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112TH CONGRESS
2D SESSION

H. R. 6176

To amend the Social Security Act to permit hospitals to make incentive payments to physicians to promote quality and efficiency.

IN THE HOUSE OF REPRESENTATIVES

JULY 24, 2012

Mr. BOUSTANY (for himself and Mr. PRICE of Georgia) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means and the Judiciary, 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 the Social Security Act to permit hospitals to make incentive payments to physicians to promote quality and efficiency.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Aligning Incentives for Better Patient Care Act of 2011''.

SEC. 2. PERMITTING CERTAIN INCENTIVE PAYMENTS THAT PROMOTE QUALITY AND EFFICIENCY.

(a) IN GENERAL.—Section 1877(e) of the Social Security Act (42 U.S.C. 1395nn(e)) is amended by adding at the end the following new paragraph:

''(9) INCENTIVE PAYMENTS THAT PROMOTE QUALITY AND EFFICIENCY.—Any remuneration made, directly or indirectly, to a physician by a qualified hospital (as such term is defined in subsection (j)(2)) under the terms of a quality incentive agreement that meets the requirements of subsection (j)(1), for purposes of sharing cost savings generated for the hospital through the physician's voluntary participation in quality improvement activities under such agreement.''.

(b) REQUIREMENTS FOR INCENTIVE PAYMENTS.—Section 1877 of the Social Security Act (42 U.S.C. 1395nn) is amended by adding at the end the following new subsection:

''(j) REQUIREMENTS FOR EXCEPTION FOR INCENTIVE PAYMENTS THAT PROMOTE QUALITY AND EFFICIENCY.—

''(1) QUALITY INCENTIVE AGREEMENT.—

''(A) IN GENERAL.—A quality incentive agreement that meets the requirements of this paragraph is an agreement between a physician

and a qualified hospital that meets the following requirements:

"(i) QUALITY IMPROVEMENT ACTIVITIES.—The agreement lists the quality improvement activities under the hospital's quality improvement program that the physician agrees to participate in under the agreement.

"(ii) DETERMINATION OF REMUNERATION.—The agreement specifies that remuneration will be made to the physician by the hospital for cost savings achieved through the physician's participation in the quality improvement activities under clause (i), and includes the methodology that will be used to determine—

"(I) the cost savings achieved through the physician's participation in such activities; and

"(II) subject to any limitation under paragraph (3)(A), the amount of any remuneration made to the physician under such agreement.

"(iii) RECORDS.—The agreement contains a requirement that the physician and

the hospital retain records related to the agreement, including records related to any remuneration made under the agreement, for a period determined by the Secretary. At the request of the Secretary, the physician and the hospital shall make such records available to the Secretary for purposes of an audit conducted by the Secretary under paragraph (3)(B).

''(B) LIMITATION ON BASIS OF PAYMENT.—The quality incentive agreement under subparagraph (A) may not allow remuneration to be made on the basis of—

''(i) the volume of referrals made by the physician to the hospital;

''(ii) the value of referrals made by the physician to the hospital;

''(iii) cost savings achieved through limiting or denying a beneficiary's access to items or services solely on the basis that such services are new or improved; or

''(iv) cost savings achieved through directly or indirectly reducing or restricting the provision of items and services which the physician involved determines to be

medically necessary or medically appropriate.

''(2) QUALIFIED HOSPITAL.—

''(A) IN GENERAL.—For purposes of this subsection, the term 'qualified hospital' means a hospital that—

''(i) has established and maintains a quality improvement program that contains a list of quality improvement activities that meet the requirements of subparagraph (B) that the hospital seeks to encourage physicians to participate in;

''(ii) makes payments to the Secretary under subparagraph (C);

''(iii) provides notice to beneficiaries that meet the requirements under subparagraph (D);

''(iv) complies with the requirements of subparagraph (E), related to physician independence; and

''(v) submits the annual report required under subparagraph (F).

''(B) QUALITY IMPROVEMENT ACTIVITIES.—

''(i) IN GENERAL.—With respect to a quality improvement program of a hospital under subparagraph (A)(i), a quality improvement activity is an activity—

''(I) that is designed by the hospital to—

''(aa) improve the quality of inpatient hospital care (including improvements in patient safety); and

''(bb) generate cost savings for the hospital; and

''(II) does not jeopardize patient health or safety.

''(ii) FLEXIBILITY.—A quality improvement activity may be designed to—

''(I) be clinical or non-clinical in nature;

''(II) increase communication and coordination between physicians and other providers;

''(III) improve admission planning, discharge planning, operating room utilization, timely documentation of the medical record, or appropriate

transfer of patients within departments of a hospital;

''(IV) reduce the rate of avoidable re-operations;

''(V) reduce avoidable readmissions;

''(VI) appropriately reduce the average length of stay for patients in a hospital; or

''(VII) make other appropriate quality improvements, based on quality improvement measures recommended by physician specialty societies, the National Quality Forum, the National Committee for Quality Assurance, and the Physician Consortium for Performance Improvement.

''(iii) OTHER REQUIREMENTS.—

''(I) QUALITY AND COST BENCHMARKS.—The hospital shall include the quality and cost benchmarks that the hospital uses to determine if an activity is a quality improvement activity in the quality improvement program under subparagraph (A)(i).

"(II) LIMITATION.—A quality improvement program may not include incentives to encourage the hospital or a physician to avoid taking on difficult or complex cases, which, but for the remuneration permitted under subsection (e)(9), the hospital or provider would have taken on.

"(C) SHARED SAVINGS WITH MEDICARE.—For each year (except for the first such year) that a hospital makes remuneration under subsection (e)(9), the hospital shall make, at such time and in such manner as the Secretary may require, a payment to the Secretary in an amount that is determined by the Secretary, but exceeds one percent of cost savings generated in such year as a result of physician participation in quality improvement activities through a quality incentive agreement under paragraph (1). Any payments made by a hospital to the Secretary under this subparagraph shall be deposited in the Federal hospital insurance trust fund.

"(D) NOTICE REQUIREMENTS.—

"(i) IN GENERAL.—A hospital that is a party to a quality incentive agreement under paragraph (1) shall, during the period of such agreement—

"(I) provide notice to each beneficiary who receives inpatient hospital services in such hospital that the hospital provides remuneration to physicians who voluntarily participate in such agreement; and

"(II) disclose and prominently display on the public Internet website of the hospital information about the hospital's participation in such agreement and the remuneration made under such agreement.

"(ii) TIMING.—To the extent that is feasible, without compromising patient safety, the notice under clause (i)(I) shall be provided to a beneficiary before such beneficiary receives inpatient hospital services through the hospital.

"(E) PROTECTION OF PHYSICIAN INDEPENDENCE.—A qualified hospital may not—

"(i) require that any physician who works for the hospital (as an employee, an independent contractor, or in any other status) to enter into a quality incentive agreement under paragraph (1); or

"(ii) penalize such physician (except through a denial of remuneration under subsection (e)(9), subject to the terms of the agreement under paragraph (1)) for the failure of such physician to participate in the quality improvement activities under the hospital's quality improvement program.

"(F) ANNUAL REPORT.—A hospital shall submit to the Secretary an annual report that includes—

"(i) a copy of the hospital's quality improvement program;

"(ii) a list of the major quality improvement activities for which remuneration was made under any quality incentive agreement to which the hospital is a party during the previous year;

"(iii) the amount of cost savings generated for the hospital by such quality improvement activities during such year; and

"(iv) the quality improvement activities that generated the most cost savings for the hospital.

"(3) RESPONSIBILITIES OF THE SECRETARY.—

"(A) AUTHORITY TO SET LIMITS TO PREVENT MISUSE OF INCENTIVE PAYMENTS.—The Secretary may set a limit to the amount of remuneration that a hospital may make to a physician under an agreement under paragraph (1) for the purpose of the types of remuneration prohibited under clauses (i) or (ii) of paragraph (1)(B).

"(B) AUDITS.—The Secretary, may, in such time and manner as the Secretary may specify, audit a hospital or physician with respect to remuneration made pursuant to a quality incentive agreement under paragraph (1).

"(C) PUBLIC DISCLOSURE OF PARTICIPATING HOSPITALS ON WEBSITE.—The Secretary shall maintain and publish a list of hospitals that have quality incentive agreements under paragraph (1) on the Medicare.gov Inter-

net website of the Centers for Medicare & Medicaid Services.''.

(c) QUALITY INCENTIVE OMBUDSMAN.—Section 1808(c) of such Act (42 U.S.C. 1395b–9(c)) is amended by adding at the end the following new paragraph:

''(4) QUALITY INCENTIVE OMBUDSMAN.—

''(A) IN GENERAL.—The Secretary shall provide a quality incentive ombudsman with Centers for Medicare & Medicaid Services, who shall respond to complaints and inquiries made by individuals described under paragraph (2)(A), hospitals, and physicians relating to the remuneration permitted under section 1877(e)(9).

''(B) OFFICE AND REPORT.—The quality incentive ombudsman may be within the office of the Medicare Beneficiary Ombudsman appointed under paragraph (1), and the activities of the quality incentive ombudsman shall be included in the report under paragraph (2)(C).''.

(d) REGULATIONS.—

(1) IN GENERAL.—Not later than January 1, 2014, the Secretary of Health and Human Services shall promulgate regulations to implement subsections (e)(9) and (j) of section 1887 of the Social

Security Act, as added by subsection (a). Such regulations may include model quality incentive agreements and quality improvement programs.

(2) CONSULTATION.—In developing the regulations under paragraph (1), the Secretary of Health and Human Services shall consult with physician specialty societies, hospitals, and individuals entitled to benefits under part A or enrolled under part B of title XVIII of the Social Security Act.

(3) FEDERAL TRADE COMMISSION AND DEPARTMENT OF JUSTICE.—Not later than January 1, 2014, to the extent that quality incentive agreements under section 1877(j) of the Social Security Act may implicate anti-trust laws and regulations, the Federal Trade Commission and the Attorney General shall review such laws and regulations and shall issue regulations or guidance that includes examples of quality incentive agreements (as such term is used in section 1877(j) of the Social Security Act) that are permitted under such laws and regulations, and examples of such agreements that are not permitted under such laws and regulations.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to remuneration made on or after January 1, 2014.

SEC. 3. EXCEPTION TO CIVIL MONETARY PENALTIES FOR CERTAIN INCENTIVE PAYMENTS.

Section 1128A(b)(1) of the Social Security Act (42 U.S.C. 1320a–7a(b)(1)) is amended, in the matter preceding subparagraph (A), by inserting ''(except for remuneration made pursuant to section 1877(e)(9))'' after ''makes a payment''.

SEC. 4. ESTABLISHMENT OF A SAFE HARBOR FROM CERTAIN CRIMINAL PENALTIES TO PROVIDE FOR USE OF INCENTIVE PAYMENT PROGRAMS BETWEEN PHYSICIANS AND HOSPITALS.

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

(1) in subparagraph (I), by striking ''and'' at the end;

(2) in subparagraph (J), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(K) any remuneration between a hospital and a physician made pursuant to section 1877(e)(9).''.

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