

112TH CONGRESS
2D SESSION

H. R. 6176

To amend the Social Security Act to permit hospitals to make incentive payments to physicians to promote quality and efficiency.

IN THE HOUSE OF REPRESENTATIVES

JULY 24, 2012

Mr. BOUSTANY (for himself and Mr. PRICE of Georgia) 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 Judiciary, 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

A BILL

To amend the Social Security Act to permit hospitals to make incentive payments to physicians to promote quality and efficiency.

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.**

4 This Act may be cited as the “Aligning Incentives
5 for Better Patient Care Act of 2011”.

1 **SEC. 2. PERMITTING CERTAIN INCENTIVE PAYMENTS THAT**
2 **PROMOTE QUALITY AND EFFICIENCY.**

3 (a) IN GENERAL.—Section 1877(e) of the Social Se-
4 curity Act (42 U.S.C. 1395nn(e)) is amended by adding
5 at the end the following new paragraph:

6 “(9) INCENTIVE PAYMENTS THAT PROMOTE
7 QUALITY AND EFFICIENCY.—Any remuneration
8 made, directly or indirectly, to a physician by a
9 qualified hospital (as such term is defined in sub-
10 section (j)(2)) under the terms of a quality incentive
11 agreement that meets the requirements of subsection
12 (j)(1), for purposes of sharing cost savings gen-
13 erated for the hospital through the physician’s vol-
14 untary participation in quality improvement activi-
15 ties under such agreement.”.

16 (b) REQUIREMENTS FOR INCENTIVE PAYMENTS.—
17 Section 1877 of the Social Security Act (42 U.S.C.
18 1395nn) is amended by adding at the end the following
19 new subsection:

20 “(j) REQUIREMENTS FOR EXCEPTION FOR INCEN-
21 TIVE PAYMENTS THAT PROMOTE QUALITY AND EFFI-
22 CIENCY.—

23 “(1) QUALITY INCENTIVE AGREEMENT.—

24 “(A) IN GENERAL.—A quality incentive
25 agreement that meets the requirements of this
26 paragraph is an agreement between a physician

1 and a qualified hospital that meets the fol-
2 lowing requirements:

3 “(i) QUALITY IMPROVEMENT ACTIVITIES.—The agreement lists the quality im-
4 provement activities under the hospital’s
5 quality improvement program that the phy-
6 sician agrees to participate in under the
7 agreement.
8

9 “(ii) DETERMINATION OF REMUNERA-
10 TION.—The agreement specifies that remu-
11 nation will be made to the physician by
12 the hospital for cost savings achieved
13 through the physician’s participation in the
14 quality improvement activities under clause
15 (i), and includes the methodology that will
16 be used to determine—

17 “(I) the cost savings achieved
18 through the physician’s participation
19 in such activities; and

20 “(II) subject to any limitation
21 under paragraph (3)(A), the amount
22 of any remuneration made to the phy-
23 sician under such agreement.

24 “(iii) RECORDS.—The agreement con-
25 tains a requirement that the physician and

1 the hospital retain records related to the
2 agreement, including records related to any
3 remuneration made under the agreement,
4 for a period determined by the Secretary.
5 At the request of the Secretary, the physi-
6 cian and the hospital shall make such
7 records available to the Secretary for pur-
8 poses of an audit conducted by the Sec-
9 retary under paragraph (3)(B).

10 “(B) LIMITATION ON BASIS OF PAY-
11 MENT.—The quality incentive agreement under
12 subparagraph (A) may not allow remuneration
13 to be made on the basis of—

14 “(i) the volume of referrals made by
15 the physician to the hospital;

16 “(ii) the value of referrals made by
17 the physician to the hospital;

18 “(iii) cost savings achieved through
19 limiting or denying a beneficiary’s access
20 to items or services solely on the basis that
21 such services are new or improved; or

22 “(iv) cost savings achieved through di-
23 rectly or indirectly reducing or restricting
24 the provision of items and services which
25 the physician involved determines to be

1 medically necessary or medically appro-
2 priate.

3 “(2) QUALIFIED HOSPITAL.—

4 “(A) IN GENERAL.—For purposes of this
5 subsection, the term ‘qualified hospital’ means
6 a hospital that—

7 “(i) has established and maintains a
8 quality improvement program that contains
9 a list of quality improvement activities that
10 meet the requirements of subparagraph
11 (B) that the hospital seeks to encourage
12 physicians to participate in;

13 “(ii) makes payments to the Secretary
14 under subparagraph (C);

15 “(iii) provides notice to beneficiaries
16 that meet the requirements under subpara-
17 graph (D);

18 “(iv) complies with the requirements
19 of subparagraph (E), related to physician
20 independence; and

21 “(v) submits the annual report re-
22 quired under subparagraph (F).

23 “(B) QUALITY IMPROVEMENT ACTIVI-
24 TIES.—

1 “(i) IN GENERAL.—With respect to a
2 quality improvement program of a hospital
3 under subparagraph (A)(i), a quality im-
4 provement activity is an activity—

5 “(I) that is designed by the hos-
6 pital to—

7 “(aa) improve the quality of
8 inpatient hospital care (including
9 improvements in patient safety);
10 and

11 “(bb) generate cost savings
12 for the hospital; and

13 “(II) does not jeopardize patient
14 health or safety.

15 “(ii) FLEXIBILITY.—A quality im-
16 provement activity may be designed to—

17 “(I) be clinical or non-clinical in
18 nature;

19 “(II) increase communication
20 and coordination between physicians
21 and other providers;

22 “(III) improve admission plan-
23 ning, discharge planning, operating
24 room utilization, timely documentation
25 of the medical record, or appropriate

1 transfer of patients within depart-
2 ments of a hospital;

3 “(IV) reduce the rate of avoid-
4 able re-operations;

5 “(V) reduce avoidable readmis-
6 sions;

7 “(VI) appropriately reduce the
8 average length of stay for patients in
9 a hospital; or

10 “(VII) make other appropriate
11 quality improvements, based on qual-
12 ity improvement measures rec-
13 ommended by physician specialty soci-
14 eties, the National Quality Forum, the
15 National Committee for Quality As-
16 surance, and the Physician Consor-
17 tium for Performance Improvement.

18 “(iii) OTHER REQUIREMENTS.—

19 “(I) QUALITY AND COST BENCH-
20 MARKS.—The hospital shall include
21 the quality and cost benchmarks that
22 the hospital uses to determine if an
23 activity is a quality improvement ac-
24 tivity in the quality improvement pro-
25 gram under subparagraph (A)(i).

1 “(II) LIMITATION.—A quality
2 improvement program may not in-
3 clude incentives to encourage the hos-
4 pital or a physician to avoid taking on
5 difficult or complex cases, which, but
6 for the remuneration permitted under
7 subsection (e)(9), the hospital or pro-
8 vider would have taken on.

9 “(C) SHARED SAVINGS WITH MEDICARE.—
10 For each year (except for the first such year)
11 that a hospital makes remuneration under sub-
12 section (e)(9), the hospital shall make, at such
13 time and in such manner as the Secretary may
14 require, a payment to the Secretary in an
15 amount that is determined by the Secretary,
16 but exceeds one percent of cost savings gen-
17 erated in such year as a result of physician par-
18 ticipation in quality improvement activities
19 through a quality incentive agreement under
20 paragraph (1). Any payments made by a hos-
21 pital to the Secretary under this subparagraph
22 shall be deposited in the Federal hospital insur-
23 ance trust fund.

24 “(D) NOTICE REQUIREMENTS.—

1 “(i) IN GENERAL.—A hospital that is
2 a party to a quality incentive agreement
3 under paragraph (1) shall, during the pe-
4 riod of such agreement—

5 “(I) provide notice to each bene-
6 ficiary who receives inpatient hospital
7 services in such hospital that the hos-
8 pital provides remuneration to physi-
9 cians who voluntarily participate in
10 such agreement; and

11 “(II) disclose and prominently
12 display on the public Internet website
13 of the hospital information about the
14 hospital’s participation in such agree-
15 ment and the remuneration made
16 under such agreement.

17 “(ii) TIMING.—To the extent that is
18 feasible, without compromising patient
19 safety, the notice under clause (i)(I) shall
20 be provided to a beneficiary before such
21 beneficiary receives inpatient hospital serv-
22 ices through the hospital.

23 “(E) PROTECTION OF PHYSICIAN INDE-
24 PENDENCE.—A qualified hospital may not—

1 “(i) require that any physician who
2 works for the hospital (as an employee, an
3 independent contractor, or in any other
4 status) to enter into a quality incentive
5 agreement under paragraph (1); or

6 “(ii) penalize such physician (except
7 through a denial of remuneration under
8 subsection (e)(9), subject to the terms of
9 the agreement under paragraph (1)) for
10 the failure of such physician to participate
11 in the quality improvement activities under
12 the hospital’s quality improvement pro-
13 gram.

14 “(F) ANNUAL REPORT.—A hospital shall
15 submit to the Secretary an annual report that
16 includes—

17 “(i) a copy of the hospital’s quality
18 improvement program;

19 “(ii) a list of the major quality im-
20 provement activities for which remunera-
21 tion was made under any quality incentive
22 agreement to which the hospital is a party
23 during the previous year;

1 “(iii) the amount of cost savings gen-
2 erated for the hospital by such quality im-
3 provement activities during such year; and

4 “(iv) the quality improvement activi-
5 ties that generated the most cost savings
6 for the hospital.

7 “(3) RESPONSIBILITIES OF THE SECRETARY.—

8 “(A) AUTHORITY TO SET LIMITS TO PRE-
9 VENT MISUSE OF INCENTIVE PAYMENTS.—The
10 Secretary may set a limit to the amount of re-
11 muneration that a hospital may make to a phy-
12 sician under an agreement under paragraph (1)
13 for the purpose of the types of remuneration
14 prohibited under clauses (i) or (ii) of paragraph
15 (1)(B).

16 “(B) AUDITS.—The Secretary, may, in
17 such time and manner as the Secretary may
18 specify, audit a hospital or physician with re-
19 spect to remuneration made pursuant to a qual-
20 ity incentive agreement under paragraph (1).

21 “(C) PUBLIC DISCLOSURE OF PARTICI-
22 PATING HOSPITALS ON WEBSITE.—The Sec-
23 retary shall maintain and publish a list of hos-
24 pitals that have quality incentive agreements
25 under paragraph (1) on the Medicare.gov Inter-

1 net website of the Centers for Medicare & Med-
2 icaid Services.”.

3 (c) QUALITY INCENTIVE OMBUDSMAN.—Section
4 1808(c) of such Act (42 U.S.C. 1395b–9(c)) is amended
5 by adding at the end the following new paragraph:

6 “(4) QUALITY INCENTIVE OMBUDSMAN.—

7 “(A) IN GENERAL.—The Secretary shall
8 provide a quality incentive ombudsman with
9 Centers for Medicare & Medicaid Services, who
10 shall respond to complaints and inquiries made
11 by individuals described under paragraph
12 (2)(A), hospitals, and physicians relating to the
13 remuneration permitted under section
14 1877(e)(9).

15 “(B) OFFICE AND REPORT.—The quality
16 incentive ombudsman may be within the office
17 of the Medicare Beneficiary Ombudsman ap-
18 pointed under paragraph (1), and the activities
19 of the quality incentive ombudsman shall be in-
20 cluded in the report under paragraph (2)(C).”.

21 (d) REGULATIONS.—

22 (1) IN GENERAL.—Not later than January 1,
23 2014, the Secretary of Health and Human Services
24 shall promulgate regulations to implement sub-
25 sections (e)(9) and (j) of section 1887 of the Social

1 Security Act, as added by subsection (a). Such regu-
2 lations may include model quality incentive agree-
3 ments and quality improvement programs.

4 (2) CONSULTATION.—In developing the regula-
5 tions under paragraph (1), the Secretary of Health
6 and Human Services shall consult with physician
7 specialty societies, hospitals, and individuals entitled
8 to benefits under part A or enrolled under part B
9 of title XVIII of the Social Security Act.

10 (3) FEDERAL TRADE COMMISSION AND DE-
11 PARTMENT OF JUSTICE.—Not later than January 1,
12 2014, to the extent that quality incentive agreements
13 under section 1877(j) of the Social Security Act may
14 implicate anti-trust laws and regulations, the Fed-
15 eral Trade Commission and the Attorney General
16 shall review such laws and regulations and shall
17 issue regulations or guidance that includes examples
18 of quality incentive agreements (as such term is
19 used in section 1877(j) of the Social Security Act)
20 that are permitted under such laws and regulations,
21 and examples of such agreements that are not per-
22 mitted under such laws and regulations.

23 (e) EFFECTIVE DATE.—The amendments made by
24 this section shall apply to remuneration made on or after
25 January 1, 2014.

1 **SEC. 3. EXCEPTION TO CIVIL MONETARY PENALTIES FOR**
2 **CERTAIN INCENTIVE PAYMENTS.**

3 Section 1128A(b)(1) of the Social Security Act (42
4 U.S.C. 1320a–7a(b)(1)) is amended, in the matter pre-
5 ceding subparagraph (A), by inserting “(except for remu-
6 nation made pursuant to section 1877(e)(9))” after
7 “makes a payment”.

8 **SEC. 4. ESTABLISHMENT OF A SAFE HARBOR FROM CER-**
9 **TAIN CRIMINAL PENALTIES TO PROVIDE FOR**
10 **USE OF INCENTIVE PAYMENT PROGRAMS BE-**
11 **TWEEN PHYSICIANS AND HOSPITALS.**

12 Section 1128B(b)(3) of the Social Security Act (42
13 U.S.C. 1320a–7b(b)(3)) is amended—

14 (1) in subparagraph (I), by striking “and” at
15 the end;

16 (2) in subparagraph (J), by striking the period
17 at the end and inserting “; and”; and

18 (3) by adding at the end the following:

19 “(K) any remuneration between a hospital
20 and a physician made pursuant to section
21 1877(e)(9).”.

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