

116TH CONGRESS  
1ST SESSION

# S. 966

To amend title XVIII of the Social Security Act to modernize the physician self-referral prohibitions to promote care coordination in the merit-based incentive payment system and to facilitate physician practice participation in alternative payment models under the Medicare program, and for other purposes.

---

## IN THE SENATE OF THE UNITED STATES

APRIL 1, 2019

Mr. PORTMAN (for himself and Mr. BENNET) introduced the following bill;  
which was read twice and referred to the Committee on Finance

---

## A BILL

To amend title XVIII of the Social Security Act to modernize the physician self-referral prohibitions to promote care coordination in the merit-based incentive payment system and to facilitate physician practice participation in alternative payment models under the Medicare program, 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 “Medicare Care Coordi-  
5 nation Improvement Act of 2019”.

1 **SEC. 2. MODERNIZATION OF LIMITATIONS ON PHYSICIAN**  
 2 **SELF-REFERRAL.**

3 (a) FACILITATION OF PARTICIPATION IN ALTER-  
 4 NATIVE PAYMENT MODELS.—

5 (1) IN GENERAL.—Section 1833 of the Social  
 6 Security Act (42 U.S.C. 1395l) is amended—

7 (A) in subsection (z), as added by section  
 8 101(e)(2) of the Medicare Access and CHIP  
 9 Reauthorization Act of 2015 (Public Law 114–  
 10 10), by adding at the end the following para-  
 11 graph:

12 “(5) WAIVER AUTHORITY.—

13 “(A) IN GENERAL.—The provisions of sub-  
 14 section (f) of section 1899 shall apply with re-  
 15 spect to covered APM entities to the same ex-  
 16 tent and in the same manner as such provisions  
 17 apply with respect to accountable care organiza-  
 18 tions under such section.

19 “(B) COVERED APM ENTITIES.—

20 “(i) IN GENERAL.—For purposes of  
 21 subparagraph (A), the term ‘covered APM  
 22 entity’ means, subject to clause (ii) of this  
 23 subparagraph and subparagraph (C), each  
 24 of the following:

1 “(I) An eligible alternative pay-  
2 ment entity as defined in paragraph  
3 (3)(D).

4 “(II) An entity participating in  
5 an alternative payment model as de-  
6 fined in paragraph (3)(C), including  
7 such participation that qualifies as a  
8 clinical practice improvement activity  
9 under section 1848(q)(2)(B)(iii)(VI).

10 “(III) An entity participating in  
11 a physician-focused payment model  
12 for which comments and recommenda-  
13 tions have, under subparagraph (C) of  
14 section 1868(c)(2), been submitted in-  
15 dicating that such model meets the  
16 criteria described in subparagraph (A)  
17 of such section.

18 “(IV) An entity participating in  
19 any other model that the Secretary  
20 determines is a covered APM entity  
21 for purposes of subparagraph (A), in-  
22 cluding such a determination made  
23 pursuant to one or more physicians  
24 submitting a proposal to the Secretary  
25 for an alternative payment model.

1                   “(ii) INCLUSION OF CERTAIN ENTI-  
 2                   TIES.—Such term may include an entity  
 3                   engaging in activities that the Secretary  
 4                   has determined constitute significant  
 5                   progress toward establishing a model re-  
 6                   ferred to in any of subclauses (I) through  
 7                   (IV). Any waiver under this paragraph  
 8                   with respect to an entity described in the  
 9                   preceding sentence may only be approved  
 10                  for three years.

11                  “(C) CERTAIN REQUIREMENTS.—A model  
 12                  referred to in any of subclauses (I) through  
 13                  (IV) of subparagraph (B)(i) may not be consid-  
 14                  ered a covered APM entity for purposes of sub-  
 15                  paragraph (A) unless the model meets the re-  
 16                  quirements described in section  
 17                  1877(b)(6)(B).”; and

18                  (B) by redesignating subsection (z), as  
 19                  added by section 514(a) of the Medicare Access  
 20                  and CHIP Reauthorization Act of 2015 (Public  
 21                  Law 114–10), as subsection (aa).

22                  (2) CONFORMING AMENDMENT.—Section  
 23                  514(c)(1) of the Medicare Access and CHIP Reau-  
 24                  thorization Act of 2015 (Public Law 114–10) is

1       amended by striking “subsection (z)” and inserting  
 2       “subsection (aa)”.

3       (b) EXCEPTION FACILITATING THE DEVELOPMENT  
 4       AND OPERATION OF ALTERNATIVE PAYMENT MODELS.—  
 5       Section 1877(b) of the Social Security Act (42 U.S.C.  
 6       1395nn(b)) is amended by adding at the end the following  
 7       new paragraph:

8               “(6) DEVELOPMENT AND OPERATION OF AL-  
 9       TERNATIVE PAYMENT MODELS.—

10               “(A) IN GENERAL.—In the case of items  
 11               and services furnished pursuant to an arrange-  
 12               ment that meets the requirements described in  
 13               subparagraph (B) entered into for the purpose  
 14               of developing or operating a covered APM enti-  
 15               ty (as defined in section 1833(z)(5)(B)), includ-  
 16               ing—

17                       “(i) an advanced alternative payment  
 18                       model described in section 1833(z) (includ-  
 19                       ing a physician-focused payment model re-  
 20                       ferred to in section 1868(c));

21                       “(ii) a MIPS APM (as defined by the  
 22                       Secretary); and

23                       “(iii) any other alternative payment  
 24                       model that the Secretary may, by regula-  
 25                       tion, specify.

“(B) REQUIREMENTS.—

“(i) IN GENERAL.—Subject to clause (ii), the requirements described in this subparagraph with respect to an arrangement relating to an alternative payment model are as follows:

“(I) The arrangement is in writing, identifies the services, items, or actions subject to the arrangement and is signed by the parties to the arrangement.

“(II) The arrangement includes a description of the alternative payment model.

“(III) Under the arrangement written reports are submitted to the Secretary on a semi-annual basis on the progress achieved in the development and operation of the alternative payment model.

“(IV) The arrangement meets such other requirements as the Secretary may impose by regulation as needed to protect against a significant risk of program or patient abuse.

1                   “(ii) CLARIFICATION.—The Secretary  
2                   shall not prohibit or restrict an arrange-  
3                   ment from meeting the requirements de-  
4                   scribed in this subparagraph on the basis  
5                   that the arrangement takes into account  
6                   the volume or value of referrals if such ar-  
7                   rangement otherwise meets the require-  
8                   ments described in clause (i).”.

○