

114TH CONGRESS
2D SESSION

H. R. 5841

To amend title XVIII of the Social Security Act to establish a population based payment demonstration project under which Patient Care Networks are paid prospective monthly capitated payments for coordinated care furnished to Medicare beneficiaries.

IN THE HOUSE OF REPRESENTATIVES

JULY 14, 2016

Mr. KELLY of Pennsylvania (for himself and Mr. NEAL) 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 establish a population based payment demonstration project under which Patient Care Networks are paid prospective monthly capitated payments for coordinated care furnished to Medicare beneficiaries.

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. POPULATION BASED PAYMENT DEMONSTRATION PROJECT.**
2

3 Title XVIII of the Social Security Act (42 U.S.C.
4 1395x et seq.) is amended by adding at the end the fol-
5 lowing new section:

6 **“SEC. 1899C. POPULATION BASED PAYMENT DEMONSTRATION PROJECT.**
7

8 “(a) IN GENERAL.—Beginning not later than Janu-
9 ary 1, 2017, the Secretary shall establish a 5-year Popu-
10 lation Based Payment Demonstration Project (in this sec-
11 tion referred to as the ‘demonstration project’) to promote
12 efficiency of care and improve health outcomes for Medi-
13 care fee-for-service beneficiaries (as defined in subsection
14 (m)). Under the demonstration project, providers of serv-
15 ices and suppliers may, in accordance with the subsequent
16 subsections of this section, form Patient Care Networks
17 (in this section referred to as ‘PCNs’)—

18 “(1) through which providers of services and
19 suppliers shall furnish items and services for which
20 payment would otherwise be made under parts A
21 and B to participating beneficiaries, as defined in
22 subsection (m);

23 “(2) which shall, with respect to participating
24 beneficiaries of such PCN, provide for payment, in
25 accordance with subsection (b)(2)(C), for all items
26 and services for which payment would otherwise be

1 made under parts A and B furnished to such bene-
2 ficiaries; and

3 “(3) to which the Secretary shall prospectively
4 make, instead of any other payment that would oth-
5 erwise be made under such parts for such items and
6 services furnished to such participating beneficiaries,
7 capitated payments in accordance with subsection
8 (d), for each month during a year for which the
9 PCN participates in the demonstration project for
10 all such items and services furnished to such partici-
11 pating beneficiaries.

12 “(b) PATIENT CARE NETWORKS.—

13 “(1) ELIGIBLE PCNS.—Subject to the suc-
14 ceeding provisions of this subsection, as determined
15 appropriate by the Secretary, a group composed of
16 at least the following providers of services and sup-
17 pliers which has established a mechanism for shared
18 governance is eligible to enter into agreement under
19 paragraph (2) to participate as a PCN under the
20 demonstration program under this section:

21 “(A) Physicians (as defined in section
22 1861(r)(1)) and practitioners (as described in
23 section 1842(b)(18)(C)(i)) in group practice ar-
24 rangements.

25 “(B) At least one hospital.

1 “(C) Federally qualified health center (as
2 defined in section 1861(aa)(4)).

3 “(D) Such other providers of services and
4 suppliers as the Secretary determines appro-
5 priate.

6 “(2) REQUIREMENTS.—A PCN shall meet the
7 following requirements to participate in the dem-
8 onstration project:

9 “(A) The PCN shall be an integrated sys-
10 tem of care which directly provides items and
11 services under parts A and B.

12 “(B) The PCN shall employ and enter into
13 appropriate contractual arrangements—

14 “(i) with a sufficient number, as de-
15 termined by the Secretary, of primary care
16 physicians to furnish items and services
17 described in subparagraph (A) to at least
18 twenty thousand participating bene-
19 ficiaries; and

20 “(ii) agree to enter into appropriate
21 contractual arrangements to establish a
22 network of providers of services and sup-
23 pliers to provide sufficient access for par-
24 ticipating beneficiaries with respect to such
25 PCN to items and services for which pay-

1 ment may otherwise be made under parts
2 A and B.

3 “(C) The PCN shall, subject to paragraph
4 (5), be responsible for—

5 “(i) payment to providers of services
6 and suppliers participating in or otherwise
7 entering into agreements with the PCN for
8 items and services furnished to partici-
9 pating beneficiaries with respect to such
10 PCN, in such amounts as specified by the
11 PCN for such items and services; and

12 “(ii) payment to providers of services
13 and suppliers not described in clause (i)
14 for items and services furnished to partici-
15 pating beneficiaries with respect to such
16 PCN, in such amounts as specified by the
17 PCN for such items and services furnished
18 by a provider of services or supplier that is
19 described in such clause.

20 “(D) The PCN shall be willing to become
21 accountable for the quality, cost, and overall
22 care of participating beneficiaries with respect
23 to such PCN.

24 “(E) The PCN shall enter into an agree-
25 ment with the Secretary under paragraph (3).

1 “(F) The PCN shall have a formal legal
2 structure that would allow the organization to
3 receive and distribute payments made to the
4 PCN under subsection (d) to participating pro-
5 viders of services and suppliers.

6 “(G) The PCN shall provide the Secretary
7 with such information regarding providers of
8 services and suppliers participating in the PCN
9 as the Secretary determines necessary to sup-
10 port the assignment of Medicare fee-for-service
11 beneficiaries to a PCN, the implementation of
12 quality requirements under subsection (f), other
13 reporting requirements, and the determination
14 of payments to the PCN under subsection (d).

15 “(H) The PCN shall have in place a lead-
16 ership and management structure that includes
17 clinical and administrative systems.

18 “(I) The PCN shall provide for beneficiary
19 protections for Medicare fee-for-service bene-
20 ficiaries participating in such PCN under the
21 demonstration, including with respect to net-
22 work adequacy, appeals rights, and out-of-pock-
23 et costs.

24 “(3) PARTICIPATION AGREEMENT.—

1 “(A) IN GENERAL.—Each PCN that ap-
2 plies for participation in the demonstration
3 project and is approved for such participation
4 by the Secretary shall enter into an agreement
5 with the Secretary to participate in the dem-
6 onstration project for at least 3 years. Under
7 such agreement, the Secretary may require a
8 PCN to demonstrate, through financial instru-
9 ments including surety bonds, lines of credit, or
10 other means, sufficient financial resources in
11 order to meet reasonably anticipated obligations
12 that would arise as a result of participation in
13 the demonstration project.

14 “(B) RENEWAL.—An agreement under
15 subparagraph (A) may be renewed or extended
16 by mutual agreement of the PCN and the Sec-
17 retary for up to a total of 5 years.

18 “(C) TERMINATION.—The Secretary may
19 terminate an agreement under this paragraph
20 with a PCN before the end of the term of the
21 agreement if the PCN fails to meet minimum
22 quality standards established by the Secretary
23 pursuant to subsection (f) or for any other rea-
24 son specified by the Secretary.

1 “(4) TREATMENT OF ENTITIES IN EXISTING
2 AGREEMENTS.—An organization of providers of
3 services and suppliers that would otherwise be a
4 PCN eligible to participate in the demonstration
5 project, but that has entered into another agreement
6 with the Secretary that involves shared savings
7 under this title and includes downside risk may elect
8 to apply under paragraph (3) to transition from
9 such other agreement into an agreement with the
10 Secretary under paragraph (3) to participate in the
11 demonstration project under this section. Any such
12 organization that transitions under this paragraph
13 to the demonstration project under this section shall
14 do so in a manner that is consistent with any transi-
15 tion provisions as the Secretary may specify.

16 “(5) COST-SHARING.—

17 “(A) IN GENERAL.—Under the demonstra-
18 tion project, cost-sharing that would otherwise
19 apply with respect to an item or service under
20 this title shall apply with respect to such item
21 or service furnished through a PCN, except to
22 the extent such PCN may modify such cost-
23 sharing pursuant to a waiver under subsection
24 (h) and subparagraph (B).

1 “(B) SECRETARIAL APPROVAL.—The Sec-
2 retary shall establish a process under which a
3 PCN participating under the demonstration
4 program may apply to the Secretary for a waiv-
5 er under subsection (h) in order to modify cost-
6 sharing for items and services furnished
7 through such PCN under the demonstration
8 program.

9 “(c) BENEFICIARY ASSIGNMENT.—

10 “(1) ASSIGNMENT TO PCN.—

11 “(A) IN GENERAL.—Upon entering in a
12 contract with a PCN under subsection (b)(3),
13 the Secretary shall establish a process to, with
14 respect to each year during the demonstration
15 project, prospectively assign Medicare fee-for-
16 service beneficiaries to such PCN for such year.
17 Such assignment shall be based on utilization of
18 primary care services furnished under this title
19 by a provider of services or supplier partici-
20 pating in the PCN involved.

21 “(B) SELECTION.—The Secretary shall
22 allow PCNs to establish a pilot program under
23 which such PCNs have a process through which
24 Medicare fee-for-service beneficiaries may select
25 a PCN. Such selection by the beneficiary shall

1 be treated for purposes of this section as the
2 assignment of the beneficiary to the PCN and
3 shall supercede any other assignment by the
4 Secretary under subparagraph (A) with respect
5 to such beneficiary.

6 “(C) OPT OUT.—The process under para-
7 graph (1) shall allow for Medicare fee-for-serv-
8 ice beneficiaries to opt out of this section.

9 “(2) PRIMARY CARE PHYSICIAN ASSIGNMENT.—

10 Upon assignment under paragraph (1) of a Medicare
11 fee-for-service beneficiary to a PCN, the Secretary
12 shall allow the PCN to contact the beneficiary to
13 designate a primary care physician participating in
14 the PCN who shall be accountable for the coordina-
15 tion of the medical care of the beneficiary. The Sec-
16 retary shall also allow the PCN to communicate with
17 other individuals entitled to benefits under part A or
18 enrolled under part B in the region served by the
19 PCN regarding the opportunity to participate in th
20 PCN. The Secretary shall promulgate regulations to
21 govern the assignment of an individual to a primary
22 care physician participating in the PCN in the ab-
23 sence of such designation by the individual in a
24 manner that promotes patient engagement and sta-
25 bility in assignment and that takes into account pri-

1 mary care visits by physicians, nurse practitioners,
2 and physician assistants.

3 “(3) PAYMENTS WITH RESPECT TO POPU-
4 LATION.—Except in circumstances specified by the
5 Secretary, during the period for which a Medicare
6 fee-for-service beneficiary is a participating bene-
7 ficiary with respect to a PCN under this section,
8 payment may not be made under part A or B with
9 respect to such beneficiary other than under this
10 section.

11 “(4) SERVICES FROM OUT-OF-PCN PRO-
12 VIDERS.—

13 “(A) IN GENERAL.—In the case of an item
14 or service covered under the demonstration
15 project which is furnished to a participating
16 beneficiary, with respect to a PCN, during the
17 period in which the beneficiary is participating
18 in such PCN under the demonstration project
19 from a provider of services or supplier not par-
20 ticipating in or otherwise entering into an
21 agreement with the PCN with respect to such
22 item or service (in this paragraph referred to as
23 an ‘out-of-network provider’, with respect to
24 such PCN), in addition to any cost-sharing re-
25 sponsibility specified by the PCN, the bene-

1 ficiary shall be responsible for any amount by
2 which—

3 “(i) the amount payable under part A
4 or B for such item or service; exceeds

5 “(ii) the payment amount that would
6 be paid by the PCN for such item or serv-
7 ice if such item or service were furnished
8 by a provider of services or supplier who is
9 participating in, or otherwise has an agree-
10 ment with, the PCN with respect to such
11 item or service.

12 “(B) REIMBURSEMENT BY PCN.—

13 “(i) IN GENERAL.—In applying this
14 paragraph, the Secretary shall ensure that
15 an out-of-network provider, with respect to
16 a PCN that furnishes an item or service to
17 a participating beneficiary, with respect to
18 such PCN, is reimbursed by the PCN in
19 such a manner that avoids fraud and du-
20 plication of payment. For purposes of the
21 previous sentence, the Secretary shall es-
22 tablish a process by which such a provider
23 may establish a contractual relationship
24 with a PCN for reimbursement, subject to
25 clause (ii), for items and services furnished

1 to participating beneficiaries, with respect
2 to such PCN.

3 “(ii) LIMITATION.—Any out-of-net-
4 work provider, with respect to a PCN, may
5 not be reimbursed by the PCN for an item
6 or service by an amount that is more than
7 90 percent of the amount that would oth-
8 erwise be payable for such item or service
9 under part A or part B, as applicable.

10 “(d) CALCULATION OF POPULATION HEALTH BUDG-
11 ETS AND PAYMENTS TO PCNs.—

12 “(1) CALCULATION OF POPULATION HEALTH
13 BUDGETS.—Under the demonstration project, the
14 Secretary shall calculate PCN specific monthly pro-
15 spective population health budgets to PCNs as fol-
16 lows:

17 “(A) BASE ANNUAL POPULATION HEALTH
18 BUDGET.—Subject to subparagraph (C), the
19 Secretary shall calculate a base annual prospec-
20 tive population health budget for each PCN,
21 which shall be the actual annual per capita
22 total costs payable under parts A and B during
23 the year prior to the first year of the dem-
24 onstration project attributable to all individuals
25 enrolled under Medicare fee-for-service.

1 “(B) PCN SPECIFIC POPULATION HEALTH
2 BUDGET.—Subject to subparagraphs (C) and
3 (D), for each year for which a PCN participates
4 under the demonstration project, the Secretary
5 shall calculate the PCN specific prospective
6 population health budget for the PCN by—

7 “(i) adjusting the base annual pro-
8 spective population health budget under
9 subparagraph (A) for such year for bene-
10 ficiary characteristics (including age, gen-
11 der, and health status) of the participating
12 beneficiaries with respect to such PCN and
13 the geographic factors with respect to such
14 PCN;

15 “(ii) updating such budget annually to
16 account for changes in population;

17 “(iii) updating such budget by the
18 projected growth in parts A and B services
19 under the original Medicare fee-for-service
20 program, as estimated by the Secretary;
21 and

22 “(iv) multiplying such budget by the
23 number of participating beneficiaries ac-
24 counted for in the previous payment year
25 in the PCN service area.

1 “(C) NON-APPLICATION OF CERTAIN PRO-
2 VISIONS.—In calculating the base annual popu-
3 lation health budget under subparagraph (A)
4 and the PCN specific population health budgets
5 under subparagraph (B), subsections (p) and
6 (q) of section 1886 shall not be taken into ac-
7 count.

8 “(D) LIMITATIONS.—

9 “(i) INITIAL 3 YEARS.—The PCN spe-
10 cific prospective population health budgets
11 under subparagraph (B) for all PCNs shall
12 be established in a manner that will result
13 in total expenditures under this section
14 being—

15 “(I) for the first year of the dem-
16 onstration project, not more than 99
17 percent of the total expenditures
18 under parts A and B that otherwise
19 would have been expended for such
20 participating beneficiaries for such
21 year, as prospectively estimated by the
22 Secretary; and

23 “(II) for the second and third
24 years of the demonstration project,
25 not less than 97 percent of the total

1 expenditures under parts A and B
2 that otherwise would have been ex-
3 pended for such participating bene-
4 ficiaries for the year, as prospectively
5 estimated by the Secretary.

6 “(ii) SUBSEQUENT YEARS.—The Sec-
7 retary may establish a generally applicable
8 savings benchmark for all PCNs in the
9 demonstration project for any year subse-
10 quent to the third year of the demonstra-
11 tion project, provided that in establishing
12 such benchmark the Secretary shall not re-
13 capture the savings retained by PCNs in
14 prior years in any manner.

15 “(2) PAYMENTS TO PCNS.—

16 “(A) IN GENERAL.—For each month of
17 each year a PCN participates in the demonstra-
18 tion project, the Secretary shall pay each PCN
19 a prospective, monthly payment equal to one-
20 twelfth of the PCN specific population health
21 budget under paragraph (1)(B) calculated for
22 such PCN for such year. In carrying out the
23 previous sentence, any payment so made shall
24 be made to the PCN and not to a provider of
25 services or supplier participating in such PCN.

1 “(B) SPECIAL CIRCUMSTANCES.—The Sec-
2 retary shall identify special circumstances in
3 which payment may be made under parts A and
4 B with respect to a participating beneficiary
5 other than under this section. The Secretary
6 shall ensure that each PCN establishes a mech-
7 anism for reimbursement and budget adjust-
8 ment in the case of such special circumstances
9 attributable to participating beneficiaries and a
10 method for adjusting the PCN specific prospec-
11 tive population health budgets to the PCNs in-
12 volved in such cases to account for payments
13 made under parts A and B in such cir-
14 cumstances for such participating beneficiaries
15 to providers of services and suppliers that are
16 not participating in (or contracting with) the
17 PCN involved.

18 “(e) DATA SHARING.—The Secretary shall promptly
19 provide necessary data on a regular basis to a PCN, in-
20 cluding each claim for items and services for which pay-
21 ment may be made under parts A, B, and D associated
22 with participating beneficiaries of such PCN, to enable the
23 coordination of care for participating beneficiaries with re-
24 spect to such PCN.

1 “(f) QUALITY REPORTS.—The Secretary shall estab-
2 lish performance standards (and a method to assess the
3 performance of PCNs with respect to such quality stand-
4 ards) to assess the quality of care furnished by PCNs.
5 Such assessment shall initially be based on the quality
6 measures used for organizations that have entered into
7 shared savings agreements pursuant to sections 1115A
8 and 1899. The Secretary shall seek to improve the quality
9 of care furnished by PCNs over time by specifying higher
10 standards, new measures, or both for purposes of assess-
11 ing such quality of care.

12 “(g) COORDINATION.—The Secretary may, in such
13 manner and according to such methods as specified by the
14 Secretary, coordinate the activities of PCNs with respect
15 to covered part D drugs in order to increase the quality
16 and availability of health care items or services to partici-
17 pating beneficiaries and may elect to contract with PCNs
18 to provide prescription drug coverage.

19 “(h) WAIVER AUTHORITY.—The Secretary shall
20 waive such requirements of sections 1128A and 1128B of
21 this title as may be necessary to carry out the provisions
22 of this section. Such waivers shall include, without limita-
23 tion, a waiver of prohibition on beneficiary inducements
24 in the form of co-pay waivers, medical transportation, pro-
25 vision of tele-health and medical monitoring equipment for

1 home use, contracts with providers of services and sup-
2 pliers participating in the PCN, and waivers allowing the
3 provision of other supplies and services that permit the
4 efficient delivery of care in home, post-acute, and alter-
5 native settings. Any waivers established pursuant to sec-
6 tion 1899(f) shall also apply to the demonstration project.

7 “(i) ADMINISTRATION.—Chapter 35 of title 44,
8 United States Code, shall not apply to the demonstration
9 project.

10 “(j) STATE INSURANCE LAWS; PREEMPTION.—A
11 PCN shall not be required to be licensed as a health insur-
12 ance company or health maintenance organization under
13 the laws of any State. Any State law that would under-
14 mine the purpose of this section is preempted.

15 “(k) REPORTS TO CONGRESS.—The Secretary shall
16 for each year of the demonstration project submit to Con-
17 gress a report on the status and results of the demonstra-
18 tion project.

19 “(l) EXPANSION OF PROJECT.—The Secretary may,
20 through rulemaking, expand (including implementation on
21 a nationwide basis) the duration and the scope of the dem-
22 onstration project, to the extent determined appropriate
23 by the Secretary, if—

24 “(1) the Secretary determines that such expan-
25 sion is expected to—

1 “(A) reduce spending under this title with-
2 out reducing the quality of care; or

3 “(B) improve the quality of patient care
4 without increasing spending;

5 “(2) the Chief Actuary of the Centers for Medi-
6 care & Medicaid Services certifies that such expan-
7 sion would reduce (or would not result in any in-
8 crease in) net program spending under this title; and

9 “(3) the Secretary determines that such expan-
10 sion would not deny or limit the coverage or provi-
11 sion of benefits under the applicable title for applica-
12 ble individuals.

13 “(m) DEFINITIONS.—In this section:

14 “(1) The term ‘hospital’ means a subsection (d)
15 hospital (as defined in section 1886(d)(1)(B)).

16 “(2) The term ‘Medicare fee-for-service bene-
17 ficiary’ has the meaning given such term in section
18 1899(h)(3).

19 “(3) The term ‘participating beneficiary’
20 means, with respect to a PCN, a Medicare fee-for-
21 service beneficiary who has been assigned under sub-
22 section (c) to such PCN.”.

○