

112TH CONGRESS
2D SESSION

H. R. 6011

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

IN THE HOUSE OF REPRESENTATIVES

JUNE 21, 2012

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

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 INDIVIDUALS WITH KIDNEY DIS-
3 EASE
4

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

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

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

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

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

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

23 “(2) The Secretary may assess and collect fees for
24 the initial Medicare survey from a renal dialysis facility
25 subject to the requirements of section 1881(b) in an

1 amount not to exceed a reasonable fee necessary to cover
2 the costs of initial surveys conducted for purposes of deter-
3 mining the compliance of a renal dialysis facility with the
4 requirements of section 1881(b). Fees may be assessed
5 and collected under this paragraph only in such manner
6 as would result in an aggregate amount of fees collected
7 during any fiscal year being equal to the aggregate
8 amount of costs for such fiscal year for initial surveys of
9 such facilities under this section. A renal dialysis facility's
10 liability for such fees shall be reasonably based on the pro-
11 portion of the survey costs which relate to such facility.
12 Any funds collected under this paragraph shall be used
13 only to conduct the initial survey of the facilities providing
14 the fees.

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

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

23 (a) PROVIDING PATIENT CHOICE IN MEDICARE.—

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

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

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

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

1 (b) PROVIDING EQUITABLE ACCESS TO INSURANCE
2 FOR INDIVIDUALS WITH KIDNEY FAILURE.—

3 (1) APPLICATION OF ESRD MEDICARE SEC-
4 ONDARY PAYER RULES TO HEALTH INSURANCE
5 ISSUERS.—

6 (A) IN GENERAL.—Section 1862(b) of the
7 Social Security Act (42 U.S.C. 1395y(b)) is
8 amended—

9 (i) in paragraph (1)(C), in the matter
10 before clause (i), by inserting “and health
11 insurance coverage (as defined in section
12 2791(b) of the Public Health Service Act)
13 that is a qualified health plan (as defined
14 in section 1301 of the Patient Protection
15 and Affordable Care Act)” after “subpara-
16 graph (A)(v))”;

17 (ii) in paragraph (2)(A), in the matter
18 after clause (ii), by inserting “a group
19 health plan, large group health plan, or
20 health insurance coverage (as defined in
21 section 2791(b) of the Public Health Serv-
22 ice Act) that is a qualified health plan (as
23 defined in section 1301 of the Patient Pro-
24 tection and Affordable Care Act) to the ex-
25 tent that clause (i) applies pursuant to the

1 application of paragraph (1)(C),” after “to
2 the extent that clause (i) applies,”;

3 (iii) in paragraph (3)(C), by striking
4 “or a large group health plan” and insert-
5 ing “, a large group health plan, or health
6 insurance coverage (as defined in section
7 2791(b) of the Public Health Service Act)
8 that is a qualified health plan (as defined
9 in section 1301 of the Patient Protection
10 and Affordable Care Act)”;

11 (iv) in paragraph (7), by adding at
12 the end the following new subparagraph:

13 “(E) APPLICATION TO CERTAIN HEALTH
14 INSURANCE ISSUERS.—The provisions of the
15 previous subparagraphs of this paragraph shall
16 apply to a health insurance issuer offering
17 health insurance coverage (as defined in section
18 2791(b) of the Public Health Service Act) that
19 is a qualified health plan (as defined in section
20 1301 of the Patient Protection and Affordable
21 Care Act) in the same manner as such provi-
22 sions apply to an entity, a plan administrator,
23 or a fiduciary described in subparagraph (A),
24 except that in applying such provisions—

1 “(i) the reference under subparagraph
 2 (A) to the date of the enactment of this
 3 paragraph shall be deemed a reference to
 4 the date of the enactment of this subpara-
 5 graph; and

6 “(ii) the reference under subpara-
 7 graph (A)(i) to a primary plan shall be
 8 deemed a reference to a primary plan to
 9 the extent that paragraph (2)(A)(i) applies
 10 pursuant to the application of paragraph
 11 (1)(C).”.

12 (B) EFFECTIVE DATE.—The amendments
 13 made by subparagraph (A) shall apply with re-
 14 spect to plan years beginning on or after the
 15 date of the enactment of this Act.

16 (2) TREATMENT OF CERTAIN INDIVIDUALS
 17 WITH END STAGE RENAL DISEASE FOR DETER-
 18 MINING MINIMUM ESSENTIAL COVERAGE.—Such sec-
 19 tion is further amended in paragraph (2), by adding
 20 at the end the following new subparagraph:

21 “(D) TREATMENT OF CERTAIN INDIVID-
 22 UALS WITH END STAGE RENAL DISEASE FOR
 23 DETERMINING MINIMUM ESSENTIAL COV-
 24 ERAGE.—In determining a coverage month
 25 under subsection (c)(2)(B)(i) of section 36B of

1 the Internal Revenue Code of 1986, with re-
 2 spect to an individual described in paragraph
 3 (1)(C), for purposes of the premium assistance
 4 credit under such section and the application of
 5 subsection (f)(2) of section 1402 of the Patient
 6 Protection and Affordable Care Act for deter-
 7 mining eligibility for the reduction of cost-shar-
 8 ing under such section, such individual shall not
 9 be treated as having minimum essential cov-
 10 erage described in section 5000A(f)(1)(A)(i)
 11 (relating to coverage under Medicare) for each
 12 month that a group health plan or health insur-
 13 ance issuer may not take into account the indi-
 14 vidual's eligibility or entitlement under this title
 15 pursuant to such paragraph (1)(C).”.

16 **SEC. 103. PROTECTING INDIVIDUALS WITH KIDNEY FAIL-**
 17 **URE FROM UNFAIR PRACTICES.**

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

21 “(ii) may not differentiate in the ben-
 22 efits it provides between individuals having
 23 end stage renal disease and other individ-
 24 uals covered by such plan or issuer on the
 25 basis of the existence of end stage renal

1 disease, the need for renal dialysis, or in
2 any other manner, and such plan—

3 “(I) shall provide adequate, ad-
4 vanced, written notification to pa-
5 tients regarding changes to benefits
6 for dialysis services, new restrictions
7 on out-of-network access, or reduc-
8 tions in rates paid for out-of-network
9 benefits for such services;

10 “(II) shall allow patients to con-
11 tinue using their existing provider or
12 facility of such services for at least 24
13 months following the date of notice of
14 any change by the plan or issuer in
15 the dialysis services network of the
16 plan or issuer;

17 “(III) shall hold patients harm-
18 less from provider network changes
19 with respect to such services if such
20 changes require unreasonable drive
21 time or disrupt the physician-patient
22 relationship;

23 “(IV) may not restrict the dura-
24 tion or number of dialysis sessions for
25 patients, such as based on a fixed

1 number of treatments per week, to
2 less than the number for which pay-
3 ment may be made pursuant to sec-
4 tion 1881(b)(1);

5 “(V) may not require assignment
6 of benefits for such services;

7 “(VI) shall ensure that out-of-
8 pocket payments for such services (in-
9 cluding if made on behalf of the indi-
10 vidual involved) are counted towards
11 meeting any out-of-pocket maximum
12 applied under an MA plan under part
13 C and not treated as routine for pur-
14 poses of calculating beneficiary copay-
15 ments;

16 “(VII) may not deny or limit cov-
17 erage for patients for such services if
18 premiums, copayments, or other pay-
19 ments are made by third parties on
20 their behalf; and

21 “(VIII) shall meet minimum net-
22 work adequacy standards specified by
23 the Secretary with respect to such
24 services;”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 subsection (a) shall apply to group health plans and quali-
3 fied health plans as of January 1, 2014.

4 **TITLE II—SUPPORTING RE-**
5 **SEARCH TO IMPROVE ACCESS**
6 **TO HIGH-QUALITY KIDNEY**
7 **CARE**

8 **SEC. 201. UNDERSTANDING THE PROGRESSION OF KIDNEY**
9 **DISEASE IN MINORITY POPULATIONS.**

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

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

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

19 **SEC. 202. RECOMMENDATIONS ON DIALYSIS QUALITY AND**
20 **CARE MANAGEMENT RESEARCH GAPS.**

21 Not later than 2 years after the date of the enact-
22 ment of this Act, the Secretary of Health and Human
23 Services shall submit to Congress a report regarding the
24 research gaps with respect to the development of quality
25 metrics and care management metrics for patients with

1 end-stage renal disease, including pediatric and home di-
2 alysis patients. Such report shall include recommendations
3 about undertaking research to fill such gaps and
4 prioritizing such research.

5 **SEC. 203. GAO STUDY ON TRANSPORTATION BARRIERS TO**
6 **ACCESS KIDNEY CARE.**

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

12 (b) SPECIFIC MATTERS EVALUATED.—In conducting
13 the evaluation under subsection (a), the Comptroller Gen-
14 eral shall examine—

15 (1) the costs associated with providing dialysis
16 services;

17 (2) the number and characteristics of patients
18 who miss at least 2 dialysis treatments during a
19 month or have shortened treatments because of bar-
20 riers to transportation; and

21 (3) the potential sources of providing dialysis
22 patients with such transportation services.

23 (c) REPORT.—Not later than the date that is 6
24 months after the date of the enactment of this Act, the
25 Comptroller General shall submit to Congress a report on

1 the study conducted under subsection (a) together with
 2 recommendations for such legislation and administrative
 3 action as the Comptroller General determines appropriate.

4 **TITLE III—IMPROVING ACCESS**
 5 **TO PREVENTIVE CARE FOR**
 6 **INDIVIDUALS WITH KIDNEY**
 7 **DISEASE**

8 **SEC. 301. IMPROVING ACCESS TO MEDICARE KIDNEY DIS-**
 9 **EASE EDUCATION.**

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

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

13 (2) in subparagraph (A)—

14 (A) by striking “(A)” after “(2)”;

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

16 (i);

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

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

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

22 “(C) a renal dialysis facility subject to the
 23 requirements of section 1881(b)(1) with per-
 24 sonnel who—

1 “(i) provide the services described in
2 paragraph (1); and

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

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

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

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

22 (1) by inserting “or stage V” after “stage IV”;
23 and

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

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

○