

116TH CONGRESS
2D SESSION

H. R. 5741

To amend title XI of the Social Security Act to clarify parameters for model testing and add accountability to model expansion under the Center for Medicare and Medicaid Innovation, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 3, 2020

Ms. SEWELL of Alabama (for herself, Mr. SMITH of Nebraska, Mr. CÁRDENAS, Mr. SHIMKUS, Mr. WENSTRUP, and Mr. SCHRADER) 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 Rules, 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 XI of the Social Security Act to clarify parameters for model testing and add accountability to model expansion under the Center for Medicare and Medicaid Innovation, 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.**

4 This Act may be cited as the “Strengthening Innova-
5 tion in Medicare and Medicaid Act”.

1 **SEC. 2. DEFINING CMI MODEL TESTING PARAMETERS.**

2 (a) SCOPE AND DURATION OF MODELS.—Section
3 1115A(a) of the Social Security Act (42 U.S.C. 1315a(a))
4 is amended by adding at the end the following new para-
5 graph:

6 “(6) SCOPE AND DURATION OF MODELS TEST-
7 ED.—Beginning on or after the date of the enact-
8 ment of the Strengthening Innovation in Medicare
9 and Medicaid Act, for purposes of testing new pay-
10 ment and service delivery models or expanding pay-
11 ment and service deliver models under this section,
12 the Secretary shall limit testing of a model—

13 “(A) to a period not to exceed 5 years; and

14 “(B) no more applicable individuals than
15 necessary to obtain a statistically valid sam-
16 ple.”.

17 (b) MODEL REQUIREMENT WAIVERS FOR HARD-
18 SHIP.—Section 1115A(a) of the Social Security Act (42
19 U.S.C. 1315a(a)), as amended by subsection (a), is fur-
20 ther amended by adding at the end the following new para-
21 graph:

22 “(7) HARDSHIP WAIVERS.—Not later than 60
23 days after the date of the enactment of the
24 Strengthening Innovation in Medicare and Medicaid
25 Act, the Secretary shall develop and implement a
26 plan to allow providers of services and suppliers to

1 request a waiver from any requirement of a model
2 if the Secretary determines that such requirement
3 would result in undue economic hardship to such
4 provider or supplier or loss of access to such pro-
5 vider or supplier for vulnerable populations.”.

6 (c) MONITORING IMPACT.—Section 1115A(a) of the
7 Social Security Act (42 U.S.C. 1315a(a)), as amended by
8 subsections (a) and (b), is further amended by adding at
9 the end the following new paragraph:

10 “(8) MONITORING IMPACT.—Not later than 60
11 days after the date of the enactment of the
12 Strengthening Innovation in Medicare and Medicaid
13 Act, the Secretary shall develop and implement a
14 plan to—

15 “(A) monitor continuously and on a real-
16 time basis the effect of a model under sub-
17 section (b) on applicable individuals, and miti-
18 gate any adverse impact, such as inappropriate
19 reductions in care or reduced access to care;

20 “(B) assess and track the impact of deliv-
21 ery and payment models on health disparities,
22 using existing measures such as the National
23 Quality Forum Healthcare Disparities and Cul-
24 tural Competency Measure; and

1 “(C) mitigate any adverse impact that the
2 Secretary determines could affect beneficiary
3 health.”.

4 **SEC. 3. IMPLEMENTATION OF TESTING AND EXPANSION OF**
5 **MODELS WITH CONGRESSIONAL INACTION.**

6 Section 1115A(d) of the Social Security Act (42
7 U.S.C. 1315a(d)) is amended by adding at the end the
8 following new paragraph:

9 “(4) IMPLEMENTATION OF TESTING AND EX-
10 PANSION OF MODELS WITH CONGRESSIONAL INAC-
11 TION.—

12 “(A) The Secretary shall transmit a pro-
13 posal for the testing, expansion, or modification
14 of a model under subsection (b) or (c), includ-
15 ing a proposed effective date and a summary of
16 the determinations and certification made under
17 paragraphs (1) through (3) of subsection (c), if
18 applicable, to the Committee on Ways and
19 Means and the Committee on Energy and Com-
20 merce of the House of Representatives and to
21 the Committee on Finance and the Committee
22 on Health, Education, Labor, and Pensions of
23 the Senate.

24 “(B) The testing, expansion, or modifica-
25 tion of model proposed in a report submitted

1 under subparagraph (A) shall be carried out by
2 the Secretary if the Congress does not, within
3 45 days of receiving a report transmitted from
4 the Secretary detailing the proposed testing or
5 expansion including the proposed effective date
6 for such testing or expansion and a summary of
7 the determinations and certification made under
8 paragraphs (1) through (3), pass a joint resolu-
9 tion disapproving of the proposed testing or ex-
10 pansion in accordance with the following proce-
11 dure:

12 “(i) The succeeding subparagraphs of
13 this paragraph are enacted by Congress as
14 an exercise of the rulemaking power of the
15 Senate and the House of Representatives,
16 respectively, and as such they shall be
17 deemed a part of the rules of each House,
18 respectively, but applicable only with the
19 respect to the procedure to be followed in
20 that House in the case of resolutions de-
21 scribed in subparagraph (B). They shall
22 supersede other rules only to the extent
23 that they are inconsistent therewith. They
24 are enacted with full recognition of the
25 constitutional right of either House to

1 change the rules (so far as relating to the
2 procedure of that House) at any time, in
3 the same manner and to the same extent
4 as in the case of any ruse of that House.

5 “(ii) For the purpose of the suc-
6 ceeding provisions of this subparagraph,
7 “resolution” means only a joint resolution,
8 the matter after the resolving clause of
9 which is as follows: ‘That Congress dis-
10 approves the model expansion requested
11 pursuant to section 1115A(c) of the Social
12 Security Act transmitted by the Secretary
13 on _____, and such an expansion
14 shall not proceed.’, the blank space therein
15 being filled with the date on which the Sec-
16 retary’s message proposing such expansion
17 was delivered.

18 “(iii) Upon receipt of a report sub-
19 mitted to Congress under subparagraph
20 (c)(4), each House shall provide copies of
21 the report to the chairman and ranking
22 member of the Committee on Ways and
23 Means and the Committee on Energy and
24 Commerce of the House of Representatives
25 and to the Committee on Finance and the

1 Committee on Health, Education, Labor,
2 and Pensions of the Senate.

3 “(iv) A resolution shall be referred to
4 the Committee on Ways and Means and
5 the Committee on Energy and Commerce
6 of the House of Representatives and to the
7 Committee on Finance and the Committee
8 on Health, Education, Labor, and Pen-
9 sions of the Senate.

10 “(v) If a committee to which has been
11 referred a resolution has not reported it
12 before the expiration of 10 legislative days
13 after its introduction, it shall then (but not
14 before) be in order to move to discharge
15 the committee from further consideration
16 of that resolution, or to discharge the com-
17 mittee from further consideration of any
18 other resolution with respect to the pro-
19 posed expansion which has been referred to
20 the committee. The motion to discharge
21 may be made only by a person favoring the
22 resolution, shall be highly privileged (ex-
23 cept that it may not be made after the
24 committee has reported a resolution with
25 respect to the same proposed expansion),

1 and debate thereon shall be limited to not
2 more than 1 hour, to be divided equally be-
3 tween those favoring and those opposing
4 the resolution. An amendment to the mo-
5 tion is not in order, and it is not in order
6 to move to reconsider the vote by which
7 the motion is agreed to or disagreed to. If
8 the motion to discharge is agreed to or dis-
9 agreed to, the motion may not be renewed,
10 nor may another motion to discharge the
11 committee be made with respect to any
12 other resolution with respect to the same
13 proposed expansion.

14 “(vi) When the committee has re-
15 ported, or has been discharged from fur-
16 ther consideration of a resolution, it is at
17 any time thereafter in order (even though
18 a previous motion to the same effect has
19 been disagreed to) to move to proceed to
20 the consideration of the resolution. The
21 motion is highly privileged and is not de-
22 batable. An amendment to the motion is
23 not in order, and it is not in order to move
24 to reconsider the vote by which the motion
25 is agreed to or disagreed to. Debate on the

1 resolution shall be limited to not more than
2 2 hours, which shall be divided equally be-
3 tween those favoring and those opposing
4 the resolution. A motion further to limit
5 debate is not debatable. An amendment to,
6 or motion to recommit, the resolution is
7 not in order, and it is not in order to move
8 to reconsider the vote by which the resolu-
9 tion is agreed to or disagreed to.

10 “(vii) Motions to postpone, made with
11 respect to the discharge from committee,
12 or the consideration of, a resolution and
13 motions to proceed to the consideration of
14 other business shall be decided without de-
15 bate. Appeals from the decision of the
16 Chair relating to the application of the
17 rules of the Senate or the House of Rep-
18 resentatives, as the case may be, to the
19 procedure relating to a resolution shall be
20 decided without debate.

21 “(viii) COORDINATION WITH ACTION
22 BY OTHER HOUSE.—If, before the passage
23 by one House of a joint resolution of that
24 House, that House receives from the other

1 House a joint resolution, then the following
2 procedures shall apply:

3 “(I) The joint resolution of the
4 other House shall not be referred to a
5 committee.

6 “(II) With respect to a joint res-
7 olution of the House receiving the res-
8 olution, the procedure in that House
9 shall be the same as if no joint resolu-
10 tion had been received from the other
11 House, the vote on passage shall be
12 on the joint resolution of the other
13 House.

14 “(ix) If one House fails to introduce
15 or consider a joint resolution under this
16 section, the joint resolution of the other
17 House shall be entitled to expedited floor
18 procedures under this section.

19 “(x) If, following passage of the joint
20 resolution in the Senate, the Senate then
21 receives the companion measure from the
22 House of Representatives, the companion
23 measure shall not be debatable.

24 “(xi) If Congress passes a joint reso-
25 lution, the period beginning on the date

1 the President is presented with the joint
2 resolution and ending on the date the
3 President takes action with respect to the
4 joint resolution shall be disregarded in
5 computing the 45-calendar day period de-
6 scribed in subparagraph (c)(4).

7 “(xii) If the President vetoes the joint
8 resolution—

9 “(I) the period beginning on the
10 date the President vetoes the joint
11 resolution and ending on the date the
12 Congress receives the veto message
13 with respect to the joint resolution
14 shall be disregarded in computing the
15 45-calendar day period described in
16 subparagraph (c)(4), and

17 “(II) debate on a veto message in
18 the Senate under this section shall be
19 1 hour equally divided between the
20 majority and minority leaders or their
21 designees.”.

22 **SEC. 4. PUBLIC INPUT AND CONSULTATION.**

23 Section 1115A(d) of the Social Security Act (42
24 U.S.C. 1315a(d)), as amended by section 3, is further

1 amended by adding at the end of the following new para-
2 graphs:

3 “(6) PUBLIC INPUT.—The Secretary shall use a
4 process involving advance public notice and an op-
5 portunity for stakeholder input and public comments
6 to ensure transparency and accountability regarding
7 the establishment, testing, implementation, evalua-
8 tion, and expansion of a model under subsections (b)
9 and (c) of section 1115A. Such public notice shall
10 describe and define the standards, criteria, and proc-
11 esses that the Secretary will use for selecting and
12 evaluating—

13 “(A) during initial stages of model develop-
14 ment;

15 “(B) prior to testing under section (b)(1);

16 “(C) prior to modification of non-contrac-
17 tual models under section (b)(3)(B); and

18 “(D) following evaluation of a model under
19 section (b)(4) and prior to rulemaking under
20 section (c).

21 Such notice shall explain the basis for the Sec-
22 retary’s determination that the conditions set forth
23 in subsection (c) have been met. Additionally, the
24 notice shall explain the basis for selection and the
25 standards established by the Secretary under the

1 regulations issued under paragraph (1), and any ad-
2 ditional factors that will be used to test the model’s
3 impact on quality of care, patient-centeredness, and
4 innovation. The notice shall provide a minimum 45-
5 day period for public comment. The Secretary shall
6 take stakeholder comments into consideration when
7 determining whether or how to refine the model or
8 whether to proceed with testing under subsection
9 (b)(1).

10 “(7) CONSULTATION.—In carrying out the du-
11 ties under this section, the CMI shall consult rep-
12 resentatives of relevant Federal agencies, and clin-
13 ical and analytical experts with expertise in medicine
14 and health care management, specifically such ex-
15 perts with expertise in—

16 “(A) the health care needs of minority,
17 rural, and underserved populations; and

18 “(B) the financial needs of safety net,
19 community based, rural, and critical access pro-
20 viders, including federally qualified health cen-
21 ters.

22 The CMI shall use open door forums or other mech-
23 anisms to seek external feedback from interested
24 parties and incorporate that feedback into the devel-
25 opment of models.”.

1 **SEC. 5. REESTABLISHING JUDICIAL REVIEW.**

2 Section 1115A(d)(2) of the Social Security Act (42
3 U.S.C. 1315a(d)(2)) is amended—

4 (1) in the matter preceding subparagraph (A),
5 by inserting after “or otherwise” the following: “(ex-
6 cept as may be necessary to enforce requirements of
7 this section or other laws or constitutional provisions
8 intended to protect beneficiaries of affected pro-
9 grams)”;

10 (2) by striking subparagraph (C);

11 (3) in subparagraph (D), by adding at the end
12 “; and”;

13 (4) by redesignating subparagraph (D) as sub-
14 paragraph (C);

15 (5) in subparagraph (E), at the end, by striking
16 “; and” and inserting a period;

17 (6) by redesignating subparagraph (E) as sub-
18 paragraph (D); and

19 (7) by striking subparagraph (F).

20 **SEC. 6. REVISION OF REPORTING REQUIREMENT.**

21 Section 1115A(g) of the Social Security Act (42
22 U.S.C. 1315a(g)) is amended—

23 (1) by striking “and not less than once every
24 other year thereafter” and inserting “and, for years
25 before 2020, not less than once biennially (and, for

1 years beginning with 2020, not less than annually)
2 thereafter”); and

3 (2) by adding at the end the following new sen-
4 tence: “With respect to 2020 and each subsequent
5 year, the Secretary shall submit each such report by
6 not later than December 15 of such year.”.

7 **SEC. 7. ADDRESSING OVERLAP IN VALUE BASED CARE PRO-**
8 **GRAMS.**

9 (a) IN GENERAL.—

10 (1) CMI.—Section 1115A(a)(5) of the Social
11 Security Act (42 U.S.C. 1315a(a)(5)) is amended by
12 adding at the end the following new sentence: “In
13 establishing such limits, the Secretary shall take into
14 account payment and service delivery models in
15 progress in such geographic areas.”.

16 (2) REPEAL OF MEDICARE DUPLICATION PRO-
17 HIBITION.—Section 1899(b)(4) of the Social Secu-
18 rity Act (42 U.S.C. 1395jjj(b)) is amended by strik-
19 ing subparagraph (A).

20 (b) REPORT.—Not later than 60 days after the date
21 of the enactment of this Act, the Secretary of Health and
22 Human Services shall conduct an assessment and submit
23 to Congress a report on alternative payment model overlap
24 under the Medicare program under title XVIII of the So-

1 cial Security Act. Such report shall include a description
2 of and recommendations relating to—

3 (1) any issues regarding the existence of mul-
4 tiple alternative payment model participation oppor-
5 tunities for health care providers; and

6 (2) obstacles created by competing incentives
7 with respect to alternative payment models.

8 **SEC. 8. GAO REPORT.**

9 Not later than 12 months after the date of enactment
10 of this Act, the Comptroller General of the United States
11 shall submit to Congress a report on the efforts of the
12 Center for Medicare and Medicaid Innovation to attract,
13 retain, and develop emerging experts, including under-rep-
14 resented individuals in medicine, such as women, racial
15 and ethnic minorities, and other groups. Such report shall
16 include an analysis of the impact of the existing authority
17 provided to the Center for Medicare and Medicaid Innova-
18 tion to address workforce shortages and gaps in priority
19 areas.

20 **SEC. 9. MODELS SPECIFICALLY TO IMPROVE QUALITY OF**
21 **CARE.**

22 (a) CLARIFICATION OF MODEL ELIGIBILITY.—Sec-
23 tion 1115A of the Social Security Act (42 U.S.C. 1315a)
24 is amended—

25 (1) in subsection (a)(1)—

1 (A) by striking “while preserving or en-
2 hancing the quality of care” and inserting “or
3 to enhance quality of care”; and

4 (B) by striking “also” before “improve”;
5 and

6 (2) in subsection (b)(2)(A) by inserting after
7 the second sentence the following new sentence:
8 “The Secretary may also focus on models solely
9 aimed at practices to significantly improve the care
10 and health outcomes of individuals receiving benefits
11 under the applicable title in anticipation that quality
12 of care benefits and potential direct or indirect sav-
13 ings will accrue to the Medicare or Medicaid pro-
14 gram.”.

15 (b) ADDITIONAL OPPORTUNITY.—Section
16 1115A(b)(2)(B) of the Social Security Act (42 U.S.C.
17 1315a(b)(2)(B)) is amended by adding at the end the fol-
18 lowing new clause:

19 “(xxviii) Implementing newly recog-
20 nized and evidence-based, professionally
21 supported care delivery practices and bun-
22 dles to improve the efficient and effective
23 delivery of hospital-based care and lead to
24 enhanced patient outcomes, reductions in

1 readmissions, or avoidance of costly med-
2 ical errors or complications.”.

3 (c) INCLUSION OF INDIRECT SAVINGS.—Section
4 1115A(b)(3)(A) of the Social Security Act (42 U.S.C.
5 1315a(b)(3)(A)) is amended by inserting at the end “or
6 that savings cannot be made indirectly over time when
7 testing quality of care delivery models.”.

8 (d) EVALUATING QUALITY OF CARE.—Section
9 1115A(b)(4) of the Social Security Act (42 U.S.C.
10 1315a(b)(4)) is amended—

11 (1) in subparagraph (A), by amending clause (i)
12 to read as follows:

13 “(i) the quality of care furnished
14 under the model, including the measure-
15 ment of patient-level outcomes, patient-
16 centeredness, and any unintended con-
17 sequences, such as access to services, using
18 criteria determined appropriate by the Sec-
19 retary for each model; and”;

20 (2) in subparagraph (C), by striking “and” be-
21 fore “patient-centered care” and inserting “, are ap-
22 propriate to issues of quality outcomes related to the
23 medical conditions under study, and are”.

1 **SEC. 10. EFFECTIVE DATE.**

2 Except as otherwise provided in the previous sections
3 of this Act (or the amendments made by such sections),
4 such amendments shall apply with respect to the testing,
5 expansion, or modification of models on or after January
6 1, 2020.

○