

113TH CONGRESS
1ST SESSION

H. R. 1487

To amend titles XVIII and XI of the Social Security Act to establish an exception from the physician self-referral prohibition and a safe harbor from Federal antikickback and other sanctions for incentive payments made by hospitals to physicians under certain incentive payment programs.

IN THE HOUSE OF REPRESENTATIVES

APRIL 11, 2013

Mr. McDERMOTT 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

A BILL

To amend titles XVIII and XI of the Social Security Act to establish an exception from the physician self-referral prohibition and a safe harbor from Federal antikickback and other sanctions for incentive payments made by hospitals to physicians under certain incentive payment programs.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Improved Health Care
3 at Lower Cost Act of 2013”.

4 **SEC. 2. EXCEPTION AND SAFE HARBOR FROM FEDERAL**
5 **SANCTIONS FOR INCENTIVE PAYMENTS**
6 **FROM HOSPITALS TO PHYSICIANS UNDER**
7 **CERTAIN INCENTIVE PAYMENT PROGRAMS.**

8 (a) FINDINGS.—Congress finds the following:

9 (1) The Department of Health and Human
10 Services has been engaged in approving, on a
11 project-by-project basis, gain-sharing arrangements
12 under demonstration authority for nearly a decade.
13 Based on the knowledge gained from such dem-
14 onstration projects, the Department is capable of de-
15 veloping and applying standards for permitting such
16 arrangements more generally without the use of
17 such authority.

18 (2) The Inspector General of the Department of
19 Health and Human Services has issued a special ad-
20 visory bulletin in July 1999 that indicates that there
21 is no general authority for waiving sanctions for any
22 gain-sharing arrangements between physicians and
23 hospitals.

24 (3) Due to lack of capitalization, size limita-
25 tions, risk characteristics, and other factors, many
26 hospitals and physicians have been unable or unwill-

1 ing to enter into gain-sharing types of arrangements
2 that meet the requirements of the shared savings
3 program.

4 (b) PURPOSE.—The purpose of this section is to es-
5 tablish general statutory authority within the Department
6 of Health and Human Services to recognize gain-sharing
7 and other incentive payment programs, other than the
8 shared savings program, that align incentives among hos-
9 pitals and physicians to improve efficiency and decrease
10 costs while maintaining or improving quality care.

11 (c) EXCEPTION FROM PHYSICIAN SELF-REFERRAL
12 PROHIBITION.—Section 1877(e) of the Social Security Act
13 (42 U.S.C. 1395nn(e)) is amended by adding at the end
14 the following new paragraph:

15 “(9) PAYMENTS UNDER CERTAIN INCENTIVE
16 PAYMENT PROGRAMS BETWEEN HOSPITALS AND
17 PHYSICIANS.—

18 “(A) IN GENERAL.—In the case of a mone-
19 etary incentive payment which is made by a hos-
20 pital to a physician under an incentive payment
21 program (as defined in subparagraph (B)) that
22 meets requirements established by the Secretary
23 in consultation with the Attorney General and
24 the Inspector General of the Department of

1 Health and Human Services for purposes of
2 this paragraph.

3 “(B) INCENTIVE PAYMENT PROGRAM DE-
4 FINED.—In this paragraph, the term ‘incentive
5 payment program’ means a program that is de-
6 signed to align incentives among hospitals and
7 physicians (through techniques such as product
8 standardization, the substitution of lower cost
9 products, and care coordination initiatives that
10 encourage medically appropriate decreases in
11 length of stay) to improve efficiency and de-
12 crease costs while maintaining or improving
13 quality.”.

14 (d) SAFE HARBOR FROM ANTIKICKBACK AND OTHER
15 FEDERAL SANCTIONS.—

16 (1) Section 1128B(b)(3) of the Social Security
17 Act (42 U.S.C. 1320a-7b(b)(3)) is amended—

18 (A) by striking “and” at the end of sub-
19 paragraph (I);

20 (B) in subparagraph (J), by moving the in-
21 dentation 2 ems to the left and by striking the
22 period at the end and inserting “; and”; and

23 (C) by adding at the end the following new
24 subparagraph:

1 “(K) any monetary incentive payment which is
2 made by a hospital to a physician under an incentive
3 payment program (as defined in subparagraph (B)
4 of section 1877(e)(9)) that meets requirements es-
5 tablished by the Inspector General of the Depart-
6 ment of Health and Human Services in consultation
7 with the Attorney General for purposes of applying
8 this subparagraph (which requirements needs not be
9 the same as those established under subparagraph
10 (A) of such section).”.

11 (2) Section 1128A(b)(1) of the Social Security
12 Act (42 U.S.C. 1320a-7a(b)(1)) is amended by in-
13 serting “(other than a monetary incentive payment
14 described in section 1128B(b)(3)(K))” after “makes
15 a payment”.

16 (e) PUBLICATION OF GUIDANCE.—The Secretary of
17 Health and Human Services and the Inspector General
18 of the Department of Health and Human Services—

19 (1) not later than 6 months after the date of
20 the enactment of this Act, shall jointly publish a so-
21 licitation of comments to carry out the amendments
22 made by this section; and

23 (2) not later than 12 months after such date of
24 enactment, shall publish, jointly or separately, such
25 guidance or rules, which may be effective on an in-

1 terim, final basis, as may be necessary to carry out
2 such amendments in a timely manner.

3 (f) CONSTRUCTION.—Nothing in this section (or the
4 amendments made by this section) shall be construed as
5 affecting the operation of the shared savings program.

6 (g) SHARED SAVINGS PROGRAM DEFINED.—In this
7 section, the term “shared savings program” means such
8 program under section 1899 of the Social Security Act (42
9 U.S.C. 1395jjj).

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