H. R. 3961

To amend title XVIII of the Social Security Act to reform the Medicare SGR payment system for physicians.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 29, 2009

Mr. Dingell (for himself, Mr. Rangel, Mr. Waxman, Mr. George Miller of California, Mr. Stark, Mr. Pallone, and Mr. Andrews) 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 reform the Medicare SGR payment system for physicians.

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 “Medicare Physician Payment Reform Act of 2009”.

SEC. 2. MEDICARE SUSTAINABLE GROWTH RATE REFORM.

(a) TRANSITIONAL UPDATE FOR 2010.—Section 1848(d) of the Social Security Act (42 U.S.C. 1395w–
(d)) is amended by adding at the end the following new paragraph:

“(10) UPDATE FOR 2010.—The update to the single conversion factor established in paragraph (1)(C) for 2010 shall be the percentage increase in the MEI (as defined in section 1842(i)(3)) for that year.”.

(b) REBASING SGR USING 2009; LIMITATION ON CUMULATIVE ADJUSTMENT PERIOD.—Section 1848(d)(4) of such Act (42 U.S.C. 1395w–4(d)(4)) is amended—

(1) in subparagraph (B), by striking “subparagraph (D)” and inserting “subparagraphs (D) and (G)”;

and

(2) by adding at the end the following new subparagraph:

“(G) REBASING USING 2009 FOR FUTURE UPDATE ADJUSTMENTS.—In determining the update adjustment factor under subparagraph (B) for 2011 and subsequent years—

“(i) the allowed expenditures for 2009 shall be equal to the amount of the actual expenditures for physicians’ services during 2009; and

“(ii) the reference in subparagraph (B)(ii)(I) to ‘April 1, 1996’ shall be treat-
ed as a reference to ‘January 1, 2009 (or, if later, the first day of the fifth year before the year involved’.’’).

(e) LIMITATION ON PHYSICIANS’ SERVICES INCLUDED IN TARGET GROWTH RATE COMPUTATION TO SERVICES COVERED UNDER PHYSICIAN FEE SCHEDULE.—Effective for services furnished on or after January 1, 2009, section 1848(f)(4)(A) of such Act is amended by striking "(such as clinical” and all that follows through “in a physician’s office” and inserting “for which payment under this part is made under the fee schedule under this section, for services for practitioners described in section 1842(b)(18)(C) on a basis related to such fee schedule, or for services described in section 1861(p) (other than such services when furnished in the facility of a provider of services)”).

(d) ESTABLISHMENT OF SEPARATE TARGET GROWTH RATES FOR CATEGORIES OF SERVICES.—

(1) ESTABLISHMENT OF SERVICE CATEGORIES.—Subsection (j) of section 1848 of the Social Security Act (42 U.S.C. 1395w–4) is amended by adding at the end the following new paragraph:

“(5) SERVICE CATEGORIES.—For services furnished on or after January 1, 2009, each of the following categories of physicians’ services (as defined
in paragraph (3)) shall be treated as a separate ‘service category’:

“(A) Evaluation and management services that are procedure codes (for services covered under this title) for—

“(i) services in the category designated Evaluation and Management in the Health Care Common Procedure Coding System (established by the Secretary under subsection (c)(5) as of December 31, 2009, and as subsequently modified by the Secretary); and

“(ii) preventive services (as defined in section 1861(iii)) for which payment is made under this section.

“(B) All other services not described in subparagraph (A).

Service categories established under this paragraph shall apply without regard to the specialty of the physician furnishing the service.”.

(2) Establishment of separate conversion factors for each service category.—Subsection (d)(1) of section 1848 of the Social Security Act (42 U.S.C. 1395w–4) is amended—

(A) in subparagraph (A)—
(i) by designating the sentence beginning “The conversion factor” as clause (i) with the heading “APPLICATION OF SINGLE CONVERSION FACTOR.—” and with appropriate indentation;

(ii) by striking “The conversion factor” and inserting “Subject to clause (ii), the conversion factor”; and

(iii) by adding at the end the following new clause:

“(ii) APPLICATION OF MULTIPLE CONVERSION FACTORS BEGINNING WITH 2011.—

“(I) IN GENERAL.—In applying clause (i) for years beginning with 2011, separate conversion factors shall be established for each service category of physicians’ services (as defined in subsection (j)(5)) and any reference in this section to a conversion factor for such years shall be deemed to be a reference to the conversion factor for each of such categories.
“(II) Initial Conversion Factors.—Such factors for 2011 shall be based upon the single conversion factor for the previous year multiplied by the update established under paragraph (11) for such category for 2011.

“(III) Updating of Conversion Factors.—Such factor for a service category for a subsequent year shall be based upon the conversion factor for such category for the previous year and adjusted by the update established for such category under paragraph (11) for the year involved.”; and

(B) in subparagraph (D), by striking “other physicians’ services” and inserting “for physicians’ services described in the service category described in subsection (j)(5)(B)”.

(3) Establishing Updates for Conversion Factors for Service Categories.—Section 1848(d) of the Social Security Act (42 U.S.C. 1395w–4(d)), as amended by subsection (a), is amended—
(A) in paragraph (4)(C)(iii), by striking “The allowed” and inserting “Subject to paragraph (11)(B), the allowed”; and

(B) by adding at the end the following new paragraph:

“(11) UPDATES FOR SERVICE CATEGORIES BEGINNING WITH 2011.—

“(A) IN GENERAL.—In applying paragraph (4) for a year beginning with 2011, the following rules apply:

“(i) APPLICATION OF SEPARATE UPDATE ADJUSTMENTS FOR EACH SERVICE CATEGORY.—Pursuant to paragraph (1)(A)(ii)(I), the update shall be made to the conversion factor for each service category (as defined in subsection (j)(5)) based upon an update adjustment factor for the respective category and year and the update adjustment factor shall be computed, for a year, separately for each service category.

“(ii) COMPUTATION OF ALLOWED AND ACTUAL EXPENDITURES BASED ON SERVICE CATEGORIES.—In computing the prior year adjustment component and the cumu-
ative adjustment component under clauses (i) and (ii) of paragraph (4)(B), the following rules apply:

“(I) Application based on service categories.—The allowed expenditures and actual expenditures shall be the allowed and actual expenditures for the service category, as determined under subparagraph (B).

“(II) Application of category specific target growth rate.—The growth rate applied under clause (ii)(II) of such paragraph shall be the target growth rate for the service category involved under subsection (f)(5).

“(B) Determination of allowed expenditures.—In applying paragraph (4) for a year beginning with 2010, notwithstanding subparagraph (C)(iii) of such paragraph, the allowed expenditures for a service category for a year is an amount computed by the Secretary as follows:

“(i) For 2010.—For 2010:

“(I) Total 2009 actual expenditures for all services in—
cluded in SGR computation for each service category.—Compute total actual expenditures for physicians’ services (as defined in subsection (f)(4)(A)) for 2009 for each service category.

“(II) Increase by growth rate to obtain 2010 allowed expenditures for service category.—Compute allowed expenditures for the service category for 2010 by increasing the allowed expenditures for the service category for 2009 computed under subclause (I) by the target growth rate for such service category under subsection (f) for 2010.

“(ii) For subsequent years.—For a subsequent year, take the amount of allowed expenditures for such category for the preceding year (under clause (i) or this clause) and increase it by the target growth rate determined under subsection (f) for such category and year.”.

(4) Application of separate target growth rates for each category.—
(A) IN GENERAL.—Section 1848(f) of the Social Security Act (42 U.S.C. 1395w–4(f)) is amended by adding at the end the following new paragraph:

“(5) APPLICATION OF SEPARATE TARGET GROWTH RATES FOR EACH SERVICE CATEGORY BEGINNING WITH 2010.—The target growth rate for a year beginning with 2010 shall be computed and applied separately under this subsection for each service category (as defined in subsection (j)(5)) and shall be computed using the same method for computing the target growth rate except that the factor described in paragraph (2)(C) for—

“(A) the service category described in subsection (j)(5)(A) shall be increased by 0.02; and

“(B) the service category described in subsection (j)(5)(B) shall be increased by 0.01.”.

(B) USE OF TARGET GROWTH RATES.—Section 1848 of such Act is further amended—

(i) in subsection (d)—

(I) in paragraph (1)(E)(ii), by inserting “or target” after “sustainable”; and
(II) in paragraph (4)(B)(ii)(II),
by inserting “or target” after “sustainable”;
(ii) in the heading of subsection (f),
by inserting “AND TARGET GROWTH RATE” after “SUSTAINABLE GROWTH RATE”;
(iii) in subsection (f)(1)—
(I) by striking “and” at the end of subparagraph (A);
(II) in subparagraph (B), by inserting “before 2010” after “each succeeding year” and by striking the period at the end and inserting “; and”;
(III) by adding at the end the following new subparagraph:
“(C) November 1 of each succeeding year the target growth rate for such succeeding year and each of the 2 preceding years.”; and
(iv) in subsection (f)(2), in the matter before subparagraph (A), by inserting after “beginning with 2000” the following: “and ending with 2009”.
(e) Application to Health Care Group Demonstration Program and Successor Accountable Care Organization Pilot Program.—In applying the target growth rate under subsections (d) and (f) of section 1848 of the Social Security Act to services furnished by a practitioner to beneficiaries who are attributable to a health care group under the demonstration program provided under section 1886A of such Act (or to an accountable care organization under a pilot program that is a successor to such demonstration program under a section of such Act), the Secretary of Health and Human Services shall develop, not later than January 1, 2012, for application beginning with 2012, a method that—

(1) allows each such group or organization to have its own expenditure targets and updates for such practitioners, with respect to beneficiaries who are attributable to that group or organization, that are consistent with the methodologies described in such subsection (f); and

(2) provides that the target growth rate applicable to other physicians shall not apply to such physicians to the extent that the physicians’ services are furnished through the group or organization.

In applying paragraph (1), the Secretary of Health and Human Services may apply the difference in the update
under such paragraph on a claim-by-claim or lump sum basis and such a payment shall be taken into account under the demonstration or pilot program.