

115TH CONGRESS
1ST SESSION

H. R. 4580

To amend title XVIII of the Social Security Act to improve the Medicare accountable care organization (ACO) program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 6, 2017

Mr. WELCH (for himself and Mrs. BLACK) 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 improve the Medicare accountable care organization (ACO) 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 “ACO Improvement Act
5 of 2017”.

6 **SEC. 2. MEDICARE ACO PROGRAM IMPROVEMENTS.**

7 (a) IMPROVING OUTCOMES THROUGH GREATER
8 BENEFICIARY ENGAGEMENT.—

1 (1) IN GENERAL.—Section 1899 of the Social
2 Security Act (42 U.S.C. 1395jjj) is amended by add-
3 ing at the end the following new subsection:

4 “(1) IMPROVING OUTCOMES THROUGH GREATER
5 BENEFICIARY ENGAGEMENT.—

6 “(1) USE OF BENEFICIARY INCENTIVES.—Sub-
7 ject to approval of the Secretary, the Secretary shall
8 permit an ACO—

9 “(A) to reduce or eliminate cost-sharing
10 otherwise applicable under part B for some or
11 all primary care services (as identified by the
12 ACO) furnished by health care professionals
13 (including, as applicable, professionals fur-
14 nishing services through a rural health clinic or
15 Federally qualified health center) within the
16 network of the ACO; and

17 “(B) to develop additional incentives to en-
18 courage patient engagement and participation
19 in their own wellness.

20 The cost of the incentives under this paragraph shall
21 be borne by the ACO and shall not affect the pay-
22 ments to the ACO under subsection (d).

23 “(2) FOSTERING STRONGER PATIENT-PROVIDER
24 TIES.—

1 “(A) PERMITTING PROSPECTIVE ASSIGN-
2 MENT OF BENEFICIARIES.—In carrying out
3 subsection (c) with respect to any agreement
4 with an ACO under this section, the ACO may
5 elect under any such agreement prospective as-
6 signment of Medicare fee-for-service bene-
7 ficiaries before the beginning of a year to the
8 ACO and a primary care ACO professional.

9 “(B) INCLUSION OF ACO INFORMATION IN
10 WELCOME TO MEDICARE VISIT AND ANNUAL
11 WELLNESS VISITS.—The Secretary may encour-
12 age a primary care ACO professional to include,
13 as part of the initial preventive physical exam-
14 ination under section 1861(ww)(1) or personal-
15 ized prevention plan services under section
16 1861(hhh)(1) for a Medicare fee-for-service
17 beneficiary assigned to that professional under
18 this section, to provide the beneficiary with in-
19 formation concerning the ACO program under
20 this section, including information on any cost-
21 sharing reductions allowed under this section.

22 “(3) MOVING FROM VOLUME TO VALUE.—Sub-
23 ject to paragraph (4)—

24 “(A) REGULATORY RELIEF FOR MOVING
25 TO TWO-SIDED RISK.—In the case of an ACO

1 that has elected a two-sided risk model (as pro-
2 vided for under regulations), in addition to the
3 authority provided under paragraph (1), the
4 Secretary shall provide the following regulatory
5 relief:

6 “(i) 3-DAY PRIOR HOSPITALIZATION
7 WAIVER FOR SNF SERVICES.—Waiver of
8 the 3-day prior hospitalization requirement
9 for coverage of skilled nursing facility serv-
10 ices.

11 “(ii) HOMEBOUND REQUIREMENT
12 WAIVER FOR HOME HEALTH SERVICES.—
13 Waiver of the homebound requirement for
14 coverage of home health services.

15 “(B) IMPROVING CARE COORDINATION
16 THROUGH ACCESS TO TELEHEALTH.—

17 “(i) FLEXIBILITY IN FURNISHING
18 TELEHEALTH SERVICES.—In applying sec-
19 tion 1834(m) in the case of an ACO, the
20 Secretary shall grant a waiver, and the
21 ACO may elect, to have the limitations on
22 originating site (under paragraph (4)(C) of
23 such section) and on the use of store-and-
24 forward technologies (under paragraph (1)
25 of such section) not apply. The previous

1 sentence shall not be construed as affect-
2 ing the authority of the Secretary under
3 subsection (f) to waive other provisions of
4 such section.

5 “(ii) PROVISION OF REMOTE MONI-
6 TORING IN CONNECTION WITH HOME
7 HEALTH SERVICES.—Nothing in this sec-
8 tion shall be construed as preventing an
9 ACO from paying for remote patient moni-
10 toring and home-based video conferencing
11 services in connection with the provision of
12 home health services (under conditions for
13 which payment for such services would not
14 be made under section 1895 for such serv-
15 ices) in a manner that is financially not
16 more expensive than the furnishing of a
17 home health visit.

18 “(C) MOVING UP RISK TRACK ANNU-
19 ALLY.—Each year of an agreement period, the
20 Secretary shall permit an ACO to make an elec-
21 tion to assume greater risk.

22 “(4) DISCRETIONARY REVOCATION.—The Sec-
23 retary may revoke, at the Secretary’s discretion, a
24 waiver granted under paragraph (3).

1 “(5) PROVISIONS FOR SHARING OF INTERNAL
2 COST SAVINGS.—

3 “(A) IN GENERAL.—Subject to the suc-
4 ceeding provisions of this paragraph, the Sec-
5 retary shall permit an ACO to distribute inter-
6 nal cost savings among ACO participants pur-
7 suant to an internal cost savings sharing ar-
8 rangement if the arrangement meets the re-
9 quirements of subparagraph (B) and the ACO
10 meets the reporting requirements of subpara-
11 graph (C) with respect to such arrangement.

12 “(B) REQUIREMENTS RELATING TO DE-
13 SIGN OF ARRANGEMENT.—The requirements of
14 this subparagraph for an internal cost savings
15 sharing arrangement of an ACO are as follows:

16 “(i) NO REDUCTION IN MEDICALLY
17 NECESSARY CARE.—ACO participants may
18 not reduce or limit medically necessary
19 items and services furnished to Medicare
20 fee-for-service beneficiaries.

21 “(ii) VOLUNTARY PARTICIPATION.—
22 Participation by providers of services and
23 suppliers in the arrangement is voluntary.

1 “(iii) TRANSPARENCY.—The arrange-
2 ment is transparent and subject to audit
3 by the Secretary.

4 “(iv) QUALITY OF CARE.—ACO par-
5 ticipants participating in the arrangement
6 meet quality performance standards estab-
7 lished by the Secretary under subsection
8 (b)(3).

9 “(v) PAYMENT METHODOLOGY.—Dis-
10 tributions of internal cost savings under
11 the arrangement is not based on the vol-
12 ume or value of referrals or business other-
13 wise generated.

14 “(C) REPORTING REQUIREMENTS.—The
15 requirements of this subparagraph for an ar-
16 rangement of an ACO is that the ACO provides
17 the following information to the Secretary for
18 purposes of evaluating the arrangement:

19 “(i) METHODOLOGY.—The method-
20 ology for distributions of internal cost sav-
21 ings under the arrangement among all
22 ACO participants, including the frequency
23 of and the criteria for such distributions.

24 “(ii) CARE REDESIGN.—A detailed ex-
25 planation of how the arrangement will

1 achieve improved quality and patient expe-
2 rience, as well as the anticipated cost sav-
3 ings.

4 “(iii) ELIGIBILITY TO PARTICIPATE IN
5 ARRANGEMENT.—The criteria for partici-
6 pation by ACO participants, particularly
7 professionals, in the arrangement.

8 “(iv) DISTRIBUTION PLAN.—A com-
9 prehensive plan for distributions of inter-
10 nal cost savings under the arrangement.

11 “(D) WAIVERS.—The Secretary shall waive
12 such provisions of this title and title XI as may
13 be necessary to carry out this paragraph.

14 “(E) DEFINITIONS.—In this paragraph:

15 “(i) INTERNAL COST SAVINGS SHAR-
16 ING ARRANGEMENT.—The term ‘internal
17 cost savings sharing arrangement’ means
18 an arrangement among ACO participants
19 of an ACO for the distributions of internal
20 cost savings to such ACO participants, in-
21 cluding to ACO professionals, solely from
22 gains or savings that are a direct result of
23 collaborative efforts among ACO partici-
24 pants of an ACO to improve the quality
25 and efficiency of care furnished to Medi-

1 care fee-for-service beneficiaries, but does
2 not include shared savings under sub-
3 section (d)(2).

4 “(ii) DISTRIBUTION OF INTERNAL
5 COST SAVINGS.—The term ‘distribution of
6 internal cost savings’ means a payment of
7 a percentage of the gains or savings from
8 an internal cost savings sharing arrange-
9 ment to ACO participants.

10 “(iii) ACO PARTICIPANTS.—The term
11 ‘ACO participants’ means providers of
12 services and suppliers participating in an
13 ACO who voluntarily participate in an in-
14 ternal cost savings sharing arrangement
15 under this paragraph.”.

16 (2) EFFECTIVE DATE.—The amendment made
17 by paragraph (1) shall apply as if included in the
18 enactment of section 3022 of Public Law 111–148.

19 (3) CONFORMING AMENDMENT.—Effective as if
20 included in the enactment of section 3021 of Public
21 Law 111–148, the provisions of section 1899(l)(5) of
22 the Social Security Act (relating to authority for dis-
23 tributions of internal cost savings under internal
24 cost savings sharing arrangements), as added by
25 paragraph (1), shall apply to participants in ac-

1 countable care organization payment and service de-
2 livery models (and other appropriate models) tested
3 pursuant to section 1115A of the Social Security Act
4 (42 U.S.C. 1315a).

5 (b) STUDY AND REPORT ON FEASIBILITY ON PRO-
6 VIDING ELECTRONIC ACCESS TO MEDICARE CLAIMS
7 DATA.—

8 (1) STUDY.—The Secretary of Health and
9 Human Services shall conduct a study regarding the
10 feasibility of establishing a system of electronic ac-
11 cess of providers of services and suppliers to in-proc-
12 ess and complete patient claims data. Such system
13 may be a modification of an existing database, such
14 as the Virtual Research Data Center. The study
15 shall take into account the measures needed to en-
16 sure the security and privacy of beneficiary and pro-
17 vider information.

18 (2) REPORT.—Not later than six months after
19 the date of the enactment of this Act, the Secretary
20 shall submit to Congress a report on such study.
21 The Secretary shall include in such report such rec-
22 ommendations as the Secretary deems appropriate.

23 (c) PERMITTING DE MINIMIS VARIATION FROM MIN-
24 IMUM ENROLLMENT REQUIREMENT.—Section
25 1899(b)(2)(D) of the Social Security Act (42 U.S.C.

1 1395jjj(b)(2)(D)) is amended by inserting before the pe-
2 riod at the end the following: “, except that the Secretary
3 may permit an ACO with fewer than 5,000 participants
4 by a de minimis number (not to exceed 100) to be eligible
5 to continue to participate in cases where such fewer num-
6 ber does not negatively impact the ACO’s participation in
7 the program and the ACO meets other conditions to be
8 so eligible”.

9 (d) PAYMENTS FOR SHARED SAVINGS.—Section
10 1899(d)(2) of the Social Security Act (42 U.S.C.
11 1395jjj(d)(2)) is amended by adding at the end the fol-
12 lowing: “For years beginning on or after January 1, 2018,
13 the Secretary may use a sliding scale to increase by up
14 to 10 percentage points the appropriate percent otherwise
15 applied under this paragraph for an ACO that achieves
16 the median of quality performance standards, or achieves
17 quality improvement scores above such median, estab-
18 lished under subsection (b)(3). The Secretary shall not de-
19 crease such appropriate percent otherwise applied to an
20 ACO because of the application of an increase under the
21 previous sentence for another ACO.”.

22 (e) DEMONSTRATION FOR ALLOWING GROWTH OF
23 HCC SCORES.—Section 1899(d)(1)(B)(ii) of the Social
24 Security Act (42 U.S.C. 1395jjj(d)(1)(B)(ii)) is amended
25 by adding at the end the following: “In carrying out this

1 subsection, the Secretary shall establish a 3-year dem-
2 onstration project that develops and applies a method-
3 ology, similar to the Medicare Advantage normalization
4 factor applied under section 1853(a)(3), that allows
5 growth of HCC scores for those who are continuously en-
6 rolled with an ACO. The Secretary shall submit to Con-
7 gress a report on the results of such demonstration
8 project.”.

9 (f) CREATING INCENTIVES FOR ACO DEVELOP-
10 MENT.—The Secretary of Health and Human Services
11 may develop a mechanism to make permanent those ACO-
12 related pilot programs, including the Advance Payment
13 ACO Model, that the Secretary determines have been suc-
14 cessful. The Secretary shall submit to Congress a report
15 on the mechanism and shall include in the report such rec-
16 ommendations, including such changes in legislation, as
17 the Secretary determines appropriate.

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