

111<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 6537

To amend titles XVIII and XIX of the Social Security Act and other Acts to improve Medicare and other benefits for beneficiaries with kidney disease, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 16, 2010

Mr. LEWIS of Georgia introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, 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 titles XVIII and XIX of the Social Security Act and other Acts to improve Medicare and other benefits for beneficiaries 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 “Improving Care for Kidney Patients Act of 2010”.

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

Sec. 1. Short title; table of contents.

TITLE I—IMPROVING PATIENT CARE

- Sec. 101. Improvement of pre-dialysis care for Medicaid beneficiaries.
- Sec. 102. Study the progression kidney disease in minority populations.
- Sec. 103. AHRQ recommendations on dialysis quality and care management research gaps.
- Sec. 104. Kidney disease screening.
- Sec. 105. Kidney disease education in hospitals.
- Sec. 106. Increasing access to medicare kidney disease education benefit.
- Sec. 107. Kidney disease accountable care organizations (ACOs).
- Sec. 108. Coordination of care between hospitals and renal dialysis facilities.
- Sec. 109. Clarification of coverage of certain occlusive dressings.

TITLE II—PROVIDING ACCESS TO PATIENTS IN NEED OF DIALYSIS TREATMENT

- Sec. 201. Survey requirements for renal dialysis facilities.
- Sec. 202. GAO study on transportation barriers to accessing kidney care.
- Sec. 203. Vascular access care service sites.

TITLE III—ELIMINATING INEQUITIES FOR PATIENTS WITH KIDNEY FAILURE

- Sec. 301. Patient choice of primary insurer.
- Sec. 302. Access to medigap policies.
- Sec. 303. Protecting individuals with kidney failure from unfair practices under health care reform.

**1 TITLE I—IMPROVING PATIENT  
2 CARE**

**3 SEC. 101. IMPROVEMENT OF PRE-DIALYSIS CARE FOR MED-  
4 ICARD BENEFICIARIES.**

5 (a) IN GENERAL.—Section 1905(b) of the Social Se-  
6 curity Act (42 U.S.C. 1396d(b)) is amended by adding  
7 at the end the following new sentence: “Notwithstanding  
8 the first sentence of this subsection, the Federal medical  
9 assistance percentage with respect to the placement of an  
10 arteriovenous fistula or graft for purposes of hemodialysis  
11 treatment shall be 100 percent”.

1 (b) EFFECTIVE DATE.—The amendment made by  
2 subsection (a) apply to fistulas and grafts placed on or  
3 after January 1, 2011.

4 **SEC. 102. STUDY THE PROGRESSION KIDNEY DISEASE IN**  
5 **MINORITY POPULATIONS.**

6 Not later than one year after the date of the enact-  
7 ment of this Act, the Secretary of Health and Human  
8 Services, acting through the Director of the Agency for  
9 Healthcare Research and Quality, shall complete a study  
10 (and submit a report to Congress) on—

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

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

16 **SEC. 103. AHRQ RECOMMENDATIONS ON DIALYSIS QUALITY**  
17 **AND CARE MANAGEMENT RESEARCH GAPS.**

18 Not later than 2 years after the date of the enact-  
19 ment of this Act, the Secretary of Health and Human  
20 Services, acting through the Director of the Agency for  
21 Healthcare Research and Quality, shall submit to Con-  
22 gress a report regarding the research gaps with respect  
23 to the development of quality measures and care manage-  
24 ment for patients with end-stage renal disease, including  
25 pediatric patients. Such report shall include recommenda-

1 tions about undertaking research to fill such gaps and  
2 prioritizing such research.

3 **SEC. 104. KIDNEY DISEASE SCREENING.**

4 (a) IN GENERAL.—Section 1128B(b)(3) of the Social  
5 Security Act (42 U.S.C. 1320a–7b(b)(3)) is amended—

6 (1) by striking “and” at the end of subpara-  
7 graph (I);

8 (2) in subparagraph (J), by moving the inden-  
9 tation 2 ems to the left and by striking the period  
10 at the end and inserting “; and”; and

11 (3) by adding at the end the following new sub-  
12 paragraph:

13 “(K) a waiver of any fee or cost-sharing by  
14 a renal dialysis facility for the purpose of pro-  
15 viding screening for chronic kidney disease so  
16 long as—

17 “(i) receiving the screening is not con-  
18 ditioned on the individual’s use of any  
19 other goods or services from the facility or  
20 any other particular health care provider;

21 “(ii) individuals receiving the screen-  
22 ing are referred to their own health care  
23 practitioner;

1 “(iii) no special discounts or waivers  
2 are available for any follow-up services;  
3 and

4 “(iv) the facility does not bill for the  
5 screening to any Federal or State health  
6 care program or to any other third party  
7 payor.”.

8 (b) **EFFECTIVE DATE.**—The amendments made by  
9 subsection (a) shall apply to waivers occurring after the  
10 date of the enactment of this Act.

11 **SEC. 105. KIDNEY DISEASE EDUCATION IN HOSPITALS.**

12 (a) **IN GENERAL.**—Section 1861(e)(6) of the Social  
13 Security Act (42 U.S.C. 1395x(e)(6)) is amended—

14 (1) by striking “and (B)” and inserting “,  
15 (B)”; and

16 (2) by inserting before the semicolon at the end  
17 the following: “, and (C) provides patients who are  
18 entitled to benefits under this title or title XIX diag-  
19 nosed with stage IV or stage V kidney disease with  
20 educational materials regarding the treatment of  
21 kidney disease”.

22 (b) **TECHNICAL ASSISTANCE.**—Not later than one  
23 year after the date of the enactment of this Act, the Sec-  
24 retary of Health and Human Services shall develop proto-  
25 cols for the identification of chronic kidney disease in at-

1 risk Medicare and Medicaid beneficiaries for use in the  
2 inpatient hospital setting under the amendment made by  
3 subsection (a)(2).

4 (c) EFFECTIVE DATE.—The amendments made by  
5 subsection (a) shall take effect 1 year after the date of  
6 the enactment of this Act.

7 **SEC. 106. INCREASING ACCESS TO MEDICARE KIDNEY DIS-**  
8 **EASE EDUCATION BENEFIT.**

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

11 (1) by striking subparagraph (B); and

12 (2) in subparagraph (A)—

13 (A) by striking “(A)” after “(2)”;

14 (B) by striking “and” at the end of clause

15 (i);

16 (C) by striking the period at the end of  
17 clause (ii) and inserting “; and”;

18 (D) by redesignating clauses (i) and (ii) as  
19 subparagraphs (A) and (B), respectively; and

20 (E) by adding at the end the following:

21 “(C) a renal dialysis facility subject to the re-  
22 quirements of section 1881(b)(1) with personnel  
23 who—

24 “(i) provide the services described in para-  
25 graph (1); and

1           “(ii) is a physician (as defined in sub-  
2           section (r)(1)) or a physician assistant, nurse  
3           practitioner, or clinical nurse specialist (as de-  
4           fined in subsection (aa)(5)).”.

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

9           “(15) For purposes of paragraph (14), the sin-  
10          gle payment for renal dialysis services under such  
11          paragraph shall not take into account the amount of  
12          payment for kidney disease education services (as  
13          defined in section 1861(ggg)). Instead, payment for  
14          such services shall be made to the renal dialysis fa-  
15          cility on an assignment-related basis under section  
16          1848.”.

17          (c) EFFECTIVE DATE.—The amendments made by  
18 this section apply to kidney disease education services fur-  
19 nished on or after January 1, 2011.

20 **SEC. 107. KIDNEY DISEASE ACCOUNTABLE CARE ORGANI-**  
21 **ZATIONS (ACOS).**

22          Section 1899(b)(1) of the Social Security Act (42  
23 U.S.C. 1395jjj(b)(1)), as added by section 3022, and  
24 amended by section 10307, of the Patient Protection and  
25 Affordable Care Act (Public Law 111–148), is amended—

1 (1) by redesignating subparagraph (E) as sub-  
2 paragraph (F); and

3 (2) by inserting after subparagraph (D) the fol-  
4 lowing new subparagraph:

5 “(E) A group consisting of dialysis facili-  
6 ties, nephrologists, and other providers of serv-  
7 ices and suppliers that treat patients with kid-  
8 ney disease.”.

9 **SEC. 108. COORDINATION OF CARE BETWEEN HOSPITALS**  
10 **AND RENAL DIALYSIS FACILITIES.**

11 (a) **IN GENERAL.**—Section 1861(ee)(2) of the Social  
12 Security Act (42 U.S.C. 1395x(ee)(2)) is amended by add-  
13 ing at the end the following new subparagraph:

14 “(I) In the case of a patient who has end  
15 stage renal disease and is or will be receiving  
16 dialysis treatments upon discharge, the hospital  
17 must transmit the discharge summary and any  
18 other relevant health information defined by the  
19 Secretary to the renal dialysis facility or hos-  
20 pital-based provider when the patient is dis-  
21 charged from the hospital.”.

22 (b) **DEADLINE.**—The Secretary of Health and  
23 Human Services shall implement guidelines and standards  
24 to carry out the amendment made by subsection (a) not



1 later than 6 months after the date of the enactment of  
2 this Act.

3 **SEC. 109. CLARIFICATION OF COVERAGE OF CERTAIN**  
4 **OCCULSIVE DRESSINGS.**

5 (a) IN GENERAL.—Section 1861(s)(5) of the Social  
6 Security Act (42 U.S.C. 1395x(s)(5)) is amended by in-  
7 serting before the semicolon the following: “and special-  
8 ized occlusive dressings used by a patient with receiving  
9 dialysis treatment to protect the individual against life  
10 threatening catheter-related infections during mainte-  
11 nance of personal hygiene at home (such as during bathing  
12 and showering)”.

13 (b) EXCLUSION FROM ESRD BUNDLED PAYMENT  
14 RATE.—The last sentence of section 1881(b)(14)(B) of  
15 such Act (42 U.S.C. 1395rr(b)(14)(B)) is amended by in-  
16 serting before the period at the end the following: “or oc-  
17 clusive dressings described in section 1861(s)(5)”.

18 (c) PAYMENT UNDER SURGICAL DRESSING PROVI-  
19 SIONS.—Section 1834(i)(1) of such Act (42 U.S.C.  
20 1395m(i)(1)) is amended by inserting “, including special-  
21 ized occlusive dressings described in such section” after  
22 “1861(s)(5)”.

23 (d) EFFECTIVE DATE.—The amendments made by  
24 this section shall apply to dressings furnished on or after  
25 January 1, 2011.

1 **TITLE II—PROVIDING ACCESS**  
2 **TO PATIENTS IN NEED OF DI-**  
3 **ALYSIS TREATMENT**

4 **SEC. 201. SURVEY REQUIREMENTS FOR RENAL DIALYSIS**  
5 **FACILITIES.**

6 Section 1864 of the Social Security Act (42 U.S.C.  
7 1395aa) is amended—

8 (1) by redesignating subsection (e) as sub-  
9 section (f) and by inserting after subsection (d) the  
10 following new subsection:

11 “(e)(1) If the Secretary has entered into an agree-  
12 ment with any State under this section under which the  
13 appropriate State or local agency that performs any sur-  
14 vey related to determining the compliance of a renal dialy-  
15 sis facility subject to the requirements of section 1881(b)  
16 and the State licensure survey requirements are consistent  
17 with or exceed such Federal requirements, the Secretary  
18 must accept the results of the State licensure survey for  
19 purposes of determining Federal certification of compli-  
20 ance. In the case of such an initial survey of a renal dialy-  
21 sis facility, the Secretary may allow any State to waive  
22 the reimbursement for conducting the survey under this  
23 subsection if it requests such a waiver.

24 “(2) In the case of a renal dialysis facility that has  
25 waited for more than 6 months to receive the results of

1 an initial survey under this section, the Secretary shall  
2 establish a specific timetable for completing and reporting  
3 the results of the survey.”;

4 (2) in subsection (f), as so redesignated—

5 (A) by striking “Notwithstanding any  
6 other provision of law,” and inserting “(1) Not-  
7 withstanding any other provision of law and ex-  
8 cept as provided in paragraph (2)”;

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

10 “(2) The Secretary may assess and collect fees for  
11 the initial Medicare survey from a renal dialysis facility  
12 subject to the requirements of section 1881(b) in an  
13 amount not to exceed a reasonable fee necessary to cover  
14 the costs of initial surveys conducted for purposes of deter-  
15 mining the compliance of a renal dialysis facility with the  
16 requirements of section 1881(b). Fees may be assessed  
17 and collected under this paragraph only in such manner  
18 as would result in an aggregate amount of fees collected  
19 during any fiscal year which equals the aggregate amount  
20 of costs for such fiscal year for initial surveys of such fa-  
21 cilities under this section. A renal dialysis facility’s liabil-  
22 ity for such fees shall be reasonably based on the propor-  
23 tion of the survey costs which relate to such facility. Any  
24 funds collected under this paragraph shall be used only

1 to conduct the initial survey of the facilities providing the  
2 fees.

3 “(3) Fees authorized under paragraph (2) shall be  
4 collected by the Secretary and available only to the extent  
5 and in the amount provided in advance in appropriations  
6 Acts and upon request of the Secretary, subject to the  
7 amount and usage limitations of such paragraph. Such  
8 fees so collected are authorized to remain available until  
9 expended.”.

10 **SEC. 202. GAO STUDY ON TRANSPORTATION BARRIERS TO**  
11 **ACCESSING KIDNEY CARE.**

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

17 (b) SPECIFIC MATTERS EVALUATED.—In conducting  
18 the evaluation under subsection (a), the Comptroller Gen-  
19 eral shall examine—

20 (1) the costs associated with providing dialysis  
21 services;

22 (2) the number and characteristics of patients  
23 who miss at least 2 dialysis treatments during a  
24 month or have shortened treatments because of bar-  
25 riers to transportation; and

1           (3) the potential sources of providing dialysis  
2 patients with such transportation services.

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

9 **SEC. 203. VASCULAR ACCESS CARE SERVICE SITES.**

10           Not later than 1 year after the date of the enactment  
11 of this Act, the Secretary of Health and Human Services  
12 shall report and provide recommendations to the Congress  
13 on the benefits of recognizing dialysis vascular and peri-  
14 toneal dialysis access care service sites for purposes of re-  
15 ceiving reimbursement under the Medicare program.

16 **TITLE III—ELIMINATING INEQUI-**  
17 **TIES FOR PATIENTS WITH**  
18 **KIDNEY FAILURE**

19 **SEC. 301. PATIENT CHOICE OF PRIMARY INSURER.**

20           (a) PROVIDING PATIENT CHOICE IN MEDICARE.—

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

1 (A) in the last sentence, by inserting “and  
2 before January 1, 2011” 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, 2011 (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) APPLICATION OF RULES TO QUALIFIED HEALTH  
24 PLANS AND INDIVIDUAL HEALTH INSURANCE COV-  
25 ERAGE.—Such section is further amended, in the matter

1 before clause (i), by inserting after “subparagraph  
2 (A)(v)” the following: “, a qualified health plan estab-  
3 lished pursuant to or governed by subtitle D of title I of  
4 the Patient Protection and Affordable Care Act, or any  
5 individual health insurance coverage (as defined in section  
6 2791(b)(5) of the Public Health Service Act, excluding ex-  
7 cepted coverage under subsection (c) of such section)”.

8 **SEC. 302. ACCESS TO MEDIGAP POLICIES.**

9 (a) IN GENERAL.—Section 1882(s) of the Social Se-  
10 curity Act (42 U.S.C. 1395ss(s)) is amended—

11 (1) in paragraph (2)(A), by inserting “, or is el-  
12 igible for hospital insurance benefits under part A  
13 on the basis of sections 226(b) or 226A” after “65  
14 years of age or older”;

15 (2) in paragraph (2)(D), by striking “the 6-  
16 month period described in subparagraph (A) to an  
17 individual who is 65 years of age or older as of the  
18 date of issuance and” and inserting “a 6-month pe-  
19 riod described in subparagraph (A) to an indi-  
20 vidual”; and

21 (3) in paragraph (3)(B)(vi), by striking “at age  
22 65”.

23 (b) EFFECTIVE DATE.—

1           (1) IN GENERAL.—The amendments made by  
2 subsection (a) shall take effect as of the date of the  
3 enactment of this Act.

4           (2) TRANSITION.—

5           (A) No medicare supplemental policy of an  
6 issuer shall be deemed to meet the standards in  
7 subsection (c) of section 1882 of the Social Se-  
8 curity Act (42 U.S.C. 1395ss) unless the issuer  
9 permits each individual described in subpara-  
10 graph (B), during the 6-month period beginning  
11 on the first day of the first month beginning  
12 after the date of the enactment of this Act, to  
13 be enrolled under a medicare supplemental pol-  
14 icy in accordance with subsection (s) of such  
15 section, as amended by subsection (a), applied  
16 as if the individual were first enrolled under  
17 part B of title XVIII of the Social Security Act  
18 as of the first day of such first month.

19           (B) For purposes of subparagraph (A), an  
20 individual described in this subparagraph is an  
21 individual who, as of the first day of the first  
22 month beginning after the date of the enact-  
23 ment of this Act—

24           (i) is under 65 years of age;



- 1 (ii) is enrolled under part B of title  
2 XVIII of the Social Security Act; and  
3 (iii) is not enrolled in a medicare sup-  
4 plemental policy.

5 **SEC. 303. PROTECTING INDIVIDUALS WITH KIDNEY FAIL-**  
6 **URE FROM UNFAIR PRACTICES UNDER**  
7 **HEALTH CARE REFORM.**

8 (a) IN GENERAL.—Section 2719A of the Public  
9 Health Service Act (42 U.S.C. 300gg–19a), as added by  
10 section 10101(h) of the Patient Protection and Affordable  
11 Care Act (Public Law 111–148), is amended by adding  
12 at the end the following new subsection:

13 “(e) ACCESS FOR PATIENTS WITH KIDNEY FAIL-  
14 URE.—

15 “(1) IN GENERAL.—In the case of an individual  
16 who is a participant, beneficiary, or enrollee under  
17 a group health plan, or health insurance coverage of-  
18 fered by a health insurance issuer in the group or  
19 individual market and who has kidney failure, the  
20 plan or issuer may only impose restrictions with re-  
21 spect to treatment for kidney failure if the restric-  
22 tions are reasonable and assure adequate access to  
23 out-of-network providers consistent with this sub-  
24 section.

1           “(2) SPECIFIC REQUIREMENTS.—In carrying  
2 out paragraph (1), a plan or issuer—

3           “(A) may not set out-of-network rates  
4 through unilateral rate setting or other mecha-  
5 nisms that restrict or limit negotiations with  
6 providers and facilities that furnish services to  
7 treat kidney failure;

8           “(B) shall provide adequate, advanced,  
9 written notification to patients regarding  
10 changes to dialysis service benefits, new restric-  
11 tions on out-of-network access, or reductions to  
12 rates paid for out-of-network benefits for such  
13 services;

14           “(C) shall allow patients to continue using  
15 their existing provider or facility of such serv-  
16 ices for at least 24 months following the date  
17 of notice of any change by the plan or issuer in  
18 their dialysis services network;

19           “(D) shall hold patients harmless from  
20 provider network changes with respect to such  
21 services if such changes require unreasonable  
22 drive time or disrupt the physician-patient rela-  
23 tionship;

24           “(E) may not restrict the duration or num-  
25 ber of dialysis sessions for patients, such as

1 based on a fixed number of treatments per  
2 week, to less than the number permitted under  
3 the Medicare program under title XVIII of the  
4 Social Security Act;

5 “(F) may not penalize physicians for refer-  
6 ring patients to out-of-network providers or fa-  
7 cilities for such services;

8 “(G) may not require assignment of bene-  
9 fits for such services;

10 “(H) shall ensure equity with respect to  
11 out-of-pocket payments for such services;

12 “(I) may not deny or limit coverage for pa-  
13 tients for such services if premiums, co-pay-  
14 ments, or other payments are made by third  
15 parties on their behalf; and

16 “(J) shall meet minimum network ade-  
17 quacy standards specified by the Secretary with  
18 respect to such services.”.

19 (b) EFFECTIVE DATE.—The amendment made by  
20 subsection (a) shall apply to plans and issuers as of Janu-  
21 ary 1, 2014.

○