

114TH CONGRESS
1ST SESSION

S. 2425

To amend titles XVIII and XIX of the Social Security Act to improve payments for complex rehabilitation technology and certain radiation therapy services, to ensure flexibility in applying the hardship exception for meaningful use for the 2015 EHR reporting period for 2017 payment adjustments, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 18, 2015

Mr. PORTMAN (for himself, Mr. CASEY, Mr. BURR, Mr. SCHUMER, Mr. BLUNT, Mr. BENNET, Mr. WYDEN, Mrs. MURRAY, Mr. BLUMENTHAL, Ms. KLOBUCHAR, and Ms. HIRONO) introduced the following bill; which was read twice, considered, read the third time, and passed

A BILL

To amend titles XVIII and XIX of the Social Security Act to improve payments for complex rehabilitation technology and certain radiation therapy services, to ensure flexibility in applying the hardship exception for meaningful use for the 2015 EHR reporting period for 2017 payment adjustments, 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 “Patient Access and
5 Medicare Protection Act”.

1 **SEC. 2. NON-APPLICATION OF MEDICARE FEE SCHEDULE**
2 **ADJUSTMENTS FOR WHEELCHAIR ACCES-**
3 **SORIES AND SEAT AND BACK CUSHIONS**
4 **WHEN FURNISHED IN CONNECTION WITH**
5 **COMPLEX REHABILITATIVE POWER WHEEL-**
6 **CHAIRS.**

7 (a) NON-APPLICATION.—

8 (1) IN GENERAL.—Notwithstanding any other
9 provision of law, the Secretary of Health and
10 Human Services shall not, prior to January 1, 2017,
11 use information on the payment determined under
12 the competitive acquisition programs under section
13 1847 of the Social Security Act (42 U.S.C. 1395w–
14 3)) to adjust the payment amount that would other-
15 wise be recognized under section 1834(a)(1)(B)(ii)
16 of such Act (42 U.S.C. 1395m(a)(1)(B)(ii)) for
17 wheelchair accessories (including seating systems)
18 and seat and back cushions when furnished in con-
19 nection with Group 3 complex rehabilitative power
20 wheelchairs.

21 (2) IMPLEMENTATION.—Notwithstanding any
22 other provision of law, the Secretary may implement
23 this subsection by program instruction or otherwise.

24 (b) GAO STUDY AND REPORT.—

25 (1) STUDY.—

1 (A) IN GENERAL.—The Comptroller Gen-
2 eral of the United States shall conduct a study
3 on wheelchair accessories (including seating sys-
4 tems) and seat and back cushions furnished in
5 connection with Group 3 complex rehabilitative
6 power wheelchairs. Such study shall include an
7 analysis of the following with respect to such
8 wheelchair accessories and seat and back cush-
9 ions in each of the groups described in clauses
10 (i) through (iii) of subparagraph (B):

11 (i) The item descriptions and associ-
12 ated HCPCS codes for such wheelchair ac-
13 cessories and seat and back cushions.

14 (ii) A breakdown of utilization and ex-
15 penditures for such wheelchair accessories
16 and seat and back cushions under title
17 XVIII of the Social Security Act.

18 (iii) A comparison of the payment
19 amount under the competitive acquisition
20 program under section 1847 of such Act
21 (42 U.S.C. 1395w-3) with the payment
22 amount that would otherwise be recognized
23 under section 1834 of such Act (42 U.S.C.
24 1395m), including beneficiary cost sharing,

for such wheelchair accessories and seat and back cushions.

(iv) The aggregate distribution of such wheelchair accessories and seat and back cushions furnished under such title XVIII within each of the groups described in subparagraph (B).

(v) Other areas determined appropriate by the Comptroller General.

(B) GROUPS DESCRIBED.—The following groups are described in this subparagraph:

(i) Wheelchair accessories and seat and back cushions furnished predominantly with Group 3 complex rehabilitative power wheelchairs.

(ii) Wheelchair accessories and seat and back cushions furnished predominantly with power wheelchairs that are not described in clause (i).

(iii) Other wheelchair accessories and seat and back cushions furnished with either power wheelchairs described in clause (i) or (ii).

(2) REPORT.—Not later than June 1, 2016, the Comptroller General of the United States shall sub-

1 mit to Congress a report containing the results of
 2 the study conducted under paragraph (1), together
 3 with recommendations for such legislation and ad-
 4 ministrative as the Comptroller General determines
 5 to be appropriate.

6 **SEC. 3. TRANSITIONAL PAYMENT RULES FOR CERTAIN RA-**
 7 **DIATION THERAPY SERVICES UNDER THE**
 8 **MEDICARE PHYSICIAN FEE SCHEDULE.**

9 (a) IN GENERAL.—Section 1848 of the Social Secu-
 10 rity Act (42 U.S.C. 1395w-4) is amended—

11 (1) in subsection (b), by adding at the end the
 12 following new paragraph:

13 “(11) SPECIAL RULE FOR CERTAIN RADIATION
 14 THERAPY SERVICES.—The code definitions, the work
 15 relative value units under subsection (c)(2)(C)(i),
 16 and the direct inputs for the practice expense rel-
 17 ative value units under subsection (c)(2)(C)(ii) for
 18 radiation treatment delivery and related imaging
 19 services (identified in 2016 by HCPCS G-codes
 20 G6001 through G6015) for the fee schedule estab-
 21 lished under this subsection for services furnished in
 22 2017 and 2018 shall be the same as such defini-
 23 tions, units, and inputs for such services for the fee
 24 schedule established for services furnished in 2016.”;
 25 and

(2) in subsection (c)(2)(K), by adding at the end the following new clause:

“(iv) TREATMENT OF CERTAIN RADIATION THERAPY SERVICES.—Radiation treatment delivery and related imaging services identified under subsection (b)(11) shall not be considered as potentially misvalued services for purposes of this subparagraph and subparagraph (O) for 2017 and 2018.”.

(b) REPORT TO CONGRESS ON ALTERNATIVE PAYMENT MODEL.—Not later than 18 months after the date of the enactment of this Act, the Secretary of Health and Human Services shall submit to Congress a report on the development of an episodic alternative payment model for payment under the Medicare program under title XVIII of the Social Security Act for radiation therapy services furnished in nonfacility settings.

SEC. 4. ENSURING FLEXIBILITY IN APPLYING HARDSHIP EXCEPTION FOR MEANINGFUL USE FOR 2015 EHR REPORTING PERIOD FOR 2017 PAYMENT ADJUSTMENTS.

(a) ELIGIBLE PROFESSIONALS.—Section 1848(a)(7)(B) of the Social Security Act (42 U.S.C. 1395w-4(a)(7)(B)) is amended, in the first sentence, by

1 inserting “(and, with respect to the payment adjustment
 2 under subparagraph (A) for 2017, for categories of eligible
 3 professionals, as established by the Secretary and posted
 4 on the Internet website of the Centers for Medicare &
 5 Medicaid Services prior to December 15, 2015, an applica-
 6 tion for which must be submitted to the Secretary by not
 7 later than March 15, 2016)” after “case-by-case basis”.

8 (b) ELIGIBLE HOSPITALS.—Section
 9 1886(b)(3)(B)(ix) of the Social Security Act (42 U.S.C.
 10 1395ww(b)(3)(B)(ix)) is amended—

11 (1) in the first sentence of subclause (I), by
 12 striking “(n)(6)(A)” and inserting “(n)(6)”; and

13 (2) in subclause (II), in the first sentence, by
 14 inserting “(and, with respect to the application of
 15 subclause (I) for fiscal year 2017, for categories of
 16 subsection (d) hospitals, as established by the Sec-
 17 retary and posted on the Internet website of the
 18 Centers for Medicare & Medicaid Services prior to
 19 December 15, 2015, an application for which must
 20 be submitted to the Secretary by not later than
 21 April 1, 2016)” after “case-by-case basis”.

22 (c) IMPLEMENTATION.—Notwithstanding any other
 23 provision of law, the Secretary of Health and Human
 24 Services shall implement the provisions of, and the amend-
 25 ments made by, subsections (a) and (b) by program in-

1 struction, such as through information on the Internet
 2 website of the Centers for Medicare & Medicaid Services.

3 **SEC. 5. MEDICARE IMPROVEMENT FUND.**

4 Section 1898(b)(1) of the Social Security Act (42
 5 U.S.C. 1395iii(b)(1)) is amended by striking
 6 “\$5,000,000” and inserting “\$0”.

7 **SEC. 6. STRENGTHENING MEDICAID PROGRAM INTEGRITY**
 8 **THROUGH FLEXIBILITY.**

9 Section 1936 of the Social Security Act (42 U.S.C.
 10 1396u–6) is amended—

11 (1) in subsection (a), by inserting “, or other-
 12 wise,” after “entities”; and

13 (2) in subsection (e)—

14 (A) in paragraph (1), in the matter pre-
 15 ceding subparagraph (A), by inserting “(includ-
 16 ing the costs of equipment, salaries and bene-
 17 fits, and travel and training)” after “Program
 18 under this section”; and

19 (B) in paragraph (3), by striking “by 100”
 20 and inserting “by 100, or such number as de-
 21 termined necessary by the Secretary to carry
 22 out the Program,”.

1 **SEC. 7. ESTABLISHING MEDICARE ADMINISTRATIVE CON-**
 2 **TRACTOR ERROR REDUCTION INCENTIVES.**

3 (a) IN GENERAL.—Section 1874A(b)(1)(D) of the
 4 Social Security Act (42 U.S.C. 1395kk–1(b)(1)(D)) is
 5 amended—

6 (1) by striking “QUALITY.—The Secretary” and
 7 inserting “QUALITY.—

8 “(i) IN GENERAL.—Subject to clauses

9 (ii) and (iii), the Secretary”; and

10 (2) by inserting after clause (i), as added by
 11 paragraph (1), the following new clauses:

12 “(ii) IMPROPER PAYMENT RATE RE-
 13 DUCATION INCENTIVES.—The Secretary
 14 shall provide incentives for medicare ad-
 15 ministrative contractors to reduce the im-
 16 proper payment error rates in their juris-
 17 dictions.

18 “(iii) INCENTIVES.—The incentives
 19 provided for under clause (ii)—

20 “(I) may include a sliding scale
 21 of award fee payments and additional
 22 incentives to medicare administrative
 23 contractors that either reduce the im-
 24 proper payment rates in their jurisdic-
 25 tions to certain thresholds, as deter-
 26 mined by the Secretary, or accomplish

1 tasks, as determined by the Secretary,
2 that further improve payment accu-
3 racy; and

4 “(II) may include substantial re-
5 ductions in award fee payments under
6 cost-plus-award-fee contracts, for
7 medicare administrative contractors
8 that reach an upper end improper
9 payment rate threshold or other
10 threshold as determined by the Sec-
11 retary, or fail to accomplish tasks, as
12 determined by the Secretary, that fur-
13 ther improve payment accuracy.”.

14 (b) EFFECTIVE DATE.—

15 (1) IN GENERAL.—The amendments made by
16 subsection (a) shall apply to contracts entered into
17 or renewed on or after the date that is 3 years after
18 the date of enactment of this Act.

19 (2) APPLICATION TO EXISTING CONTRACTS.—

20 In the case of contracts in existence on or after the
21 date of the enactment of this Act and that are not
22 subject to the effective date under paragraph (1),
23 the Secretary of Health and Human Services shall,
24 when appropriate and practicable, seek to apply the

1 incentives provided for in the amendments made by
2 subsection (a) through contract modifications.

3 **SEC. 8. STRENGTHENING PENALTIES FOR THE ILLEGAL**
4 **DISTRIBUTION OF A MEDICARE, MEDICAID,**
5 **OR CHIP BENEFICIARY IDENTIFICATION OR**
6 **BILLING PRIVILEGES.**

7 Section 1128B(b) of the Social Security Act (42
8 U.S.C. 1320a–7b(b)) is amended by adding at the end the
9 following:

10 “(4) Whoever without lawful authority know-
11 ingly and willfully purchases, sells or distributes, or
12 arranges for the purchase, sale, or distribution of a
13 beneficiary identification number or unique health
14 identifier for a health care provider under title
15 XVIII, title XIX, or title XXI shall be imprisoned
16 for not more than 10 years or fined not more than
17 \$500,000 (\$1,000,000 in the case of a corporation),
18 or both.”.

19 **SEC. 9. IMPROVING THE SHARING OF DATA BETWEEN THE**
20 **FEDERAL GOVERNMENT AND STATE MED-**
21 **ICAID PROGRAMS.**

22 (a) IN GENERAL.—The Secretary of Health and
23 Human Services (in this section referred to as the “Sec-
24 retary”) shall establish a plan to encourage and facilitate
25 the participation of States in the Medicare-Medicaid Data

1 Match Program (commonly referred to as the “Medi-Medi
 2 Program”) under section 1893(g) of the Social Security
 3 Act (42 U.S.C. 1395ddd(g)).

4 (b) PROGRAM REVISIONS TO IMPROVE MEDI-MEDI
 5 DATA MATCH PROGRAM PARTICIPATION BY STATES.—

6 Section 1893(g)(1)(A) of the Social Security Act (42
 7 U.S.C. 1395ddd(g)(1)(A)) is amended—

8 (1) in the matter preceding clause (i), by insert-
 9 ing “or otherwise” after “eligible entities”;

10 (2) in clause (i)—

11 (A) by inserting “to review claims data”
 12 after “algorithms”; and

13 (B) by striking “service, time, or patient”
 14 and inserting “provider, service, time, or pa-
 15 tient”;

16 (3) in clause (ii)—

17 (A) by inserting “to investigate and re-
 18 cover amounts with respect to suspect claims”
 19 after “appropriate actions”; and

20 (B) by striking “; and” and inserting a
 21 semicolon;

22 (4) in clause (iii), by striking the period and
 23 inserting“ ; and”; and

24 (5) by adding at the end the following new
 25 clause:

1 “(iv) furthering the Secretary’s de-
 2 sign, development, installation, or enhance-
 3 ment of an automated data system archi-
 4 tecture—

5 “(I) to collect, integrate, and as-
 6 sess data for purposes of program in-
 7 tegrity, program oversight, and ad-
 8 ministration, including the Medi-Medi
 9 Program; and

10 “(II) that improves the coordina-
 11 tion of requests for data from
 12 States.”.

13 (c) PROVIDING STATES WITH DATA ON IMPROPER
 14 PAYMENTS MADE FOR ITEMS OR SERVICES PROVIDED TO
 15 DUAL ELIGIBLE INDIVIDUALS.—

16 (1) IN GENERAL.—The Secretary shall develop
 17 and implement a plan that allows each State agency
 18 responsible for administering a State plan for med-
 19 ical assistance under title XIX of the Social Security
 20 Act access to relevant data on improper or fraudu-
 21 lent payments made under the Medicare program
 22 under title XVIII of the Social Security Act (42
 23 U.S.C. 1395 et seq.) for health care items or serv-
 24 ices provided to dual eligible individuals.

1 (2) DUAL ELIGIBLE INDIVIDUAL DEFINED.—In
2 this section, the term “dual eligible individual”
3 means an individual who is entitled to, or enrolled
4 for, benefits under part A of title XVIII of the So-
5 cial Security Act (42 U.S.C. 1395c et seq.), or en-
6 rolled for benefits under part B of title XVIII of
7 such Act (42 U.S.C. 1395j et seq.), and is eligible
8 for medical assistance under a State plan under title
9 XIX of such Act (42 U.S.C. 1396 et seq.) or under
10 a waiver of such plan.

○