II

116TH CONGRESS
2D SESSION

S. 4088

To amend title XIX of the Social Security Act to extend the application of the Medicare payment rate floor to primary care services furnished under Medicaid and to apply the rate floor to additional providers of primary care services.

IN THE SENATE OF THE UNITED STATES

JUNE 25, 2020

Mr. BROWN (for himself, Mrs. MURRAY, Mr. LEAHY, Ms. BALDWIN, Mr. SCHATZ, Ms. STABENOW, Mr. MURPHY, and Mr. MERKLEY) introduced the following bill; which was read twice and referred to the Committee on Finance

---

A BILL

To amend title XIX of the Social Security Act to extend the application of the Medicare payment rate floor to primary care services furnished under Medicaid and to apply the rate floor to additional providers of primary care services.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Ensuring Access to Primary Care for Women & Children Act''.

SEC. 2. RENEWAL OF APPLICATION OF MEDICARE PAYMENT RATE FLOOR TO PRIMARY CARE SERVICES FURNISHED UNDER MEDICAID AND INCLUSION OF ADDITIONAL PROVIDERS.

(a) RENEWAL OF PAYMENT FLOOR; ADDITIONAL PROVIDERS.—

(1) IN GENERAL.—Section 1902(a)(13) of the Social Security Act (42 U.S.C. 1396a(a)(13)) is amended by striking subparagraph (C) and inserting the following:

"(C) payment for primary care services (as defined in subsection (jj)) at a rate that is not less than 100 percent of the payment rate that applies to such services and provider under part B of title XVIII (or, if greater, the payment rate that would be applicable under such part if the conversion factor under section 1848(d) for the year involved were the conversion factor under such section for 2009), and that is not less than the rate that would otherwise apply to such services under this title if the rate were determined without regard to this subparagraph, and that are—

"(i) furnished in 2013 and 2014, by a physician with a primary specialty designa-

tion of family medicine, general internal medicine, or pediatric medicine; or

''(ii) furnished in the 2-year period that begins on the first day of the first month that begins after the date of enactment of the Ensuring Access to Primary Care for Women & Children Act or during any other additional period specified with respect to the State under section 1905(dd)(2)—

''(I) by a physician with a primary specialty designation of family medicine, general internal medicine, or pediatric medicine, but only if the physician self-attests that the physician is Board certified in family medicine, general internal medicine, or pediatric medicine;

''(II) by a physician with a primary specialty designation of obstetrics and gynecology, but only if the physician self-attests that the physician is Board certified in obstetrics and gynecology;

"(III) by an advanced practice clinician, as defined by the Secretary (except that the Secretary shall define such term for purposes of this subparagraph to exclude a provider described in subclause (I), (II), or (V)), that works under the supervision of—

"(aa) a physician that satisfies the criteria specified in subclause (I) or (II); or

"(bb) a nurse practitioner or a physician assistant (as such terms are defined in section 1861(aa)(5)(A)) who is working in accordance with State law, or a certified nurse-midwife (as defined in section 1861(gg)) who is working in accordance with State law;

"(IV) by a rural health clinic, Federally-qualified health center, or other health clinic that receives reimbursement on a fee schedule applicable to a physician, a nurse practitioner or a physician assistant (as

such terms are defined in section 1861(aa)(5)(A)) who is working in accordance with State law, or a certified nurse-midwife (as defined in section 1861(gg)) who is working in accordance with State law, for services furnished by a physician, nurse practitioner, physician assistant, or certified nurse-midwife, or services furnished by an advanced practice clinician supervised by a physician described in subclause (I) or (II), another advanced practice clinician, a nurse practitioner, physician assistant, or a certified nurse-midwife; or

''(V) by a nurse practitioner or a physician assistant (as such terms are defined in section 1861(aa)(5)(A)) who is working in accordance with State law, or a certified nurse-midwife (as defined in section 1861(gg)) who is working in accordance with State law, in accordance with procedures that ensure that the portion of the payment for such services that the

nurse practitioner, physician assistant, or certified nurse-midwife is paid is not less than the amount that the nurse practitioner, physician assistant, or certified nurse-midwife would be paid if the services were provided under part B of title XVIII;''.

(2) CONFORMING AMENDMENTS.—Section 1905(dd) of the Social Security Act (42 U.S.C. 1396d(dd)) is amended—

(A) by striking ''Notwithstanding'' and inserting the following:

''(1) IN GENERAL.—Notwithstanding'';

(B) by inserting ''or furnished during a period that is an additional period with respect to the State, as specified in paragraph (2),'' after ''2015,''; and

(C) by adding at the end the following:

''(2) ADDITIONAL PERIODS.—For purposes of paragraph (1):

''(A) The 2-year period that begins on the first day of the first month that begins after the date of enactment of the Ensuring Access to Primary Care for Women & Children Act

shall be an additional period with respect to all States.

''(B) Any public health emergency period (as defined in paragraph (3)) with respect to a State shall be an additional period with respect to such State.

''(3) PUBLIC HEALTH EMERGENCY PERIOD.—For purposes of paragraph (2), the term 'public health emergency period' means, with respect to a State, a period that—

''(A) begins on the date on which a public health emergency is declared with respect to the State by the Secretary pursuant to section 319 of the Public Health Service Act; and

''(B) ends on the last day of the sixth month that begins on or after the date on which such declaration expires.''.

(b) IMPROVED TARGETING OF PRIMARY CARE.—Section 1902(jj) of the Social Security Act (42 U.S.C. 1396a(jj)) is amended—

(1) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively and realigning the left margins accordingly;

(2) by striking ''For purposes of'' and inserting the following:

''(1) IN GENERAL.—For purposes of''; and

(3) by adding at the end the following:

''(2) EXCLUSIONS.—Such term does not include any services described in subparagraph (A) or (B) of paragraph (1) if such services are provided in an emergency department of a hospital.''.

(c) ENSURING PAYMENT BY MANAGED CARE ENTITIES.—

(1) IN GENERAL.—Section 1903(m)(2)(A) of the Social Security Act (42 U.S.C. 1396b(m)(2)(A)) is amended—

(A) in clause (xii), by striking ''and'' after the semicolon;

(B) by realigning the left margin of clause (xiii) so as to align with the left margin of clause (xii) and by striking the period at the end of clause (xiii) and inserting ''; and''; and

(C) by inserting after clause (xiii) the following:

''(xiv) such contract provides that (I) payments to providers specified in section 1902(a)(13)(C) for primary care services defined in section 1902(jj) that are furnished during a year or period specified in section 1902(a)(13)(C) and section 1905(dd) are at least equal to the amounts set forth and required

by the Secretary by regulation, (II) the entity shall, upon request, provide documentation to the State, sufficient to enable the State and the Secretary to ensure compliance with subclause (I), and (III) the Secretary shall approve payments described in subclause (I) that are furnished through an agreed upon capitation, partial capitation, or other value-based payment arrangement if the capitation, partial capitation, or other value-based payment arrangement is based on a reasonable methodology and the entity provides documentation to the State sufficient to enable the State and the Secretary to ensure compliance with subclause (I).''.

(2) CONFORMING AMENDMENT.—Section 1932(f) of the Social Security Act (42 U.S.C. 1396u–2(f)) is amended by inserting ''and clause (xiv) of section 1903(m)(2)(A)'' before the period.

SEC. 3. IMPROVING QUALITY AND VALUE FOR MEDICAID BENEFICIARIES.

(a) GAO STUDY.—Not later than 3 years after the date of enactment of this Act, the Comptroller General of the United States shall submit to Congress a report that examines the effects of the payment rate floor for primary care services under Medicaid provided under section 1902(a)(13)(C) of the Social Security Act (42 U.S.C.

1396a(a)(13)(C)) on beneficiary access to such services, including any recommendations for how the payment rate floor for such services could be more effective.

(b) FUNDING THE DEVELOPMENT OF QUALITY MEASURES.—The first sentence of section 1139B(e) of the Social Security Act (42 U.S.C. 1320b–9b(e)) is amended by inserting ", and for fiscal year 2016, $15,000,000," before "for the purpose".

(c) DEVELOPING QUALITY MEASURES FOR BENEFICIARIES WITH DISABILITIES.—Section 1139B(b)(5) of the Social Security Act (42 U.S.C. 1320b–9b(b)(5)) is amended by adding at the end the following:

"(D) QUALITY MEASURES SPECIFIC TO ADULT INDIVIDUALS WITH DISABILITIES.—The Secretary, acting through the Administrator for the Centers for Medicare & Medicaid Services and the Director of the Agency for Healthcare Research and Quality, shall develop adult health quality measures that are specific to adult individuals with disabilities and shall include those measures in the Medicaid Quality Measurement Program. In developing such measures, priority shall be given to developing quality measures that assess the impact on adult individuals with disabilities of existing

programs and to the development of quality measures that assess the impact of new service delivery innovations on such individuals.''.

○