

111TH CONGRESS
1ST SESSION

H. R. 2959

To amend title XVIII of the Social Security Act to establish an accountable care organization pilot program to reduce the growth of expenditures and improve health outcomes under the Medicare Program.

IN THE HOUSE OF REPRESENTATIVES

JUNE 18, 2009

Mr. WELCH (for himself, Mr. POMEROY, Mr. VAN HOLLEN, Mr. CARNEY, Mr. KIND, Mr. LEVIN, Ms. LINDA T. SÁNCHEZ of California, Mr. INSLEE, Mr. HIGGINS, Mr. THOMPSON of California, Mr. LEWIS of Georgia, Mr. PASCRELL, Ms. SCHWARTZ, Mr. SPACE, Mr. MARKEY of Massachusetts, Mr. COOPER, Mr. PERLMUTTER, Mr. BRALEY of Iowa, Mr. BLUMENAUER, Mr. YARMUTH, and Mr. TANNER) 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 establish an accountable care organization pilot program to reduce the growth of expenditures and improve health outcomes under the Medicare Program.

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.**

2 This Act may be cited as the “Accountable Care Pro-
3 motion Act of 2009”.

4 **SEC. 2. ACCOUNTABLE CARE ORGANIZATION PILOT PRO-**
5 **GRAM.**

6 Title XVIII of the Social Security Act is amended by
7 inserting after section 1866C the following new section:

8 “ACCOUNTABLE CARE ORGANIZATION PILOT PROGRAM

9 “SEC. 1866D. (a) IN GENERAL.—The Secretary shall
10 conduct a pilot program (in this section referred to as the
11 ‘pilot program’) to test different payment incentive mod-
12 els, including (to the extent practicable) the specific pay-
13 ment incentive models described in subsection (c), de-
14 signed to reduce the growth of expenditures and improve
15 health outcomes in the provision of items and services
16 under this title to applicable beneficiaries (as defined in
17 subsection (d)) by qualifying accountable care organiza-
18 tions (as defined in subsection (b)(1)) in order to—

19 “(1) promote accountability for a patient popu-
20 lation and coordinate items and services under parts
21 A and B;

22 “(2) encourage investment in infrastructure and
23 redesigned care processes for high quality and effi-
24 cient service delivery; and

1 “(3) reward physician practices for the provi-
2 sion of high quality and efficient health care serv-
3 ices.

4 “(b) QUALIFYING ACCOUNTABLE CARE ORGANIZA-
5 TIONS (ACOs).—

6 “(1) QUALIFYING ACO DEFINED.—

7 “(A) IN GENERAL.—In this section, the
8 terms ‘qualifying accountable care organization’
9 and ‘qualifying ACO’ mean a group of physi-
10 cians that—

11 “(i) is organized at least in part for
12 the purpose of providing physicians’ serv-
13 ices; and

14 “(ii) meets such criteria as the Sec-
15 retary determines to be appropriate to par-
16 ticipate in the pilot program, including the
17 criteria specified in paragraph (2).

18 “(B) INCLUSION OF OTHER PROVIDERS.—

19 Nothing in this subsection shall be construed as
20 preventing a qualifying ACO from including a
21 hospital or any other provider of services or
22 supplier furnishing items or services for which
23 payment may be made under this title that is
24 affiliated with the ACO under an arrangement
25 structured so that such provider or supplier

1 participates in the pilot program and shares in
2 any incentive payments under the pilot pro-
3 gram.

4 “(C) PHYSICIAN.—In this section, the
5 term ‘physician’ includes, except as the Sec-
6 retary may otherwise provide, any individual
7 who furnishes services for which payment may
8 be made as physicians’ services.

9 “(D) OTHER SERVICES.—Nothing in this
10 paragraph shall be construed as preventing a
11 qualifying ACO from furnishing items or serv-
12 ices, for which payment may not made under
13 this title, for purposes of achieving performance
14 goals under the pilot program.

15 “(2) QUALIFYING CRITERIA.—The following are
16 criteria described in this paragraph for an organized
17 group of physicians to be a qualifying ACO:

18 “(A) The group has a legal structure that
19 would allow the group to receive and distribute
20 incentive payments under this section.

21 “(B) The group includes a sufficient num-
22 ber of primary care physicians for the applica-
23 ble beneficiaries for whose care the group is ac-
24 countable (as determined by the Secretary).

1 “(C) The group is comprised of only par-
2 ticipating physicians.

3 “(D) The group reports on quality meas-
4 ures in such form, manner, and frequency as
5 specified by the Secretary (which may be for
6 the group, for providers of services and sup-
7 pliers, or both).

8 “(E) The group reports to the Secretary
9 (in a form, manner, and frequency as specified
10 by the Secretary) such data as the Secretary
11 determines appropriate to monitor and evaluate
12 the pilot program.

13 “(F) The group provides notice to applica-
14 ble beneficiaries regarding the pilot program (as
15 determined appropriate by the Secretary).

16 “(G) The group contributes to a best prac-
17 tices network or website, that shall be main-
18 tained by the Secretary for the purpose of shar-
19 ing strategies on quality improvement, care co-
20 ordination, and efficiency that the groups be-
21 lieve are effective.

22 “(H) The group utilizes patient-centered
23 processes of care, including those that empha-
24 size patient and caregiver involvement in plan-

1 ning and monitoring of ongoing care manage-
2 ment plan.

3 “(I) The group meets other criteria deter-
4 mined to be appropriate by the Secretary.

5 “(c) SPECIFIC PAYMENT INCENTIVE MODELS.—The
6 specific payment incentive models described in this sub-
7 section are the following:

8 “(1) PERFORMANCE TARGET MODEL.—Under
9 the performance target model under this paragraph
10 (in this paragraph referred to as the ‘performance
11 target model’):

12 “(A) IN GENERAL.—A qualifying ACO
13 qualifies to receive an incentive payment if ex-
14 penditures for applicable beneficiaries are less
15 than a target spending level or a target rate of
16 growth. The incentive payment shall be made
17 only if savings are greater than would result
18 from normal variation in expenditures for items
19 and services covered under parts A and B.

20 “(B) COMPUTATION OF PERFORMANCE
21 TARGET.—

22 “(i) IN GENERAL.—The Secretary
23 shall establish a performance target for
24 each qualifying ACO comprised of a base
25 amount (described in clause (ii)) increased

1 to the current year by an adjustment fac-
2 tor (described in clause (iii)). Such a tar-
3 get may be established on a per capita
4 basis, as the Secretary determines to be
5 appropriate.

6 “(ii) BASE AMOUNT.—For purposes of
7 clause (i), the base amount in this sub-
8 paragraph is equal to the average total
9 payments (or allowed charges) under parts
10 A and B (and may include part D, if the
11 Secretary determines appropriate) for ap-
12 plicable beneficiaries for whom the quali-
13 fying ACO furnishes items and services in
14 a base period determined by the Secretary.
15 Such base amount may be determined on
16 a per capita basis.

17 “(iii) ADJUSTMENT FACTOR.—For
18 purposes of clause (i), the adjustment fac-
19 tor in this clause may equal an annual per
20 capita amount that reflects changes in ex-
21 penditures from the period of the base
22 amount to the current year that would rep-
23 resent an appropriate performance target
24 for applicable beneficiaries (as determined
25 by the Secretary). Such adjustment factor

1 may be determined as an amount or rate,
2 may be determined on a national, regional,
3 local, or organization-specific basis, and
4 may be determined on a per capita basis.
5 Such adjustment factor also may be ad-
6 justed for risk as determined appropriate
7 by the Secretary.

8 “(iv) REBASING.—Under this model
9 the Secretary shall periodically rebase the
10 base expenditure amount described in
11 clause (ii).

12 “(C) MEETING TARGET.—

13 “(i) IN GENERAL.—Subject to clause
14 (ii), a qualifying ACO that meet or exceeds
15 annual quality and performance targets for
16 a year shall receive an incentive payment
17 for such year equal to a portion (as deter-
18 mined appropriate by the Secretary) of the
19 amount by which payments under this title
20 for such year relative are estimated to be
21 below the performance target for such
22 year, as determined by the Secretary. The
23 Secretary may establish a cap on incentive
24 payments for a year for a qualifying ACO.

1 “(ii) LIMITATION.—The Secretary
2 shall limit incentive payments to each
3 qualifying ACO under this paragraph as
4 necessary to ensure that the aggregate ex-
5 penditures with respect to applicable bene-
6 ficiaries for such ACOs under this title in-
7 clusive of incentive payments described in
8 this subparagraph do not exceed the
9 amount that the Secretary estimates would
10 be expended for such ACO for such bene-
11 ficiaries if the pilot program under this
12 section were not implemented.

13 “(D) REPORTING AND OTHER REQUIRE-
14 MENTS.—In carrying out such model, the Sec-
15 retary may (as the Secretary determines to be
16 appropriate) incorporate reporting require-
17 ments, incentive payments, and penalties re-
18 lated to the physician quality reporting initia-
19 tive (PQRI), electronic prescribing, electronic
20 health records, and other similar initiatives
21 under section 1848, and may use alternative
22 criteria than would otherwise apply under such
23 section for determining whether to make such
24 payments. The incentive payments described in
25 this subparagraph shall not be included in the

1 limit described in subparagraph (C)(ii) or in the
2 performance target model described in this
3 paragraph.

4 “(2) PARTIAL CAPITATION MODEL.—

5 “(A) IN GENERAL.—Subject to subpara-
6 graph (B), a partial capitation model described
7 in this paragraph (in this paragraph referred to
8 as a ‘partial capitation model’) is a model in
9 which a qualifying ACO would be at financial
10 risk for some, but not all, of the items and serv-
11 ices covered under parts A and B, such as at
12 risk for some or all physicians’ services or all
13 items and services under part B. The Secretary
14 may limit a partial capitation model to ACOs
15 that are highly integrated systems of care and
16 to ACOs capable of bearing risk, as determined
17 to be appropriate by the Secretary.

18 “(B) NO ADDITIONAL PROGRAM EXPENDI-
19 TURES.—Payments to a qualifying ACO for ap-
20 plicable beneficiaries for a year under the par-
21 tial capitation model shall be established in a
22 manner that does not result in spending more
23 for such ACO for such beneficiaries than would
24 otherwise be expended for such ACO for such
25 beneficiaries for such year if the pilot program

1 were not implemented, as estimated by the Sec-
2 retary.

3 “(3) OTHER PAYMENT MODELS.—

4 “(A) IN GENERAL.—Subject to subpara-
5 graph (B), the Secretary may develop other
6 payment models that meet the goals of this
7 pilot program to improve quality and efficiency.

8 “(B) NO ADDITIONAL PROGRAM EXPENDI-
9 TURES.—Subparagraph (B) of paragraph (2)
10 shall apply to a payment model under subpara-
11 graph (A) in a similar manner as such subpara-
12 graph (B) applies to the payment model under
13 paragraph (2).

14 “(d) APPLICABLE BENEFICIARIES.—

15 “(1) IN GENERAL.—In this section, the term
16 ‘applicable beneficiary’ means, with respect to a
17 qualifying ACO, an individual who—

18 “(A) is enrolled under part B and entitled
19 to benefits under part A;

20 “(B) is not enrolled in a Medicare Advan-
21 tage plan under part C or a PACE program
22 under section 1894; and

23 “(C) meets such other criteria as the Sec-
24 retary determines appropriate, which may in-

1 clude criteria relating to frequency of contact
2 with physicians in the ACO.

3 “(2) FOLLOWING APPLICABLE BENE-
4 FICIARIES.—The Secretary may monitor data on ex-
5 penditures and quality of services under this title
6 after an applicable beneficiary discontinues receiving
7 services under this title through a qualifying ACO.

8 “(e) IMPLEMENTATION.—

9 “(1) STARTING DATE.—The pilot program shall
10 begin no later than January 1, 2011. An agreement
11 with a qualifying ACO under the pilot program may
12 cover a multi-year period of between 3 and 5 years.

13 “(2) WAIVER.—The Secretary may waive such
14 provisions of this title and title XI as the Secretary
15 determines necessary in order implement the pilot
16 program.

17 “(3) PERFORMANCE RESULTS REPORTS.—The
18 Secretary shall report performance results to quali-
19 fying ACOs under the pilot program at least annu-
20 ally.

21 “(4) LIMITATIONS ON REVIEW.—There shall be
22 no administrative or judicial review under section
23 1869, section 1878, or otherwise of—

24 “(A) the elements, parameters, scope, and
25 duration of the pilot program;

1 “(B) the selection of qualifying ACOs for
2 the pilot program;

3 “(C) the establishment of targets, meas-
4 urement of performance, determinations with
5 respect to whether savings have been achieved
6 and the amount of savings;

7 “(D) determinations regarding whether, to
8 whom, and in what amounts incentive payments
9 are paid; and

10 “(E) decisions about the extension of the
11 program under subsection (g), expansion of the
12 program under subsection (h) or extensions
13 under subsection (i).

14 “(5) ADMINISTRATION.—Chapter 35 of title 44,
15 United States Code shall not apply to this section.

16 “(f) EVALUATION.—The Secretary shall evaluate the
17 payment incentive model for each qualifying ACO under
18 the pilot program to assess impacts on beneficiaries, pro-
19 viders of services, suppliers and the program under this
20 title. The Secretary shall make such evaluation publicly
21 available within 60 days of the date of completion of such
22 report.

23 “(g) EXTENSION OF PILOT AGREEMENT WITH SUC-
24 CESSFUL ORGANIZATIONS.—

1 “(1) REPORTS TO CONGRESS.—Not later than
2 2 years after the date the first agreement is entered
3 into under this section, and biennially thereafter for
4 six years, the Secretary shall report to Congress on
5 the use of authorities under the pilot program. Each
6 report shall address the impact of the use of those
7 authorities on expenditures, access, and quality
8 under this title.

9 “(2) EXTENSION.—Subject to the monitoring
10 described in paragraph (1), with respect to a quali-
11 fying ACO, the Secretary may extend the duration
12 of the agreement for such ACO under the pilot pro-
13 gram as the Secretary determines appropriate if—

14 “(A) the ACO receives incentive payments
15 with respect to any of the first 4 years of the
16 pilot agreement and is consistently meeting
17 quality standards; or

18 “(B) the ACO is consistently exceeding
19 quality standards and is not increasing spend-
20 ing under the program.

21 “(3) TERMINATION.—The Secretary may termi-
22 nate an agreement with a qualifying ACO under the
23 pilot program if such ACO did not receive incentive
24 payments or consistently failed to meet quality

1 standards in any of the first 3 years under the pro-
2 gram.

3 “(h) EXPANSION TO ADDITIONAL ACOs.—

4 “(1) TESTING AND REFINEMENT OF PAYMENT
5 INCENTIVE MODELS.—Subject to the evaluation de-
6 scribed in subsection (f), the Secretary may enter
7 into agreements under the pilot program with addi-
8 tional qualifying ACOs to further test and refine
9 payment incentive models with respect to qualifying
10 ACOs.

11 “(2) EXPANDING USE OF SUCCESSFUL MODELS
12 TO PROGRAM IMPLEMENTATION.—

13 “(A) IN GENERAL.—Subject to subpara-
14 graph (B), the Secretary may issue regulations
15 to implement, on a permanent basis, the compo-
16 nents of the pilot program that are beneficial to
17 the program under this title, as determined by
18 the Secretary.

19 “(B) CERTIFICATION.—The Chief Actuary
20 of the Centers for Medicare & Medicaid Serv-
21 ices shall certify that the expansion of the com-
22 ponents of the program described in subpara-
23 graph (A) would result in estimated spending
24 that would be less than what spending would

1 otherwise be estimated to be in the absence of
2 such expansion.

3 “(i) TREATMENT OF PHYSICIAN GROUP PRACTICE
4 DEMONSTRATION.—

5 “(1) EXTENSION.—The Secretary may enter in
6 to an agreement with a qualifying ACO under the
7 demonstration under section 1866A, subject to re-
8 basing and other modifications deemed appropriate
9 by the Secretary, until the pilot program under this
10 section is operational.

11 “(2) TRANSITION.—For purposes of extension
12 of an agreement with a qualifying ACO under sub-
13 section (g)(2), the Secretary shall treat receipt of an
14 incentive payment for a year by an organization
15 under the physician group practice demonstration
16 pursuant to section 1866A as a year for which an
17 incentive payment is made under such subsection, as
18 long as such practice group practice organization
19 meets the criteria under subsection (b)(2).

20 “(j) ADDITIONAL PROVISIONS.—

21 “(1) AUTHORITY FOR SEPARATE INCENTIVE
22 ARRANGEMENTS.—The Secretary may create sepa-
23 rate incentive arrangements (including using mul-
24 tiple years of data, varying thresholds, varying
25 shared savings amounts, and varying shared savings

1 limits) for different categories of qualifying ACOs to
2 reflect natural variations in data availability, vari-
3 ation in average annual attributable expenditures,
4 program integrity, and other matters the Secretary
5 deems appropriate.

6 “(2) ELIGIBILITY FOR MEDICAL HOME BONUS
7 PAYMENTS.—A qualifying ACO shall be eligible for
8 bonus or incentive payments for provision of a med-
9 ical home (or similar model of care delivery) under
10 section 204 of the Medicare Improvement and Ex-
11 tension Act of 2006 (division B of Public Law 109–
12 432) in the same manner as health care providers
13 participating in the ACO are so eligible.

14 “(3) ENCOURAGEMENT OF PARTICIPATION OF
15 SMALLER ORGANIZATIONS.—In order to encourage
16 the participation of smaller accountable care organi-
17 zations under the pilot program, the Secretary may
18 limit a qualifying ACO’s exposure to high cost pa-
19 tients under the program.

20 “(4) INVOLVEMENT IN PRIVATE PAY ARRANGE-
21 MENTS.—Nothing in this section shall be construed
22 as preventing qualifying ACOs participating in the
23 pilot program from negotiating similar contracts
24 with private payers.

1 “(5) ANTIDISCRIMINATION LIMITATION.—The
2 Secretary shall not enter into an agreement with an
3 entity to provide health care items or services under
4 the pilot program, or with an entity to administer
5 the program, unless such entity guarantees that it
6 will not deny, limit, or condition the coverage or pro-
7 vision of benefits under the program, for individuals
8 eligible to be enrolled under such program, based on
9 any health status-related factor described in section
10 2702(a)(1) of the Public Health Service Act.”.

○