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111TH CONGRESS
1ST SESSION

H. R. 2858

To amend titles XI and XVIII of the Social Security Act to modernize the quality improvement organization (QIO) program.

IN THE HOUSE OF REPRESENTATIVES

JUNE 12, 2009

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

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A BILL

To amend titles XI and XVIII of the Social Security Act to modernize the quality improvement organization (QIO) program.

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 ''Medicare Quality Improvement Organization Modernization Act of 2009''.

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

SEC. 2. QUALITY IMPROVEMENT ACTIVITIES.

(a) INCLUSION OF QUALITY IMPROVEMENT FUNCTIONS.—

(1) IN GENERAL.—Section 1154(a) of the Social Security Act (42 U.S.C. 1320c–3(a)) is amended by adding at the end the following new paragraph:

''(18) The organization shall offer quality improvement assistance to providers, practitioners, Medicare Advantage organizations offering Medicare Advantage plans under part C of title XVIII, and prescription drug sponsors offering prescription drug plans under part D of such title, including the following:

''(A) Education on quality improvement initiatives, strategies, and techniques.

''(B) Instruction on how to collect, submit, aggregate, and interpret data on measures that may be used for quality improvement, public reporting, and payment.

''(C) Instruction on how to conduct root-cause analyses.

"(D) Technical assistance for providers and practitioners in beneficiary education to facilitate patient self-management.

"(E) Facilitating cooperation among local stakeholders in quality improvement.

"(F) Facilitating adoption of procedures that encourage timely candid feedback from patients and their families concerning perceived problems.

"(G) Guidance on redesigning clinical processes, including the adoption and effective use of health information technology, to improve the coordination, effectiveness, efficiency, and safety of care.

"(H) Assistance in improving the quality of care delivered in rural and frontier areas and reducing health care disparities among racial and ethnic minorities, as well as gender disparities, including efforts to prevent or address any inconsistencies or delays in the rate of adoption of health information technology and in the effective use of such technology among such entities that treat racial and ethnic minorities or individuals dually eligible for benefits under this

title and title XVIII or that furnish such services in rural areas.

''(I) Assistance in improving coordination of care as patients transition between providers and practitioners, including developing the capacity to securely exchange electronic health information and helping providers and practitioners to effectively use secure electronic health information to improve quality.

''(J) Preparation of confidential reports comparing the performance of primary care physician practices using standardized performance measures and distribution of such reports to primary care practices, subject to the following requirements:

''(i) The organization shall consult with stakeholders in the State to select clinical topic areas to address in such reports.

''(ii) Performance measures must have been endorsed by a consensus-based national entity.

''(iii) The report given to each primary care practice shall identify that prac-

tice, but shall not identify the other practices in the comparison.

''(iv) The organization shall offer assistance to primary care practices in improving performance on the measures.''.

(2) PERMITTING DISCLOSURE OF DEIDENTIFIED INFORMATION.—

(A) IN GENERAL.—Section 1160 of such Act (42 U.S.C. 1320c–9) is amended—

(i) in subsection (a)(2), by inserting ''(including the case described in subsection (f))'' after ''in such cases''; and

(ii) by adding at the end the following new subsection:

''(f) An organization with a contract under this part may provide de-identified patient data to providers treating the same population of patients for the purpose of measuring and improving the safety, quality, and effectiveness of transitions of such patients from one provider of services to another. Nothing in this subsection shall be construed to limit, alter, or affect the requirements imposed pursuant to the HIAA privacy regulations (as defined in section 1180(b)(3)).''.

(B) PROMULGATION OF REGULATIONS.—Not later than 180 days after the date of the

enactment of this Act, the Secretary of Health and Human Services shall promulgate a regulation that permits the sharing of data under the amendments made by subparagraph (A).

(b) MEDICARE QUALITY ACCOUNTABILITY PROGRAM.—Paragraph (14) of section 1154(a) of such Act (42 U.S.C. 1320c–3(a)) is amended to read as follows:

''(14)(A) The organization shall conduct a review of all complaints about the quality of services (for which payment may otherwise be made under title XVIII) not meeting professionally recognized standards of health care, if the complaint is filed with the organization by an individual entitled to benefits for such services under such title (or a person acting on the individual's behalf). Before the organization concludes that the quality of services does not meet professionally recognized standards of health care, the organization must provide the practitioner or person concerned with reasonable notice and opportunity for discussion.

''(B) The organization shall establish and operate a Medicare quality accountability program consistent with the following:

''(i) The organization shall actively educate Medicare beneficiaries of their right to bring

quality concerns to Quality Improvement Organizations.

''(ii) The organization shall report findings of its investigations to the beneficiary involved or a representative of such beneficiary, regardless of whether such findings involve a provider, physician or other practitioner, or plan. Such report shall describe whether the organization confirms the allegations in the complaint and any actions taken by the provider, practitioner, or plan, respectively, with respect to such findings. Such findings may not be used in any form in a medical malpractice action.

''(iii) The organization shall assist providers, practitioners, and plans in adopting best practices for soliciting and welcoming feedback about patient concerns, and assist providers, practitioners, and plans in remedying patient-reported problems that are confirmed by the organization and shall report findings of patient reported problems to the provider, practitioner, or plan involved before disclosing investigation results to the patient or patient's representative.

''(iv) The organization shall determine whether the complaint allegations about clinical quality of care are confirmed and assist providers, practitioners, and plans in remedying confirmed complaints.

''(v) The organization shall assist providers, practitioners, and plans in preventing recurrence of quality problems caused by unsafe systems of care, and refer to an appropriate regulatory body providers, practitioners, or plans that are unwilling or unable to improve.

''(vi) The organization shall publish annual quality reports in each State in which the organization operates, including aggregate complaint data and provider performance on standardized quality measures.

''(vii) The organization shall promote beneficiary awareness and understanding of standardized quality measures that may be used for evaluating care and for choosing providers, practitioners and plans.

''(C) The Secretary shall monitor and report to Congress, regarding—

''(i) the reliability of complaint determinations by Quality Improvement Organizations;

''(ii) the effect of disclosure of complaint findings on the availability of primary- and specialty-care physician reviewers;

''(iii) changes resulting from the systems change process described in subparagraph (B)(v); and

''(iv) trends in civil litigation filed by Medicare beneficiaries or their representatives.''.

SEC. 3. IMPROVED PROGRAM ADMINISTRATION.

Part B of title XI of the Social Security Act is amended by adding at the end the following new section:

''PROGRAM ADMINISTRATION

''SEC. 1164. (a) IMPROVED PROGRAM MANAGEMENT.—The Secretary shall ensure that Quality Improvement Organizations are provided maximum freedom in designing and applying intervention strategies for local quality improvement.

''(b) ASSURING DATA ACCESS.—The Secretary shall ensure that Quality Improvement Organizations have timely, top priority access to Medicare data for all parts of Medicare pertinent to the contract activities, in a form allowing the data to be integrated and analyzed by such organizations according to the needs of partners and Medicare beneficiaries in each jurisdiction.

''(c) SETTING STRATEGIC PRIORITIES.—

''(1) APPOINTMENT OF STRATEGIC ADVISORY COMMITTEE.—The Secretary shall appoint an independent strategic advisory committee (in this subsection referred to as the 'committee'), composed of national quality measurement and improvement experts, that includes at least three representatives of organizations holding contracts under this part and at least one appropriately qualified representative of each of the following:

''(A) Medicare beneficiaries.

''(B) The Agency for Healthcare Research and Quality.

''(C) The Federal Employee Health Benefits Program.

''(D) The Indian Health Service.

''(E) The TRACER program.

''(F) The Veterans Health Affairs program.

''(G) State Medicaid programs.

''(H) Private purchasers.

''(I) Health care providers.

''(J) Physicians.

''(K) Other health care practitioners.

''(2) DUTIES OF COMMITTEE.—

"(A) IN GENERAL.—The committee shall set national strategic priorities for improvement in the quality of care, consistent with the Institute of Medicine's six aims for health care improvement, including safety, effectiveness, patient centeredness, timeliness, efficiency and equity, and update these in time to permit preparation of a draft statement of work and funding request for each program cycle under this part.

"(B) SECRETARIAL CONSULTATION WITH COMMITTEE.—Two years before the start of the contract cycle under this part that begins at least 30 months after the date of the enactment of this section, the Secretary shall begin consultation with the committee on the design and tasks of the statement of work for such contract cycle.

"(C) PUBLIC FORUM.—Eighteen months before the beginning of such contract cycle, the committee shall convene a public forum to solicit and receive stakeholder and public comment concerning the design and tasks under the next contract.

"(3) INDEPENDENT EVALUATION.—The committee should ensure that the Quality Improvement

Organization program is evaluated by an independent entity using a study design, such as a crossover design, to allow for an assessment of program performance in a way that does not have an adverse impact on providers, practitioners, and plans that may work with the Organization.

''(4) FUNDING.—The Secretary shall allocate funds for the strategic advisory committee from the portion of the funding that does not directly fund the contracts with Quality Improvement Organizations, as required under section 1159(b).

''(d) TAKING INTO ACCOUNT RECOMMENDATIONS FROM STAKEHOLDERS IN STATEMENTS OF WORK.—Each statement of work under this part for a contract period beginning on or after August 1, 2009, shall include a task for the contracting Quality Improvement Organization to convene stakeholders to identify high priority quality problems for work in the next contract period that are relevant to Medicare beneficiaries in the State. Each such organization shall propose, as part of such statement, one or more projects to the Secretary taking into consideration the recommendations of such stakeholders, along with suggested performance measures to evaluate progress on such item.

''(e) ALLOCATION OF RESOURCES TO PRIORITY AREAS.—The Secretary shall allocate at least 20 percent of the funding that directly funds contracts with Quality Improvement Organizations under section 1159(b) to promote improvement in one or more locally defined priority areas identified under subsection (d).

''(f) QUALITY COORDINATION.—Quality Improvement Organizations holding contracts under this part shall be an integral part of Federal performance improvement initiatives and each organization's activities shall be coordinated with initiatives developed by the Secretary and other Federal agencies.

''(g) FUNDING.—The Secretary shall increase contract funding for any significant new work required as a result of coordinating the activities of contractors with initiatives developed by the Secretary and other Federal agencies.''.

SEC. 4. USE OF EVALUATION AND COMPETITION.

Section 1153 of the Social Security Act (42 U.S.C. 1320c–2) is amended—

(1) by amending paragraph (3) of subsection (c) to read as follows:

''(3) contract terms are consistent with subsection (j);'';

(2) in subsection (c)(1), by inserting ", at the sole discretion of the organization," after "or may subcontract";

(3) in subsection (e), by striking "(1) Except as provided" and all that follows through "(2)"; and

(4) by adding at the end the following new subsection:

"(j)(1) Subject to the succeeding provisions of this subsection, each contract with an organization under this section shall be for an initial term of five years, beginning and ending on a common date for all contractors as required under this subsection and shall be renewable for 5-year terms thereafter.

"(2) If an incumbent organization achieves excellent performance as described in paragraph (3), then the Secretary may renew the contract with that organization without full and open competition, but in no case may an organization be permitted to hold a contract for more than 10 years without being subject to full and open competition.

"(3) Before publishing a request for proposal for a contract period, the Secretary shall, in consultation with the strategic advisory committee appointed under section 1164(c)(1), establish measurable goals for each task to be included in such proposal. The contract shall include per-

formance thresholds by which an organization holding a contract under this section may demonstrate excellent performance. The Secretary may not establish such performance thresholds in such a way as to predetermine or limit either the number or percentage of organizations which may demonstrate excellent performance.

''(4) The Secretary shall publish the request for proposals no later than four months prior to the beginning of such contract period.

''(5) The Secretary shall ensure that measures to be used in evaluating the performance of organizations holding a contract under this section have been demonstrated to be valid, reliable, and feasible for use under the terms and circumstances of the contract.

''(6) In the case of an open competition for a contract under this section, if the incumbent organization bidding for the contract in the State in which it holds the contract demonstrates excellent performance in fulfilling the terms of such contract during the previous contract period, the Secretary shall award such organization a bonus equivalent to ten percent of the total possible score for the proposal.

''(7) The Secretary may not reduce the amount of a contract award below the amount proposed by the bidder prevailing in a competitive bidding process.

''(8) The Secretary shall design the process for performance evaluation of contracts under this section—

''(A) to avoid interfering with the work of contractors with plans, providers, and practitioners;

''(B) to hold harmless and not penalize contractors when performance is impaired or delayed by failures of the Secretary, personnel of the Department of Health and Human Services, or contractors of the Secretary, to provide timely deliverables by other entities;

''(C) to use a continuous measurement strategy with provision for frequent performance updates for evaluating interim progress; and

''(D) to require that evaluation metrics be monitored and permit their adjustment based on experience or evolving science over the course of a contract cycle.''.

SEC. 5. QUALITY IMPROVEMENT FUNDING.

Section 1159 of the Social Security Act (42 U.S.C. 1320c–8) is amended—

(1) by inserting ''(a)'' before ''Expenses incurred''; and

(2) by adding at the end the following new subsection:

''(b)(1) The aggregate annual funding for contracts under this part that begin after August 1, 2009, shall not be less than $421,666,000. In addition, there are authorized to be apportioned for contract periods in subsequent years such additional amounts as may be necessary to adequately fund any resource needs in excess of the amount provided under the previous sentence.

''(2) At least 80 percent of the funding under this part in a contract period shall be expended to directly fund the contracts held by organizations, as required under section 1153(b).

''(3) The Secretary shall determine the resources needs for a contract period, taking into account any new work added by contract modification, during the course of the contract period or added from one contract cycle to the next cycle. New work includes—

''(A) additional core contract tasks, requirements, deliverables, and performance thresholds;

''(B) technical assistance for additional providers, practitioners, and health plans and additional provider settings;

''(C) increased outreach and communications to Medicare beneficiaries, providers, practitioners, and plans; and

''(D) increased volume of medical reviews.

''(4) With respect to the apportionment of funds under this part for a contract period—

''(A) the Secretary shall submit a proposed apportionment to the Director of the Office of Management and Budget no later than 1 year before the first date of the contract period;

''(B) such Director shall approve an proposed apportionment no later than 9 months before the first date of such contract period;

''(C) for tasks the Secretary proposes to continue from the previous contract period, if the apportionment is not authorized by the deadline specified in subparagraph (B), funding shall continue for the next contract period at a level no less than the level for the previous contract period, increased by the percentage increase in the consumer price index for all urban consumers during the preceding 12-month period.

''(5) Organizations with a contract under this part may enter into contracts with public or private entities including providers, practitioners, and payers other than the Secretary, to provide quality improvement or other services if there are arrangements made to avoid or mitigate potential conflicts of interest.

''(6) Such organizations shall be permitted discretion to allocate contract funds as needed to accomplish the tasks to be performed for a contract awarded under this title.

''(7) Organizations with a contract under this part may utilize funding allocated to such contracts to pay for food costs directly related to fulfilling contract requirements.''.

SEC. 6. QUALIFICATIONS FOR QIOS.

(a) IN GENERAL.—Subsection (b) of section 1153 of the Social Security Act (42 U.S.C. 1320c–2) is amended by adding at the end the following new paragraph:

''(4)(A) The Secretary shall not enter into or renew a contract under this section with an entity unless the entity has demonstrated success in facilitating clinical and administrative system redesign to improve the coordination, effectiveness, and safety of health care, and in facilitating cooperation among stakeholders in quality improvement.

''(B) The Secretary shall ensure that the entity complies with standards to ensure organizational integrity, including—

''(i) appropriate representation of consumers and other stakeholders in the composition of the governing body;

''(ii) market-based compensation of board members and executives;

''(iii) avoidance and mitigation of board member conflict of interest; and

''(iv) safeguards to ensure appropriate travel expenses.

To the extent practicable, the Secretary shall utilize standards developed in the private sector for purposes of carrying out this subparagraph and shall conduct audits as necessary to ensure compliance with such standards.''.

(b) USE OF STATES FOR GEOGRAPHIC AREAS.—Subsection (a) of such section is amended to read as follows:

''(a) The Secretary shall designate each State as a geographic area with respect to which contracts under this part will be made.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to contract periods beginning after the date of the enactment of this Act.

SEC. 7. COORDINATION WITH MEDICAID.

(a) PERMITTING ALTERNATIVE QUALITY IMPROVEMENT PROGRAM.—Section 1902(a)(30) of the Social Security Act (42 U.S.C. 1396a(a)(30)) is amended by striking ''and'' at the end of subparagraph (A), by adding ''and'' and the end of subparagraph (B), and by adding at the end the following new subparagraph:

''(C) provide, at the discretion of the State plan, for a quality improvement program in place of the program described in subparagraph (A), in whole or in part, that—

''(i) establishes priorities for achieving significant measurable improvement in the quality of health care services provided to individuals eligible under this title, and reviews such priorities at least every five years for the purpose of making appropriate revisions;

''(ii) provides quality improvement assistance to providers and practitioners consistent with such priorities; and

''(iii) provides for an annual report to the Secretary on quality performance under such plan of providers and practitioners using nationally standardized quality measures;''.

(b) ROLE OF QIOS.—Section 1902(d) of such Act (42 U.S.C. 1396a(d)) is amended—

(1) by inserting ''(1)'' after ''(d)''; and

(2) by adding at the end the following new paragraph:

''(2) If a State contracts with a Quality Improvement Organization having a contract with the Secretary under part B of title XI for the performance of quality improvement program activities required by subsection (a)(30)(C), such requirements shall be deemed to be met for those activities by delegation to such an Organization if the contract provides for the performance of activities not inconsistent with part B of title XI and provides for such assurances of satisfactory performance by such an entity or organization as the Secretary may prescribe.''.

(c) FUNDING.—Section 1903(a)(3)(C) of such Act (42 U.S.C. 1396b(a)(3)(C)) is amended—

(1) in clause (i), by striking ''1902(d)'' and inserting ''1902(d)(1)''; and

(2) by adding at the end the following new clause:

''(iii) 75 percent of the sums expended with respect to costs incurred during such quarter (as found necessary by the Secretary for the proper and efficient administration of the State plan) as are attributable to the performance of quality improvement program activities under a contract entered into under section 1902(d)(2)

by an organization holding a contract under section 1153; and''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to contract periods beginning after the date of the enactment of this Act.

SEC. 8. CONFORMING NAME TO "QUALITY IMPROVEMENT ORGANIZATIONS".

Part C of title XI of the Social Security Act is amended by striking ''utilization and quality control peer review'' and ''peer review'' each place either appears before ''organization'' or ''organizations'' and inserting ''quality improvement''.

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