111TH CONGRESS
2D SESSION

S. 3915

To amend title XVIII of the Social Security Act to improve the recruitment and retention of physicians under the Medicare program.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 29, 2010

Mrs. LINCOLN 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 recruitment and retention of physicians under the Medicare program.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Medicare Rural Physician Recruitment and Retention Act of 2010''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) The United States is facing shortages in a wide range of health workforce professions, including as many as 91,500 physicians, consisting of 46,100

specialists and 45,400 primary care physicians, by 2020. Many rural and other underserved areas continue to experience chronic shortages.

(2) These shortages will be exacerbated as millions of previously uninsured Americans gain access to health insurance and the ''Baby Boomer'' generation enters the Medicare program in greater numbers.

(3) To address the physician shortage, United States medical schools have already started fulfilling their commitment to expanding class size by 30 percent by the year 2015. However, the Medicare program has not yet increased the number of approved medical residency training positions it helps support in order to accommodate a 30 percent increase in medical school graduates.

(4) From 1966 through 1991, Medicare physician payments reflected physician charges for health care services. The Omnibus Budget Reconciliation Act of 1989 (Public Law 101–239) mandated the creation of a national Medicare physician fee schedule, which was implemented in 1992.

(5) As mandated by the Balanced Budget Act of 1997 (Public Law 105–33), the statutory method for determining annual updates to the Medicare phy-

sician fee schedule, known as the sustainable growth rate system, has resulted in a reduction in physician reimbursement rates each year since 2002. With the exception of 2002, when a 4.8 percent decrease was applied, Congress has passed a series of bills to override the reductions.

(6) Although a number of modifications to the Medicare sustainable growth rate system have been proposed, Congress has yet to pass legislation that would provide for a long-term alternative to the current system.

(7) The Medicare physician fee schedule establishes payment rates for more than 7,000 services. Payments for each service on the fee schedule is based on 3 relative value units that correspond to the 3 physician payment components of physician work, practice expense, and malpractice expense.

(8) Each relative value unit is geographically adjusted to reflect the cost of providing a particular service in a particular location (a ''locality''). Physician payment localities are primarily consolidations of the carrier-defined localities established in 1966.

(9) Medicare's geographic adjustment for a particular physician payment locality is determined using 3 Geographic Practice Cost Indices that also

correspond to the 3 Medicare physician payment components of physician work, practice expense, and malpractice expense.

(10) In general, Medicare Geographic Practice Cost Indices (and thus, reimbursements) are less in rural areas than in urban areas largely because rural cost-of-living is estimated to be lower.

(11) Medicare Geographic Practice Cost Indices are based on 1990 earnings of professionals with 5 or more years of post high school education, not current physician earnings, and the office rent portion of the practice expense Geographic Practice Cost Index is based on 2000 residential apartment rental data from the Department of Housing and Urban Development, proxy data used in place of actual national data for physician office rents.

(12) Rural physician employers and rural communities recruiting physicians must pay salaries that are competitive in regional and national, not local, markets.

(13) Though the percentage difference may seem small, the elderly represent a higher percent of the rural population. Consequently, Medicare patients will represent a greater percentage of a rural physician's practice, and differences in payment due

to variation in Medicare Geographic Practice Cost Indices represent many thousands of reimbursement dollars.

(14) Furthermore, commercial insurers often reimburse physicians at rates directly related to Medicare's fee schedule. As a result, the impact of any Medicare payment disparity is potentially extended to non-Medicare payors as well.

(15) Recruitment and retention of rural physicians remains problematic.

TITLE I—RURAL PHYSICIAN RETENTION IN MEDICARE

SEC. 101. MEDICARE PHYSICIAN FEE SCHEDULE UPDATE.

(a) UPDATE.—

(1) REMAINING PORTION OF 2010.—Section 1848(d)(11) of the Social Security Act (42 U.S.C. 1395w–4(d)(11)) is amended—

(A) in the heading, by striking ''NOVEMBER'' and inserting ''DECEMBER'';

(B) in subparagraph (A), by striking ''November 30'' and inserting ''December 31''; and

(C) in subparagraph (B)—

(i) in the heading, by striking ''REMAINING PORTION OF 2010'' and inserting ''2011''; and

(ii) by striking ''the period beginning on December 1, 2010, and ending on December 31, 2010, and for''.

(2) FOR 2011 AND SUBSEQUENT YEARS.—Section 1848(d) of the Social Security Act (42 U.S.C. 1395w–4(d)) is amended by adding at the end the following new paragraph:

''(12) UPDATE FOR 2011 AND SUBSEQUENT YEARS.—The update to the single conversion factor established in paragraph (1)(C) for 2011 and each subsequent year shall be the percentage increase in the MEI (as defined in section 1842(i)(3)) for that year.''.

(b) CONFORMING SUNSET OF SUSTAINABLE GROWTH RATE.—Section 1848(f)(1)(B) of the Social Security Act (42 U.S.C. 1395w–4(f)(1)(B)) is amended by inserting ''(ending with 2008)'' after ''each succeeding year''.

SEC. 102. RECOGNITION OF EQUALITY OF PHYSICIAN WORK IN ALL GEOGRAPHIC AREAS UNDER THE MEDICARE PHYSICIAN FEE SCHEDULE.

Section 1848(e)(1) of the Social Security Act (42 U.S.C. 1395w–4(e)(1)) is amended—

(1) in subparagraph (A), in the matter preceding clause (i), by striking ''subparagraphs (B)''

through ''the Secretary'' and inserting ''the succeeding provisions of this paragraph, the Secretary''; and

(2) in subparagraph (E)—

(A) by striking ''and before January 1, 2011,''; and

(B) by adding at the end the following new sentence. ''For services furnished on or after January 1, 2011, the preceding sentence shall not be applied in a budget neutral manner.''.

SEC. 103. REVISIONS TO THE PRACTICE EXPENSE GEOGRAPHIC ADJUSTMENT UNDER THE MEDICARE PHYSICIAN FEE SCHEDULE.

(a) REPEAL.—Effective as if included in the enactment of the Patient Protection and Affordable Care Act (Public Law 111–148), the provisions of, and amendments made by, sections 3102(b) and 10324(c) of such Act and section 1108 of the Health Care and Education Reconciliation Act of 2010 (Public Law 111–152) are repealed.

(b) ESTABLISHMENT OF FLOOR.—Section 1848(e)(1) of the Social Security Act (42 U.S.C. 1395w–4(e)(1)) is amended by adding at the end the following new subparagraph:

''(F) FLOOR AT 1.0 ON PRACTICE EXPENSE GEOGRAPHIC INDEX.—After calculating the

practice expense geographic index in subparagraph (A)(i), for purposes of payment for services furnished on or after January 1, 2010, the Secretary shall increase the practice expense geographic index to 1.0 for any locality for which such practice expense geographic index is less than 1.0. The preceding sentence shall not be applied in a budget neutral manner.''.

TITLE II—RURAL PHYSICIAN RECRUITMENT IN MEDICARE

SEC. 201. DISTRIBUTION OF ADDITIONAL RESIDENCY POSITIONS.

(a) IN GENERAL.—Section 1886(h) of the Social Security Act (42 U.S.C. 1395ww(h)) is amended—

(1) in paragraph (4)(F)(i), by striking ''and (8)'' and inserting '', (8), and (9)'';

(2) in paragraph (4)(H)(i), by striking ''and (8)'' and inserting '', (8), and (9)'';

(3) in paragraph (7)(E), by striking ''this paragraph, paragraph (8),'' and inserting ''paragraph, paragraph (8), paragraph (9),''; and

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

''(9) DISTRIBUTION OF ADDITIONAL RESIDENCY POSITIONS.—

''(A) NUMBER AVAILABLE FOR DISTRIBUTION.—The number of additional residency positions available for distribution under subparagraph (B) shall be an amount that the Secretary determines would result in a 15 percent increase in the aggregate number of full-time equivalent residents in approved medical residency training programs (as determined based on the most recent cost reports available at the time of distribution).

''(B) DISTRIBUTION.—The Secretary shall increase the otherwise applicable resident limit for each qualifying hospital that submits an application under this subparagraph by such number as the Secretary may approve for portions of cost reporting periods occurring on or after July 1, 2011. The aggregate number of increases in the otherwise applicable resident limit under this subparagraph shall be equal to the number of additional residency positions available for distribution under subparagraph (A).

''(C) CONSIDERATIONS IN DISTRIBUTION.—In determining for which hospitals the increase in the otherwise applicable resident

limit is provided under subparagraph (B), the Secretary shall take into account the demonstrated likelihood of the hospital filling the positions within the first 3 cost reporting periods beginning on or after July 1, 2011, made available under this paragraph, as determined by the Secretary.

''(D) PRIORITY FOR CERTAIN AREAS.—

''(i) IN GENERAL.—In determining for which hospitals the increase in the otherwise applicable resident limit is provided under subparagraph (B), the Secretary shall give preference to hospitals located in States that are in the lowest quartile of active physician-to-population ratio.

''(ii) HOSPITALS IN OTHER STATES.—In the case where the Secretary does not distribute all of the positions available for distribution under subparagraph (A) to hospitals located in States described in clause (i), the Secretary shall distribute the remaining positions available to qualifying hospitals in other States.

''(E) APPLICATION OF PER RESIDENT AMOUNTS FOR PRIMARY CARE AND NONPRI-

MARY CARE.—With respect to additional residency positions in a hospital attributable to the increase provided under this paragraph, the approved FTE resident amounts are deemed to be equal to the hospital per resident amounts for primary care and nonprimary care computed under paragraph (2)(D) for that hospital.

''(F) DEFINITIONS.—In this paragraph:

''(i) REFERENCE RESIDENT LEVEL.—

''(I) IN GENERAL.—Except as otherwise provided in subclause (II), the reference resident level specified in this clause for a hospital is the resident level for the most recent cost reporting period of the hospital ending on or before the date of enactment of this paragraph, for which a cost report has been settled (or, if not, submitted (subject to audit)), as determined by the Secretary.

''(II) USE OF MOST RECENT ACCOUNTING PERIOD TO RECOGNIZE EXPANSION OF EXISTING PROGRAM OR ESTABLISHMENT OF NEW PROGRAM.—If a hospital submits a timely

request to increase its resident level due to an expansion of an existing residency training program or the establishment of a new residency training program that is not reflected on the most recent cost report that has been settled (or, if not, submitted (subject to audit)), after audit and subject to the discretion of the Secretary, the reference resident level for such hospital is the resident level for the cost reporting period that includes the additional residents attributable to such expansion or establishment, as determined by the Secretary.

''(ii) RESIDENT LEVEL.—The term 'resident level' has the meaning given such term in paragraph (7)(C)(i).

''(iii) OTHERWISE APPLICABLE RESIDENT LEVEL.—The term 'otherwise applicable resident limit' means, with respect to a hospital, the limit otherwise applicable under subparagraphs (F)(i) and (H) of paragraph (4) on the resident level for the hospital determined without regard to this

paragraph but taking into account paragraphs (7)(A) and (8)(A)''.

(b) IME.—

(1) IN GENERAL.—The second sentence of section 1886(d)(5)(B)(v) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(B)(v)) is amended to read as follows: ''The provisions of subsections (h)(4)(H)(vi), (h)(7), (h)(8), and (h)(9) shall apply with respect to the first sentence of this clause in the same manner as they apply with respect to subsection (h)(4)(F)(i).''.

(2) CONFORMING AMENDMENT.—Section 1886(d)(5)(B)(x) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(B)(x)), as added by section 5503(b)(2) of the Patient Protection and Affordable Care Act (Public Law 111–148) is redesignated as clause (xi) and amended by striking ''subsection (h)(8)(B)'' and inserting ''subsection (h)(8)(B) or (h)(9)(B)''.

(c) CONFORMING AMENDMENT.—Section 422(b)(2) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173) is amendment by striking ''paragraphs (7) and (8)'' and inserting ''paragraphs (7), (8), and (9)''.

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