

118TH CONGRESS  
1ST SESSION

# S. 3503

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 SENATE OF THE UNITED STATES

DECEMBER 13, 2023

Mr. WHITEHOUSE (for himself, Mr. BARRASSO, Mr. WELCH, Mr. TILLIS, Mr. CASSIDY, Mr. THUNE, and Mrs. BLACKBURN) introduced the following bill; which was read twice and referred to the Committee on Finance

---

## 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.

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 “Value in Health Care  
5 Act of 2023”.

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

3 (a) REMOVING BARRIERS TO SHARED SAVINGS PRO-  
4 GRAM PARTICIPATION.—Prior to the beginning of the first  
5 performance year (as defined in section 425.20 of title 42,  
6 Code of Federal Regulations (or a successor regulation))  
7 that begins at least 90 days after the date of enactment  
8 of this Act, the Secretary of Health and Human Services  
9 shall revise part 425 of title 42, Code of Federal Regula-  
10 tions, or any successor regulation, to—

11 (1) eliminate any distinction in requirements in  
12 such part between a low revenue ACO and a high  
13 revenue ACO (as such terms are defined in section  
14 425.20 of title 42, Code of Federal Regulations, or  
15 a successor regulation) and, with respect to such a  
16 low revenue ACO or high revenue ACO and except  
17 as otherwise modified in this Act, apply the require-  
18 ments of such part as such requirements applied to  
19 low revenue ACOs on July 1, 2024, except that the  
20 Secretary of Health and Human Services may, if the  
21 Secretary determines appropriate, apply less strin-  
22 gent requirements than those requirements that ap-  
23 plied to low revenue ACOs as of such date; and

24 (2) remove any provision requiring an account-  
25 able care organization to assume responsibility for  
26 repayment of any shared losses or participate in a

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

8 (b) FINANCIAL METHODOLOGY ENHANCEMENTS TO  
9 PROMOTE SUCCESS OF SHARED SAVINGS PROGRAM.—  
10 Prior to the beginning of the first performance year (as  
11 defined for purposes of subsection (a)) that begins at least  
12 90 days after the date of enactment of this Act, the Sec-  
13 retary shall—

14 (1) ensure that any methodology used to estab-  
15 lish, adjust, or update benchmark expenditures be  
16 developed and implemented in a clear and trans-  
17 parent manner, including by making publicly avail-  
18 able sufficient information and data to allow inter-  
19 ested members of the public to replicate the method-  
20 ology used by the Secretary and to evaluate the ac-  
21 curacy of the Secretary's benchmark expenditure  
22 calculations;

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

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

4               (3) require that any regional contributions or  
5       expenditures (below the national level) used directly  
6       or indirectly to establish, update, or adjust bench-  
7       mark expenditures be calculated in a manner that  
8       excludes the expenditure impact of ACOs in the ap-  
9       plicable region, including any regional expenditures  
10      associated with Medicare fee-for-service beneficiaries  
11      assigned to such ACOs.

12      (c) SHARED SAVINGS OPTION.—Prior to the begin-  
13      ning of the first performance year (as defined for purposes  
14      of subsection (a)) that begins after the date of the enact-  
15      ment of this Act, and notwithstanding any other provision  
16      of law, the Secretary of Health and Human Services shall  
17      establish a voluntary full-risk option under the Medicare  
18      Shared Savings Program (as described in section 1899 of  
19      the Social Security Act (42 U.S.C. 1395jjj)) under which  
20      the percent of shared savings paid to an ACO under sec-  
21      tion 1899(d)(2) of the Social Security Act (42 U.S.C.  
22      1395jjj(d)(2)) shall be set at 100 percent, with the ACO  
23      bearing commensurate risk of any shared losses.

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

1 for Medicare & Medicaid Services shall submit to the ap-  
2 propriate committees of Congress a report on mechanisms  
3 that the agency can take to avoid penalizing ACOs for  
4 achieving cost savings and account for regional variations  
5 in spending in a manner that prevents arbitrary Medicare  
6 Shared Savings Program outcomes for ACOs. Such report  
7 shall include specific actions that the Centers for Medicare  
8 & Medicaid Services can take to develop and implement  
9 effective benchmarks and guardrails for any changes made  
10 to the agency’s benchmarking policies.

11 **SEC. 3. ADVANCED PAYMENT MODEL INCENTIVE, PARTICI-  
12 PATION, AND THRESHOLD MODIFICATIONS.**

13 (a) IN GENERAL.—Section 1833(z) of the Social Se-  
14 curity Act (42 U.S.C. 1395l(z)) is amended—

15 (1) in paragraph (1)(A)—

16 (A) by striking “with 2025” and inserting  
17 “with 2027”; and

18 (B) by inserting “, or, with respect to  
19 2026 and 2027, the scaled percentage amount  
20 (as defined in paragraph (2)(C)(vi))” after “3.5  
21 percent”;

22 (2) in paragraph (2)(C)—

23 (A) in clause (i), by striking “75 percent”  
24 and inserting “the applicable percent (as de-  
25 fined in clause (iv)) for such year”;

1 (B) in clause (ii)(I)—

2 (i) in the matter preceding item (aa),  
3 by striking “75 percent” and inserting  
4 “the applicable percent (as defined in  
5 clause (iv)) for such year”; and

6 (ii) in item (bb)—

7 (I) by striking “and other than  
8 payments made under title XIX” and  
9 inserting “other than payments made  
10 under title XIX”; and

11 (II) by striking “State program  
12 under that title,” and inserting  
13 “State program under that title, and  
14 other than payments made by payers  
15 in which no payment or program  
16 meeting the requirements described in  
17 clause (iii)(II) is available from the  
18 payer for participation by the eligible  
19 professional”); and

20 (C) by adding at the end the following new  
21 clauses:

22 “(iv) APPLICABLE PERCENT DE-  
23 FINED.—For purposes of clauses (i) and  
24 (ii), subject to clause (v), the term ‘appli-  
25 cable percent’ means—

1                   “(I) for each of 2026 and 2027,  
2                   50 percent; and

3                   “(II) for 2028 and each subse-  
4                   quent year, a percent specified by the  
5                   Secretary, but in no case less than the  
6                   percent specified under this clause for  
7                   the preceding year or more than the  
8                   lesser of 75 percent or 5 percentage  
9                   points higher than the percent speci-  
10                  fied under this clause for the pre-  
11                  ceding year.

12                  “(v) ALTERNATIVE APPLICABLE PER-  
13                  CENT.—Notwithstanding any other provi-  
14                  sion of law, the Secretary may define the  
15                  applicable percent for purposes of clause  
16                  (i) or (ii) of this subparagraph or a given  
17                  alternative payment model (or for purposes  
18                  of partial qualifying APM participants  
19                  under section 1848(q)(1)(C)(iii)(III)) to  
20                  mean a percentage amount that is lower  
21                  than the amount (or range) otherwise spec-  
22                  ified in clause (iv) (or, as applicable, under  
23                  section 1848(q)(1)(C)(iii)(III)), if the Sec-  
24                  retary determines there is good cause to  
25                  support such alternative applicable percent,

1 including where the design of an alter-  
2 native payment model warrants use of such  
3 alternative applicable percent. In no case  
4 shall the Secretary designate an alternative  
5 applicable percent that exceeds the max-  
6 imum applicable percent specified in clause  
7 (iv) (or, as applicable, under section  
8 1848(q)(1)(C)(iii)(III)) for the applicable  
9 year.

10 “(vi) SCALED PERCENTAGE  
11 AMOUNT.—For purposes of paragraphs  
12 (1)(A) and (4)(B):

13 “(I) IN GENERAL.—The term  
14 ‘scaled percentage amount’ means a  
15 progressively scaled percentage  
16 amount designated by the Secretary.  
17 Subject to subclause (II), the Sec-  
18 retary shall determine an appropriate  
19 progressive percentage scale for dif-  
20 ferent categories of eligible profes-  
21 sionals based on programmatic inter-  
22 ests in efficiency, equity, and align-  
23 ment of appropriate incentives.

24 “(II) MAXIMUM AMOUNT.—



1           “(aa) IN GENERAL.—The  
2 maximum scaled percentage  
3 amount shall be 5 percent and,  
4 subject to item (bb), such max-  
5 imum amount shall apply to an  
6 eligible professional with respect  
7 to a year if the eligible profes-  
8 sional meets or exceeds the  
9 threshold under clause (i) or (ii)  
10 with respect to such year (deter-  
11 mined based on application of the  
12 applicable percent, as defined  
13 under clause (iv)).

14           “(bb) CLARIFICATION.—In  
15 no case may an eligible profes-  
16 sional who meets or exceeds the  
17 threshold under clause (i) or (ii)  
18 with respect to a year through  
19 application of an alternative ap-  
20 plicable percent under clause (v)  
21 that is less than the applicable  
22 percent (as defined under clause  
23 (iv)) be eligible for the maximum  
24 scaled percentage amount under  
25 this clause.”; and

1           (3) in paragraph (4)(B), by inserting “, or,  
2           with respect to 2026 and each subsequent year, the  
3           scaled percentage amount (as defined in paragraph  
4           (2)(C)(vi))” after “3.5 percent”.

5           (b) TECHNICAL ASSISTANCE.—The Secretary of  
6 Health and Human Services shall provide education and  
7 technical assistance to ACOs and other types of providers  
8 (as defined under section 414.1305 of title 42, Code of  
9 Federal Regulations (or a successor regulation)) that the  
10 Secretary determines to target or otherwise operate in  
11 rural or medically underserved areas or to involve material  
12 participation by small practice or safety net groups of pro-  
13 viders of services and suppliers. Such education and tech-  
14 nical assistance may include infrastructure support or ac-  
15 cess to data analytics to support ACO implementation in  
16 such rural or medically underserved areas or to benefit  
17 small practice or safety net groups of providers of services  
18 and suppliers, or other groups of providers of services and  
19 suppliers deemed to require additional support, such as  
20 providers of services or suppliers that are new to APMs,  
21 including specialists.

22           (c) PARTIAL QUALIFYING APM PARTICIPANT MODI-  
23 FICATION.—Section 1848(q)(1)(C)(iii)(III) of the Social  
24 Security Act (42 U.S.C. 1395w-4(q)(1)(C)(iii)(III)) is  
25 amended—

1 (1) in item (aa), by striking “50 percent was  
2 instead a reference to 40 percent” and inserting  
3 “the applicable percent were instead a reference to  
4 the percent that is 10 percentage points less than  
5 the applicable percent”; and

6 (2) in item (bb)—

7 (A) by striking “75 percent” and inserting  
8 “the applicable percent”; and

9 (B) by striking “50 percent” and inserting  
10 “the percent that is 10 percentage points less  
11 than the applicable percent”.

12 **SEC. 4 STUDY ON ALTERNATIVE PAYMENT MODELS AND**  
13 **MEDICARE ADVANTAGE.**

14 Not later than 18 months after the date of enactment  
15 of this Act, the Comptroller General of the United States  
16 shall conduct a study and submit to the appropriate com-  
17 mittees of Congress a report evaluating the benefits and  
18 flexibilities provided to support alternative payment mod-  
19 els (as defined under section 414.1305 of title 42, Code  
20 of Federal Regulations (or a successor regulation)) and  
21 Medicare Advantage organizations (as defined in section  
22 1859(a)(1) of the Social Security Act (42 U.S.C. 1395w-  
23 28(a)(1))). The objective of such study and report shall  
24 be to better understand the effect of different policies  
25 under the Medicare program under title XVIII of the So-

1 cial Security Act (42 U.S.C. 1395 et seq.) with respect  
2 to such models and organizations on different types of  
3 beneficiaries and participating providers, including spe-  
4 cialty, safety net, small practice, and rural providers, with  
5 the goal of identifying areas to enhance alignment between  
6 such policies and benchmarks, including through mecha-  
7 nisms that could facilitate greater alignment in such poli-  
8 cies and benchmarks and to encourage the adoption of  
9 value-based arrangements across payers or that could oth-  
10 erwise increase parity in the flexibilities available to alter-  
11 native payment models and Medicare Advantage organiza-  
12 tions under the Medicare program.

○