

115TH CONGRESS
1ST SESSION

S. 2051

To amend title XVIII of the Social Security Act to modernize the physician self-referral prohibitions to promote care coordination in the merit-based incentive payment system and to facilitate physician practice participation in alternative payment models under the Medicare program, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 1, 2017

Mr. PORTMAN (for himself and Mr. BENNET) introduced the following bill;
which was read twice and referred to the Committee on Finance

A BILL

To amend title XVIII of the Social Security Act to modernize the physician self-referral prohibitions to promote care coordination in the merit-based incentive payment system and to facilitate physician practice participation in alternative payment models 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 Care Coordi-
5 nation Improvement Act of 2017”.

1 **SEC. 2. MODERNIZATION OF LIMITATIONS ON PHYSICIAN**
 2 **SELF-REFERRAL.**

3 (a) FACILITATION OF PARTICIPATION IN ALTER-
 4 NATIVE PAYMENT MODELS.—

5 (1) IN GENERAL.—Section 1833 of the Social
 6 Security Act (42 U.S.C. 1395l) is amended—

7 (A) in subsection (z), as added by section
 8 101(e)(2) of the Medicare Access and CHIP
 9 Reauthorization Act of 2015 (Public Law 114–
 10 10), by adding at the end the following para-
 11 graph:

12 “(5) WAIVER AUTHORITY.—

13 “(A) IN GENERAL.—The provisions of sub-
 14 section (f) of section 1899 shall apply with re-
 15 spect to covered APM entities to the same ex-
 16 tent and in the same manner as such provisions
 17 apply with respect to accountable care organiza-
 18 tions under such section.

19 “(B) COVERED APM ENTITIES.—For pur-
 20 poses of subparagraph (A), the term ‘covered
 21 APM entity’ means, subject to subparagraph
 22 (C), each of the following:

23 “(i) An eligible alternative payment
 24 entity as defined in paragraph (3)(D).

25 “(ii) An entity participating in an al-
 26 ternative payment model as defined in

1 paragraph (3)(C), including such participa-
2 tion that qualifies as a clinical practice im-
3 provement activity under section
4 1848(q)(2)(B)(iii)(VI).

5 “(iii) An entity participating in a phy-
6 sician-focused payment model for which
7 comments and recommendations have,
8 under subparagraph (C) of section
9 1868(c)(2), been submitted indicating that
10 such model meets the criteria described in
11 subparagraph (A) of such section.

12 “(iv) An entity participating in any
13 other model that the Secretary determines
14 is a covered APM for purposes of subpara-
15 graph (A), including such a determination
16 made pursuant to physicians submitting a
17 proposal to the Secretary for an alternative
18 payment model.

19 “(v) An entity engaging in activities
20 that the Secretary has determined con-
21 stitute significant progress toward estab-
22 lishing a model referred to in any of
23 clauses (i) through (iv).

24 “(C) CERTAIN REQUIREMENTS.—A model
25 referred to in any of clauses (i) through (iv) of

subparagraph (B) may not be considered a covered APM entity for purposes of subparagraph (A) unless the model meets the requirements described in section 1877(b)(6)(B).”; and

(B) by redesignating subsection (z), as added by section 514(a) of the Medicare Access and CHIP Reauthorization Act of 2015 (Public Law 114–10), as subsection (aa).

(2) CONFORMING AMENDMENT.—Section 514(c)(1) of the Medicare Access and CHIP Reauthorization Act of 2015 (Public Law 114–10) is amended by striking “subsection (z)” and inserting “subsection (aa)”.

(b) EXPANSION OF ADMINISTRATIVE AUTHORITY TO PROVIDE EXCEPTIONS TO PHYSICIAN OWNERSHIP AND COMPENSATION ARRANGEMENT PROHIBITIONS TO PROMOTE CARE COORDINATION.—

(1) PROMOTING CARE COORDINATION.—Section 1877(b)(4) of the Social Security Act (42 U.S.C. 1395nn(b)(4)) is amended by striking “risk of program or patient abuse” and inserting the following: “significant risk of program or patient abuse, including those that would promote care coordination, quality improvement, or resource conservation by physician practices under part B”.

1 (2) CARE COORDINATION IN MIPS AND PARTICI-
 2 PATION IN APMS.—Section 1877(a) of the Social Se-
 3 curity Act (42 U.S.C. 1395nn(a)) is amended by
 4 adding at the end the following new paragraph:

5 “(3) LIMITATION.—The Secretary may not im-
 6 pose requirements under this section that could ad-
 7 versely affect—

8 “(A) physician care coordination in the
 9 merit-based incentive payment system under
 10 section 1848(q); or

11 “(B) physician participation in an alter-
 12 native payment model under 1833(z).”.

13 (c) EXCEPTION FACILITATING THE DEVELOPMENT
 14 AND OPERATION OF ALTERNATIVE PAYMENT MODELS.—
 15 Section 1877(b) of the Social Security Act (42 U.S.C.
 16 1395nn(b)) is amended by adding at the end the following
 17 new paragraph:

18 “(6) DEVELOPMENT AND OPERATION OF AL-
 19 TERNATIVE PAYMENT MODELS.—

20 “(A) IN GENERAL.—In the case of services
 21 furnished pursuant to an arrangement that
 22 meets the requirements described in subpara-
 23 graph (B) entered into for the purpose of devel-
 24 oping or operating an alternative payment
 25 model, including—

1 “(i) advanced alternative payment
2 models described in section 1833(z) (in-
3 cluding physician-focused payment models
4 referred to in section 1868(c));

5 “(ii) MIPS APMs (as defined by the
6 Secretary); and

7 “(iii) any other alternative payment
8 model that the Secretary may, by regula-
9 tion, specify.

10 “(B) REQUIREMENTS.—The requirements
11 described in this subparagraph with respect to
12 an arrangement relating to an alternative pay-
13 ment model are as follows:

14 “(i) The arrangement is in writing,
15 identifies the services, items, or actions
16 subject to the arrangement and is signed
17 by the parties to the arrangement.

18 “(ii) Items and services furnished sub-
19 ject to the arrangement are furnished at
20 fair market value. In this clause, the term
21 ‘fair market value’ has the meaning given
22 such term in subsection (h)(3), except that
23 the Secretary may not take into account
24 the volume or value of referrals in deter-

1 mining such value for purposes of this
2 clause.

3 “(iii) The arrangement includes a de-
4 scription of the alternative payment model.

5 “(iv) Under the arrangement written
6 reports are submitted to the Secretary on
7 a semi-annual basis on the progress
8 achieved in the development and operation
9 of the alternative payment model.

10 “(v) The arrangement meets such
11 other requirements as the Secretary may
12 impose by regulation as needed to protect
13 against a significant risk of program pa-
14 tient abuse.”.

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