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2D SESSION

S. 2782

To amend part C of title XVIII of the Social Security Act to consolidate and restate the Federal laws relating to the social health maintenance organization projects, to make such projects permanent, to require the Medicare Payment Advisory Commission to conduct a study on ways to expand such projects, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 24, 2002

Mr. SMITH of Oregon (for himself, Mr. REID, Mr. WYDEN, Mr. ENSIGN, Mrs. CLINTON, Mr. SCHUMER, Mrs. BOXER, and Mrs. FEINSTEIN) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend part C of title XVIII of the Social Security Act to consolidate and restate the Federal laws relating to the social health maintenance organization projects, to make such projects permanent, to require the Medicare Payment Advisory Commission to conduct a study on ways to expand such projects, 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,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Seniors Health and Independence Preservation Act of
4 2002”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Making the social health maintenance organization (SHMO) projects permanent.
- Sec. 3. Expansion of SHMO projects into noncontiguous service areas within a State.
- Sec. 4. Permanence of SHMO planning grant sites.
- Sec. 5. Procedures for SHMO benefit and payment mechanism changes.
- Sec. 6. Comprehensive MedPAC study on SHMO I and SHMO II cost-effectiveness and potential expansion.
- Sec. 7. SHMO Beneficiary satisfaction survey.
- Sec. 8. Conforming cross-references.
- Sec. 9. Legislative purpose and construction.
- Sec. 10. Repeals.

7 **SEC. 2. MAKING THE SOCIAL HEALTH MAINTENANCE ORGA-**
8 **NIZATION (SHMO) PROJECTS PERMANENT.**

9 Part C of title XVIII of the Social Security Act (42
10 U.S.C. 1395w–21 et seq.) is amended by inserting after
11 section 1857 the following new section:

12 “WAIVERS FOR SOCIAL HEALTH MAINTENANCE
13 ORGANIZATIONS

14 “SEC. 1858. (a) ESTABLISHMENT OF SHMO
15 PROJECTS.—In the case of a project described in sub-
16 section (b), the Secretary shall approve, with appropriate
17 terms and conditions as defined by the Secretary, applica-
18 tions or protocols submitted for waivers described in sub-
19 section (c), and the evaluation of such protocols, in order

1 to carry out such project. Such approval shall be effected
2 not later than 30 days after the date on which the applica-
3 tion or protocol for a waiver is submitted or not later than
4 30 days after the date of enactment of the Deficit Reduc-
5 tion Act of 1984 (Public Law 98–369; 98 Stat. 494) in
6 the case of an application or protocol submitted before the
7 date of enactment of such Act. Not later than 36 months
8 after the date of enactment of the Omnibus Budget Rec-
9 onciliation Act of 1990 (Public Law 101–508; 104 Stat.
10 1388), the Secretary shall approve applications or proto-
11 cols described in paragraph (1) for not more than 4 addi-
12 tional projects described in subsection (b).

13 “(b) PROJECTS DESCRIBED.—A project referred to
14 in subsection (a) is a project—

15 “(1) to demonstrate—

16 “(A) the concept of a social health mainte-
17 nance organization with the organizations as
18 described in Project No. 18–P–9 7604/1–04 of
19 the University Health Policy Consortium of
20 Brandeis University; or

21 “(B) in the case of a project conducted as
22 a result of the amendments made by section
23 4207(b)(4)(B)(i) of the Omnibus Budget Rec-
24 onciliation Act of 1990 (Public Law 101–508;
25 104 Stat. 1388–118), the effectiveness and fea-

1 sibility of innovative approaches to refining tar-
2 geting and financing methodologies and benefit
3 design, including the effectiveness of feasibility
4 of—

5 “(i) the benefits of expanded post-
6 acute and community care case manage-
7 ment through links between chronic care
8 case management services and acute care
9 providers;

10 “(ii) refining targeting or reimburse-
11 ment methodologies;

12 “(iii) the establishment and operation
13 of a rural services delivery system;

14 “(iv) integrating acute and chronic
15 care management for patients with end-
16 stage renal disease through expanded com-
17 munity care case management services
18 (and for purposes of a project conducted
19 under this clause, any requirement under a
20 waiver granted under this section that a
21 project disenroll individuals who develop
22 end-stage renal disease shall not apply); or

23 “(v) the effectiveness of second-gen-
24 eration sites in reducing the costs of the

1 commencement and management of health
2 care service delivery;

3 “(2) which provides for the integration of
4 health and social services under the direct financial
5 management of a provider of services;

6 “(3) under which all services under this title
7 will be provided by or under arrangements made by
8 the organization at a fixed annual prepaid capitation
9 rate for medicare of 100 percent of the adjusted av-
10 erage per capita cost; and

11 “(4) under which services under title XIX will
12 be provided at a rate approved by the Secretary.

13 “(c) WAIVERS.—The waivers referred to in sub-
14 section (a) are appropriate waivers of—

15 “(1) certain requirements of this title, pursuant
16 to section 402(a) of the Social Security Amendments
17 of 1967 (Public Law 90–248; 81 Stat. 930), as
18 amended by section 222 of the Social Security
19 Amendments of 1972 (Public Law 92–603; 86 Stat.
20 1390);

21 “(2) certain requirements of title XIX, pursu-
22 ant to section 1115; and

23 “(3) in the case of a project conducted as a re-
24 sult of the amendments made by section
25 4207(b)(4)(B)(i) of the Omnibus Budget Reconcili-

1 ation Act of 1990 (Public Law 101–508; 104 Stat.
2 1388–118), any requirements of title XVIII or XIX
3 that, if imposed, would prohibit such project from
4 being conducted.

5 “(d) AGGREGATE LIMIT ON NUMBER OF MEM-
6 BERS.—The Secretary may not impose a limit on the num-
7 ber of individuals that may participate in a project con-
8 ducted under this section, other than an aggregate limit
9 of not less than 324,000 for all sites.

10 “(e) REPORTS.—

11 “(1) PRELIMINARY REPORT.—The Secretary
12 shall submit a preliminary report to Congress on the
13 status of the projects and waivers referred to in sub-
14 section (a) 45 days after the date of enactment of
15 the Deficit Reduction Act of 1984 (Public Law 98–
16 369; 98 Stat. 494).

17 “(2) INTERIM REPORT.—The Secretary shall
18 submit an interim report to Congress on the projects
19 referred to in subsection (a) not later than 42
20 months after the date of enactment of the Deficit
21 Reduction Act of 1984 (Public Law 98–369; 98
22 Stat. 494).

23 “(3) SECOND INTERIM REPORT.—The Sec-
24 retary shall submit a second interim report to Con-

1 gress on the project referred to in paragraph (1) not
2 later than March 31, 1993.

3 “(4) REPORT ON INTEGRATION AND TRANSI-
4 TION.—

5 “(A) IN GENERAL.—The Secretary shall
6 submit to Congress, by not later than January
7 1, 1999, a plan for the integration of health
8 plans offered by social health maintenance or-
9 ganizations (including SHMO I and SHMO II
10 sites developed under this section and similar
11 plans) as an option under the Medicare+Choice
12 program under this title.

13 “(B) PROVISION FOR TRANSITION.—The
14 plan submitted under subparagraph (A) shall
15 include a transition for social health mainte-
16 nance organizations operating under the project
17 authority under this section.

18 “(C) PAYMENT POLICY.—The report shall
19 also include recommendations on appropriate
20 payment levels for plans offered by such organi-
21 zations, including an analysis of the application
22 of risk adjustment factors appropriate to the
23 population served by such organizations.

24 “(5) HHS REPORT.—The Secretary shall sub-
25 mit a report on the projects conducted under this

1 section not later than the date that is 21 months
2 after the date on which the Secretary submits to
3 Congress the report described in paragraph (4).

4 “(f) AUTHORIZATION OF APPROPRIATIONS.—There
5 are authorized to be appropriated \$3,500,000 for the costs
6 of technical assistance and evaluation related to projects
7 conducted as a result of the amendments made by section
8 4207(b)(4)(B) of the Omnibus Budget Reconciliation Act
9 of 1990 (Public Law 101–508; 104 Stat. 1388–118).”.

10 **SEC. 3. EXPANSION OF SHMO PROJECTS INTO NONCONTIG-**
11 **UOUS SERVICE AREAS WITHIN A STATE.**

12 Not later than the date that is 90 days after the date
13 of enactment of this Act, the Secretary shall promulgate
14 a regulation that permits each social health maintenance
15 organization participating in a project conducted under
16 section 1858 of the Social Security Act (as added by sec-
17 tion 2) to expand the service area of such organization
18 to include areas within the State served by the organiza-
19 tion that are not contiguous to any other service area of
20 the organization.

21 **SEC. 4. PERMANENCE OF SHMO PLANNING GRANT SITES.**

22 (a) ORIGINAL SHMO II DEMONSTRATIONS.—The 5
23 organizations authorized by section 4207(b)(4)(B) of the
24 Omnibus Budget Reconciliation Act of 1990 (Public Law
25 101–508; 104 Stat. 1388–118) to demonstrate the con-

1 cept of social health maintenance organizations that were
2 approved by the Secretary of Health and Human Services
3 in 1995 shall be permitted to participate in the program
4 under section 1858 of the Social Security Act (as added
5 by section 2).

6 (b) SHMO II DUAL-ELIGIBLE PLANNING GRANTS.—
7 Each entity that received a planning grant in 1998 under
8 the 1997 Grants Program for Reforming Service Delivery
9 for Dual Eligible Beneficiaries to develop a Second Gen-
10 eration Social HMO Demonstration Program shall be per-
11 mitted to participate in the program under section 1858
12 of the Social Security Act (as added by section 2).

13 **SEC. 5. PROCEDURES FOR SHMO BENEFIT AND PAYMENT**
14 **MECHANISM CHANGES.**

15 (a) CONGRESSIONAL NOTIFICATION OF BENEFIT
16 CHANGES.—The Secretary of Health and Human Services
17 shall notify the appropriate committees of Congress prior
18 to making any change to the benefits available under a
19 project under section 1858 of the Social Security Act (as
20 added by section 2).

21 (b) RULEMAKING REQUIREMENT FOR PAYMENT
22 MECHANISM CHANGES.—The Secretary may not change
23 the payment mechanism applicable with respect to any so-
24 cial health maintenance organization project under section

1 1858 of the Social Security Act (as added by section 2),
2 except by regulation.

3 **SEC. 6. COMPREHENSIVE MEDPAC STUDY ON SHMO I AND**
4 **SHMO II COST-EFFECTIVENESS AND POTEN-**
5 **TIAL EXPANSION.**

6 (a) STUDY.—

7 (1) IN GENERAL.—The Medicare Payment Ad-
8 visory Commission established under section 1805 of
9 the Social Security Act (42 U.S.C. 1395b–6) (in this
10 section referred to as the “Commission”) shall con-
11 duct a study on the cost-effectiveness of the projects
12 and the potential expansion of such projects.

13 (2) COST-EFFECTIVENESS.—

14 (A) IN GENERAL.—In determining the
15 cost-effectiveness of the projects under the
16 study conducted under paragraph (1), the Com-
17 mission shall take into account—

18 (i) the extent to which the per bene-
19 ficiary costs to the medicare program for
20 enrollees in a social health maintenance or-
21 ganization do not exceed the average per
22 beneficiary costs to the medicare program
23 for a comparable case mix of beneficiaries
24 who are enrolled in the original medicare
25 fee-for-service program;

1 (ii) the actuarial value of items and
2 services available to beneficiaries enrolled
3 in a social health maintenance organization
4 but not available to beneficiaries enrolled
5 in the original medicare fee-for-service pro-
6 gram; and

7 (iii) the extent to which social health
8 maintenance organizations reduced expend-
9 itures under the medicaid program under
10 title XIX of the Social Security Act by—

11 (I) preventing individuals from
12 being eligible for medical assistance
13 under such program as medically
14 needy individuals through the applica-
15 tion of spend-down requirements for
16 income and resources; or

17 (II) reducing the number of nurs-
18 ing home bed days associated with
19 stays of 60 days or longer for med-
20 icaid beneficiaries.

21 (B) COMPARABLE CASE MIX.—In evalu-
22 ating a comparable case mix of beneficiaries for
23 purposes of clause (i)(I), the Commission shall
24 take into account the following factors:

25 (i) Age.

1 (ii) Gender.

2 (iii) Diagnoses.

3 (iv) Functional status.

4 (v) Any other available demographic
5 or illness factor deemed appropriate by the
6 Commission.

7 (C) DATA.—In determining the cost-effec-
8 tiveness of social health maintenance organiza-
9 tions under this subsection, the Commission
10 shall evaluate data from social health mainte-
11 nance organizations for the period beginning on
12 January 1, 1997, and ending on the first De-
13 cember 31 occurring after the date of enact-
14 ment of this Act.

15 (b) REPORT.—

16 (1) IN GENERAL.—Not later than the date that
17 is 24 months after the date of enactment of this Act,
18 the Commission shall submit to the Secretary of
19 Health and Human Services and to the appropriate
20 committees of Congress a report on the study con-
21 ducted under subsection (a)(1).

22 (2) CONTENTS.—The report submitted under
23 paragraph (1) shall contain—

1 (A) a statement regarding whether the
2 Commission finds social health maintenance or-
3 ganizations to be cost-effective;

4 (B) recommendations regarding whether
5 the projects should be expanded to include addi-
6 tional sites and whether additional social health
7 maintenance organizations should be permitted
8 to participate in the projects;

9 (C) recommendations on whether to modify
10 or eliminate the aggregate limit on number of
11 members under section 1858(d) of the Social
12 Security Act (as added by section 2); and

13 (D) if the Commission recommends expan-
14 sion or replication of the projects, recommenda-
15 tions on the appropriate implementation of such
16 expansion.

17 (c) DEFINITIONS.—In this section:

18 (1) PROJECT.—The term “project” means a
19 project conducted under section 1858 of the Social
20 Security Act (as added by section 2) other than a
21 project described in subsection (b)(1)(B)(iv) of such
22 section.

23 (2) MEDICARE PROGRAM.—The term “medicare
24 program” means the health benefits program under
25 title XVIII of the Social Security Act.

1 (3) ORIGINAL MEDICARE FEE-FOR-SERVICE
 2 PROGRAM.—The term “original medicare fee-for-
 3 service program” means the program under parts A
 4 and B of the medicare program.

5 (4) SOCIAL HEALTH MAINTENANCE ORGANIZA-
 6 TION.—The term “social health maintenance organi-
 7 zation” means an organization participating in a
 8 SHMO I project described in subparagraph (A) of
 9 section 1858(b)(1) of the Social Security Act (as
 10 added by section 2) or a SHMO II project described
 11 in subparagraph (B) of such section (other than a
 12 project described in clause (iv) of such subpara-
 13 graph).

14 **SEC. 7. SHMO BENEFICIARY SATISFACTION SURVEY.**

15 (a) SURVEY.—

16 (1) IN GENERAL.—The Secretary of Health and
 17 Human Services shall conduct a comparative quali-
 18 tative survey of the satisfaction of medicare bene-
 19 ficiaries enrolled in—

20 (A) the original medicare fee-for-service
 21 program under parts A and B of title XVIII of
 22 the Social Security Act;

23 (B) a Medicare+Choice plan under part C
 24 of title XVIII of such Act; and

1 (C) a social health maintenance organiza-
2 tion under section 1858 of such Act (as added
3 by section 2).

4 (2) CONSIDERATIONS.—In determining bene-
5 ficiary satisfaction, the Secretary of Health and
6 Human Services shall take into account—

7 (A) the differences in the program or plan
8 benefit structure;

9 (B) the extent to which the program or
10 plan benefit structure enables beneficiaries to
11 avoid or delay institutionalization;

12 (C) the amount of out-of-pocket costs
13 saved by beneficiaries under the program or
14 plan for traditional and expanded care services;

15 (D) the access to services by beneficiaries
16 under the program or plan; and

17 (E) the satisfaction level of family mem-
18 bers and caregivers of beneficiaries enrolled in
19 the program or plan.

20 (b) PUBLICATION OF RESULTS AND SUBMISSION TO
21 CONGRESS.—Not later than the date that is 24 months
22 after the date of enactment of this Act, the Secretary of
23 Health and Human Services shall post the results of the
24 survey conducted under subsection (a)(1) on an Internet

1 website and shall submit such results to the appropriate
2 committees of Congress.

3 **SEC. 8. CONFORMING CROSS-REFERENCES.**

4 (a) SOCIAL SECURITY ACT.—

5 (1) The last sentence of section 1853(a)(1)(B)
6 of the Social Security Act (42 U.S.C. 1395w-
7 23(a)(1)(B)), as added by section 605(a) of the
8 Medicare, Medicaid, and SCHIP Benefits Improve-
9 ment and Protection Act of 2000 (114 Stat. 2763A-
10 556), is amended by striking “(established by sec-
11 tion 2355 of the Deficit Reduction Act of 1984, as
12 amended by section 13567(b) of the Omnibus Budg-
13 et Reconciliation Act of 1993)” and inserting “(es-
14 tablished by section 1858)”.

15 (2) Section 1882(g)(1) of the Social Security
16 Act (42 U.S.C. 1395ss(g)(1)) is amended by striking
17 “section 2355 of the Deficit Reduction Act of 1984”
18 and inserting “section 1858”.

19 (b) MEDICARE, MEDICAID, AND SCHIP BENEFITS
20 IMPROVEMENT AND PROTECTION ACT OF 2000.—Section
21 542(b)(2)(B)(iv) of the Medicare, Medicaid, and SCHIP
22 Benefits Improvement and Protection Act of 2000 (114
23 Stat. 2763A–551), as enacted into law by section 1(a)(6)
24 of Public Law 106–554, is amended by striking “section
25 4018(b) of the Omnibus Budget Reconciliation Act of

1 1987 (Public Law 100–203)” and inserting “section 1858
2 of the Social Security Act”.

3 **SEC. 9. LEGISLATIVE PURPOSE AND CONSTRUCTION.**

4 (a) **PRINCIPAL SUBSTANTIVE CHANGES TO MAKE**
5 **SHMO PROJECTS PERMANENT.**—

6 (1) **IN GENERAL.**—Except as provided in para-
7 graphs (2) and (3), section 2—

8 (A) restates, without substantive change,
9 laws enacted before January 24, 2002, that
10 were replaced by that section;

11 (B) may not be construed as making a
12 substantive change in the laws replaced; and

13 (C) is superseded by any law that is en-
14 acted after January 24, 2002, that is incon-
15 sistent with such section or that supersedes
16 that section to the extent of the inconsistency.

17 (2) **PERMANENCY.**—Section 2 extends the so-
18 cial health maintenance organization projects for an
19 indefinite time period (beyond the date that is 30
20 months after the date that the Secretary submits to
21 Congress the report described in section 1858(e)(4)
22 of the Social Security Act, as added by section 2).

23 (3) **MODIFICATION OF CERTAIN REPORTING RE-**
24 **QUIREMENTS.**—

1 (A) The report required to be submitted by
2 the Secretary of Health and Human Services
3 under section 1858(e)(5) of the Social Security
4 Act (as added by section 2) is the same report
5 as is required under the first sentence of sec-
6 tion 4018 of the Omnibus Budget Reconcili-
7 ation Act of 1987 (Public Law 100–203; 101
8 Stat. 1330–65), except that such report is no
9 longer characterized as a final report.

10 (B) The Medicare Payment Advisory Com-
11 mission established under section 1805 of the
12 Social Security Act (42 U.S.C. 1395b–6) shall
13 not be required to submit the report described
14 in the second sentence of section 4018 of the
15 Omnibus Budget Reconciliation Act of 1987
16 (Public Law 100–203; 101 Stat. 1330–65).

17 (b) REFERENCES.—A reference to a law replaced by
18 section 2, including a reference in a regulation, order, or
19 other law, is deemed to refer to the corresponding provi-
20 sion enacted by this Act.

21 (c) CONTINUING EFFECT.—An order, rule, or regula-
22 tion in effect under a law replaced by section 2 shall con-
23 tinue in effect under the corresponding provision enacted
24 by this Act until repealed, amended, or superseded.

1 (d) ACTIONS UNDER PRIOR LAW.—An action taken
 2 under a law replaced by section 2 is deemed to have been
 3 taken under the corresponding provision enacted by this
 4 Act.

5 (e) INFERENCES.—No inference of legislative con-
 6 struction may be drawn by reason of a heading of a provi-
 7 sion.

8 (f) SEVERABILITY.—If a provision enacted by this
 9 Act is—

10 (1) held invalid, each valid provision that is sev-
 11 erable from the invalid provision shall remain in ef-
 12 fect; and

13 (2) held invalid with respect to any application,
 14 the provision shall remain valid with respect to each
 15 valid application that is severable from the invalid
 16 application.

17 **SEC. 10. REPEALS.**

18 (a) INFERENCES OF REPEAL.—The repeal of a law
 19 by this Act may not be construed as a legislative inference
 20 that the provision was or was not in effect before its re-
 21 peal.

22 (b) LAWS REPEALED.—Except for rights and duties
 23 that matured, penalties that were incurred, and pro-
 24 ceedings that were begun before the date of enactment of

1 this Act, the following provisions (and amendments made
2 by such provisions) are repealed:

3 (1) Section 2355 of the Deficit Reduction Act
4 of 1984 (Public Law 98–369; 98 Stat. 1103).

5 (2) Section 4018(b) of the Omnibus Budget
6 Reconciliation Act of 1987 (Public Law 100–203;
7 101 Stat. 1330–65).

8 (3) Section 4207(b)(4) of the Omnibus Budget
9 Reconciliation Act of 1990 (Public Law 101–508;
10 104 Stat. 1388–118).

11 (4) Section 13567 of the Omnibus Budget Rec-
12 onciliation Act of 1993 (Public Law 103–66; 107
13 Stat. 607).

14 (5) Paragraphs (6) through (8) of section
15 160(d) of the Social Security Act Amendments of
16 1994 (Public Law 103–432; 108 Stat. 4443).

17 (6) Section 4014 of the Balanced Budget Act
18 of 1997 (Public Law 105–33; 111 Stat. 336).

19 (7) Section 531 of the Medicare, Medicaid, and
20 SCHIP Balanced Budget Refinement Act of 1999
21 (Appendix F of Public Law 106–113; 113 Stat.
22 1501A–388).

23 (8) Section 631 of the Medicare, Medicaid, and
24 SCHIP Benefits Improvement and Protection Act of

1 2000 (Appendix F of Public Law 106–554; 114
2 Stat. 2763A–566).

○