

113TH CONGRESS
1ST SESSION

H. R. 574

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

FEBRUARY 6, 2013

Ms. SCHWARTZ (for herself, Mr. HECK of Nevada, Mr. BLUMENAUER, Mrs. CHRISTENSEN, Mr. CARNEY, Mr. COURTNEY, Mr. POLIS, Mr. FATTAH, and Ms. CASTOR of Florida) 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 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.

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; PURPOSE.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Medicare Physician Payment Innovation Act of 2013”.

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

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

8 (2) to stabilize payments for 2014;

9 (3) to promote the rapid development and im-
10 plementation of alternative improved payment and
11 delivery models that incentivize high quality, high-
12 value care; and

13 (4) to provide continuing incentives for adop-
14 tion of such alternative payment and delivery models
15 by physicians and other providers.

16 **SEC. 2. MEDICARE PHYSICIAN PAYMENT REFORM.**

17 (a) REPEAL OF SGR PAYMENT METHODOLOGY.—
18 Section 1848 of the Social Security Act (42 U.S.C.
19 1395w–4) is amended—

20 (1) in subsection (d)—

21 (A) in paragraph (1)(A), by inserting “or
22 a subsequent paragraph” after “paragraph
23 (4)”; and

24 (B) in paragraph (4)—

1 (i) in the heading, by striking “YEARS
 2 BEGINNING WITH 2001” and inserting
 3 “2001, 2002, AND 2003”; and

4 (ii) in subparagraph (A), by striking
 5 “a year beginning with 2001” and insert-
 6 ing “2001, 2002, and 2003”; and

7 (2) in subsection (f)—

8 (A) in paragraph (1)(B), by inserting
 9 “through 2013” after “of such succeeding
 10 year”; and

11 (B) in paragraph (2), by inserting “and
 12 ending with 2013” after “beginning with
 13 2000”.

14 (b) STABILIZING 2014 PAYMENT RATES AT CUR-
 15 RENT LEVEL.—

16 (1) IN GENERAL.—Subsection (d) of section
 17 1848 of the Social Security Act (42 U.S.C. 1395w-
 18 4), as amended by section 601 of the American Tax-
 19 payer Relief Act of 2012 (Public Law 112–240), is
 20 amended by adding at the end the following new
 21 paragraph:

22 “(15) UPDATE FOR 2014.—In lieu of the update
 23 to the single conversion factor established in para-
 24 graph (1)(C) that would otherwise apply for 2014,

1 the update to the single conversion factor shall be 0
 2 percent for 2014.”.

3 (2) TECHNICAL AMENDMENT.—Effective for
 4 years beginning with 2014, subparagraph (C)(i) of
 5 paragraph (7) of section 1848(m) of the Social Se-
 6 curity Act (42 U.S.C. 1395w-4(m)(7)(C)(i); relating
 7 to additional incentive payment) is amended by in-
 8 serting “, the program of Osteopathic Continuous
 9 Certification of the American Osteopathic Associa-
 10 tion,” after “Specialties Maintenance of Certification
 11 program”.

12 (c) ESTABLISHMENT OF DIFFERENTIAL UPDATES
 13 BEGINNING WITH 2015 TO PROMOTE ACCESS TO PRI-
 14 MARY CARE SERVICES.—

15 (1) ESTABLISHMENT OF SERVICE CAT-
 16 EGORIES.—Subsection (j) of section 1848 of the So-
 17 cial Security Act (42 U.S.C. 1395w-4) is amended
 18 by adding at the end the following new paragraphs:

19 “(5) SERVICE CATEGORIES.—

20 “(A) IN GENERAL.—For services furnished
 21 on or after January 1, 2015, each of the fol-
 22 lowing categories of services shall be treated as
 23 a separate ‘service category’:

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

4 “(ii) OTHER SERVICES.—Other physi-
5 cians’ services.

6 “(B) PRIMARY CARE SERVICES.—In this
7 subsection, the term ‘primary care services’
8 means services identified, as of April 1, 2013,
9 with the following HCPCS codes (and as subse-
10 quently modified by the Secretary):

11 “(i) OFFICE AND OUTPATIENT VIS-
12 ITS.—99201 through 99215.

13 “(ii) HOSPITAL OBSERVATIONAL
14 SERVICES.—99217 through 99220.

15 “(iii) HOSPITAL INPATIENT VISITS
16 SERVICES.—99221 through 99239.

17 “(iv) NURSING HOME, DOMICILIARY,
18 REST HOME OR CUSTODIAL CARE VISITS.—
19 99304 through 99340.

20 “(v) HOME SERVICE VISITS.—99341
21 through 99350.

22 “(vi) WELCOME TO MEDICARE
23 VISIT.—G0402.

24 “(vii) ANNUAL WELLNESS VISITS.—
25 G0438 and G0439.

1 “(C) INCLUSION OF PREVENTIVE SERV-
2 ICES.—Such term also includes preventive serv-
3 ices described in section 1861(ddd)(3) and addi-
4 tional preventive services described in section
5 1861(ddd)(1).

6 “(D) INCLUSION OF ADDITIONAL SERV-
7 ICES.—Such term also includes services, such
8 as care coordination services, telemedicine serv-
9 ices, non-face-to-face care management services,
10 preparation and supervision of long-term care
11 plans, home care plan oversight services, and
12 similar services that the Secretary identifies, by
13 regulation, as being similar to the services de-
14 scribed in subparagraph (B) or (C).

15 “(6) QUALIFYING PRACTITIONER.—The term
16 ‘qualifying practitioner’ means, with respect to the
17 furnishing of primary care services, an individual—

18 “(A) for whom primary care services has
19 accounted for at least 60 percent of the allowed
20 charges under this part (not counting any such
21 charges attributable to in-office clinical labora-
22 tory services) in a prior period as determined by
23 the Secretary; or

24 “(B) who does not have claims under this
25 part during such a prior period and whom the

1 Secretary determines is likely to meet the re-
 2 quirement of subparagraph (A) for the subse-
 3 quent period.”.

4 (2) ESTABLISHMENT OF SEPARATE CONVER-
 5 SION FACTORS FOR EACH SERVICE CATEGORY.—Sec-
 6 tion 1848(d)(1) of the Social Security Act (42
 7 U.S.C. 1395w-4(d)(1)), as amended by subsection
 8 (a)(1)(A), is further amended—

9 (A) in subparagraph (A)—

10 (i) by designating the sentence begin-
 11 ning “The conversion factor” as clause (i)
 12 with the heading “APPLICATION OF SIN-
 13 GLE CONVERSION FACTOR.—” and with
 14 appropriate indentation;

15 (ii) by striking “The conversion fac-
 16 tor” and inserting “Subject to clause (ii),
 17 the conversion factor”; and

18 (iii) by adding at the end the fol-
 19 lowing new clause:

20 “(ii) APPLICATION OF MULTIPLE CON-
 21 VERSION FACTORS BEGINNING WITH
 22 2015.—

23 “(I) IN GENERAL.—In applying
 24 clause (i) for each year beginning with
 25 2015, 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 2015 shall be based upon the single conversion factor for the previous year multiplied by the update established under paragraph (16) for such category for 2015.

“(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 (16) 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:

“(16) UPDATES BY SERVICE CATEGORY BEGINNING WITH 2015; UPDATES FOR 2015 THROUGH 2018.—In applying paragraph (4) for each year beginning with 2015, 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 2014, the update shall be made to the conversion factor for each service category (as defined in subsection (j)(5)(A)).

“(B) UPDATES FOR 2015 THROUGH 2018.—The updates for 2015, 2016, 2017, and 2018 for the conversion factor for the services category described in—

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

1 “(ii) subsection (j)(5)(A)(ii) shall be
2 0.5 percent.”.

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

5 (1) EXPANSION OF TESTING IN MULTIPLE GEO-
6 GRAPHIC REGIONS.—Section 1115A(a)(5) of the So-
7 cial Security Act (42 U.S.C. 1315a(a)(5)) is amend-
8 ed by inserting before the period at the end the fol-
9 lowing: “, but shall (to the maximum extent feasible)
10 including testing of each such model in geographic
11 areas in at least 3 regions”.

12 (2) INCLUSION OF PHYSICIAN IMPLEMENTA-
13 TION COSTS IN EVALUATIONS.—Section
14 1115A(b)(4)(A) of the Social Security Act (42
15 U.S.C. 1315a(b)(4)(A)) is amended—

16 (A) by striking “and” at the end of clause
17 (i);

18 (B) by striking the period at the end of
19 clause (ii) and inserting “; and”; and

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

22 “(iii) the average cost, per physician,
23 of implementation of the model with re-
24 spect to physicians’ services.”.

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

5 “(5) TIMING.—The Secretary, acting through
6 the CMI, shall conduct activities under this sub-
7 section in such a timely manner so that evaluations
8 of initial models can be initially completed so that
9 physicians and other providers can begin to transi-
10 tion to implementation of such models with respect
11 to services for which payment is made under section
12 1848 beginning not later than January 1, 2018.”.

13 (4) INVOLVEMENT OF PROVIDER GROUPS IN SE-
14 LECTION OF MODELS.—Section 1115A(b)(4) of such
15 Act is amended by adding at the end the following
16 subparagraph:

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

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

24 (A) by adding at the end of subsection
25 (b)(2)(B) the following new clause:

“(xxi) Providing payment for outpatient therapy services and speech language pathology services on the basis of a treatment session, an episode of care, or other bundled payment methodology that takes into account varying levels of severity and complexity of patient diagnoses, conditions, and comorbidities and the varying intensity of services needed for effective treatment of patients.”; and

(B) in subsection (c), in the matter preceding paragraph (1), by—

(i) striking “or” after “tested under subsection (b)” and inserting a comma; and

(ii) by inserting “, or other model (including a model that was not tested under subsection (b))” 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

1 physicians' services (and other services) under the
2 Medicare program. Not later than April 1, 2017, the
3 Comptroller General shall submit a report to Con-
4 gress on such study and shall include in the report
5 such recommendations as the Comptroller General
6 deems appropriate for—

7 (A) changes in the development and imple-
8 mentation process under such section; and

9 (B) alternative payment and delivery mod-
10 els identified under such section as being appro-
11 priate for expansion under subsection (c) of
12 such section.

13 (7) PUBLICATION OF LIST OF SUCCESSFUL
14 MODELS.—Beginning on October 1, 2017, and each
15 year thereafter, the Secretary of Health and Human
16 Services shall publicly release a comprehensive list of
17 such health care delivery and payment models identi-
18 fied, under section 1115A of the Social Security Act
19 or otherwise, as meeting (or likely to meet) the re-
20 quirements of subsection (c)(1) of such section. Such
21 list shall include at least 4 health care delivery and
22 payment models and may include models not tested
23 under subsection (b) of such section.

24 (8) CONSIDERATIONS.—The Comptroller Gen-
25 eral 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, 2017, the Secretary of Health and Human Services shall provide information to physicians (and nurse practitioners and other providers for which payment is determined based on the fee schedule under section 1848 of the Social Security Act) or group practices and institutions employing Medicare part B providers on how best to transition to alternative health care delivery 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

1 the Social Security Act (42 U.S.C. 1315a, 1395cc–
2 5).

3 (2) INCREASING FLEXIBILITY IN IMPLEMENTA-
4 TION.—Section 1115A(c) of the Social Security Act
5 (42 U.S.C. 1315a(c)), as amended by subsection
6 (c)(5), is further amended, in the matter preceding
7 paragraph (1), by inserting, after “through rule-
8 making”, the following: “(which may include the
9 issuance of interim final rules) or through publica-
10 tion of a directive or other guidance”.

11 (3) TIMING.—Section 1115A of such Act is fur-
12 ther amended by adding at the end the following:
13 “The Secretary shall seek to effect such expansion
14 to the maximum extent feasible so that physicians
15 (and other providers paid in amounts determined
16 based on the fee schedule under section 1848) may
17 begin to transition to implementation of such models
18 beginning not later than January 1, 2018.”.

19 (f) TRANSITION DURING 2019.—

20 (1) FREEZE IN FEE SCHEDULE FOR 2019.—
21 Subsection (d) of section 1848 of the Social Security
22 Act (42 U.S.C. 1395w–4), as amended by sub-
23 sections (b) and (c)(3), is amended by adding at the
24 end the following new paragraph:

1 “(17) UPDATE FOR 2019.—The update to both
2 of the conversion factors for 2019 shall be 0 per-
3 cent.”.

4 (2) EXPANDED ASSISTANCE THROUGH RE-
5 GIONAL EXTENSION CENTERS AND OTHER QUALI-
6 FIED ENTITIES.—Section 1115A(d) of the Social Se-
7 curity Act (42 U.S.C. 1315a(d)) is amended by add-
8 ing at the end the following new paragraph:

9 “(4) ASSISTANCE IN IMPLEMENTATION.—

10 “(A) IN GENERAL.—Using funds available
11 under subsection (f)(1) and consistent with this
12 paragraph, the Secretary shall enter into con-
13 tracts and agreements with regional extension
14 centers, in coordination with the National Coor-
15 dinator for Health Information Technology, and
16 other appropriate entities to provide guidance
17 and assistance on how physicians (and other
18 providers paid in amounts determined based on
19 the fee schedule under section 1848) may tran-
20 sition to implementation of alternative health
21 care delivery models identified as representing
22 best practices under this section.

23 “(B) DEDICATED FUNDING.—

24 “(i) IN GENERAL.—Of the amounts
25 available under subsection (f)(1)(B), the

1 Secretary shall make \$720,000,000 avail-
2 able to the Office of the National Coordi-
3 nator for Health Information Technology
4 for the awarding of grants and incentive
5 payments under a competitive process to
6 regional extension centers (receiving fund-
7 ing under section 3012(c) of the Public
8 Health Service Act) and other qualified en-
9 tities for activities described in subpara-
10 graph (A). Such grants and payments shall
11 not be available for assistance after De-
12 cember 31, 2019.

13 “(ii) PROCESS.—Under clause (i), the
14 Office shall—

15 “(I) establish a competitive selec-
16 tion process for the selection of re-
17 gional extension centers (and other
18 qualified entities) in the third quarter
19 of 2015; and

20 “(II) provide for the initial dis-
21 tribution of funds to such centers and
22 entities by January 1, 2016.

23 “(iii) COLLABORATION.—The Center
24 shall collaborate with the Office in pro-
25 viding direction to such centers and enti-

1 ties in conducting activities under this
2 paragraph, including the development of
3 performance benchmarks based on provider
4 participation and progress toward integra-
5 tion.

6 “(iv) PRIORITY.—The grants and in-
7 centive payments under this subparagraph
8 shall be directed to target assistance to
9 solo and small specialty practices as well as
10 community health centers and similar pro-
11 viders of primary care services.”.

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

14 (1) FEE SCHEDULE ADJUSTMENTS.—Sub-
15 section (d) of section 1848 of the Social Security Act
16 (42 U.S.C. 1395w-4), as amended by subsections
17 (b), (c)(3), and (f), is amended by adding at the end
18 the following:

19 “(18) UPDATES FOR 2020 THROUGH 2023.—

20 “(A) IN GENERAL.—Except as provided in
21 this paragraph, the update to each of the con-
22 version factors—

23 “(i) for 2020 shall be minus 2 per-
24 cent;

1 “(ii) for 2021 shall be minus 3 per-
2 cent;

3 “(iii) for 2022 shall be minus 4 per-
4 cent; and

5 “(iv) for 2023 shall be minus 5 per-
6 cent.

7 “(B) TREATMENT OF SERVICES PAID
8 USING ALTERNATIVE PAYMENT AND DELIVERY
9 MODELS.—In the case of physicians’ services
10 for which payment is covered under an alter-
11 native payment and delivery model, such as
12 those implemented under section 1115A, sub-
13 paragraph (A) does not apply.

14 “(C) GENERAL EXEMPTION.—The Sec-
15 retary shall, by regulation, exempt a provider
16 from the application of the negative payment
17 update specified in subparagraph (A) for a year
18 if the Secretary determines that—

19 “(i) the provider—

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

23 “(II) meets the qualifications
24 under subparagraph (B) of subsection
25 (m)(7) (relating to additional incen-

1 tive payments) for an additional in-
2 centive payment under subparagraph
3 (A) of such subsection (which includes
4 satisfactory participation in the qual-
5 ity reporting system and participation
6 in an approved Maintenance of Cer-
7 tification program);

8 “(ii) the payment modifier for the
9 provider under subsection (p), which is
10 based upon the performance of the pro-
11 vider on measures of quality of care fur-
12 nished compared to cost and which is ex-
13 pressed as a percentage of payment, is
14 within the top 25 percent of such payment
15 modifiers for providers within the same fee
16 schedule area, as determined by the Sec-
17 retary; or

18 “(iii) in the case of outpatient therapy
19 services, the provider of such services ad-
20 heres to a comprehensive list of cost, qual-
21 ity, and outcome measures as dem-
22 onstrated by—

23 “(I) participation in a certified
24 registry;

1 “(II) if applicable, participation
2 in the physician quality reporting sys-
3 tem under subsection (k);

4 “(III) use of an approved patient
5 assessment tool;

6 “(IV) current certification as a
7 physical therapist clinical specialist by
8 the American Physical Therapy Asso-
9 ciation (APTA), an occupational ther-
10 apist by the American Occupational
11 Therapy Association, or as an audiol-
12 ogist or a speech-language pathologist
13 by the American Speech-Language-
14 Hearing Association; or

15 “(V) compliance with comparable
16 functional measures reporting require-
17 ments as recognized by the Secretary.

18 “(D) CASE-BY-CASE HARDSHIP EXEMP-
19 TION.—The Secretary may, on a case-by-case
20 basis, exempt a provider from the application of
21 the negative payment update specified in sub-
22 paragraph (A) for a year if the Secretary deter-
23 mines, subject to annual renewal, that because
24 of limitations in the nature of a medical prac-
25 tice, limitations in the number of Medicare

1 beneficiaries that may be served by the pro-
2 vider, or other special circumstances, imposing
3 a financial disincentive under such subpara-
4 graph for failure to adopt an alternative pay-
5 ment and delivery model referred to in subpara-
6 graph (B) would result in a significant hardship
7 to the provider.

8 “(19) UPDATES BEGINNING WITH 2024.—

9 “(A) IN GENERAL.—The update to both of
10 the conversion factors for each year beginning
11 with 2024 shall be 0 percent.

12 “(B) TREATMENT OF SERVICES PAID
13 USING ALTERNATIVE PAYMENT AND DELIVERY
14 MODELS.—In the case of physicians’ services
15 for which payment is covered under an alter-
16 native payment and delivery model, such as
17 those implemented under section 1115A, sub-
18 paragraph (A) does not apply.”.

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

22 (A) IN GENERAL.—In determining the
23 growth rates to be recognized beginning with
24 2020 for alternative payment and delivery mod-
25 els under the Medicare program that cover phy-

1 sicians' services, such as those implemented
2 under section 1115A of the Social Security Act,
3 the Secretary of Health and Human Services
4 shall consider (among other factors) the fol-
5 lowing:

6 (i) Ensuring access to primary care
7 and specialty services, including participa-
8 tion of primary care practitioners and spe-
9 cialists and newly graduating practitioners.

10 (ii) Restraining spending growth.

11 (iii) Ensuring access to services for
12 vulnerable populations.

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

16 (i) be less than 1 percent; or

17 (ii) be greater than the percentage in-
18 crease in the MEI (as defined in section
19 1842(i)(3) of the Social Security Act, 42
20 U.S.C. 1395u(i)(3)) for such year.

21 (C) APPLICATION OF CONGRESSIONAL RE-
22 VIEW ACT.—Chapter 8 of title 5, United States
23 Code, applies with respect to the promulgation
24 of a growth factor under this paragraph for a
25 year.

1 (h) IMPACT REPORT.—Not later than January 1,
2 2023, the Secretary of Health and Human Services shall
3 submit to Congress a report on the impact on spending
4 and on access to services under title XVIII of the Social
5 Security Act, including under part A of such title, result-
6 ing from changes to Medicare delivery and payment sys-
7 tems, including under the amendments made by this sec-
8 tion.

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