

111TH CONGRESS
1ST SESSION

H. R. 3693

To amend title XVIII of the Social Security Act to modify Medicare physician reimbursement policies to ensure a future physician workforce, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 1, 2009

Mr. BURGESS (for himself, Mr. DEAL of Georgia, Mr. LINDER, Mr. GINGREY of Georgia, Mr. ROE of Tennessee, Mr. THORNBERRY, Mr. DENT, Mr. McCAUL, Mr. SESSIONS, and Mr. WALDEN) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, 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 modify Medicare physician reimbursement policies to ensure a future physician workforce, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Ensuring the Future Physician Workforce Act of 2009”.

6 (b) TABLE OF CONTENTS.—The table of contents of
7 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—PAYMENT AND QUALITY INCENTIVES

Sec. 101. Elimination of sustainable growth rate formula in 2011.

Sec. 102. Quality incentives.

TITLE II—HEALTH INFORMATION TECHNOLOGY INCENTIVES

Sec. 201. Safe harbors to antikickback, civil penalties, and criminal penalties for provision of health information technology and training services.

Sec. 202. Exception to limitation on certain physician referrals (under Stark) for provision of health information technology and training services to health care professionals.

Sec. 203. Rules of construction regarding use of consortia.

TITLE III—INFORMATION AND REPORTS

Sec. 301. Information for physicians on Medicare billings.

Sec. 302. Information for beneficiaries on Medicare expenditures.

Sec. 303. Collection of data on Medicare savings from physicians' services diversion.

Sec. 304. Trustees' ongoing examination of Medicare funding.

Sec. 305. Study of reporting requirements on health care disparities.

1 **TITLE I—PAYMENT AND**
2 **QUALITY INCENTIVES**

3 **SEC. 101. ELIMINATION OF SUSTAINABLE GROWTH RATE**
4 **FORMULA IN 2011.**

5 (a) IN GENERAL.—Section 1848(d) of the Social Se-
6 curity Act (42 U.S.C. 1395w-4(d)) is amended—

7 (1) in paragraph (4)—

8 (A) in subparagraph (B), by striking “sub-
9 paragraph (D)” and inserting “subparagraphs
10 (D) and (G)”; and

11 (B) by adding at the end the following new
12 subparagraph:

13 “(G) REBASING TO 2009 FOR UPDATE AD-
14 JUSTMENT IN 2010.—In determining the update

1 adjustment factor under subparagraph (B) for
2 2010—

3 “(i) the allowed expenditures for 2009
4 shall be equal to the amount of the actual
5 expenditures for physicians’ services during
6 2009; and

7 “(ii) the reference in subparagraph
8 (B)(ii)(I) to ‘April 1, 1996’ shall be treat-
9 ed as a reference to ‘January 1, 2009.’”;
10 and

11 (2) by adding at the end the following new
12 paragraph:

13 “(10) UPDATE BEGINNING WITH 2011.—The
14 update to the single conversion factor for each year
15 beginning with 2011 shall be the percentage increase
16 in the MEI (as defined in section 1842(i)(3)) for
17 that year.”.

18 (b) CONFORMING SUNSET.—Section 1848(f)(1)(B)
19 of such Act is amended by inserting “(ending with 2009)”
20 after “each succeeding year”.

21 **SEC. 102. QUALITY INCENTIVES.**

22 (a) EXTENSION OF CURRENT TRANSITIONAL BONUS
23 INCENTIVE PAYMENTS THROUGH 2011 AT 3 PERCENT.—
24 Section 1848(m)(1) of the Social Security Act (42 U.S.C.
25 1395w(m)(1)) is amended—

1 (1) in subparagraph (A), by striking “2010”
2 and inserting “2011”; and

3 (2) in subparagraph (B)—

4 (A) by striking “and” at the end of clause
5 (i);

6 (B) in clause (ii), by striking “and 2010,
7 2 percent.” and inserting “, 2 percent; and”;

8 (C) by adding at the end the following new
9 clause:

10 “(iii) for 2010 and 2011, 3 percent.”.

11 (b) ESTABLISHMENT OF NEW QUALITY INCENTIVE
12 SYSTEM EFFECTIVE IN 2012.—

13 (1) IN GENERAL.—Section 1848 of the Social
14 Security Act (42 U.S.C. 1395w) is amended by
15 striking subsection (k) and by adding at the end the
16 following:

17 “(p) PHYSICIAN QUALITY INCENTIVE SYSTEM.—

18 “(1) IN GENERAL.—The Secretary shall estab-
19 lish a reporting system (in this subsection referred
20 to as the ‘Physician Quality Incentive System’ or
21 ‘System’) for quality measures relating to physi-
22 cians’ services that focuses on disease-specific high
23 cost conditions. Not later than January 1, 2012, the
24 Secretary shall—

1 “(A) identify the 10 health conditions that
2 have the highest proportion of spending under
3 this part, due in part to a gap in patient care,
4 and for which reporting measures are feasible;
5 and

6 “(B) adopt reporting measures on these
7 conditions, based on measures developed by the
8 Physician Consortium of the American Medical
9 Association.

10 “(2) ADD-ON PAYMENT.—

11 “(A) IN GENERAL.—The Secretary shall
12 provide, in a form and manner specified by the
13 Secretary, for a bonus or other add-on payment
14 for physicians that submit information required
15 on the conditions identified under paragraph
16 (1).

17 “(B) AMOUNT.—Such a bonus or add-on
18 payment shall be equal to 1.0 percent of the
19 payment amount otherwise computed under this
20 section.

21 “(C) TIMELY PAYMENTS.—Such a pay-
22 ment shall be made, with respect to information
23 submitted for a month, by not later than 30
24 days after the date the information is submitted
25 for such month.

1 “(D) DEDUCTIBLE AND COINSURANCE NOT
2 APPLICABLE.—Such payment shall not be sub-
3 ject to the deductible or coinsurance otherwise
4 applicable to physicians’ services under this
5 part.

6 “(E) USE OF REGISTRY.—In carrying out
7 subparagraph (A), the Secretary shall allow the
8 submission of the required information through
9 an appropriate medical registry identified by
10 the Secretary.

11 “(3) MONITORING.—The Secretary shall mon-
12 itor and report to Congress on an annual basis phy-
13 sician participation in the Physician Quality Incen-
14 tive System, administrative burden encountered by
15 participants, barriers to participation, as well as sav-
16 ings accrued to the Medicare program due to quality
17 care improvements based on measures established
18 under the Physician Quality Incentive System.”.

19 “(2) EFFECTIVE DATE.—The amendment made
20 by paragraph (1) shall apply to payment for physi-
21 cians’ services for services furnished in years begin-
22 ning with 2012.

1 **TITLE II—HEALTH INFORMA-**
2 **TION TECHNOLOGY INCEN-**
3 **TIVES**

4 **SEC. 201. SAFE HARBORS TO ANTIKICKBACK, CIVIL PEN-**
5 **ALTIES, AND CRIMINAL PENALTIES FOR PRO-**
6 **VISION OF HEALTH INFORMATION TECH-**
7 **NOLOGY AND TRAINING SERVICES.**

8 (a) FOR CIVIL PENALTIES.—Section 1128A of the
9 Social Security Act (42 U.S.C. 1320a–7a) is amended—

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

12 “(4) For purposes of this subsection, inducements to
13 reduce or limit services described in paragraph (1) shall
14 not include the practical or other advantages resulting
15 from health information technology or related installation,
16 maintenance, support, or training services.”; and

17 (2) in subsection (i), by adding at the end the
18 following new paragraph:

19 “(8) The term ‘health information technology’
20 means hardware, software, license, right, intellectual
21 property, equipment, or other information tech-
22 nology (including new versions, upgrades, and
23 connectivity) designed or provided primarily for the
24 electronic creation, maintenance, or exchange of

1 health information to better coordinate care or im-
2 prove health care quality, efficiency, or research.”.

3 (b) FOR CRIMINAL PENALTIES.—Section 1128B of
4 such Act (42 U.S.C. 1320a–7b) is amended—

5 (1) in subsection (b)(3)—

6 (A) in subparagraph (G), by striking
7 “and” at the end;

8 (B) in the subparagraph (H) added by sec-
9 tion 237(d) of the Medicare Prescription Drug,
10 Improvement, and Modernization Act of 2003
11 (Public Law 108–173; 117 Stat. 2213)—

12 (i) by moving such subparagraph 2
13 ems to the left; and

14 (ii) by striking the period at the end
15 and inserting a semicolon;

16 (C) in the subparagraph (H) added by sec-
17 tion 431(a) of such Act (117 Stat. 2287)—

18 (i) by redesignating such subpara-
19 graph as subparagraph (I);

20 (ii) by moving such subparagraph 2
21 ems to the left; and

22 (iii) by striking the period at the end
23 and inserting “; and”; and

24 (D) by adding at the end the following new
25 subparagraph:

1 “(J) any nonmonetary remuneration (in the
2 form of health information technology, as defined in
3 section 1128A(i)(8), or related installation, mainte-
4 nance, support, or training services) made to a per-
5 son by a specified entity (as defined in subsection
6 (g)) if—

7 “(i) the provision of such remuneration is
8 without an agreement between the parties or
9 legal condition that—

10 “(I) limits or restricts the use of the
11 health information technology to services
12 provided by the physician to individuals re-
13 ceiving services at the specified entity;

14 “(II) limits or restricts the use of the
15 health information technology in conjunc-
16 tion with other health information tech-
17 nology; or

18 “(III) conditions the provision of such
19 remuneration on the referral of patients or
20 business to the specified entity;

21 “(ii) such remuneration is arranged for in
22 a written agreement that is signed by the par-
23 ties involved (or their representatives) and that
24 specifies the remuneration solicited or received
25 (or offered or paid) and states that the provi-

1 sion of such remuneration is made for the pri-
2 mary purpose of better coordination of care or
3 improvement of health quality, efficiency, or re-
4 search; and

5 “(iii) the specified entity providing the re-
6 muneration (or a representative of such entity)
7 has not taken any action to disable any basic
8 feature of any hardware or software component
9 of such remuneration that would permit inter-
10 operability.”; and

11 (2) by adding at the end the following new sub-
12 section:

13 “(g) SPECIFIED ENTITY DEFINED.—For purposes of
14 subsection (b)(3)(J), the term ‘specified entity’ means an
15 entity that is a hospital, group practice, prescription drug
16 plan sponsor, a Medicare Advantage organization, or any
17 other such entity specified by the Secretary, considering
18 the goals and objectives of this section, as well as the goals
19 to better coordinate the delivery of health care and to pro-
20 mote the adoption and use of health information tech-
21 nology.”.

22 (c) EFFECTIVE DATE AND EFFECT ON STATE
23 LAWS.—

24 (1) EFFECTIVE DATE.—The amendments made
25 by subsections (a) and (b) shall take effect on the

1 date that is 120 days after the date of the enact-
2 ment of this Act.

3 (2) PREEMPTION OF STATE LAWS.—No State
4 (as defined in section 1101(a) of the Social Security
5 Act (42 U.S.C. 1301(a)) for purposes of title XI of
6 such Act) shall have in effect a State law that im-
7 poses a criminal or civil penalty for a transaction de-
8 scribed in section 1128A(b)(4) or section
9 1128B(b)(3)(J) of such Act, as added by subsections
10 (a)(1) and (b), respectively, if the conditions de-
11 scribed in the respective provision, with respect to
12 such transaction, are met.

13 (d) STUDY AND REPORT TO ASSESS EFFECT OF
14 SAFE HARBORS ON HEALTH SYSTEM.—

15 (1) IN GENERAL.—The Secretary of Health and
16 Human Services shall conduct a study to determine
17 the impact of each of the safe harbors described in
18 paragraph (3). In particular, the study shall examine
19 the following:

20 (A) The effectiveness of each safe harbor
21 in increasing the adoption of health information
22 technology.

23 (B) The types of health information tech-
24 nology provided under each safe harbor.

1 (C) The extent to which the financial or
2 other business relationships between providers
3 under each safe harbor have changed as a re-
4 sult of the safe harbor in a way that adversely
5 affects or benefits the health care system or
6 choices available to consumers.

7 (D) The impact of the adoption of health
8 information technology on health care quality,
9 cost, and access under each safe harbor.

10 (2) REPORT.—Not later than three years after
11 the effective date described in subsection (c)(1), the
12 Secretary of Health and Human Services shall sub-
13 mit to Congress a report on the study under para-
14 graph (1).

15 (3) SAFE HARBORS DESCRIBED.—For purposes
16 of paragraphs (1) and (2), the safe harbors de-
17 scribed in this paragraph are—

18 (A) the safe harbor under section
19 1128A(b)(4) of such Act (42 U.S.C. 1320a-
20 7a(b)(4)), as added by subsection (a)(1); and

21 (B) the safe harbor under section
22 1128B(b)(3)(J) of such Act (42 U.S.C. 1320a-
23 7b(b)(3)(J)), as added by subsection (b).

1 **SEC. 202. EXCEPTION TO LIMITATION ON CERTAIN PHYSI-**
2 **CIAN REFERRALS (UNDER STARK) FOR PRO-**
3 **VISION OF HEALTH INFORMATION TECH-**
4 **NOLOGY AND TRAINING SERVICES TO**
5 **HEALTH CARE PROFESSIONALS.**

6 (a) IN GENERAL.—Section 1877(b) of the Social Se-
7 curity Act (42 U.S.C. 1395nn(b)) is amended by adding
8 at the end the following new paragraph:

9 “(6) INFORMATION TECHNOLOGY AND TRAIN-
10 ING SERVICES.—

11 “(A) IN GENERAL.—Any nonmonetary re-
12 munerated (in the form of health information
13 technology or related installation, maintenance,
14 support or training services) made by a speci-
15 fied entity to a physician if—

16 “(i) the provision of such remunera-
17 tion is without an agreement between the
18 parties or legal condition that—

19 “(I) limits or restricts the use of
20 the health information technology to
21 services provided by the physician to
22 individuals receiving services at the
23 specified entity;

24 “(II) limits or restricts the use of
25 the health information technology in

1 conjunction with other health informa-
2 tion technology; or

3 “(III) conditions the provision of
4 such remuneration on the referral of
5 patients or business to the specified
6 entity;

7 “(ii) such remuneration is arranged
8 for in a written agreement that is signed
9 by the parties involved (or their represent-
10 atives) and that specifies the remuneration
11 made and states that the provision of such
12 remuneration is made for the primary pur-
13 pose of better coordination of care or im-
14 provement of health quality, efficiency, or
15 research; and

16 “(iii) the specified entity (or a rep-
17 resentative of such entity) has not taken
18 any action to disable any basic feature of
19 any hardware or software component of
20 such remuneration that would permit
21 interoperability.

22 “(B) HEALTH INFORMATION TECHNOLOGY
23 DEFINED.—For purposes of this paragraph, the
24 term ‘health information technology’ means
25 hardware, software, license, right, intellectual

1 property, equipment, or other information tech-
2 nology (including new versions, upgrades, and
3 connectivity) designed or provided primarily for
4 the electronic creation, maintenance, or ex-
5 change of health information to better coordi-
6 nate care or improve health care quality, effi-
7 ciency, or research.

8 “(C) SPECIFIED ENTITY DEFINED.—For
9 purposes of this paragraph, the term ‘specified
10 entity’ means an entity that is a hospital, group
11 practice, prescription drug plan sponsor, a
12 Medicare Advantage organization, or any other
13 such entity specified by the Secretary, consid-
14 ering the goals and objectives of this section, as
15 well as the goals to better coordinate the deliv-
16 ery of health care and to promote the adoption
17 and use of health information technology.”.

18 (b) EFFECTIVE DATE; EFFECT ON STATE LAWS.—

19 (1) EFFECTIVE DATE.—The amendment made
20 by subsection (a) shall take effect on the date that
21 is 120 days after the date of the enactment of this
22 Act.

23 (2) PREEMPTION OF STATE LAWS.—No State
24 (as defined in section 1101(a) of the Social Security
25 Act (42 U.S.C. 1301(a)) for purposes of title XI of

1 such Act) shall have in effect a State law that im-
2 poses a criminal or civil penalty for a transaction de-
3 scribed in section 1877(b)(6) of such Act, as added
4 by subsection (a), if the conditions described in such
5 section, with respect to such transaction, are met.

6 (c) STUDY AND REPORT TO ASSESS EFFECT OF EX-
7 CEPTION ON HEALTH SYSTEM.—

8 (1) IN GENERAL.—The Secretary of Health and
9 Human Services shall conduct a study to determine
10 the impact of the exception under section 1877(b)(6)
11 of such Act (42 U.S.C. 1395nn(b)(6)), as added by
12 subsection (a). In particular, the study shall examine
13 the following:

14 (A) The effectiveness of the exception in
15 increasing the adoption of health information
16 technology.

17 (B) The types of health information tech-
18 nology provided under the exception.

19 (C) The extent to which the financial or
20 other business relationships between providers
21 under the exception have changed as a result of
22 the exception in a way that adversely affects or
23 benefits the health care system or choices avail-
24 able to consumers.

1 (D) The impact of the adoption of health
2 information technology on health care quality,
3 cost, and access under the exception.

4 (2) REPORT.—Not later than three years after
5 the effective date described in subsection (b)(1), the
6 Secretary of Health and Human Services shall sub-
7 mit to Congress a report on the study conducted
8 under paragraph (1).

9 **SEC. 203. RULES OF CONSTRUCTION REGARDING USE OF**
10 **CONSORTIA.**

11 (a) APPLICATION TO SAFE HARBOR FROM CRIMINAL
12 PENALTIES.—Section 1128B(b)(3) of the Social Security
13 Act (42 U.S.C. 1320a–7b(b)(3)) is amended by adding
14 after and below subparagraph (J), as added by section
15 202(b)(1), the following: “For purposes of subparagraph
16 (J), nothing in such subparagraph shall be construed as
17 preventing a specified entity, consistent with the specific
18 requirements of such subparagraph, from forming a con-
19 sortium composed of health care providers, payers, em-
20 ployers, and other interested entities to collectively pur-
21 chase and donate health information technology, or from
22 offering health care providers a choice of health informa-
23 tion technology products in order to take into account the
24 varying needs of such providers receiving such products.”.

1 (b) APPLICATION TO STARK EXCEPTION.—Para-
2 graph (6) of section 1877(b) of the Social Security Act
3 (42 U.S.C. 1395m(b)), as added by section 203(a), is
4 amended by adding at the end the following new subpara-
5 graph:

6 “(D) RULE OF CONSTRUCTION.—For pur-
7 poses of subparagraph (A), nothing in such
8 subparagraph shall be construed as preventing
9 a specified entity, consistent with the specific
10 requirements of such subparagraph, from—

11 “(i) forming a consortium composed
12 of health care providers, payers, employers,
13 and other interested entities to collectively
14 purchase and donate health information
15 technology; or

16 “(ii) offering health care providers a
17 choice of health information technology
18 products in order to take into account the
19 varying needs of such providers receiving
20 such products.”.

1 **TITLE III—INFORMATION AND**
2 **REPORTS**

3 **SEC. 301. INFORMATION FOR PHYSICIANS ON MEDICARE**
4 **BILLINGS.**

5 (a) IN GENERAL.—Section 1848 of the Social Secu-
6 rity Act, as amended by section 102(b), is amended by
7 adding at the end the following new subsection:

8 “(q) ANNUAL REPORTING OF INFORMATION TO PHY-
9 SICIANS.—

10 “(1) IN GENERAL.—The Secretary shall annu-
11 ally report to each physician information on total bil-
12 lings by the physician (including laboratory tests
13 and other items and services ordered by the physi-
14 cian) under this title. Such information shall be pro-
15 vided in a comparative format by code, weighting for
16 practice size, number of Medicare patients treated,
17 and relative number of Medicare beneficiaries in the
18 geographical area.

19 “(2) CONFIDENTIALITY.—Information reported
20 under paragraph (1) is confidential and shall not be
21 disclosed to anyone other than the physician to
22 whom the information relates.

23 “(3) REPORT NOT TO BE USED IN DETER-
24 MINING REIMBURSEMENT RATES FOR A SPECIFIC
25 PHYSICIAN.—The Secretary shall not use informa-

1 mation under the amendment made by subsection (a) for
2 payments made during 2010.

3 **SEC. 303. COLLECTION OF DATA ON MEDICARE SAVINGS**
4 **FROM PHYSICIANS' SERVICES DIVERSION.**

5 (a) IN GENERAL.—The Secretary of Health and
6 Human Services shall collect data on annual savings in
7 expenditures in the Medicare program due to physicians'
8 services that resulted in hospital or in-patient diversion.

9 (b) REPORT.—The Secretary shall transmit to Con-
10 gress annually a summary of the data collected under sub-
11 section (a).

12 **SEC. 304. TRUSTEES' ONGOING EXAMINATION OF MEDI-**
13 **CARE FUNDING.**

14 (a) EXAMINATION BY BOARD OF TRUSTEES.—The
15 Board of Trustees of the Federal Hospital Insurance
16 Trust Fund under section 1817 of the Social Security Act
17 (42 U.S.C. 1395i) and of the Federal Supplementary Med-
18 ical Insurance Trust Fund under section 1841 of such Act
19 (42 U.S.C. 1395t) shall monitor and examine the extent
20 to which the different funding mechanisms under parts A,
21 B, and D of title XVIII of such Act provide an appropriate
22 alignment with the program goals of the respective parts.
23 Such examination shall include an analysis of each of the
24 following:

1 (1) The extent to which, as the volume of serv-
2 ices increases in physician settings under such part
3 B, there is a corresponding reduction in similar serv-
4 ices provided in a hospital setting under such part
5 A.

6 (2) The extent to which, as a result of increased
7 coordination between physicians and the delivery of
8 prescription drugs under such part D, particularly
9 with respect to individuals with chronic conditions,
10 there will be a decrease in hospitalizations under
11 such part A.

12 (3) The extent to which other changes in physi-
13 cian or other health care practice results in a shift-
14 ing of expenditures among the various parts of such
15 title XVIII.

16 (b) INCLUSION IN ANNUAL REPORTS.—In each an-
17 nual report submitted to the Congress after the date of
18 the enactment of this Act under section 1817(b)(2) or sec-
19 tion 1841(b)(2) of the Social Security Act (42 U.S.C.
20 1395i(b)(2), 1395t(b)(2)), such Board of Trustees shall
21 include information on the matters described in subsection
22 (a).

1 **SEC. 305. STUDY OF REPORTING REQUIREMENTS ON**
2 **HEALTH CARE DISPARITIES.**

3 (a) IN GENERAL.—The Secretary of Health and
4 Human Services shall provide for a study of health care
5 disparities in high-risk health condition areas and minor-
6 ity communities about the impact reporting requirements
7 may have on physician penetration in such communities.

8 (b) REPORT.—The Secretary shall provide for the
9 completion of the study conducted under subsection (a)
10 by not later than January 1, 2012, and shall submit to
11 Congress a report on the study upon its completion.

○