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115TH CONGRESS
1ST SESSION

H. R. 4580

To amend title XVIII of the Social Security Act to improve the Medicare accountable care organization (ACO) program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 6, 2017

Mr. WELCH (for himself and Mrs. BLACK) 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

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A BILL

To amend title XVIII of the Social Security Act to improve the Medicare accountable care organization (ACO) program, and for other purposes.

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 ''ACO Improvement Act of 2017''.

SEC. 2. MEDICARE ACO PROGRAM IMPROVEMENTS.

(a) IMPROVING OUTCOMES THROUGH GREATER BENEFICIARY ENGAGEMENT.—

(1) IN GENERAL.—Section 1899 of the Social Security Act (42 U.S.C. 1395jjj) is amended by adding at the end the following new subsection:

"(l) IMPROVING OUTCOMES THROUGH GREATER BENEFICIARY ENGAGEMENT.—

"(1) USE OF BENEFICIARY INCENTIVES.—Subject to approval of the Secretary, the Secretary shall permit an ACO—

"(A) to reduce or eliminate cost-sharing otherwise applicable under part B for some or all primary care services (as identified by the ACO) furnished by health care professionals (including, as applicable, professionals furnishing services through a rural health clinic or Federally qualified health center) within the network of the ACO; and

"(B) to develop additional incentives to encourage patient engagement and participation in their own wellness.

The cost of the incentives under this paragraph shall be borne by the ACO and shall not affect the payments to the ACO under subsection (d).

"(2) FOSTERING STRONGER PATIENT-PROVIDER TIES.—

"(A) PERMITTING PROSPECTIVE ASSIGNMENT OF BENEFICIARIES.—In carrying out subsection (c) with respect to any agreement with an ACO under this section, the ACO may elect under any such agreement prospective assignment of Medicare fee-for-service beneficiaries before the beginning of a year to the ACO and a primary care ACO professional.

"(B) INCLUSION OF ACO INFORMATION IN WELCOME TO MEDICARE VISIT AND ANNUAL WELLNESS VISITS.—The Secretary may encourage a primary care ACO professional to include, as part of the initial preventive physical examination under section 1861(ww)(1) or personalized prevention plan services under section 1861(hhh)(1) for a Medicare fee-for-service beneficiary assigned to that professional under this section, to provide the beneficiary with information concerning the ACO program under this section, including information on any cost-sharing reductions allowed under this section.

"(3) MOVING FROM VOLUME TO VALUE.—Subject to paragraph (4)—

"(A) REGULATORY RELIEF FOR MOVING TO TWO-SIDED RISK.—In the case of an ACO

that has elected a two-sided risk model (as provided for under regulations), in addition to the authority provided under paragraph (1), the Secretary shall provide the following regulatory relief:

"(i) 3-DAY PRIOR HOSPITALIZATION WAIVER FOR SNF SERVICES.—Waiver of the 3-day prior hospitalization requirement for coverage of skilled nursing facility services.

"(ii) HOMEBOUND REQUIREMENT WAIVER FOR HOME HEALTH SERVICES.—Waiver of the homebound requirement for coverage of home health services.

"(B) IMPROVING CARE COORDINATION THROUGH ACCESS TO TELEHEALTH.—

"(i) FLEXIBILITY IN FURNISHING TELEHEALTH SERVICES.—In applying section 1834(m) in the case of an ACO, the Secretary shall grant a waiver, and the ACO may elect, to have the limitations on originating site (under paragraph (4)(C) of such section) and on the use of store-and-forward technologies (under paragraph (1) of such section) not apply. The previous

sentence shall not be construed as affecting the authority of the Secretary under subsection (f) to waive other provisions of such section.

''(ii) PROVISION OF REMOTE MONITORING IN CONNECTION WITH HOME HEALTH SERVICES.—Nothing in this section shall be construed as preventing an ACO from paying for remote patient monitoring and home-based video conferencing services in connection with the provision of home health services (under conditions for which payment for such services would not be made under section 1895 for such services) in a manner that is financially not more expensive than the furnishing of a home health visit.

''(C) MOVING UP RISK TRACK ANNUALLY.—Each year of an agreement period, the Secretary shall permit an ACO to make an election to assume greater risk.

''(4) DISCRETIONARY REVOCATION.—The Secretary may revoke, at the Secretary's discretion, a waiver granted under paragraph (3).

''(5) PROVISIONS FOR SHARING OF INTERNAL COST SAVINGS.—

''(A) IN GENERAL.—Subject to the succeeding provisions of this paragraph, the Secretary shall permit an ACO to distribute internal cost savings among ACO participants pursuant to an internal cost savings sharing arrangement if the arrangement meets the requirements of subparagraph (B) and the ACO meets the reporting requirements of subparagraph (C) with respect to such arrangement.

''(B) REQUIREMENTS RELATING TO DESIGN OF ARRANGEMENT.—The requirements of this subparagraph for an internal cost savings sharing arrangement of an ACO are as follows:

''(i) NO REDUCTION IN MEDICALLY NECESSARY CARE.—ACO participants may not reduce or limit medically necessary items and services furnished to Medicare fee-for-service beneficiaries.

''(ii) VOLUNTARY PARTICIPATION.—Participation by providers of services and suppliers in the arrangement is voluntary.

"(iii) TRANSPARENCY.—The arrangement is transparent and subject to audit by the Secretary.

"(iv) QUALITY OF CARE.—ACO participants participating in the arrangement meet quality performance standards established by the Secretary under subsection (b)(3).

"(v) PAYMENT METHODOLOGY.—Distributions of internal cost savings under the arrangement is not based on the volume or value of referrals or business otherwise generated.

"(C) REPORTING REQUIREMENTS.—The requirements of this subparagraph for an arrangement of an ACO is that the ACO provides the following information to the Secretary for purposes of evaluating the arrangement:

"(i) METHODOLOGY.—The methodology for distributions of internal cost savings under the arrangement among all ACO participants, including the frequency of and the criteria for such distributions.

"(ii) CARE REDESIGN.—A detailed explanation of how the arrangement will

achieve improved quality and patient experience, as well as the anticipated cost savings.

''(iii) ELIGIBILITY TO PARTICIPATE IN ARRANGEMENT.—The criteria for participation by ACO participants, particularly professionals, in the arrangement.

''(iv) DISTRIBUTION PLAN.—A comprehensive plan for distributions of internal cost savings under the arrangement.

''(D) WAIVERS.—The Secretary shall waive such provisions of this title and title XI as may be necessary to carry out this paragraph.

''(E) DEFINITIONS.—In this paragraph:

''(i) INTERNAL COST SAVINGS SHARING ARRANGEMENT.—The term 'internal cost savings sharing arrangement' means an arrangement among ACO participants of an ACO for the distributions of internal cost savings to such ACO participants, including to ACO professionals, solely from gains or savings that are a direct result of collaborative efforts among ACO participants of an ACO to improve the quality and efficiency of care furnished to Medi-

care fee-for-service beneficiaries, but does not include shared savings under subsection (d)(2).

''(ii) DISTRIBUTION OF INTERNAL COST SAVINGS.—The term 'distribution of internal cost savings' means a payment of a percentage of the gains or savings from an internal cost savings sharing arrangement to ACO participants.

''(iii) ACO PARTICIPANTS.—The term 'ACO participants' means providers of services and suppliers participating in an ACO who voluntarily participate in an internal cost savings sharing arrangement under this paragraph.''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply as if included in the enactment of section 3022 of Public Law 111–148.

(3) CONFORMING AMENDMENT.—Effective as if included in the enactment of section 3021 of Public Law 111–148, the provisions of section 1899(l)(5) of the Social Security Act (relating to authority for distributions of internal cost savings under internal cost savings sharing arrangements), as added by paragraph (1), shall apply to participants in ac-

countable care organization payment and service delivery models (and other appropriate models) tested pursuant to section 1115A of the Social Security Act (42 U.S.C. 1315a).

(b) STUDY AND REPORT ON FEASIBILITY ON PROVIDING ELECTRONIC ACCESS TO MEDICARE CLAIMS DATA.—

(1) STUDY.—The Secretary of Health and Human Services shall conduct a study regarding the feasibility of establishing a system of electronic access of providers of services and suppliers to in-process and complete patient claims data. Such system may be a modification of an existing database, such as the Virtual Research Data Center. The study shall take into account the measures needed to ensure the security and privacy of beneficiary and provider information.

(2) REPORT.—Not later than six months after the date of the enactment of this Act, the Secretary shall submit to Congress a report on such study. The Secretary shall include in such report such recommendations as the Secretary deems appropriate.

(c) PERMITTING DE MINIMIS VARIATION FROM MINIMUM ENROLLMENT REQUIREMENT.—Section 1899(b)(2)(D) of the Social Security Act (42 U.S.C.

1395jjj(b)(2)(D)) is amended by inserting before the period at the end the following: ", except that the Secretary may permit an ACO with fewer than 5,000 participants by a de minimis number (not to exceed 100) to be eligible to continue to participate in cases where such fewer number does not negatively impact the ACO's participation in the program and the ACO meets other conditions to be so eligible".

(d) PAYMENTS FOR SHARED SAVINGS.—Section 1899(d)(2) of the Social Security Act (42 U.S.C. 1395jjj(d)(2)) is amended by adding at the end the following: "For years beginning on or after January 1, 2018, the Secretary may use a sliding scale to increase by up to 10 percentage points the appropriate percent otherwise applied under this paragraph for an ACO that achieves the median of quality performance standards, or achieves quality improvement scores above such median, established under subsection (b)(3). The Secretary shall not decrease such appropriate percent otherwise applied to an ACO because of the application of an increase under the previous sentence for another ACO.".

(e) DEMONSTRATION FOR ALLOWING GROWTH OF HCC SCORES.—Section 1899(d)(1)(B)(ii) of the Social Security Act (42 U.S.C. 1395jjj(d)(1)(B)(ii)) is amended by adding at the end the following: "In carrying out this

subsection, the Secretary shall establish a 3-year demonstration project that develops and applies a methodology, similar to the Medicare Advantage normalization factor applied under section 1853(a)(3), that allows growth of HCC scores for those who are continuously enrolled with an ACO. The Secretary shall submit to Congress a report on the results of such demonstration project.''.

(f) CREATING INCENTIVES FOR ACO DEVELOPMENT.—The Secretary of Health and Human Services may develop a mechanism to make permanent those ACO-related pilot programs, including the Advance Payment ACO Model, that the Secretary determines have been successful. The Secretary shall submit to Congress a report on the mechanism and shall include in the report such recommendations, including such changes in legislation, as the Secretary determines appropriate.

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