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112TH CONGRESS
2D SESSION

H. R. 5707

To amend part B of title XVIII of the Social Security Act to reform Medicare payment for physicians' services by eliminating the sustainable growth rate system and providing incentives for the adoption of innovative payment and delivery models to improve quality and efficiency.

IN THE HOUSE OF REPRESENTATIVES

MAY 9, 2012

Ms. SCHWARTZ (for herself, Mr. HECK, Mrs. CHRISTENSEN, and Mr. COURTNEY) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means and the Budget, 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 part B of title XVIII of the Social Security Act to reform Medicare payment for physicians' services by eliminating the sustainable growth rate system and providing incentives for the adoption of innovative payment and delivery models to improve quality and efficiency.

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

SECTION 1. SHORT TITLE; PURPOSE.

(a) SHORT TITLE.—This Act may be cited as the ''Medicare Physician Payment Innovation Act of 2012''.

(b) PURPOSE.—The purpose of this Act is to reform the system of Medicare payment for physicians' services—

(1) by ending the application of the sustainable growth rate (SGR) system;

(2) to stabilize payments for 2013;

(3) to promote the rapid development and implementation of alternative improved payment and delivery models that incentivize high quality, high-value care; and

(4) to provide continuing incentives for physician adoption of such alternative payment and delivery models.

SEC. 2. MEDICARE PHYSICIAN PAYMENT REFORM.

(a) REPEAL OF SGR PAYMENT METHODOLOGY.—Section 1848 of the Social Security Act (42 U.S.C. 1395w–4) is amended—

(1) in subsection (d)—

(A) in paragraph (1)(A), by inserting ''or a subsequent paragraph'' after ''paragraph (4)''; and

(B) in paragraph (4)—

(i) in the heading, by striking ''YEARS BEGINNING WITH 2001'' and inserting ''2001, 2002, AND 2003''; and

(ii) in subparagraph (A), by striking ''a year beginning with 2001'' and inserting ''2001, 2002, and 2003''; and

(2) in subsection (f)—

(A) in paragraph (1)(B), by inserting ''through 2012'' after ''of such succeeding year'' ; and

(B) in paragraph (2), by inserting ''and ending with 2012'' after ''beginning with 2000''.

(b) STABILIZING 2013 PAYMENT RATES AT CURRENT LEVEL.—

(1) IN GENERAL.—Subsection (d) of section 1848 of the Social Security Act (42 U.S.C. 1395w–4) is amended by adding at the end the following new paragraph:

''(14) UPDATE FOR 2013.—In lieu of the update to the single conversion factor established in paragraph (1)(C) that would otherwise apply for 2013, the update to the single conversion factor shall be 0 percent for 2013.''.

(2) TECHNICAL AMENDMENT.—Effective for years beginning with 2013, section 1848(m)(7)(C)(i) of the Social Security Act (42 U.S.C. 1395w–4(m)(7)(C)(i)) is amended by inserting ", the program of Osteopathic Continuous Certification of the American Osteopathic Association," after "Specialties Maintenance of Certification program".

(c) ESTABLISHMENT OF DIFFERENTIAL UPDATES BEGINNING WITH 2014 TO PROMOTE ACCESS TO PRIMARY CARE SERVICES.—

(1) ESTABLISHMENT OF SERVICE CATEGORIES.—Subsection (j) of section 1848 of the Social Security Act (42 U.S.C. 1395w–4) is amended by adding at the end the following new paragraphs:

"(5) SERVICE CATEGORIES.—

"(A) IN GENERAL.—For services furnished on or after January 1, 2014, each of the following categories of services shall be treated as a separate 'service category':

"(i) PRIMARY CARE.—Primary care services (as defined in subparagraph (B)) furnished by a qualifying practitioner.

"(ii) OTHER SERVICES.—Other physicians' services.

"(B) PRIMARY CARE SERVICES.—In this subsection, the term 'primary care services' means services identified, as of April 1, 2012, with the following HCPCS codes (and as subsequently modified by the Secretary):

"(i) OFFICE AND OUTPATIENT VISITS.—99201 through 99215.

"(ii) HOSPITAL OBSERVATIONAL SERVICES.—99217 through 99220.

"(iii) HOSPITAL INPATIENT VISITS SERVICES.—99221 through 99239.

"(iv) NURSING HOME, DOMICILIARY, REST HOME OR CUSTODIAL CARE VISITS.—99304 through 99340.

"(v) HOME SERVICE VISITS.—99341 through 99350.

"(vi) WELCOME TO MEDICARE VISIT.—G0402.

"(vii) ANNUAL WELLNESS VISITS.—G0438 and G0439.

"(C) INCLUSION OF PREVENTIVE SERVICES.—Such term also includes preventive services described in section 1861(ddd)(3) and additional preventive services described in section 1861(ddd)(1).

''(D) INCLUSION OF ADDITIONAL SERVICES.—Such term also includes services, such as care coordination services, telemedicine services, non-face-to-face care management services, preparation and supervision of long-term care plans, home care plan oversight services, and similar services that the Secretary identifies, by regulation, as being similar to the services described in subparagraph (B) or (C).

''(6) QUALIFYING PRACTITIONER.—The term 'qualifying practitioner' means, with respect to the furnishing of primary care services, an individual—

''(A) for whom primary care services has accounted for at least 60 percent of the allowed charges under this part (not counting any such charges attributable to in-office clinical laboratory services) in a prior period as determined by the Secretary; or

''(B) who does not have claims under this part during such a prior period and whom the Secretary determines is likely to meet the requirement of subparagraph (A) for the subsequent period.''.

(2) ESTABLISHMENT OF SEPARATE CONVERSION FACTORS FOR EACH SERVICE CATEGORY.—Sec-

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

(A) in subparagraph (A)—

(i) by designating the sentence beginning ''The conversion factor'' as clause (i) with the heading ''APPLICATION OF SINGLE CONVERSION FACTOR.—'' and with appropriate indentation;

(ii) by striking ''The conversion factor'' and inserting ''Subject to clause (ii), the conversion factor''; and

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

''(ii) APPLICATION OF MULTIPLE CONVERSION FACTORS BEGINNING WITH 2014.—

''(I) IN GENERAL.—In applying clause (i) for each year beginning with 2014, separate conversion factors shall be established for each service category of physicians' services (as defined in subsection (j)(5)(A)) and any reference in this section to a conversion factor for such years shall be

deemed a reference to the conversion factor for each of such categories.

''(II) INITIAL CONVERSION FACTORS.—Such factors for 2014 shall be based upon the single conversion factor for the previous year multiplied by the update established under paragraph (15) for such category for 2014.

''(III) UPDATING OF CONVERSION FACTORS.—Such factor for a service category for a subsequent year shall be based upon the conversion factor for such category for the previous year and adjusted by the update established for such category under paragraph (15) or a subsequent paragraph for the year involved.''; and

(B) in subparagraph (D), by striking ''other physicians' services'' and inserting ''for physicians' services in the service category described in subsection (j)(5)(A)(ii))''.

(3) ESTABLISHMENT OF SEPARATE UPDATES FOR CONVERSION FACTORS FOR EACH SERVICE CATEGORY.—Section 1848(d) of the Social Security Act

(42 U.S.C. 1395w–4(d)), as amended by subsection (b), is amended by adding at the end the following new paragraph:

''(15) UPDATES BY SERVICE CATEGORY BEGINNING WITH 2014; UPDATES FOR 2014 THROUGH 2017.—In applying paragraph (4) for each year beginning with 2014, the following rules apply:

''(A) APPLICATION OF SEPARATE UPDATE ADJUSTMENTS FOR EACH SERVICE CATEGORY.—Pursuant to paragraph (1)(A)(ii)(I), for each year beginning with 2013, the update shall be made to the conversion factor for each service category (as defined in subsection (j)(5)(A)).

''(B) UPDATES FOR 2014 THROUGH 2017.—The updates for 2014, 2015, 2016, and 2017 for the conversion factor for the services category described in—

''(i) subsection (j)(5)(A)(i) shall be 2.5 percent; and

''(ii) subsection (j)(5)(A)(ii) shall be 0.5 percent.''.

(d) PROMOTING TESTING AND EVALUATION OF NEW PAYMENT AND DELIVERY MODELS (PHASE I).—

(1) EXPANSION OF TESTING IN MULTIPLE GEOGRAPHIC REGIONS.—Section 1115A(a)(5) of the Social Security Act (42 U.S.C. 1315a(a)(5)) is amended by inserting before the period at the end the following: ", but shall (to the maximum extent feasible) including testing of each such model in geographic areas in at least 3 regions".

(2) INCLUSION OF PHYSICIAN IMPLEMENTATION COSTS IN EVALUATIONS.—Section 1115A(b)(4)(A) of the Social Security Act (42 U.S.C. 1315a(b)(4)(A)) is amended—

(A) by striking "and" at the end of clause (i);

(B) by striking the period at the end of clause (ii) and inserting "; and"; and

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

"(iii) the average cost, per physician, of implementation of the model.".

(3) ACCELERATING TESTING AND EVALUATION PROCESS.—Section 1115A(b) of the Social Security Act (42 U.S.C. 1315a(b)) is amended by adding at the end the following new paragraph:

"(5) TIMING.—The Secretary, acting through the Center, shall conduct activities under this sub-

section in such a timely manner so that evaluations of initial models can be initially completed so that physicians can begin to transition to implementation of such models beginning not later than January 1, 2017.''.

(4) INVOLVEMENT OF PROVIDER GROUPS IN SELECTION OF MODELS.—Section 1115A(b)(4) of such Act is amended by adding at the end the following subparagraph:

''(D) INVOLVEMENT OF PROVIDER GROUPS IN MODEL SELECTION.—The Secretary shall consult and work closely with physician and other provider groups in the selection of models under this subsection and subsection (c).''.

(5) USE OF OTHER MODELS.—Section 1115A of such Act is further amended—

(A) by adding at the end of subsection (b)(4) the following new subparagraph:

''(E) USE OF OTHER MODELS.—Nothing in this section shall be construed as preventing the Secretary from selecting, for expansion under subsection (c), a model that was not tested under this subsection.''; and

(B) in subsection (c), by inserting ''or other model'' after ''section 1866C''.

(6) GAO REVIEW AND STUDY.—The Comptroller General of the United States shall conduct a study of the evaluations made under subsection (b) of section 1115A of the Social Security Act, as amended by this section. Such study shall include an analysis of the alternative payment and delivery models identified under such section for payment for physicians' services (and other services) under the Medicare program. Not later than April 1, 2016, the Comptroller General shall submit a report to Congress on such study and shall include in the report such recommendations as the Comptroller General deems appropriate for—

(A) changes in the development and implementation process under such section; and

(B) alternative payment and delivery models identified under such section as being appropriate for expansion under subsection (c) of such section.

(7) PUBLICATION OF LIST OF SUCCESSFUL MODELS.—Beginning on October 1, 2016, and each year thereafter, the Secretary of Health and Human Services shall publicly release a comprehensive list of such health care delivery and payment models identified, under section 1115A of the Social Security Act

or otherwise, as meeting (or likely to meet) the requirements of subsection (c)(1) of such section. Such list shall include at least 4 health care delivery and payment models and may include models not tested under subsection (b) of such section.

(8) CONSIDERATIONS.—The Comptroller General in making recommendations under paragraph (6) and the Secretary in releasing the list of models under paragraph (7) shall take into account variations among providers in size, specialty mix, case mix, and patient demographics, as well as regional health care infrastructure variations and variations in cost of living among areas, and shall specifically consider appropriate variations that take into account the special circumstances of providers in rural and other underserved areas.

(e) IMPLEMENTATION OF PAYMENT AND DELIVERY MODEL OPTIONS (PHASE II).—

(1) IN GENERAL.—Based on the report of the Comptroller General under subsection (d)(4) and not later than October 1, 2016, the Secretary of Health and Human Services shall provide information to physicians, nurse practitioners, group practices and institutions employing Medicare part B providers on how best to transition to alternative health care de-

livery and payment models that are aimed at improving the coordination, quality and efficiency of health care, including those developed under section 1115A or 1866E of the Social Security Act (42 U.S.C. 1315a, 1395cc–5).

(2) INCREASING FLEXIBILITY IN IMPLEMENTATION.—Section 1115A(c) of the Social Security Act (42 U.S.C. 1315a(c)) is amended by inserting after ''through rulemaking'' the following: ''(which may include the issuance of interim, final rules) or through publication of a directive or other guidance''.

(3) TIMING.—Such section is further amended by adding at the end the following: ''The Secretary shall seek to effect such expansion to the maximum extent feasible so that physicians may begin to transition to implementation of such models beginning not later than January 1, 2017.''.

(f) TRANSITION DURING 2018.—

(1) FREEZE IN FEE SCHEDULE FOR 2018.—Subsection (d) of section 1848 of the Social Security Act (42 U.S.C. 1395w–4), as amended by subsections (b) and (c)(3), is amended by adding at the end the following new paragraph:

''(15) UPDATE FOR 2018.—The update to both of the conversion factors for 2018 shall be 0 percent.''.

(2) EXPANDED ASSISTANCE THROUGH REGIONAL EXTENSION CENTERS AND OTHER QUALIFIED ENTITIES.—Section 1115A(d) of the Social Security Act (42 U.S.C. 1315a(d)) is amended by adding at the end the following new paragraph:

''(4) ASSISTANCE IN IMPLEMENTATION.—

''(A) IN GENERAL.—Using funds available under subsection (f)(1) and consistent with this paragraph, the Secretary shall enter into contracts and agreements with regional extension centers, in coordination with the National Coordinator for Health Information Technology, and other appropriate entities to provide guidance and assistance on how physicians may transition to implementation of alternative health care delivery models identified as representing best practices under this section.

''(B) DEDICATED FUNDING.—

''(i) IN GENERAL.—Of the amounts available under subsection (f)(1)(B), the Secretary shall make $720,000,000 available to the Office of the National Coordi-

nator for Health Information Technology for the awarding of grants and incentive payments under a competitive process to regional extension centers (receiving funding under section 3012(c) of the Public Health Service Act) and other qualified entities for activities described in subparagraph (A). Such grants and payments shall not be available for assistance after December 31, 2018.

''(ii) PROCESS.—Under clause (i), the Office shall—

''(I) establish a competitive selection process for the selection of regional extension centers (and other qualified entities) in the third quarter of 2014; and

''(II) provide for the initial distribution of funds to such centers and entities by January 1, 2015.

''(iii) COLLABORATION.—The Center shall collaborate with the Office in providing direction to such centers and entities in conducting activities under this paragraph, including the development of

performance benchmarks based on provider participation and progress toward integration.

''(iv) PRIORITY.—The grants and incentive payments under this subparagraph shall be directed to target assistance to solo and small specialty practices as well as community health centers and similar providers of primary care services.''.

(g) CONTINUING INCENTIVES FOR PHYSICIANS PROVIDING HIGH-QUALITY, HIGH-VALUE CARE.—

(1) FEE SCHEDULE ADJUSTMENTS.—Subsection (d) of section 1848 of the Social Security Act (42 U.S.C. 1395w–4), as amended by subsections (b), (c)(3), and (f), is amended by adding at the end the following:

''(17) UPDATES FOR 2019 THROUGH 2022.—

''(A) IN GENERAL.—Except as provided in this paragraph, the update to each of the conversion factors—

''(i) for 2019 shall be minus 2 percent;

''(ii) for 2020 shall be minus 3 percent;

"(iii) for 2021 shall be minus 4 percent; and

"(iv) for 2022 shall be minus 5 percent.

"(B) TREATMENT OF SERVICES PAID USING ALTERNATIVE PAYMENT AND DELIVERY MODELS.—In the case of physicians' services for which payment is covered under an alternative payment and delivery model, such as those implemented under section 1115A, subparagraph (A) does not apply.

"(C) GENERAL EXEMPTION.—The Secretary shall, by regulation, exempt a provider from the application of the negative payment update specified in subparagraph (A) for a year if the Secretary determines that—

"(i) the provider—

"(I) is a meaningful EHR user (as determined under subsection (o)(2) with respect to the year); and

"(II) meets the qualifications under subparagraph (B) of subsection (m)(7) (relating to additional incentive payments) for an additional incentive payment under subparagraph

(A) of such subsection (which includes satisfactory participation in the quality reporting system and participation in an approved Maintenance of Certification program); or

''(ii) the payment modifier for the provider under subsection (p), which is based upon the performance of the provider on measures of quality of care furnished compared to cost and which is expressed as a percentage of payment, is within the top 25 percent of such payment modifiers for providers within the same fee schedule area, as determined by the Secretary.

''(D) CASE-BY-CASE HARDSHIP EXEMPTION.—The Secretary may, on a case-by-case basis, exempt a provider from the application of the negative payment update specified in subparagraph (A) for a year if the Secretary determines, subject to annual renewal, that because of limitations in the nature of a medical practice, limitations in the number of Medicare beneficiaries that may be served by the provider, or other special circumstances, imposing

a financial disincentive under such subparagraph for failure to adopt an alternative payment and delivery model referred to in subparagraph (B) would result in a significant hardship to the provider.

''(18) UPDATES BEGINNING WITH 2023.—

''(A) IN GENERAL.—The update to both of the conversion factors for each year beginning with 2023 shall be 0 percent.

''(B) TREATMENT OF SERVICES PAID USING ALTERNATIVE PAYMENT AND DELIVERY MODELS.—In the case of physicians' services for which payment is covered under an alternative payment and delivery model, such as those implemented under section 1115A, subparagraph (A) does not apply.''.

(2) CONSIDERATIONS IN PROMULGATING GROWTH RATES FOR ALTERNATIVE PAYMENT AND DELIVERY MODELS.—

(A) IN GENERAL.—In determining the growth rates to be recognized beginning with 2019 for alternative payment and delivery models under the Medicare program that cover physicians' services, such as those implemented under section 1115A of the Social Security Act,

the Secretary of Health and Human Services shall consider (among other factors) the following:

(i) Ensuring access to primary care and specialty services, including participation of primary care practitioners and specialists and newly graduating practitioners.

(ii) Restraining spending growth.

(iii) Ensuring access to services for vulnerable populations.

(B) LIMITATIONS.—In no case shall the growth factor determined under this paragraph for a year—

(i) be less than 1 percent; or

(ii) be greater than the percentage increase in the MEI (as defined in section 1842(i)(3) of the Social Security Act, 42 U.S.C. 1395u(i)(3)) for such year.

(C) APPLICATION OF CONGRESSIONAL REVIEW ACT.—Chapter 8 of title 5, United States Code, applies with respect to the promulgation of a growth factor under this paragraph for a year.

(h) IMPACT REPORT.—Not later than January 1, 2022, the Secretary of Health and Human Services shall

submit to Congress a report the impact on spending and on access to services under title XVIII of the Social Security Act, including under part A of such title, resulting from changes to Medicare delivery and payment systems, including under the amendments made by this section.

SEC. 3. SAVINGS FROM OVERSEAS CONTINGENCY AND RELATED ACTIVITIES.

(a) IN GENERAL.—Section 251(b)(2) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(2)) is amended by adding at the end the following new subparagraph:

''(E) OVERSEAS CONTINGENCY AND RELATED ACTIVITIES.—

''(i) CAP ADJUSTMENT.—If a bill or joint resolution making appropriations for a fiscal year is enacted that specifies an amount for overseas contingency and related activities for that fiscal year after taking into account any other bills or joint resolutions enacted for that fiscal year that specify an amount for overseas contingency and related activities, but do not exceed in the aggregate the amounts specified in clause (ii), then the adjustments for that fiscal year shall be the additional new

budget authority provided in that Act for such activities for that fiscal year.

''(ii) LEVELS.—The levels for overseas contingency and related activities specified in this subparagraph are as follows:

''(I) For fiscal year 2013, $83,000,000,000 in budget authority.

''(II) For fiscal year 2014, $50,000,000,000 in budget authority.

''(III) For fiscal year 2015, $50,000,000,000 in budget authority.

''(IV) For fiscal year 2016, $50,000,000,000 in budget authority.

''(V) For fiscal year 2017, $50,000,000,000 in budget authority.

''(VI) For fiscal year 2018, $50,000,000,000 in budget authority.

''(VII) For fiscal year 2019, $50,000,000,000 in budget authority.

''(VIII) For fiscal year 2020, $50,000,000,000 in budget authority.

''(IX) For fiscal year 2021, $50,000,000,000 in budget authority.''.

(b) BREACH.—Section 251(a)(2) of such Act (2 U.S.C. 901(a)(2)) is amended to read as follows:

''(2) ELIMINATING A BREACH.—

''(A) IN GENERAL.—Each non-exempt account within a category shall be reduced by a dollar amount calculated by multiplying the enacted level of sequestrable budgetary resources in that account by the uniform percentage necessary to eliminate a breach within that category.

''(B) OVERSEAS CONTINGENCIES.—Any amount of budget authority for overseas contingency operations and related activities for fiscal years 2013 through 2021 in excess of the levels set in subsection 251(b)(2)(E) shall be counted in determining whether a breach has occurred in the security category and the nonsecurity category on a proportional basis to the total spending for overseas contingency operations in the security category and the nonsecurity category.''.

(c) CONFORMING AMENDMENT.—Section 251(b)(2)(A) of such Act (2 U.S.C. 901(b)(2)(A)) is amended to read as follows:

"(A) EMERGENCY APPROPRIATIONS.—If, for any fiscal year, appropriations for discretionary accounts are enacted that the Congress designates as emergency requirements in statute on an account by account basis and the President subsequently so designates, the adjustment shall be the total of such appropriations in discretionary accounts designated as emergency requirements.".

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