waive 12 compliance with the requirements of title XVIII of the So-13 cial Security Act (42 U.S.C. 1395 et seq.) to the extent, 14 and for such period as, the Secretary determines is nec-15 essary to conduct the demonstration projects.

16 (e) AUTHORIZATION OF APPROPRIATIONS.—

17 (1) IN GENERAL.—Payments for the costs of
18 carrying out the demonstration projects under this
19 section shall be made from the Federal Supple20 mentary Medical Insurance Trust Fund under sec21 tion 1841 of the Social Security Act (42 U.S.C.
22 1395t).

23 (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.

3 SEC. 104. INSTITUTE OF MEDICINE EVALUATION AND RE4 PORT ON TREATMENT MODALITIES FOR PA5 TIENTS WITH KIDNEY FAILURE.

6 (a) EVALUATION.—

7 (1) IN GENERAL.—Not later than 2 months 8 after the date of enactment of this Act, the Sec-9 retary of Health and Human Services (in this sec-10 tion referred to as the "Secretary") shall enter into 11 an arrangement under which the Institute of Medi-12 cine of the National Academy of Sciences (in this 13 section referred to as the "Institute") shall conduct 14 an evaluation of the barriers that exist to increasing 15 the number of individuals with end-stage renal dis-16 ease who elect to receive home dialysis services or 17 other treatment modalities under the Medicare pro-18 gram under title XVIII of the Social Security Act 19 (42 U.S.C. 1395 et seq.).

20 (2) SPECIFIC MATTERS EVALUATED.—In con21 ducting the evaluation under paragraph (1), the In22 stitute shall—

23 (A) compare current Medicare home dialy24 sis costs and payments with current in-center
25 and hospital dialysis costs and payments;

1	(B) catalogue and evaluate the incentives
2	and disincentives in the current reimbursement
3	system that influence whether patients receive
4	home dialysis services or other treatment mo-
5	dalities;
6	(C) evaluate patient education services and
7	how such services impact the treatment choices
8	made by patients; and
9	(D) consider such other matters as the In-
10	stitute determines appropriate.
11	(3) SCOPE OF REVIEW.—In conducting the
12	evaluation under paragraph (1), the Institute shall
13	consider a variety of perspectives, including the per-
14	spectives of physicians, other health care profes-
15	sionals, hospitals, dialysis facilities, health plans,
16	purchasers, and patients.
17	(b) REPORT.—Not later than 19 months after the
18	date of enactment of this Act, the Institute shall submit
19	to the Secretary and to Congress a report on the evalua-
20	tion conducted under subsection $(a)(1)$. Such report shall
21	contain a detailed description of the findings of such eval-
22	uation and recommendations for implementing incentives
23	to encourage patients to elect to receive home dialysis
24	services or other treatment modalities under the Medicare
25	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.

5 SEC. 105. REQUIRED TRAINING FOR PATIENT CARE DIALY6 SIS TECHNICIANS.

7 (a) IN GENERAL.—Section 1881 of the Social Secu8 rity Act (42 U.S.C. 1395rr) is amended by adding the fol9 lowing 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

1 dialysis technician unless the individual meets the require2 ments described in subparagraphs (A), (B), and (C) of
3 paragraph (1).

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

"(4) For purposes of paragraph (1), if, since the most 8 9 recent completion by an individual of a training program 10 described in paragraph (1)(A), there has been a period 11 of 24 consecutive months during which the individual has 12 not performed dialysis-related services for monetary com-13 pensation, such individual shall be required to complete 14 a new training program or become recertified as described 15 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 1 CARE FOR **PROVIDERS.** OF 2 FACILITIES, AND PHYSICIANS 3 THAT PROVIDE SERVICES TO 4 INDIVIDUALS WITH END-5 STAGE RENAL DISEASE WHO 6 **ARE ENROLLED IN PART B** 7

8 SEC. 201. ESTABLISHMENT OF THE END-STAGE RENAL DIS9 EASE (ESRD) ADVISORY COMMITTEE.

10 (a) IN GENERAL.—Pursuant to section 222 of the Public Health Service Act (42 U.S.C. 217a), the Secretary 11 12 of Health and Human Services (in this section referred to as the "Secretary") shall establish within 1 year of the 13 14 date of enactment of this Act an independent, multidisciplinary, nonpartisan End-Stage Renal Disease Advisory 15 16 Committee (in this section referred to as the "Committee"). 17

18 (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.

1	(2) CONSULTATION.—In appointing members of
2	the Committee, the Secretary shall consult with pa-
3	tients, facilities and providers, physicians, nurses, a
4	representative from the pediatric community, payers
5	and insurers, manufacturers, and a representative of
6	the Centers for Medicare & Medicaid Services who
7	coordinates activities related to end-stage renal dis-
8	ease within the Centers.
9	(c) Purpose of the Committee.—
10	(1) DUTIES.—The Committee shall provide a
11	forum for expert discussion and deliberation and the
12	formulation of advice and recommendations to the
13	Secretary regarding Medicare coverage for individ-
14	uals with end-stage renal disease, as described under
15	section 1881 of the Social Security Act (42 U.S.C.
16	1395rr).
17	(2) Recommendations.—
18	(A) ANNUAL RECOMMENDATIONS.—The
19	Committee shall provide annual recommenda-
20	tions to the Secretary regarding—
21	(i) selecting, modifying, and updating
22	clinical and quality of life measures;
23	(ii) modifying the payment structure;

1	(iii) determining hardship criteria to
2	exempt certain facilities and providers
3	from the program; and
4	(iv) other issues related to implemen-
5	tation of a quality initiative by the Sec-
6	retary.
7	(B) PERIODIC RECOMMENDATIONS.—The
8	Committee shall provide periodic advice and
9	recommendations to the Secretary regarding
10	Medicare coverage for individuals with end-
11	stage renal disease, as described in such section
12	1881.
12	
12	SEC. 202. UPDATE FOR THE MEDICARE ESRD COMPOSITE
13	SEC. 202. UPDATE FOR THE MEDICARE ESRD COMPOSITE
13 14	SEC. 202. UPDATE FOR THE MEDICARE ESRD COMPOSITE RATE FOR 2008, 2009, AND 2010.
13 14 15 16	SEC. 202. UPDATE FOR THE MEDICARE ESRD COMPOSITE RATE FOR 2008, 2009, AND 2010. Section 1881(b)(12)(G) of the Social Security Act
13 14 15 16	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
 13 14 15 16 17 	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
 13 14 15 16 17 18 	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—
 13 14 15 16 17 18 19 	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;
 13 14 15 16 17 18 19 20 	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)—
 13 14 15 16 17 18 19 20 21 	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,

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

3 "(iii) furnished during 2008, by the amount 4 equal to the ESRD market basket (as developed 5 pursuant to section 422(b) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Pro-6 7 tection Act of 2000 (Public Law 106-554), as en-8 acted into law by section 1(a)(6) of Public Law 106-9 554) percentage increase for 2008 above the amount 10 of such composite rate component for such services 11 furnished on December 31, 2007;

12 "(iv) furnished during 2009, by the amount 13 equal to the ESRD market basket (as so developed) 14 percentage increase for 2009 above the amount of 15 such composite rate component for such services fur-16 nished 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 INITIA TIVE IN THE MEDICARE END-STAGE RENAL DISEASE PROGRAM.

4 (a) ESTABLISHMENT OF THE PROGRAM.—Section
5 1881 of the Social Security Act (42 U.S.C. 1395rr), as
6 amended by section 105, is amended by adding at the end
7 the following new subsection:

8 "(i) Continuous Quality Improvement Initia-9 TIVE IN THE END-STAGE RENAL DISEASE PROGRAM.— 10 "(1) IN GENERAL.—Not later than January 1, 11 2008, the Secretary shall establish a 3-year contin-12 uous quality improvement initiative (in this section 13 referred to as the 'quality initiative') under which 14 quality payments are provided to renal dialysis facili-15 ties, providers of services, and physicians that pro-16 vide items and services to individuals with end-stage 17 renal disease who are enrolled under part B and 18 that meet quality benchmarks and demonstrate qual-19 ity improvements.

- 20 "(2) PARTICIPATION.—
- 21 "(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 fa-
cilities 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 pro-
vided 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.—

1	"(i) IN GENERAL.—Subject to clause
2	(ii), a pediatric facility, provider, or physi-
3	cian who provides items and services to in-
4	dividuals with end-stage renal disease who
5	are enrolled in part B and with at least 50
6	percent of its patients being individuals
7	under 18 years of age shall be required to
8	report data for pediatric-specific measures
9	under this subsection in order to receive
10	the full market basket update during 2008,
11	2009, and 2010 under subsection
12	(b)(12)(G) or the full update under section
13	1848(d).
14	"(ii) Positive update required.—
15	The reporting requirement under clause (i)
16	shall not apply to—
17	"(I) pediatric facilities and pro-
18	viders in a year unless the ESRD
19	market basket percentage increase de-
20	scribed in subsection $(b)(12)(G)$ for
21	such year is positive; and
22	"(II) to pediatric physicians in a
23	year unless the update to the conver-
24	sion factor under section 1848(d) for
25	such year is positive.

	20
1	"(iii) EVALUATION.—The Secretary,
2	in consultation with the End-Stage Renal
3	Disease Advisory Committee established
4	under section 201 of the Kidney Care
5	Quality and Education Act of 2007 (in this
6	subsection referred to as the 'ESRD Advi-
7	sory Committee'), shall evaluate and make
8	recommendations to Congress regarding
9	the feasibility of incorporating pediatric fa-
10	cilities, providers, and physicians described
11	in clause (i) fully into the quality initiative
12	if the initiative were to extend beyond
13	2010.
14	"(3) DURATION.—The quality initiative shall be
15	conducted during a period of 3 years beginning Jan-
16	uary 1, 2008.
17	"(4) FUNDING.—
18	"(A) BONUS POOL FOR PROVIDERS AND
19	FACILITIES.—During 2008, 2009, and 2010,
20	the Secretary shall set aside at least $\frac{1}{4}$, but no
21	more than $\frac{1}{2}$, of the ESRD market basket
22	amount under subsection $(b)(12)(G)$ for each
23	year, respectively, to establish a bonus pool to
24	be used to provide bonus payments for pro-
25	viders and facilities described in paragraph

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

3 "(B) BONUS POOL FOR PHYSICIANS.— 4 During 2008, 2009, and 2010, the Secretary 5 shall set aside at least $\frac{1}{4}$, but no more than $\frac{1}{2}$, 6 of the portion of the physician fee schedule up-7 date under section 1848(d) that applies to phy-8 sicians who receive the monthly capitated pay-9 ment under this title with respect to end-stage 10 renal disease items and services for each year 11 respectively to establish a bonus pool to be used 12 to provide bonus payments for physicians de-13 scribed in paragraph (2)(B) that demonstrate 14 improvements in quality or attainment of qual-15 ity benchmarks.

16 "(5) ESTABLISHMENT OF QUALITY INCENTIVE
17 PAYMENTS.—

18 "(A) INCENTIVES FOR REPORTING IN
19 2008.—

20 "(i) IN GENERAL.—During 2008, the
21 Secretary shall make quality incentive pay22 ments from the bonus pool described in
23 paragraph (4)(A) to facilities and providers
24 and from the bonus pool described in para25 graph (4)(B) to physicians described in

1

1	subparagraphs (A) and (B) of paragraph
2	(2) for reporting data about clinical and
3	quality of life measures adopted by the
4	Secretary in consultation with the ESRD
5	Advisory Committee.
6	"(ii) EXTENSION.—If the Secretary
7	determines that there are problems associ-
8	ated with reporting that should be resolved
9	before implementing the quality payment
10	system under subparagraph (B), the Sec-
11	retary may extend the reporting period an
12	additional year.
13	"(iii) EXCEPTION TO REPORTING RE-
14	QUIREMENT.—The Secretary shall estab-
15	lish criteria for an application for a hard-
16	ship exception that would allow small or
17	rural facilities and providers to receive the
18	full update under subsection $(b)(12)(G)$
19	even if they are not able to report data.
20	"(B) QUALITY INCENTIVE PAYMENTS IN
21	2009 AND 2010.—
22	"(i) IN GENERAL.—During 2009 and
23	2010, the Secretary shall make quality in-
24	centive payments from their respective
25	bonus pools under paragraph (4) to facili-

1	ties, providers, and physicians described in
2	subparagraphs (A) and (B) of paragraph
3	(2) with respect to a year if the Secretary
4	determines that the quality of care pro-
5	vided in that year by the facility, provider,
6	or physician to individuals with end-stage
7	renal disease who are enrolled under part
8	В—
9	"(I) has substantially improved
10	(as determined by the Secretary in
11	consultation with the ESRD Advisory
12	Committee) over the prior year; or
13	"(II) exceeds a threshold estab-
14	lished by the Secretary in consultation
15	with the ESRD Advisory Committee.
16	"(ii) Requirements.—In deter-
17	mining which facilities, providers, or physi-
18	cians qualify for the quality incentive pay-
19	ments under clause (i), the Secretary shall
20	do the following:
21	"(I) Adopt clinical and quality of
22	life measures in consultation with the
23	ESRD Advisory Committee.
24	"(II) For 2008, ensure that pay-
25	ments will be based on the reporting

of data regarding clinical and quality 1 2 of life measures adopted by the Sec-3 retary in consultation with the ESRD 4 Advisory Committee. "(III) For 2009 and 2010, sub-5 6 ject to subparagraph (C), ensure that 7 payments will be based upon the com-8 posite score awarded to the facilities, 9 providers, and physicians. The com-10 posite score will be based upon the 11 submission of data about clinical and 12 quality of life measures adopted by 13 the Secretary in consultation with the 14 ESRD Advisory Committee. "(C) DETERMINATION OF AMOUNT OF IN-15 16 CENTIVE PAYMENT.— 17 "(i) IN GENERAL.—Subject to clause 18 (ii), the Secretary shall determine the 19 amount of a quality incentive payment to 20 a facility, provider, or physician based upon a quintile scale of a weighted com-21 22 posite score of clinical and quality of life 23 measures.

24 "(ii) LIMITATION.—The Secretary25 shall establish the quality incentive pay-

4from the bonus pool under paragraph5(4)(A) is equal to the total amount6available for such payments for the7year under such paragraph; and8"(II) to physicians from the9bonus pool under paragraph (4)(B) is10equal to the total amount available for11such payments for the year under12such payments for the year under13"(D) REQUIREMENTS FOR ESTABLISH-14MENT OF THE COMPOSITE SCORE.—In estab-15lishing the composite score under this sub-16section, the Secretary shall—17"(i) consult with the ESRD Advisory18Committee to develop the clinical and qual-19ity of life measures and formula used to20calculate the weighted composite score;21"(ii) use a transparent process con-22sistent with the requirements of chapter 523of title 5, United States Code (commonly24referred to as the 'Administrative Proce-	1	ments so that the total amount of such
4from the bonus pool under paragraph5(4)(A) is equal to the total amount6available for such payments for the7year under such paragraph; and8"(II) to physicians from the9bonus pool under paragraph (4)(B) is10equal to the total amount available for11such payments for the year under12such payments for the year under13"(D) REQUIREMENTS FOR ESTABLISH-14MENT OF THE COMPOSITE SCORE.—In estab-15lishing the composite score under this sub-16section, the Secretary shall—17"(i) consult with the ESRD Advisory18Committee to develop the clinical and qual-19ity of life measures and formula used to20calculate the weighted composite score;21"(ii) use a transparent process con-22sistent with the requirements of chapter 523of title 5, United States Code (commonly24referred to as the 'Administrative Proce-	2	payments made in a year—
5(4)(A) is equal to the total amount available for such payments for the year under such paragraph; and7year under such paragraph; and8"(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.10equal to the total amount available for such payments for the year under such paragraph.13"(D) REQUIREMENTS FOR ESTABLISH- MENT OF THE COMPOSITE SCORE.—In estab- lishing the composite score under this sub- section, the Secretary shall—16section, the Secretary shall—17"(i) consult with the ESRD Advisory l818Committee to develop the clinical and qual- ity of life measures and formula used to calculate the weighted composite score; 2121"(ii) use a transparent process con- sistent with the requirements of chapter 5 23 of title 5, United States Code (commonly referred to as the 'Administrative Proce-	3	"(I) to facilities and providers
6available for such payments for the year under such paragraph; and7year under such paragraph; and8"(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.10equal to the total amount available for such payments for the year under such paragraph.13"(D) REQUIREMENTS FOR ESTABLISH- 1414MENT OF THE COMPOSITE SCORE.—In estab- lishing the composite score under this sub- section, the Secretary shall—16section, the Secretary shall—17"(i) consult with the ESRD Advisory l818Committee to develop the clinical and qual- ity of life measures and formula used to calculate the weighted composite score;21"(ii) use a transparent process con- sistent with the requirements of chapter 523of title 5, United States Code (commonly referred to as the 'Administrative Proce-	4	from the bonus pool under paragraph
7 year under such paragraph; and 8 "(II) to physicians from the 9 bonus pool under paragraph (4)(B) is 10 equal to the total amount available for 11 such payments for the year under 12 such paragraph. 13 "(D) REQUIREMENTS FOR ESTABLISH- 14 MENT OF THE COMPOSITE SCORE.—In estab- 15 lishing the composite score under this sub- 16 section, the Secretary shall— 17 "(i) consult with the ESRD Advisory 18 Committee to develop the clinical and qual- 19 ity of life measures and formula used to 20 calculate the weighted composite score; 21 "(ii) use a transparent process con- 22 sistent with the requirements of chapter 5 23 of title 5, United States Code (commonly 24 referred to as the 'Administrative Proce-	5	(4)(A) is equal to the total amount
8 "(II) to physicians from the 9 bonus pool under paragraph (4)(B) is 10 equal to the total amount available for 11 such payments for the year under 12 such paragraph. 13 "(D) REQUIREMENTS FOR ESTABLISH- 14 MENT OF THE COMPOSITE SCORE.—In estab- 15 lishing the composite score under this sub- 16 section, the Secretary shall— 17 "(i) consult with the ESRD Advisory 18 Committee to develop the clinical and qual- 19 ity of life measures and formula used to 20 calculate the weighted composite score; 21 "(ii) use a transparent process con- 22 sistent with the requirements of chapter 5 23 of title 5, United States Code (commonly 24 referred to as the 'Administrative Proce-	6	available for such payments for the
9bonus pool under paragraph (4)(B) is10equal to the total amount available for11such payments for the year under12such paragraph.13"(D) REQUIREMENTS FOR ESTABLISH-14MENT OF THE COMPOSITE SCORE.—In estab-15lishing the composite score under this sub-16section, the Secretary shall—17"(i) consult with the ESRD Advisory18Committee to develop the clinical and qual-19ity of life measures and formula used to20calculate the weighted composite score;21"(ii) use a transparent process con-22sistent with the requirements of chapter 523of title 5, United States Code (commonly24referred to as the 'Administrative Proce-	7	year under such paragraph; and
10equal to the total amount available for11such payments for the year under12such paragraph.13"(D) REQUIREMENTS FOR ESTABLISH-14MENT OF THE COMPOSITE SCORE.—In estab-15lishing the composite score under this sub-16section, the Secretary shall—17"(i) consult with the ESRD Advisory18Committee to develop the clinical and qual-19ity of life measures and formula used to20calculate the weighted composite score;21"(ii) use a transparent process con-22sistent with the requirements of chapter 523of title 5, United States Code (commonly24referred to as the 'Administrative Proce-	8	"(II) to physicians from the
11such payments for the year under12such paragraph.13"(D) REQUIREMENTS FOR ESTABLISH-14MENT OF THE COMPOSITE SCORE.—In estab-15lishing the composite score under this sub-16section, the Secretary shall—17"(i) consult with the ESRD Advisory18Committee to develop the clinical and qual-19ity of life measures and formula used to20calculate the weighted composite score;21"(ii) use a transparent process con-22sistent with the requirements of chapter 523of title 5, United States Code (commonly24referred to as the 'Administrative Proce-	9	bonus pool under paragraph (4)(B) is
12such paragraph.13"(D) REQUIREMENTS FOR ESTABLISH-14MENT OF THE COMPOSITE SCORE.—In estab-15lishing the composite score under this sub-16section, the Secretary shall—17"(i) consult with the ESRD Advisory18Committee to develop the clinical and qual-19ity of life measures and formula used to20calculate the weighted composite score;21"(ii) use a transparent process con-22sistent with the requirements of chapter 523of title 5, United States Code (commonly24referred to as the 'Administrative Proce-	10	equal to the total amount available for
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14MENT OF THE COMPOSITE SCORE.—In estab-15lishing the composite score under this sub-16section, the Secretary shall—17"(i) consult with the ESRD Advisory18Committee to develop the clinical and qual-19ity of life measures and formula used to20calculate the weighted composite score;21"(ii) use a transparent process con-22sistent with the requirements of chapter 523of title 5, United States Code (commonly24referred to as the 'Administrative Proce-	12	such paragraph.
 lishing the composite score under this sub- section, the Secretary shall— "(i) consult with the ESRD Advisory Committee to develop the clinical and qual- ity 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 Proce- 	13	"(D) REQUIREMENTS FOR ESTABLISH-
16section, the Secretary shall—17"(i) consult with the ESRD Advisory18Committee to develop the clinical and qual-19ity of life measures and formula used to20calculate the weighted composite score;21"(ii) use a transparent process con-22sistent with the requirements of chapter 523of title 5, United States Code (commonly24referred to as the 'Administrative Proce-	14	MENT OF THE COMPOSITE SCORE.—In estab-
 17 "(i) consult with the ESRD Advisory 18 Committee to develop the clinical and qual- 19 ity of life measures and formula used to 20 calculate the weighted composite score; 21 "(ii) use a transparent process con- 22 sistent with the requirements of chapter 5 23 of title 5, United States Code (commonly 24 referred to as the 'Administrative Proce- 	15	lishing the composite score under this sub-
18Committee to develop the clinical and qual-19ity of life measures and formula used to20calculate the weighted composite score;21"(ii) use a transparent process con-22sistent with the requirements of chapter 523of title 5, United States Code (commonly24referred to as the 'Administrative Proce-	16	section, the Secretary shall—
19ity of life measures and formula used to20calculate the weighted composite score;21"(ii) use a transparent process con-22sistent with the requirements of chapter 523of title 5, United States Code (commonly24referred to as the 'Administrative Proce-	17	"(i) consult with the ESRD Advisory
 20 calculate the weighted composite score; 21 "(ii) use a transparent process con- 22 sistent with the requirements of chapter 5 23 of title 5, United States Code (commonly 24 referred to as the 'Administrative Proce- 	18	Committee to develop the clinical and qual-
 21 "(ii) use a transparent process consistent with the requirements of chapter 5 23 of title 5, United States Code (commonly 24 referred to as the 'Administrative Procession 	19	ity of life measures and formula used to
 sistent with the requirements of chapter 5 of title 5, United States Code (commonly referred to as the 'Administrative Proce- 	20	calculate the weighted composite score;
 23 of title 5, United States Code (commonly 24 referred to as the 'Administrative Proce- 	21	"(ii) use a transparent process con-
24 referred to as the 'Administrative Proce-	22	sistent with the requirements of chapter 5
	23	of title 5, United States Code (commonly
25 dure Act') to develop the measures and the	24	referred to as the 'Administrative Proce-
	25	dure Act') to develop the measures and the

1 formula used to calculate the weighted 2 composite score; and 3 "(iii) assure that the payments reward 4 facilities, providers, and physicians for— 5 "(I) the attainment of minimum 6 quality targets; and 7 "(II) substantial improvement 8 over the previous year, as dem-9 onstrated by the movement of a facil-10 ity, provider, or physician from 1 11 quintile to another. 12 **((6)** REQUIREMENTS FOR INCENTIVE PAY-13 MENTS.---14 "(A) IN GENERAL.—In order for a facility, 15 provider, or physician to be eligible for quality 16 incentive payments described in paragraph (5)17 for a year, the provider, facility, or physician 18 must have provided for the submission of data 19 in accordance with subparagraph (B) with re-20 spect to that year. "(B) SUBMISSION OF DATA.—For 2008, 21 22 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 8 9 order for a facility, provider, or physician to be 10 eligible for a quality incentive payment under 11 this subsection for a year, the facility, provider, 12 or physician must have provided the Secretary 13 (under procedures established by the Secretary 14 in consultation with the ESRD Advisory Com-15 mittee) with an attestation that the data sub-16 mitted under this subsection for the year are 17 complete and accurate.

18 "(7) PAYMENT METHODS AND TIMING OF PAY19 MENT.—

20 "(A) IN GENERAL.—Subject to subpara21 graph (B), the payment of quality incentive
22 payments shall be based on such method as the
23 Secretary, in consultation with the ESRD Advi24 sory Committee, determines appropriate.

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1	"(B) TIMING.—The Secretary shall ensure
2	that quality incentive payments with respect to
3	a year are made by no later than June 30 of
4	the subsequent year.
5	"(8) FEEDBACK.—The Secretary shall provide
6	quality incentive payments and feedback to facilities,
7	providers, and physicians as frequently as possible
8	and as close to the date on which such facilities, pro-
9	viders, and physicians submitted quality data.
10	"(9) TECHNICAL ASSISTANCE.—The Secretary
11	shall identify or establish an appropriately skilled
12	group or organization, such as the ESRD Networks,
13	to provide technical assistance to consistently low-
14	performing facilities, providers, or physicians that
15	are in the bottom quintile.
16	"(10) STREAMLINE REPORTING.—The Sec-
17	retary shall—
18	"(A) evaluate the current data systems
19	used by facilities, providers, and physicians to
20	submit data; and
21	"(B) eliminate redundant reporting by con-
22	solidating all current data reporting into a new
23	web-based system in order to minimize redun-
24	dancy and reduce regulatory and administrative
25	demands.

"(11) PUBLIC REPORTING.—

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2 "(A) AVAILABILITY TO THE PUBLIC.—The 3 Secretary shall establish procedures for making 4 weighted composite scores calculated under this 5 subsection available to the public in a clear and 6 understandable form, including through its 7 website and the Medicare.gov comparison tool. 8 Such procedures shall ensure that a facility, 9 provider, or physician has the opportunity to re-10 view the data that is to be made public with re-11 spect to the facility, provider, or physician prior 12 to such data being made public.

13 "(B) CERTIFICATES.—The Secretary shall 14 provide certificates to facilities, providers, and 15 physicians who provide services to individuals 16 with end-stage renal disease under this title to 17 display in patient areas. The certificate shall in-18 dicate the weighted composite score obtained by 19 the facility, provider, or physician under the 20 quality initiative.

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

1	part B that indicates whether measures were
2	met or not.
3	"(12) EVALUATIONS.—
4	"(A) EVALUATION BY THE SECRETARY.—
5	"(i) Recognizing part a savings
6	FROM CONTINUOUS QUALITY IMPROVE-
7	MENT INITIATIVE.—Not later than Janu-
8	ary 1, 2010, the Secretary shall evaluate
9	and make recommendations to Congress
10	regarding the feasibility of continuing the
11	quality initiative by funding an annual in-
12	crease to the composite rate by the ESRD
13	market basket amount under subsection
14	(b)(12)(G) through reduced expenditures
15	under the Federal Hospital Insurance
16	Trust Fund as a result of the quality ini-
17	tiative.
18	"(ii) Recommendations for an an-
19	NUAL UPDATE MECHANISM.—Not later
20	than 12 months after the date of enact-
21	ment of this subsection, the Secretary, act-
22	ing through the Administrator of the Cen-
23	ters for Medicare & Medicaid Services,
24	shall submit a report to Congress using the
25	data collected as part of the quality initia-

1 tive to make recommendations about estab-2 lishing a permanent update mechanism for the composite rate under this section. 3 "(B) EVALUATION BY MEDPAC.— 4 "(i) STUDY.—The Medicare Payment 5 6 Advisory Commission shall conduct a study 7 on the advisability and feasibility of mak-8 ing the quality initiative permanent. 9 "(ii) REPORT.—Not later than June 1, 2009, the Commission shall submit a re-10 11 port to Congress and the Secretary on the 12 study conducted under clause (i) together 13 with recommendations for such legislation 14 and administrative actions as the Commis-15 sion considers appropriate, including the 16 need for establishing an annual update 17 mechanism for the composite rate under 18 this section. 19 "(C) EVALUATION BY THE INSTITUTE OF 20 MEDICINE.-21 "(i) IN GENERAL.—Not later than 2 22 years after the date of enactment of this subsection, the Secretary shall enter into 23 24 an arrangement under which the Institute 25 of Medicine of the National Academy of 1Sciences (in this section referred to as the2'Institute') shall conduct an evaluation of3the effectiveness of the quality initiative.4''(ii) SCOPE OF REVIEW.—The Insti-5tute shall consider a variety of perspec-6tives, including the perspectives of facili-7ties, providers, physicians, nurses, other

health care professionals, and patients.

9 "(iii) REPORT.—Not later than 3 10 years after the date of enactment of this 11 subsection, the Institute shall submit to 12 the Secretary and to Congress a report on the evaluation conducted under clause (i). 13 14 Such report shall contain a detailed de-15 scription of the findings of such evaluation 16 and recommendations for implementing on 17 an ongoing basis the quality initiative.

18 "(iv) AUTHORIZATION OF APPROPRIA19 TIONS.—There are authorized to be appro20 priated such sums as may be necessary for
21 the purpose of conducting the evaluation
22 and preparing the report required by this
23 subparagraph.".

24 SEC. 204. EXTENSION OF MEDICARE SECONDARY PAYER.

25 (a) EXTENSION.—

1	(1) IN GENERAL.—Section $1862(b)(1)(C)$ of the
2	Social Security Act (42 U.S.C. 1395y(b)(1)(C)) is
3	amended—
4	(A) in the last sentence, by inserting ",
5	and before January 1, 2008" after "prior to
6	such date)"; and
7	(B) by adding at the end the following new
8	sentence: "Effective for items and services fur-
9	nished on or after January 1, 2008 (with re-
10	spect to periods beginning on or after the date
11	that is 42 months prior to such date), clauses
12	(i) and (ii) shall be applied by substituting '42-
13	month' for '12-month' each place it appears in
14	the first sentence.".
15	(2) EFFECTIVE DATE.—The amendments made
16	by this subsection shall take effect on the date of en-
17	actment of this Act. For purposes of determining an
18	individual's status under section $1862(b)(1)(C)$ of
19	the Social Security Act (42 U.S.C. $1395y(b)(1)(C)$),
20	as amended by paragraph (1) , an individual who is
21	within the coordinating period as of the date of en-
22	actment of this Act shall have that period extended
23	to the full 42 months described in the last sentence
24	of such section, as added by the amendment made
25	by paragraph (1)(B).

1	(b) OIG STUDY AND REPORT.—
2	(1) Study.—The Inspector General of the De-
3	partment of Health and Human Services shall con-
4	duct a study on—
5	(A) the enforcement of the provisions of
6	section 1862(b)(1)(C)(ii) of the Social Security
7	Act (42 U.S.C. 1395y(b)(1)(C)(ii)); and
8	(B) how effective such provisions are at
9	protecting individuals on dialysis from receiving
10	differential treatment by health plans once the
11	individual is diagnosed with end stage renal dis-
12	ease.
13	(2) REPORT.—Not later than 1 year after the
14	date of enactment of this Act, the Inspector General
15	of the Department of Health and Human Services
16	shall submit to Congress a report on the study con-
17	ducted under paragraph (1), together with such rec-
18	ommendations as the Inspector General determines
19	appropriate.

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