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118TH CONGRESS
1ST SESSION

H. R. 5013

To direct the Secretary of Health and Human Services to revise certain regulations in relation to the Medicare shared savings program and other alternative payment arrangements to encourage participation in such program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 27, 2023

Mr. LAHOOD (for himself, Ms. DELBENE, Mr. WENSTRUP, Ms. SCHRIER, Mr. BUCSHON, and Mr. BLUMENAUER) 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 direct the Secretary of Health and Human Services to revise certain regulations in relation to the Medicare shared savings program and other alternative payment arrangements to encourage participation in such 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 "Value in Health Care Act of 2023".

SEC. 2. ENCOURAGING PARTICIPATION IN THE MEDICARE SHARED SAVINGS PROGRAM.

(a) REMOVING BARRIERS TO SHARED SAVINGS PROGRAM PARTICIPATION.—Prior to the beginning of the first performance year (as defined in section 425.20 of title 42, Code of Federal Regulations (or a successor regulation)) that begins at least 90 days after the date of enactment of this Act, the Secretary of Health and Human Services shall revise part 425 of title 42, Code of Federal Regulations, or any successor regulation, to—

(1) eliminate any distinction in requirements in such part between a low revenue ACO and a high revenue ACO (as such terms are defined in section 425.20 of title 42, Code of Federal Regulations, or a successor regulation) and, with respect to such a low revenue ACO or high revenue ACO and except as otherwise modified in this Act, apply the requirements of such part as such requirements applied to low revenue ACOs on July 1, 2024, except that the Secretary of Health and Human Services may, if the Secretary determines appropriate, apply less stringent requirements than those requirements that applied to low revenue ACOs as of such date; and

(2) remove any provision requiring an accountable care organization to assume responsibility for repayment of any shared losses or participate in a

two-sided risk model before the organization has participated for at least 3 years in any program subject to the provisions of part 425 of title 42, Code of Federal Regulations, or any successor regulation, provided that such an organization shall be allowed to elect to participate in such two-sided risk models or models requiring repayment of such losses.

(b) FINANCIAL METHODOLOGY ENHANCEMENTS TO PROMOTE SUCCESS OF SHARED SAVINGS PROGRAM.—Prior to the beginning of the first performance year (as defined for purposes of subsection (a)) that begins at least 90 days after the date of enactment of this Act, the Secretary shall—

(1) ensure that any methodology used to establish, adjust, or update benchmark expenditures be developed and implemented in a clear and transparent manner, including by making publicly available sufficient information and data to allow interested members of the public to replicate the methodology used by the Secretary and to evaluate the accuracy of the Secretary's benchmark expenditure calculations;

(2) implement a process that allows ACOs to appeal the accuracy of benchmark expenditures in a hearing before an administrative law judge, and en-

sure that any such appeal be heard within a 90-day period beginning on the date a request for hearing is filed; and

(3) require that any regional contributions or expenditures (below the national level) used directly or indirectly to establish, update, or adjust benchmark expenditures be calculated in a manner that excludes the expenditure impact of ACOs in the applicable region, including any regional expenditures associated with Medicare fee-for-service beneficiaries assigned to such ACOs.

(c) SHARED SAVINGS OPTION.—Prior to the beginning of the first performance year (as defined for purposes of subsection (a)) that begins after the date of the enactment of this Act, and notwithstanding any other provision of law, the Secretary of Health and Human Services shall establish a voluntary full-risk option under the Medicare Shared Savings Program (as described in section 1899 of the Social Security Act (42 U.S.C. 1395jjj) under which the percent of shared savings paid to an ACO under section 1899(d)(2) of the Social Security Act (42 U.S.C. 1395jjj(d)(2)) shall be set at 100 percent, with the ACO bearing commensurate risk of any shared losses.

(d) REPORT.—Not later than 90 days after the date of enactment of this Act, the Administrator of the Centers

for Medicare & Medica Services shall submit to the appropriate committees of Congress a report on mechanisms that the agency can take to avoid penalizing ACOs for achieving cost savings and account for regional variations in spending in a manner that prevents arbitrary Medicare Shared Savings Program outcomes for ACOs. Such report shall include specific actions that the Centers for Medicare & Medicaid Services can take to develop and implement effective benchmarks and guardrails for any changes made to the agency's benchmarking policies.

SEC. 3. ADVANCED PAYMENT MODEL INCENTIVE, PARTICIPATION, AND THRESHOLD MODIFICATIONS.

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

(1) in paragraph (1)(A), by striking ''2025'' and inserting ''2027'' and by adding after ''5 percent (or, with respect to 2025, 3.5 percent'' and before the close parenthesis ''or, with respect to 2026 and any subsequent year, the scaled percentage amount'';

(2) in paragraph (2)(C)—

(A) in clause (i), by striking ''75 percent''and inserting ''the applicable percent (as defined in clause (iv)) for such year'';

(B) in clause (ii)(I)—

(i) in the matter preceding item (aa), by striking ''75 percent'' and inserting ''the applicable percent (as defined in clause (iv)) for such year''; and

(ii) in item (bb)—

(I) by striking ''and other than payments made under title XIX'' and inserting ''other than payments made under title XIX''; and

(II) by striking ''State program under that title),'' and inserting ''State program under that title, and other than payments made by payers in which no payment or program meeting the requirements described in clause (iii)(II) is available from the payer for participation by the eligible professional)''; and

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

''(iv) APPLICABLE PERCENT DEFINED.—For purposes of clauses (i) and (ii), the term 'applicable percent' means—

''(I) for 2026 through 2027, 50 percent; and

"(II) for 2028 and any subsequent year, a percent specified by the Secretary, but in no case less than the percent specified under this clause for the preceding year or more than the lesser of 75 percent or 5 percentage points higher than the percent specified under this clause for the preceding year.

"(v) ALTERNATIVE APPLICABLE PERCENT.—Notwithstanding any other provision of law, the Secretary may define the applicable percent for purposes of a given alternative payment model (or for purposes of partial qualifying APM participants under section 1848(q)(1)(C)(iii)(III)) to mean a percentage amount that is lower than the amount (or range) otherwise specified in such preceding clause (or, as applicable, under section 1848(q)(1)(C)(iii)(III)), if there is good cause to support such alternative applicable percent, including where an alternative payment model's design warrants use of such alternative applicable percent. In no

case shall the Secretary designate an alternative applicable percent that exceeds the maximum applicable percent specified in the preceding clause (or, as applicable, under section 1848(q)(1)(C)(iii)(III)) for the applicable year; and

''(vi) SCALED PERCENTAGE AMOUNT.—For purposes of this subsection (including paragraph (1)), the term 'scaled percentage amount' means a progressively scaled percentage amount designated by the Secretary. The Secretary shall determine an appropriate progressive percentage scale for different categories of eligible professionals based on programmatic interests in efficiency, equity, and alignment of appropriate incentives. The maximum scaled percentage amount shall be 5 percent, and such maximum amount shall apply to an eligible professional that meets or exceeds the applicable percent (as defined in paragraph (2)(C)(iv)). In no case may an eligible professional below the applicable percent qualify for the maximum scaled percentage amount''; and

(3) in paragraph (4)(B), by adding after ''5 percent (or, with respect to 2025, 3.5 percent'' and before the close parenthesis ''or, with respect to 2026 and any subsequent year, the scaled percentage amount''.

(b) TECHNICAL ASSISTANCE.—The Secretary of Health and Human Services shall provide education and technical assistance to ACOs and other types of providers (as defined under section 414.1305 of title 42, Code of Federal Regulations (or a successor regulation)) that the Secretary determines to target or otherwise operate in rural or medically underserved areas or to involve material participation by small practice or safety net groups of providers of services and suppliers. Such education and technical assistance may include infrastructure support or access to data analytics to support ACO implementation in such rural or medically underserved areas or to benefit small practice or safety net groups of providers of services and suppliers, or other groups of providers of services and suppliers deemed to require additional support, such as providers of services or suppliers that are new to APMs, including specialists.

(c) PARTIAL QUALIFYING APM PARTICIPANT MODIFICATION.—Section 1848(q)(1)(C)(iii)(III) of the Social

Security Act (42 U.S.C. 1395w–4(q)(1)(C)(iii)(III)) is amended—

(1) in item (aa), by striking ''50 percent was instead a reference to 40 percent'' and inserting ''the applicable percent were instead a reference to 10 percentage points less than the applicable percent''; and

(2) in item (bb)—

(A) by striking ''75 percent'' and inserting ''the applicable percent''; and

(B) by striking ''50 percent'' and inserting ''10 percentage points less than the applicable percent''.

SEC. 4 STUDY ON ALTERNATIVE PAYMENT MODELS AND MEDICARE+CHOICE.

Not later than 18 months after the date of enactment of this Act, the Comptroller General of the Government Accountability Office shall study and submit to the appropriate committees of Congress a report evaluating the benefits and flexibilities provided to support alternative payment models (as defined under section 414.1305 of title 42, Code of Federal Regulations (or a successor regulation)) and Medicare+Choice Organizations (as defined in section 1859(a)(1) of the Social Security Act (42 U.S.C. 1395w–28(a)(1)). The objective of such report shall be to

better understand the effect of these programs' different policies on different types of participating patients and providers, including specialty, safety net, small practice, and rural providers, with the goal of identifying areas to enhance alignment between such programs' policies and benchmarks including through mechanisms that could facilitate greater alignment in policies and benchmarks and to encourage the adoption of value-based arrangements across payers or that could otherwise increase parity in the flexibilities available to alternative payment models and Medicare+Choice Organizations.

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