

114TH CONGRESS
1ST SESSION

H. R. 3298

To amend title XVIII of the Social Security Act to provide for value-based purchasing of post-acute care services under the Medicare program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 29, 2015

Mr. BRADY of Texas (for himself and Mr. KIND) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, 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 title XVIII of the Social Security Act to provide for value-based purchasing of post-acute care services under the Medicare program, and for other purposes.

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 “Medicare Post-Acute
5 Care Value-Based Purchasing Act of 2015”.

1 **SEC. 2. REPEAL OF MARKET BASKET CUTS FOR POST-**
2 **ACUTE PROVIDERS.**

3 (a) SNFs.—Section 1888(e) of the Social Security
4 Act (42 U.S.C. 1395yy(e)), as amended by section 411(a)
5 of the Medicare Access and CHIP Reauthorization Act of
6 2015, is amended—

7 (1) in paragraph (5)(B)—

8 (A) in clause (i), by striking “clauses (ii)
9 and (iii)” and inserting “clause (ii)”;

10 (B) in clause (ii), by striking “subject to
11 clause (iii),”; and

12 (C) by striking clause (iii); and

13 (2) in paragraph (6)(A)(i), by striking “clauses
14 (ii) and (iii) of paragraph (5)(B)” and inserting
15 “paragraph (5)(B)(ii)”.

16 (b) IRFs.—Section 1886(j) of the Social Security Act
17 (42 U.S.C. 1395ww(j)), as amended by section 411(b) of
18 the Medicare Access and CHIP Reauthorization Act of
19 2015, is amended—

20 (1) in paragraph (3)(C)—

21 (A) in clause (i), by striking “clauses (ii)
22 and (iii)” and inserting “clause (ii)”;

23 (B) in clause (ii), by striking “Subject to
24 clause (iii), after” and inserting “After” ; and

25 (C) by striking clause (iii); and

1 (2) in paragraph (7)(A)(i), by striking “sub-
2 paragraphs (C)(iii) and (D) of paragraph (3)” and
3 inserting “paragraph (3)(D)”.

4 (c) HHAs.—Section 1895(b)(3)(B) of the Social Se-
5 curity Act (42 U.S.C. 1395fff(b)(3)(B)), as amended by
6 section 411(c) of the Medicare Access and CHIP Reau-
7 thorization Act of 2015, is amended—

8 (1) in clause (iii), by striking the last sentence;
9 and

10 (2) in clause (vi)(I), by striking “(except
11 2018)”.

12 (d) LTCHs.—Section 1886(m)(3) of the Social Secu-
13 rity Act (42 U.S.C. 1395ww(m)(3)), as amended by sec-
14 tion 411(e) of the Medicare Access and CHIP Reauthor-
15 ization Act of 2015, is amended—

16 (1) in subparagraph (A), by striking “Subject
17 to subparagraph (C), in implementing” and insert-
18 ing “In implementing”; and

19 (2) by striking subparagraph (C).

20 (e) EFFECTIVE DATE.—The amendments made by
21 this section shall be effective as if included in the enact-
22 ment of the Medicare Access and CHIP Reauthorization
23 Act of 2015.

1 **SEC. 3. POST-ACUTE CARE VALUE-BASED PURCHASING**
 2 **PROGRAM.**

3 (a) IN GENERAL.—Section 1899B of the Social Secu-
 4 rity Act (42 U.S.C. 1395lll) is amended—

5 (1) in the heading, by inserting “; **POST-**
 6 **ACUTE CARE VALUE-BASED PURCHASING PRO-**
 7 **GRAM**” before the period at the end; and

8 (2) by adding at the end the following new sub-
 9 section:

10 “(n) POST-ACUTE CARE VALUE-BASED PURCHASING
 11 PROGRAM (PAC VBP PROGRAM).—

12 “(1) ESTABLISHMENT.—

13 “(A) IN GENERAL.—Subject to the suc-
 14 ceeding provisions of this subsection, the Sec-
 15 retary shall establish a post-acute care value-
 16 based purchasing program (in this subsection
 17 referred to as the ‘PAC VBP Program’) under
 18 which value-based incentive payments are made
 19 in a payment year to PAC providers.

20 “(B) PROGRAM IMPLEMENTATION.—The
 21 PAC VBP Program shall apply to payments for
 22 services furnished in payment years beginning
 23 on or after October 1, 2019.

24 “(C) TREATMENT OF NEW PAC PRO-
 25 VIDERS.—In the case of a PAC provider that
 26 first begins participation in the program under

1 this title during the performance period for a
2 payment year (and had not previously sub-
3 mitted claims under this title as such a provider
4 under a different billing number or tax identi-
5 fier), such provider shall not be treated under
6 this subsection as a PAC provider until the sub-
7 sequent payment year and performance period
8 for such subsequent payment year.

9 “(D) PAYMENT YEAR DEFINED.—In this
10 subsection, the term ‘payment year’ means—

11 “(i) for PAC providers described in
12 clause (i) of subsection (a)(2)(A) (relating
13 to home health agencies), a calendar year;
14 and

15 “(ii) for all other PAC providers, a
16 fiscal year.

17 “(E) TYPE OF PROVIDER DEFINED.—In
18 this subsection, the term ‘provider type’ means,
19 with respect to PAC providers, each of the
20 types of PAC providers described in a clause in
21 subsection (a)(2)(A).

22 “(2) APPLICATION OF MEASURE.—

23 “(A) IN GENERAL.—Under the PAC VBP
24 Program, the Secretary shall apply the resource
25 use measure specified under subsection

1 (d)(1)(A) for purposes of the PAC VBP Pro-
2 gram.

3 “(B) APPLICATION ON PROVIDER AND
4 AREA BASIS.—Such measure shall be applied
5 separately—

6 “(i) for each PAC provider; and

7 “(ii) for all PAC providers, regardless
8 of type, in each hospital service area or
9 comparable area (as determined by the
10 Secretary) in which an individual receives
11 a service from any PAC provider involved
12 under this title in such area.

13 “(3) PERFORMANCE STANDARDS.—

14 “(A) ESTABLISHMENT.—The Secretary
15 shall establish performance standards consistent
16 with this paragraph with respect to the measure
17 applied under paragraph (2) for a performance
18 period for a payment year.

19 “(B) HIGHER OF ACHIEVEMENT AND IM-
20 PROVEMENT.—The performance standards es-
21 tablished under subparagraph (A) shall include
22 levels of achievement and improvement. In cal-
23 culating the performance score of a PAC pro-
24 vider (including an area) under paragraph (4),

1 the Secretary shall use the higher of either im-
2 provement or achievement.

3 “(C) TIMING.—The Secretary shall estab-
4 lish and announce the performance standards
5 established under subparagraph (A) not later
6 than 90 days before the beginning of the per-
7 formance period for the payment year involved.

8 “(4) PAC PERFORMANCE SCORES.—

9 “(A) IN GENERAL.—The Secretary shall
10 develop a methodology for assessing the total
11 performance of each PAC provider, and of each
12 hospital service area or comparable area (as de-
13 termined by the Secretary, based on perform-
14 ance standards established under paragraph (3)
15 with respect to the measure applied under para-
16 graph (2) for a performance period for a pay-
17 ment year.

18 “(B) COMPUTATION OF INDIVIDUAL, AREA,
19 AND COMPOSITE PERFORMANCE SCORES.—
20 Using such methodology, the Secretary shall
21 provide for—

22 “(i) an assessment, based on the
23 measure applied under paragraph
24 (2)(B)(i), for each individual PAC provider
25 for each performance period;

“(ii) an assessment, based on the measure applied under paragraph (2)(B)(ii), for all PAC providers in each area described in such paragraph for each performance period; and

“(iii) a composite assessment (in this subsection referred to as the ‘PAC composite performance score’) for each PAC provider for each performance period equal to the sum of—

“(I) 55 percent of the performance score under clause (i) for the period for that PAC provider; and

“(II) 45 percent of the performance score under clause (ii) for the period for all PAC providers located in the area in which the PAC provider is located.

“(C) RANKING OF PAC PERFORMANCE SCORES.—The Secretary shall, for the performance period for each payment year for each type of PAC provider, rank the PAC composite performance scores determined under subparagraph (B)(iii) from low to high.

1 “(5) CALCULATION OF VALUE-BASED INCEN-
2 TIVE PAYMENTS.—

3 “(A) IN GENERAL.—With respect to a
4 PAC provider, based on the ranking under
5 paragraph (4)(C) for a performance period for
6 a payment year, the Secretary shall increase the
7 payment basis specified in subparagraph (B)
8 otherwise applicable to such provider for serv-
9 ices furnished by such provider during such
10 payment year by the value-based incentive pay-
11 ment percentage specified under subparagraph
12 (C) for the provider and payment year.

13 “(B) PAYMENT BASIS.—The payment
14 basis specified in this subparagraph for a type
15 of provider is as follows, as applied after the
16 application of paragraph (6):

17 “(i) SKILLED NURSING FACILITIES.—
18 For skilled nursing facilities, the adjusted
19 Federal per diem rate under section
20 1888(e)(4)(B).

21 “(ii) INPATIENT REHABILITATION FA-
22 CILITIES.—For inpatient rehabilitation fa-
23 cilities, the prospective per unit payment
24 rate under section 1886(j)(3).

1 “(iii) LONG-TERM CARE HOSPITALS.—
2 For long-term care hospitals, the standard
3 Federal rate under section 1886(m), or, if
4 applicable, the applicable site neutral pay-
5 ment rate under paragraph (6) of such
6 section.

7 “(iv) HOME HEALTH AGENCIES.—For
8 home health agencies, the standard pro-
9 spective payment amount (or amounts)
10 under section 1895(b)(3).

11 “(C) VALUE-BASED INCENTIVE PAYMENT
12 PERCENTAGE.—The Secretary shall specify a
13 value-based incentive payment percentage for
14 each PAC provider for a payment year, which
15 may include a zero percentage but not a per-
16 centage below zero. In specifying the value-
17 based incentive payment percentage for each
18 PAC provider for a payment year under this
19 subparagraph, the Secretary shall ensure that—

20 “(i) such percentage is based on the
21 ranking of PAC composite performance
22 score of the provider under paragraph (4)
23 for the performance period for the pay-
24 ment year;

1 “(ii) the application of all such per-
2 centages for a type of PAC provider for a
3 payment year results in an appropriate dis-
4 tribution of value-based incentive increases
5 under subparagraph (A) such that—

6 “(I) PAC providers with the
7 highest rankings under paragraph
8 (4)(C) receive the highest value-based
9 incentive payment percentages under
10 this subparagraph; and

11 “(II) PAC providers with the
12 lowest rankings under such paragraph
13 receive the lowest value-based incen-
14 tive payment percentages under this
15 subparagraph; and

16 “(iii) the total amount of value-based
17 incentive increases under this paragraph
18 for all PAC providers for each type of pro-
19 vider in such payment year shall be at
20 least 50 percent, but not greater than 70
21 percent, of the total amount of the reduc-
22 tions to payments for PAC providers of
23 such type for such payment year under
24 paragraph (6), as estimated by the Sec-
25 retary.

1 “(6) FUNDING FOR VALUE-BASED INCENTIVE
2 PAYMENTS.—

3 “(A) IN GENERAL.—The Secretary shall
4 reduce the payment basis (as defined in para-
5 graph (5)(B)), not taking into account any in-
6 crease under paragraph (5), for each type of
7 PAC provider for each payment year begin-
8 ning—

9 “(i) during fiscal year 2020 by 3 per-
10 cent;

11 “(ii) during fiscal year 2021 by 4 per-
12 cent;

13 “(iii) during fiscal year 2022 by 5
14 percent;

15 “(iv) during fiscal year 2023 by 6 per-
16 cent;

17 “(v) during fiscal year 2024 by 7 per-
18 cent; and

19 “(vi) during or after fiscal year 2025
20 by 8 percent.

21 “(B) IMPLEMENTATION.—The Secretary
22 shall make such reductions for all PAC pro-
23 viders in the payment year involved, regardless
24 of whether or not the PAC provider has been
25 determined by the Secretary to have earned a

1 value-based incentive payment increase under
2 paragraph (5) for such payment year.

3 “(7) ANNOUNCEMENT OF NET RESULT OF AD-
4 JUSTMENTS.—Under the PAC VBP Program, the
5 Secretary shall, not later than 90 days prior to the
6 payment year involved, inform each PAC provider of
7 the adjustments to payments to the PAC provider
8 for services furnished by such provider during the
9 payment year under paragraphs (5) and (6).

10 “(8) NO EFFECT IN SUBSEQUENT FISCAL
11 YEARS.—The value-based incentive payment increase
12 under paragraph (5) and the payment reduction
13 under paragraph (6) shall each apply only with re-
14 spect to the payment year involved, and the Sec-
15 retary shall not take into account such value-based
16 incentive payment increase or payment reduction in
17 making payments to a PAC provider under this title
18 in a subsequent payment year.

19 “(9) PUBLIC REPORTING.—

20 “(A) PAC SPECIFIC INFORMATION.—The
21 Secretary shall make available to the public, by
22 posting on the relevant Compare Medicare
23 website (or a successor website) in an easily un-
24 derstandable format, information regarding the
25 performance of individual PAC providers under

1 the PAC VBP Program, with respect to a pay-
2 ment year, including—

3 “(i) the PAC composite performance
4 score of the PAC provider for such pay-
5 ment year; and

6 “(ii) the ranking of the PAC provider
7 under paragraph (4)(C) for the perform-
8 ance period for such payment year.

9 “(B) AGGREGATE INFORMATION.—The
10 Secretary shall periodically post on the relevant
11 websites referred to in subparagraph (A) aggre-
12 gate information on the PAC VBP Program for
13 the types of providers, including—

14 “(i) the range of PAC composite per-
15 formance scores under paragraph (4)(B);
16 and

17 “(ii) the number of PAC providers of
18 each type receiving value-based incentive
19 payment increases under paragraph (5)
20 and the range and total amount of such
21 value-based incentive payment increases.

22 “(10) LIMITATION ON REVIEW.—There shall be
23 no administrative or judicial review under section
24 1869, section 1878, or otherwise of the following:

1 “(A) The establishment of the performance
2 standards under paragraph (3) and the per-
3 formance period.

4 “(B) The methodology developed under
5 paragraph (4) that is used to calculate PAC
6 composite performance scores and the calcula-
7 tion of such scores.

8 “(C) The ranking determinations under
9 paragraph (4)(C).

10 “(D) The methodology used to determine
11 the value-based incentive payment percentages
12 under paragraph (5).

13 “(E) The determination of the amount of
14 funding available for such value-based incentive
15 payments under paragraph (5)(C)(iii).”.

16 (b) CONFORMING AMENDMENTS.—

17 (1) SNF PAYMENT.—Section 1888(e)(4) of the
18 Social Security Act (42 U.S.C. 1395yy(e)(4)) is
19 amended by adding at the end the following new
20 subparagraph:

21 “(I) VALUE-BASED PURCHASING ADJUST-
22 MENT.—The adjusted Federal per diem rate
23 under subparagraph (B) is subject to adjust-
24 ment under paragraphs (5) and (6) of section
25 1899B(n).”.

1 (2) INPATIENT REHABILITATION FACILITIES.—
2 Section 1886(j)(3) of the Social Security Act (42
3 U.S.C. 1395ww(j)(3)) is amended by adding at the
4 end the following new subparagraph:

5 “(D) VALUE-BASED PURCHASING ADJUST-
6 MENT.—The prospective per unit payment rate
7 under this paragraph is subject to adjustment
8 under paragraphs (5) and (6) of section
9 1899B(n).”.

10 (3) LONG-TERM CARE HOSPITALS.—Section
11 1886(m) of the Social Security Act (42 U.S.C.
12 1395ww(m)) is amended by adding at the end the
13 following new paragraph:

14 “(7) VALUE-BASED PURCHASING ADJUST-
15 MENT.—The standard Federal rate under this sub-
16 section, or, if applicable, the applicable site neutral
17 payment rate under paragraph (6), is subject to ad-
18 justment under paragraphs (5) and (6) of section
19 1899B(n).”.

20 (4) HOME HEALTH AGENCIES.—Section
21 1895(b)(3) of the Social Security Act (42 U.S.C.
22 1395fff(b)(3)) is amended by adding at the end the
23 following new subparagraph:

24 “(D) VALUE-BASED PURCHASING ADJUST-
25 MENT.—The standard prospective payment

1 amount (or amounts) under this paragraph is
2 subject to adjustment under paragraphs (5)
3 and (6) of section 1899B(n).”.

4 **SEC. 4. SUNSETTING OF SKILLED NURSING FACILITY**
5 **VALUE-BASED PURCHASING (SNF VBP) PRO-**
6 **GRAM.**

7 Section 1888(h)(1)(B) of the Social Security Act (42
8 U.S.C. 1395yy(h)(1)(B)) is amended—

9 (1) in the heading, by inserting “AND TO END
10 IN FISCAL YEAR 2025” after “FISCAL YEAR 2019”;
11 and

12 (2) by inserting “and before October 1, 2025”
13 after “2018”.

○