

112TH CONGRESS  
2D SESSION

# S. 2163

To amend title XVIII of the Social Security Act to improve Medicare benefits for individuals with kidney disease, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

MARCH 6, 2012

Mr. CONRAD introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend title XVIII of the Social Security Act to improve Medicare benefits for individuals with kidney disease, 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 “Kidney Disease Equitable Access, Prevention, and Re-  
6 search Act of 2012”.

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

Sec. 1. Short title; table of contents.

TITLE I—PROVIDING EQUITABLE ACCESS TO CARE FOR  
INDIVIDUALS WITH KIDNEY DISEASE

Sec. 101. Improving access to care through improvements in the initial survey process for renal dialysis facilities.

Sec. 102. Providing choice in primary insurer.

Sec. 103. Protecting individuals with kidney failure from unfair practices.

TITLE II—SUPPORTING RESEARCH TO IMPROVE ACCESS TO HIGH  
QUALITY KIDNEY CARE

Sec. 201. Understanding the progression of kidney disease in minority populations.

Sec. 202. Recommendations on dialysis quality and care management research gaps.

Sec. 203. GAO study on transportation barriers to access kidney care.

TITLE III—IMPROVING ACCESS TO PREVENTIVE CARE FOR  
INDIVIDUALS WITH KIDNEY DISEASE

Sec. 301. Improving access to medicare kidney disease education.

1 **TITLE I—PROVIDING EQUITABLE**  
2 **ACCESS TO CARE FOR INDI-**  
3 **VIDUALS WITH KIDNEY DIS-**  
4 **EASE**

5 **SEC. 101. IMPROVING ACCESS TO CARE THROUGH IM-**  
6 **PROVEMENTS IN THE INITIAL SURVEY PROC-**  
7 **ESS FOR RENAL DIALYSIS FACILITIES.**

8 Section 1864 of the Social Security Act (42 U.S.C.  
9 1395aa) is amended—

10 (1) by redesignating subsection (e) as sub-  
11 section (f);

12 (2) by inserting after subsection (d) the fol-  
13 lowing new subsection:

14 “(e)(1) If the Secretary has entered into an agree-  
15 ment with any State under this section under which the  
16 appropriate State or local agency that performs any sur-

1 vey related to determining the compliance of a renal dialy-  
2 sis facility subject to the requirements of section 1881(b)  
3 and the State licensure survey requirements are consistent  
4 with or exceed such Federal requirements, the Secretary  
5 must accept the results of the State licensure survey for  
6 purposes of determining Federal certification of compli-  
7 ance. In the case of such an initial survey of a renal dialy-  
8 sis facility, the Secretary may allow any State to waive  
9 the reimbursement for conducting the survey under this  
10 section if it requests such a waiver.

11 “(2) In the case of a renal dialysis facility that has  
12 waited for more than 6 months to receive the results of  
13 an initial survey under this section, the Secretary shall  
14 establish a specific timetable for completing and reporting  
15 the results of the survey.”; and

16 (3) in subsection (f), as so redesignated—

17 (A) by striking “Notwithstanding any  
18 other provision of law,” and inserting “(1) Not-  
19 withstanding any other provision of law and ex-  
20 cept as provided in paragraph (2)”;

21 (B) by adding at the end the following:

22 “(2) The Secretary may assess and collect fees for  
23 the initial Medicare survey from a renal dialysis facility  
24 subject to the requirements of section 1881(b) in an  
25 amount not to exceed a reasonable fee necessary to cover

1 the costs of initial surveys conducted for purposes of deter-  
2 mining the compliance of a renal dialysis facility with the  
3 requirements of section 1881(b). Fees may be assessed  
4 and collected under this paragraph only in such manner  
5 as would result in an aggregate amount of fees collected  
6 during any fiscal year being equal to the aggregate  
7 amount of costs for such fiscal year for initial surveys of  
8 such facilities under this section. A renal dialysis facility's  
9 liability for such fees shall be reasonably based on the pro-  
10 portion of the survey costs which relate to such facility.  
11 Any funds collected under this paragraph shall be used  
12 only to conduct the initial survey of the facilities providing  
13 the fees.

14 “(3) Fees authorized under paragraph (2) shall be  
15 collected by the Secretary and available only to the extent  
16 and in the amount provided in advance in appropriations  
17 Acts and upon request of the Secretary, subject to the  
18 amount and usage limitations of such paragraph. Such  
19 fees so collected are authorized to remain available until  
20 expended.”

21 **SEC. 102. PROVIDING CHOICE IN PRIMARY INSURER.**

22 (a) PROVIDING FOR PATIENT CHOICE.—

23 (1) IN GENERAL.—Section 1862(b)(1)(C) of the  
24 Social Security Act (42 U.S.C. 1395y(b)(1)(C)) is  
25 amended—

1 (A) in the last sentence, by inserting “and  
2 before January 1, 2013,” after “prior to such  
3 date)”; and

4 (B) by adding at the end the following new  
5 sentence: “Effective for items and services fur-  
6 nished on or after January 1, 2013 (with re-  
7 spect to periods beginning on or after the date  
8 that is 42 months prior to such date), clauses  
9 (i) and (ii) shall be applied by substituting ‘42-  
10 month’ for ‘12-month’ each place it appears in  
11 the first sentence.”.

12 (2) EFFECTIVE DATE.—The amendments made  
13 by this subsection shall take effect on the date of en-  
14 actment of this Act. For purposes of determining an  
15 individual’s status under section 1862(b)(1)(C) of  
16 the Social Security Act (42 U.S.C. 1395y(b)(1)(C)),  
17 as amended by paragraph (1), an individual who is  
18 within the coordinating period as of the date of en-  
19 actment of this Act shall have that period extended  
20 to the full 42 months described in the last sentence  
21 of such section, as added by the amendment made  
22 by paragraph (1)(B).

23 (b) PROVIDING EQUITABLE ACCESS TO INSURANCE  
24 FOR INDIVIDUALS WITH KIDNEY FAILURE.—The Sec-  
25 retary of Health and Human Services shall clarify upon

1 enactment of this Act that the Medicare Secondary Payer  
 2 rules set forth in section 1862(b)(1)(C) of the Social Secu-  
 3 rity Act (42 U.S.C. 1395y(b)(1)(C)), as amended by this  
 4 Act, apply to qualified health plans established under sec-  
 5 tion 1311(b)(1)(B) of Public Law 111–148 (42 U.S.C.  
 6 13031(b)(1)(B)).

7 **SEC. 103. PROTECTING INDIVIDUALS WITH KIDNEY FAIL-**  
 8 **URE FROM UNFAIR PRACTICES.**

9 (a) IN GENERAL.—Section 1862(b)(1)(C)(ii) of the  
 10 Social Security Act (42 U.S.C. 1395y(b)(1)(C)(ii)) is  
 11 amended to read as follows:

12 “(ii) may not differentiate in the ben-  
 13 efits it provides between individuals having  
 14 end stage renal disease and other individ-  
 15 uals covered by such plan or issuer on the  
 16 basis of the existence of end stage renal  
 17 disease, the need for renal dialysis, or in  
 18 any other manner, and such plan—

19 “(I) shall provide adequate, ad-  
 20 vanced, written notification to pa-  
 21 tients regarding changes to dialysis  
 22 service benefits, new restrictions on  
 23 out-of-network access, or reductions in  
 24 rates paid for out-of-network benefits  
 25 for such services;

1           “(II) shall allow patients to con-  
2           tinue using their existing provider or  
3           facility of such services for at least 24  
4           months following the date of notice of  
5           any change by the plan or issuer in  
6           the dialysis services network of the  
7           plan or issuer;

8           “(III) shall hold patients harm-  
9           less from provider network changes  
10          with respect to such services if such  
11          changes require unreasonable drive  
12          time or disrupt the physician-patient  
13          relationship;

14          “(IV) may not restrict the dura-  
15          tion or number of dialysis sessions for  
16          patients, such as based on a fixed  
17          number of treatments per week, to  
18          less than the number for which pay-  
19          ment may be made pursuant to sec-  
20          tion 1881(b)(1);

21          “(V) may not require assignment  
22          of benefits for such services;

23          “(VI) shall ensure that out-of-  
24          pocket payments for such services  
25          apply to the medicare part C out-of-

1 pocket maximums and not treated as  
 2 routine for purposes of calculating  
 3 beneficiary copayments;

4 “(VII) may not deny or limit cov-  
 5 erage for patients for such services if  
 6 premiums, copayments, or other pay-  
 7 ments are made by third parties on  
 8 their behalf; and

9 “(VIII) shall meet minimum net-  
 10 work adequacy standards specified by  
 11 the Secretary with respect to such  
 12 services;”.

13 (b) EFFECTIVE DATE.—The amendment made by  
 14 subsection (a) shall apply to group health plans as of Jan-  
 15 uary 1, 2014.

16 **TITLE II—SUPPORTING RE-**  
 17 **SEARCH TO IMPROVE ACCESS**  
 18 **TO HIGH QUALITY KIDNEY**  
 19 **CARE**

20 **SEC. 201. UNDERSTANDING THE PROGRESSION OF KIDNEY**  
 21 **DISEASE IN MINORITY POPULATIONS.**

22 Not later than one year after the date of the enact-  
 23 ment of this Act, the Secretary of Health and Human  
 24 Services shall complete a study (and submit a report to  
 25 Congress) on—



1 (1) the social, behavioral, and biological factors  
2 leading to kidney disease; and

3 (2) efforts to slow the progression of kidney dis-  
4 ease in minority populations that are disproportion-  
5 ately affected by such disease.

6 **SEC. 202. RECOMMENDATIONS ON DIALYSIS QUALITY AND**  
7 **CARE MANAGEMENT RESEARCH GAPS.**

8 Not later than 2 years after the date of the enact-  
9 ment of this Act, the Secretary of Health and Human  
10 Services shall submit to Congress a report regarding the  
11 research gaps with respect to the development of quality  
12 metrics and care management metrics for patients with  
13 end-stage renal disease, including pediatric and home di-  
14 alysis patients. Such report shall include recommendations  
15 about undertaking research to fill such gaps and  
16 prioritizing such research.

17 **SEC. 203. GAO STUDY ON TRANSPORTATION BARRIERS TO**  
18 **ACCESS KIDNEY CARE.**

19 (a) IN GENERAL.—The Comptroller General of the  
20 United States shall conduct an evaluation of the transpor-  
21 tation barriers facing dialysis patients that result in less  
22 than 100 percent compliance with their plan of care under  
23 the Medicare program.

1 (b) SPECIFIC MATTERS EVALUATED.—In conducting  
 2 the evaluation under subsection (a), the Comptroller Gen-  
 3 eral shall examine—

4 (1) the costs associated with providing dialysis  
 5 services;

6 (2) the number and characteristics of patients  
 7 who miss at least 2 dialysis treatments during a  
 8 month or have shortened treatments because of bar-  
 9 riers to transportation; and

10 (3) the potential sources of providing dialysis  
 11 patients with such transportation services.

12 (c) REPORT.—Not later than the date that is 6  
 13 months after the date of the enactment of this Act, the  
 14 Comptroller General shall submit to Congress a report on  
 15 the study conducted under subsection (a) together with  
 16 recommendations for such legislation and administrative  
 17 action as the Comptroller General determines appropriate.

18 **TITLE III—IMPROVING ACCESS**  
 19 **TO PREVENTIVE CARE FOR**  
 20 **INDIVIDUALS WITH KIDNEY**  
 21 **DISEASE**

22 **SEC. 301. IMPROVING ACCESS TO MEDICARE KIDNEY DIS-**  
 23 **EASE EDUCATION.**

24 (a) IN GENERAL.—Section 1861(ggg)(2) of the So-  
 25 cial Security Act (42 U.S.C. 1395x(ggg)(2)) is amended—

- 1 (1) by striking subparagraph (B); and  
2 (2) in subparagraph (A)—  
3 (A) by striking “(A)” after “(2)”;  
4 (B) by striking “and” at the end of clause  
5 (i);  
6 (C) by striking the period at the end of  
7 clause (ii) and inserting “; and”;  
8 (D) by redesignating clauses (i) and (ii) as  
9 subparagraphs (A) and (B), respectively; and  
10 (E) by adding at the end the following:  
11 “(C) a renal dialysis facility subject to the  
12 requirements of section 1881(b)(1) with per-  
13 sonnel—  
14 “(i) who provide the services described  
15 in paragraph (1); and  
16 “(ii) that include a physician (as de-  
17 fined in subsection (r)(1)) or a physician  
18 assistant, nurse practitioner, or clinical  
19 nurse specialist (as defined in subsection  
20 (aa)(5)).”.

21 (b) PAYMENT TO RENAL DIALYSIS FACILITIES.—  
22 Section 1881(b) of such Act (42 U.S.C. 1395rr(b)) is  
23 amended by adding at the end the following new para-  
24 graph:

1           “(15) For purposes of paragraph (14), the single pay-  
2 ment for renal dialysis services under such paragraph shall  
3 not take into account the amount of payment for kidney  
4 disease education services (as defined in section  
5 1861(ggg)). Instead, payment for such services shall be  
6 made to the renal dialysis facility on an assignment-re-  
7 lated basis under section 1848.”.

8           (c) PROVIDING EDUCATION SERVICES TO INDIVID-  
9 UALS WITH KIDNEY FAILURE.—Section 1861(ggg)(1)(A)  
10 of the Social Security Act (42 U.S.C. 1395x(ggg)(1)(A))  
11 is amended—

12                 (1) by inserting “or stage V” after “stage IV”;

13           and

14                 (2) by inserting “and who is not receiving dialy-  
15 sis services” after “chronic kidney disease”.

16           (d) EFFECTIVE DATE.—The amendments made by  
17 this section apply to kidney disease education services fur-  
18 nished on or after January 1, 2013.

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