I

112TH CONGRESS
2D SESSION

H. R. 6352

To amend title XVIII of the Social Security Act to provide for the distribution of additional residency positions, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 2, 2012

Mr. SCHOCK (for himself and Ms. SCHWARTZ) 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

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A BILL

To amend title XVIII of the Social Security Act to provide for the distribution of additional residency positions, and for other purposes.

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 ''Resident Physician Shortage Reduction and Graduate Medical Education Accountability and Transparency Act''.

SEC. 2. DISTRIBUTION OF ADDITIONAL RESIDENCY POSITIONS.

(a) IN GENERAL.—Section 1886(h) of the Social Security Act (42 U.S.C. 1395ww(h)) is amended—

(1) in paragraph (4)(F)(i), by striking ''paragraphs (7) and (8)'' and inserting ''paragraphs (7), (8), and (9)'';

(2) in paragraph (4)(H)(i), by striking ''paragraphs (7) and (8)'' and inserting ''paragraphs (7), (8), and (9)'';

(3) in paragraph (7)(E), by inserting ''paragraph (9),'' after ''paragraph (8),''; and

(4) by adding at the end the following new paragraph:

''(9) DISTRIBUTION OF ADDITIONAL RESIDENCY POSITIONS.—

''(A) ADDITIONAL RESIDENCY POSITIONS.—

''(i) IN GENERAL.—For each of fiscal years 2013 through 2017 (and succeeding fiscal years if the Secretary determines that there are additional residency positions available to distribute under clause (iv)(II)), the Secretary shall, subject to clause (ii) and subparagraph (D), increase the otherwise applicable resident limit for

each qualifying hospital that submits a timely application under this subparagraph by such number as the Secretary may approve for portions of cost reporting periods occurring on or after July 1 of the fiscal year of the increase.

''(ii) NUMBER AVAILABLE FOR DISTRIBUTION.—For each such fiscal year, the Secretary shall determine the total number of additional residency positions available for distribution under clause (i) in accordance with the following:

''(I) ALLOCATION TO HOSPITALS ALREADY OPERATING OVER RESIDENT LIMIT.—One-third of such number shall be available for distribution only to hospitals described in subparagraph (B).

''(II) AGGREGATE LIMITATION.—Except as provided in clause (iv)(I), the aggregate number of increases in the otherwise applicable resident limit under this subparagraph shall be equal to 3,000 in each such year.

"(iii) PROCESS FOR DISTRIBUTING POSITIONS.—

"(I) ROUNDS OF APPLICATIONS.—The Secretary shall initiate 5 separate rounds of applications for an increase under clause (i), 1 round with respect to each of fiscal years 2013 through 2017.

"(II) NUMBER AVAILABLE.—In each of such rounds, the aggregate number of positions available for distribution in the fiscal year under clause (ii) shall be distributed, plus any additional positions available under clause (iv).

"(III) TIMING.—The Secretary shall notify hospitals of the number of positions distributed to the hospital under this paragraph as a result of an increase in the otherwise applicable resident limit by January 1 of the fiscal year of the increase. Such increase shall be effective for portions of cost reporting periods beginning on or after July 1 of that fiscal year.

"(iv) POSITIONS NOT DISTRIBUTED DURING THE FISCAL YEAR.—

"(I) IN GENERAL.—If the number of resident full-time equivalent positions distributed under this paragraph in a fiscal year is less than the aggregate number of positions available for distribution in the fiscal year (as described in clause (ii), including after application of this subclause), the difference between such number distributed and such number available for distribution shall be added to the aggregate number of positions available for distribution in the following fiscal year.

"(II) EXCEPTION IF POSITIONS NOT DISTRIBUTED BY END OF FISCAL YEAR 2017.—If the aggregate number of positions distributed under this paragraph during the 5-year period of fiscal years 2013 through 2017 is less than 15,000, the Secretary shall, in accordance with the provisions of clause (ii) and subparagraph (D) and

the considerations and priority described in subparagraph (C), conduct an application and distribution process in each subsequent fiscal year until such time as the aggregate amount of positions distributed under this paragraph is equal to 15,000.

''(B) ALLOCATION OF DISTRIBUTION FOR POSITIONS TO HOSPITALS ALREADY OPERATING OVER RESIDENT LIMIT.—

''(i) IN GENERAL.—Subject to clauses (ii) and (iii), in the case of a hospital in which the reference resident level of the hospital (as specified in subparagraph (G)(iii)) is greater than the otherwise applicable resident limit, the increase in the otherwise applicable resident limit under subparagraph (A) for a fiscal year described in such subparagraph shall be an amount equal to the product of the total number of additional residency positions available for distribution under subparagraph (A)(ii)(I) for such fiscal year and the quotient of—

''(I) the number of resident positions by which the reference resident level of the hospital exceeds the otherwise applicable resident limit for the hospital; and

''(II) the number of resident positions by which the reference resident level of all such hospitals with respect to which an application is approved under this paragraph exceeds the otherwise applicable resident limit for such hospitals.

''(ii) REQUIREMENTS.—A hospital described in clause (i)—

''(I) is not eligible for an increase in the otherwise applicable resident limit under this subparagraph unless the amount by which the reference resident level of the hospital exceeds the otherwise applicable resident limit is not less than 10 and the hospital trains at least 25 percent of the full-time equivalent residents of the hospital in primary care and general sur-

gery (as of the date of enactment of this paragraph); and

''(II) shall continue to train at least 25 percent of the full-time equivalent residents of the hospital in primary care and general surgery for the 5-year period beginning on such date.

In the case where the Secretary determines that a hospital described in clause (i) no longer meets the requirement of subclause (II), the Secretary may reduce the otherwise applicable resident limit of the hospital by the amount by which such limit was increased under this subparagraph.

''(iii) CLARIFICATION REGARDING ELIGIBILITY FOR OTHER ADDITIONAL RESIDENCY POSITIONS.—Nothing in this subparagraph shall be construed as preventing a hospital described in clause (i) from applying for and receiving additional residency positions under this paragraph that are not reserved for distribution under this subparagraph.

''(C) DISTRIBUTION OF OTHER POSITIONS.—For purposes of determining an in-

crease in the otherwise applicable resident limit under subparagraph (A) (other than such an increase described in subparagraph (B)), the following shall apply:

"(i) CONSIDERATIONS IN DISTRIBUTION.—In determining for which hospitals such an increase is provided under subparagraph (A), the Secretary shall take into account the demonstrated likelihood of the hospital filling the positions made available under this paragraph within the first 5 cost reporting periods beginning after the date the increase would be effective, as determined by the Secretary.

"(ii) PRIORITY FOR CERTAIN HOSPITALS.—Subject to clause (iii), in determining for which hospitals such an increase is provided, the Secretary shall distribute the increase in the following priority order:

"(I) First, to hospitals in States with (aa) new medical schools that received 'Candidate School' status from the Liaison Committee on Medical Education or that received 'Pre-Ac-

creditation' status from the American Osteopathic Association Commission on Osteopathic College Accreditation on or after January 1, 2000, and that have achieved or continue to progress toward 'Full Accreditation' status (as such term is defined by the Liaison Committee on Medical Education) or toward 'Accreditation' status (as such term is defined by the American Osteopathic Association Commission on Osteopathic College Accreditation), or (bb) additional locations and branch campuses established on or after January 1, 2000, by medical schools with 'Full Accreditation' status (as such term is defined by the Liaison Committee on Medical Education) or 'Accreditation' status (as such term is defined by the American Osteopathic Association Commission on Osteopathic College Accreditation).

''(II) Second, to hospitals that emphasize training in community health center or community-based set-

tings or in hospital outpatient departments.

"(III) Third, to hospitals that are eligible for incentive payments under section 1886(n) or 1903(t) as of the date the hospital submits an application for such increase under subparagraph (A).

"(IV) Fourth, to all other hospitals.

"(iii) DISTRIBUTION TO HOSPITALS IN HIGHER PRIORITY GROUP PRIOR TO DISTRIBUTION IN LOWER PRIORITY GROUPS.—The Secretary may only distribute such an increase to a lower priority group under clause (ii) if all qualifying hospitals in the higher priority group or groups have received the maximum number of increases under such subparagraph that the hospital is eligible for under this paragraph for the fiscal year.

"(iv) REQUIREMENTS FOR USE OF ADDITIONAL POSITIONS.—

"(I) IN GENERAL.—Subject to subclause (II), a hospital that receives

such an increase shall ensure, during the 5-year period beginning on the effective date of such increase, that—

"(aa) not less than 50 percent of the positions attributable to such increase that are used in a given year during such 5-year period are used to train full-time equivalent residents in a shortage specialty residency program (as defined in subparagraph (G)(v)), as determined by the Secretary at the end of such 5-year period;

"(bb) the total number of full-time equivalent residents, excluding any additional positions attributable to such increase, is not less than the average number of full-time equivalent residents during the 3 most recent cost reporting periods ending on or before the effective date of such increase; and

"(cc) the ratio of full-time equivalent residents in a shortage

specialty residency program (as so defined) is not less than the average ratio of full-time equivalent residents in such a program during the 3 most recent cost reporting periods ending on or before the effective date of such increase.

''(II) REDISTRIBUTION OF POSITIONS IF HOSPITAL NO LONGER MEETS CERTAIN REQUIREMENTS.—With respect to each fiscal year described in subparagraph (A), the Secretary shall determine whether or not a hospital described in subclause (I) meets the requirements of such subclause. In the case that the Secretary determines that such a hospital does not meet such requirements, the Secretary shall—

''(aa) reduce the otherwise applicable resident limit of the hospital by the amount by which such limit was increased under this paragraph; and

''(bb) provide for the distribution of positions attributable to such reduction in accordance with the requirements of this paragraph.

''(D) LIMITATION.—A hospital may not receive more than 75 full-time equivalent additional residency positions under this paragraph for any fiscal year.

''(E) APPLICATION OF PER RESIDENT AMOUNTS FOR PRIMARY CARE AND NONPRIMARY CARE.—With respect to additional residency positions in a hospital attributable to the increase provided under this paragraph, the approved FTE per resident amounts are deemed to be equal to the hospital per resident amounts for primary care and nonprimary care computed under paragraph (2)(D) for that hospital.

''(F) PERMITTING FACILITIES TO APPLY AGGREGATION RULES.—The Secretary shall permit hospitals receiving additional residency positions attributable to the increase provided under this paragraph to, beginning in the fifth year after the effective date of such increase, apply such positions to the limitation amount

under paragraph (4)(F) that may be aggregated pursuant to paragraph (4)(H) among members of the same affiliated group.

''(G) DEFINITIONS.—In this paragraph:

''(i) OTHERWISE APPLICABLE RESIDENT LIMIT.—The term 'otherwise applicable resident limit' means, with respect to a hospital, the limit otherwise applicable under subparagraphs (F)(i) and (H) of paragraph (4) on the resident level for the hospital determined without regard to this paragraph but taking into account paragraphs (7)(A), (7)(B), (8)(A), and (8)(B).

''(ii) PRIMARY CARE.—The term 'primary care' means family medicine, general internal medicine, general pediatrics, preventive medicine, obstetrics and gynecology, general surgery, and psychiatry.

''(iii) REFERENCE RESIDENT LEVEL.—Except as otherwise provided in subclause (II), the term 'reference resident level' means, with respect to a hospital, the resident level for the most recent cost reporting period of the hospital ending on or before the date of enactment of this para-

graph, for which a cost report has been settled (or, if not, submitted (subject to audit)), as determined by the Secretary.

''(iv) RESIDENT LEVEL.—The term 'resident level' has the meaning given such term in paragraph (7)(C)(i).

''(v) SHORTAGE SPECIALTY RESIDENCY PROGRAM.—The term 'shortage specialty residency program' means the following:

''(I) PRIOR TO REPORT ON SHORTAGE SPECIALTIES.—Prior to the date on which the report is submitted under section 5 of the Resident Physician Shortage Reduction and Graduate Medical Education Accountability and Transparency Act, any approved residency training program in a specialty identified in the report entitled 'The Physician Workforce: Projections and Research into Current Issues Affecting Supply and Demand', issued in December 2008 by the Health Resources and Services Administration, as a specialty whose

baseline physician requirements projections exceed the projected supply of total active physicians for the period of 2005 through 2020.

''(II) AFTER REPORT ON SHORTAGE SPECIALITIES.—On or after the date on which the report is submitted under such section 5, any approved residency training program in a physician specialty identified in such report as a specialty for which there is a shortage.''.

(b) IME.—Section 1886(d)(5)(B) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(B)) is amended—

(1) in clause (v), in the second sentence, by striking ''subsections (h)(7) and (h)(8)'' and inserting ''subsections (h)(7), (h)(8), and (h)(9)'';

(2) by redesignating clause (x), as added by section 5505(b) of the Patient Protection and Affordable Care Act (Public Law 111–148), as clause (xi) and moving such clause 4 ems to the left; and

(3) by adding after clause (xi), as redesignated by subparagraph (A), the following new clause:

''(xii) For discharges occurring on or after July 1, 2013, insofar as an additional payment amount

under this subparagraph is attributable to resident positions distributed to a hospital under subsection (h)(9), the indirect teaching adjustment factor shall be computed in the same manner as provided under clause (ii) with respect to such resident positions.''.

SEC. 3. MEDICARE INDIRECT MEDICAL EDUCATION PERFORMANCE ADJUSTMENT.

Section 1886 of the Social Security Act (42 U.S.C. 1395ww) is amended—

(1) in subsection (d)(5)(B), in the matter preceding clause (i), by inserting ''subject to subsection (t) and'' before ''except as follows''; and

(2) by adding at the end the following new subsection:

''(t) INDIRECT MEDICAL EDUCATION PERFORMANCE ADJUSTMENTS.—

''(1) IN GENERAL.—Subject to the succeeding provisions of this subsection, the Secretary shall establish and implement procedures under which the amount of payments that a hospital (as defined in paragraph (11)) would otherwise receive for indirect medical education costs under subsection (d)(5)(B) for discharges occurring during a fiscal year is adjusted based on the reporting of measures and the

performance of the hospital on measures of patient care priorities specified by the Secretary.

''(2) ADJUSTMENTS TO BEGIN IN FISCAL YEAR 2017.—The adjustments shall apply to payments for discharges occurring—

''(A) with respect to the adjustments for reporting under paragraph (8)(A), during fiscal year 2017; and

''(B) with respect to the adjustments for performance under paragraph (8)(B), on or after October 1, 2017.

''(3) MEASURES.—The measures of patient care priorities specified by the Secretary under this subsection shall include the extent of training provided in—

''(A) the delivery of services categorized as evaluation and management codes by the Centers for Medicare & Medicaid Services;

''(B) a variety of settings and systems;

''(C) the coordination of patient care across settings;

''(D) the relevant cost and value of various diagnostic and treatment options;

''(E) interprofessional and multidisciplinary care teams;

''(F) methods for identifying system errors and implementing system solutions; and

''(G) the use of health information technology.

''(4) MEASURE DEVELOPMENT PROCESS.—

''(A) IN GENERAL.—The measures of patient care specified by the Secretary under this subsection—

''(i) shall—

''(I) be measures that have been adopted or endorsed by an accrediting organization (such as the Accreditation Council for Graduate Medical Education or American Osteopathic Association); and

''(II) be measures that the Secretary identifies as having used a consensus-based process for developing such measures; and

''(ii) may include measures that have been submitted by teaching hospitals and medical schools.

''(B) PROPOSED SET OF INITIAL MEASURES.—Not later than July 1, 2014, the Secretary shall publish in the Federal Register a

proposed initial set of measures for use under this subsection. The Secretary shall provide for a period of public comment on such measures.

''(C) FINAL SET OF INITIAL MEASURES.—Not later than January 1, 2015, the Secretary shall publish in the Federal Register the set of initial measures to be specified by the Secretary for use under this subsection.

''(D) UPDATE OF MEASURES.—The Secretary may, through notice and comment rulemaking, periodically update the measures specified under this subsection pursuant to the requirements under subparagraph (A).

''(5) PERFORMANCE STANDARDS.—The Secretary shall establish performance standards with respect to measures specified by the Secretary under this subsection for a performance period for a fiscal year (as established under paragraph (6)).

''(6) PERFORMANCE PERIOD.—The Secretary shall establish the performance period for a fiscal year. Such performance period shall begin and end prior to the beginning of such fiscal year.

''(7) REPORTING OF MEASURES.—The procedures established and implemented under paragraph (1) shall include a process under which hospitals

shall submit data on the measures specified by the Secretary under this subsection to the Secretary in a form and manner, and at a time, specified by the Secretary for purposes of this subsection.

''(8) ADJUSTMENTS.—

''(A) REPORTING FOR FISCAL YEAR 2017.—For fiscal year 2017, in the case of a hospital that does not submit, to the Secretary in accordance with this subsection, data required to be submitted under paragraph (7) for a period (determined appropriate by the Secretary) for such fiscal year, the total amount that the hospital would otherwise receive under subsection (d)(5)(B) for discharges in such fiscal year shall be reduced by 0.5 percent.

''(B) PERFORMANCE FOR FISCAL YEAR 2018 AND SUBSEQUENT FISCAL YEARS.—

''(i) IN GENERAL.—Subject to clause (ii), based on the performance of each hospital with respect to compliance with the measures for a performance period for a fiscal year (beginning with fiscal year 2018), the Secretary shall determine the amount of any adjustment under this subparagraph to payments to the hospital

under subsection (d)(5)(B) for discharges in such fiscal year. Such adjustment may not exceed an amount equal to 2 percent of the total amount that the hospital would otherwise receive under such subsection for discharges in such fiscal year.

''(ii) BUDGET NEUTRAL.—In making adjustments under this subparagraph, the Secretary shall ensure that the total amount of payments made to all hospitals under subsection (d)(5)(B) for discharges in a fiscal year is equal to the total amount of payments that would have been made to such hospitals under such subsection for discharges in such fiscal year if this subsection had not been enacted.

''(9) NO EFFECT IN SUBSEQUENT FISCAL YEARS.—Any adjustment under subparagraph (A) or (B) of paragraph (8) shall apply only with respect to the fiscal year involved, and the Secretary shall not take into account any such adjustment in making payments to a hospital under this section in a subsequent fiscal year.

''(10) EVALUATION OF SUBMISSION OF PERFORMANCE MEASURES.—Not later than January 1,

2017, the Secretary shall submit to Congress a report on the implementation of this subsection, including—

"(A) the measure development procedures, including any barriers to measure development;

"(B) the compliance with reporting on the performance measures, including any barriers to such compliance; and

"(C) recommendations to address any barriers described in subparagraph (A) or (B).

"(11) DEFINITION OF HOSPITAL.—In this subsection, the term 'hospital' means a hospital that receives payments under subsection (d)(5)(B).".

SEC. 4. INCREASING GRADUATE MEDICAL EDUCATION TRANSPARENCY.

(a) IN GENERAL.—Not later than 2 years after the date of the enactment of this Act, and annually thereafter, the Secretary of Health and Human Services shall submit to Congress and the National Health Care Workforce Commission a report on the graduate medical education payments that hospitals receive under the Medicare program. The report shall include the following information with respect to each hospital that receives such payments:

(1) The direct graduate medical education payments made to the hospital under section 1886(h) of the Social Security Act (42 U.S.C. 1395ww(h)).

(2) The total costs of direct graduate medical education to the hospital as reported on the annual Medicare Cost Reports.

(3) The indirect medical education payments made to the hospital under section 1886(d)(5)(B) of such Act (42 U.S.C. 1395ww(d)(1)(B)).

(4) The number of full-time-equivalent residents counted for purposes of making the payments described in paragraph (1).

(5) The number of full-time-equivalent residents counted for purposes of making the payments described in paragraph (3).

(6) The number of full-time-equivalent residents, if any, that are not counted for purposes of making payments described in paragraph (1).

(7) The number of full-time-equivalent residents, if any, that are not counted for purposes of making payments described in paragraph (3).

(8) The factors contributing to the higher costs of patient care provided by the hospital, including—

(A) the costs of trauma, burn, other standby services;

(B) translation services for disabled or non-English speaking patients;

(C) the cost of uncompensated care;

(D) financial losses with respect to Medicaid patients; and

(E) uncompensated costs of clinical research.

SEC. 5. GAO STUDY AND REPORT ON PHYSICIAN WORKFORCE.

(a) STUDY.—The Comptroller General of the United States shall conduct a study on the physician workforce. Such study shall include the identification of physician specialties for which there is a shortage, as defined by the Comptroller General.

(b) REPORT.—Not later than January 1, 2014, the Comptroller General shall submit to Congress a report on the study conducted under subsection (a), together with recommendations for such legislation and administrative action as the Comptroller General determines appropriate.

SEC. 6. STUDY AND REPORT ON STRATEGIES FOR INCREASING DIVERSITY.

(a) STUDY.—The Comptroller General of the United States shall conduct a study on strategies for increasing the diversity of the health professional workforce. Such study shall include an analysis of strategies for increasing

the number of health professionals from rural, lower income, and under-represented minority communities, including which strategies are most effective for achieving such goal.

(b) REPORT.—Not later than 2 years after the date of enactment of this Act, the Comptroller General shall submit to Congress a report on the study conducted under subsection (a), together with recommendations for such legislation and administrative action as the Comptroller General determines appropriate.

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