

105TH CONGRESS
1ST SESSION

S. 862

To amend title XVIII of the Social Security Act to change the payment system for health maintenance organizations and competitive medical plans.

IN THE SENATE OF THE UNITED STATES

JUNE 9, 1997

Mr. GRASSLEY (for himself, Mr. BAUCUS, Mr. JEFFORDS, Mr. HATCH, Mr. KERREY, Mr. THOMAS, Mr. ROBERTS, and Mr. HAGEL) 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 change the payment system for health maintenance organizations and competitive medical plans.

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 Equity and
5 Choice Enhancement Act of 1997”.

1 **SEC. 2. PAYMENTS TO HEALTH MAINTENANCE ORGANIZA-**
2 **TIONS AND COMPETITIVE MEDICAL PLANS.**

3 (a) IN GENERAL.—Section 1876(a) of the Social Se-
4 curity Act (42 U.S.C. 1395mm(a)) is amended to read as
5 follows:

6 “(a)(1)(A) The Secretary shall annually determine,
7 and shall announce (in a manner intended to provide no-
8 tice to interested parties) not later than August 1 before
9 the calendar year concerned—

10 “(i) a per capita rate of payment for individuals
11 who are enrolled under this section with an eligible
12 organization which has entered into a risk-sharing
13 contract and who are entitled to benefits under part
14 A and enrolled under part B; and

15 “(ii) a per capita rate of payment for individ-
16 uals who are so enrolled with such an organization
17 and who are enrolled under part B only.

18 For purposes of this section, the term ‘risk-sharing con-
19 tract’ means a contract entered into under subsection (g)
20 and the term ‘reasonable cost reimbursement contract’
21 means a contract entered into under subsection (h).

22 “(B) The annual per capita rate of payment for each
23 individual enrolled under this section shall be equal to the
24 adjusted capitation rate (as defined in paragraph (4)),
25 after any adjustment described in paragraph (9), adjusted
26 by the Secretary for—

1 “(i) individuals who are enrolled under this sec-
2 tion with an eligible organization which has entered
3 into a risk-sharing contract and who are enrolled
4 under part B only; and

5 “(ii) in 1999 and any succeeding year, such
6 risk factors as health status, diagnoses, and such
7 other factors as the Secretary determines to be ap-
8 propriate so as to ensure actuarial equivalence.

9 The Secretary may add to, modify, or substitute for the
10 factors described in clause (ii), if such changes will im-
11 prove the determination of actuarial equivalence.

12 “(C) In the case of an eligible organization with a
13 risk-sharing contract, the Secretary shall make monthly
14 payments—

15 “(i) in advance and in accordance with the rate
16 determined under subparagraph (B); and

17 “(ii) except as provided in subsection (g)(2), to
18 the organization for each individual enrolled with the
19 organization under this section.

20 “(D) The Secretary shall establish a separate rate of
21 payment to an eligible organization with respect to any
22 individual determined to have end-stage renal disease and
23 enrolled with the organization. Such rate of payment shall
24 be actuarially equivalent to rates paid to other enrollees

1 in the payment area (or such other area as specified by
2 the Secretary).

3 “(E)(i) The amount of payment under this paragraph
4 may be retroactively adjusted to take into account any dif-
5 ference between the actual number of individuals enrolled
6 in the plan under this section and the number of such
7 individuals estimated to be so enrolled in determining the
8 amount of the advance payment.

9 “(ii)(I) Subject to subclause (II), the Secretary may
10 make retroactive adjustments under clause (i) to take into
11 account individuals enrolled during the period beginning
12 on the date on which the individual enrolls with an eligible
13 organization (which has a risk-sharing contract under this
14 section) under a health benefit plan operated, sponsored,
15 or contributed to by the individual’s employer or former
16 employer (or the employer or former employer of the indi-
17 vidual’s spouse) and ending on the date on which the indi-
18 vidual is enrolled in the plan under this section, except
19 that for purposes of making such retroactive adjustments
20 under this clause, such period may not exceed 90 days.

21 “(II) No adjustment may be made under subclause
22 (I) with respect to any individual who does not certify that
23 the organization provided the individual with the expla-
24 nation described in subsection (c)(3)(E) at the time the
25 individual enrolled with the organization.

1 “(F)(i) At least 45 days before making the announce-
2 ment under subparagraph (A) for a year, the Secretary
3 shall provide for notice to eligible organizations of pro-
4 posed changes to be made in the methodology or benefit
5 coverage assumptions from the methodology and assump-
6 tions used in the previous announcement and shall provide
7 such organizations an opportunity to comment on such
8 proposed changes.

9 “(ii) In each announcement made under subpara-
10 graph (A) for a year, the Secretary shall include an expla-
11 nation of the assumptions (including any benefit coverage
12 assumptions) and changes in methodology used in the an-
13 nouncement in sufficient detail so that eligible organiza-
14 tions can compute per capita rates of payment for individ-
15 uals located in each county (or equivalent medicare pay-
16 ment area) which is in whole or in part within the service
17 area of such an organization.

18 “(2) With respect to any eligible organization which
19 has entered into a reasonable cost reimbursement con-
20 tract, payments shall be made to such plan in accordance
21 with subsection (h)(2) rather than paragraph (1).

22 “(3) Subject to subsections (c)(2)(B)(ii) and (c)(7),
23 payments under a contract to an eligible organization
24 under paragraph (1) or (2) shall be instead of the amounts
25 which (in the absence of the contract) would be otherwise

1 payable, pursuant to sections 1814(b) and 1833(a), for
2 services furnished by or through the organization to indi-
3 viduals enrolled with the organization under this section.

4 “(4)(A) For purposes of this section, the ‘adjusted
5 capitation rate’ for a medicare payment area (as defined
6 in paragraph (5)) is equal to the greater of the following:

7 “(i) The sum of—

8 “(I) the area-specific percentage for the
9 year (as specified under subparagraph (B) for
10 the year) of the area-specific adjusted capita-
11 tion rate for the year for the medicare payment
12 area, as determined under subparagraph (C);
13 and

14 “(II) the national percentage (as specified
15 under subparagraph (B) for the year) of the
16 input-price-adjusted national adjusted capita-
17 tion rate for the year, as determined under sub-
18 paragraph (D),

19 multiplied by a budget neutrality adjustment factor
20 determined under subparagraph (E).

21 “(ii) An amount equal to—

22 “(I) in the case of 1998, 85 percent of the
23 input-price-adjusted national adjusted capita-
24 tion rate for the year, as determined under sub-
25 paragraph (D); and

1 “(II) in the case of a succeeding year, the
2 amount specified in this clause for the preced-
3 ing year increased by the national average per
4 capita growth percentage specified under sub-
5 paragraph (F) for that succeeding year.

6 “(B) For purposes of subparagraph (A)(i)—

7 “(i) for 1998, the ‘area-specific percentage’ is
8 85 percent and the ‘national percentage’ is 15 per-
9 cent;

10 “(ii) for 1999, the ‘area-specific percentage’ is
11 75 percent and the ‘national percentage’ is 25 per-
12 cent;

13 “(iii) for 2000, the ‘area-specific percentage’ is
14 65 percent and the ‘national percentage’ is 35 per-
15 cent;

16 “(iv) for 2001, the ‘area-specific percentage’ is
17 55 percent and the ‘national percentage’ is 45 per-
18 cent; and

19 “(v) for a year after 2001, the ‘area-specific
20 percentage’ is 50 percent and the ‘national percent-
21 age’ is 50 percent.

22 “(C) For purposes of subparagraph (A)(i), the area-
23 specific adjusted capitation rate for a medicare payment
24 area—

1 “(i) for 1998, is the average of the modified an-
2 nual per capita rates of payment for the area for
3 1995 through 1997, increased by the national aver-
4 age per capita growth percentage for 1998 (as de-
5 fined in subparagraph (F)); or

6 “(ii) for a subsequent year, is the area-specific
7 adjusted capitation rate for the previous year deter-
8 mined under this subparagraph for the area, in-
9 creased by the national average per capita growth
10 percentage for such subsequent year.

11 “(D)(i) For purposes of clauses (i) and (ii) of sub-
12 paragraph (A), the input-price-adjusted national adjusted
13 capitation rate for a medicare payment area for a year
14 is equal to the sum, for all the types of medicare services
15 (as classified by the Secretary), of the product (for each
16 such type of service) of—

17 “(I) the national standardized adjusted capita-
18 tion rate (determined under clause (ii)) for the year;

19 “(II) the proportion of such rate for the year
20 which is attributable to such type of services; and

21 “(III) an index that reflects (for that year and
22 that type of services) the relative input price of such
23 services in the area compared to the national aver-
24 age input price of such services.

1 In applying subclause (III), the Secretary shall, subject
2 to clause (iii), apply those indices under this title that are
3 used in applying (or updating) national payment rates for
4 specific areas and localities.

5 “(ii) In clause (i)(I), the ‘national standardized ad-
6 justed capitation rate’ for a year is equal to—

7 “(I) the sum (for all medicare payment areas)
8 of the product of (aa) the area-specific adjusted
9 capitation rate for that year for the area under sub-
10 paragraph (C), and (bb) the average number of
11 standardized medicare beneficiaries residing in that
12 area in the year; divided by

13 “(II) the total average number of standardized
14 medicare beneficiaries residing in all the medicare
15 payment areas for that year.

16 “(iii) In applying this subparagraph for 1998—

17 “(I) medicare services shall be divided into 2
18 types of services: part A services and part B serv-
19 ices;

20 “(II) the proportions described in clause (i)(II)
21 for such types of services shall be—

22 “(aa) for part A services, the ratio (ex-
23 pressed as a percentage) of the national average
24 annual per capita rate of payment for part A
25 for 1997 to the total average annual per capita

1 rate of payment for parts A and B for 1997;
2 and

3 “(bb) for part B services, 100 percent
4 minus the ratio described in item (aa);

5 “(III) for part A services, 70 percent of pay-
6 ments attributable to such services shall be adjusted
7 by the index used under section 1886(d)(3)(E) to
8 adjust payment rates for relative hospital wage levels
9 for hospitals located in the payment area involved;
10 and

11 “(IV) for part B services—

12 “(aa) 66 percent of payments attributable
13 to such services shall be adjusted by the index
14 of the geographic area factors under section
15 1848(e) used to adjust payment rates for physi-
16 cians’ services furnished in the payment area;
17 and

18 “(bb) of the remaining 34 percent of the
19 amount of such payments, 70 percent shall be
20 adjusted by the index described in subclause
21 (III).

22 The Secretary may continue to apply the rules described
23 in this clause (or similar rules) for 1999.

24 “(E) For each year, the Secretary shall compute a
25 budget neutrality adjustment factor so that the aggregate

1 of the payments under this section shall not be greater
2 than the aggregate payments that would have been made
3 under this section if the area-specific percentage for the
4 year had been 100 percent and the national percentage
5 had been 0 percent.

6 “(F) In this section, the ‘national average per capita
7 growth percentage’ is equal to the percentage growth in
8 medicare fee-for-service per capita expenditures, which the
9 Secretary shall project for each year.

10 “(G) For purposes of subparagraph (C), the modified
11 annual per capita rate of payment for any year is the an-
12 nual per capita rate of payment for the area for such year
13 determined—

14 “(1) adjusting the 1995 and 1996 rates of pay-
15 ment to 1997 dollars; and

16 “(2) without regard to any additional payment
17 by reason of section 1886(d)(5)(B), section
18 1886(d)(5)(F), or section 1886(h).

19 “(5)(A) In this section, except as provided in sub-
20 paragraph (C), the term ‘medicare payment area’ means
21 a county, or equivalent area specified by the Secretary.

22 “(B) In the case of individuals who are determined
23 to have end-stage renal disease, the medicare payment
24 area shall be specified by the Secretary.

1 “(C)(i) Upon written request of the Chief Executive
2 Officer of a State for a contract year (beginning after
3 1998) made at least 7 months before the beginning of the
4 year, the Secretary shall adjust the system under which
5 medicare payment areas in the State are otherwise deter-
6 mined under subparagraph (A) to a system which—

7 “(I) has a single statewide medicare payment
8 area;

9 “(II) is a metropolitan based system described
10 in clause (iii); or

11 “(III) consolidates into a single medicare pay-
12 ment area noncontiguous counties (or equivalent
13 areas described in subparagraph (A)) within a State.

14 Such adjustment shall be effective for payments for
15 months beginning with January of the year following the
16 year in which the request is received.

17 “(ii) In the case of a State requesting an adjustment
18 under this subparagraph, the Secretary shall adjust the
19 payment rates otherwise established under this section for
20 medicare payment areas in the State in a manner so that
21 the aggregate of the payments under this section in the
22 State shall be equal to the aggregate payments that would
23 have been made under this section for medicare payment
24 areas in the State in the absence of the adjustment under
25 this subparagraph.

1 “(iii) The metropolitan based system described in this
2 clause is one in which—

3 “(I) all the portions of each metropolitan statis-
4 tical area in the State or in the case of a consoli-
5 dated metropolitan statistical area, all of the por-
6 tions of each primary metropolitan statistical area
7 within the consolidated area within the State, are
8 treated as a single medicare payment area; and

9 “(II) all areas in the State that do not fall
10 within a metropolitan statistical area are treated as
11 a single medicare payment area.

12 “(iv) In clause (iii), the terms ‘metropolitan statis-
13 tical area’, ‘consolidated metropolitan statistical area’, and
14 ‘primary metropolitan statistical area’ mean any area des-
15 ignated as such by the Secretary of Commerce.

16 “(6) The payment to an eligible organization under
17 this section for individuals enrolled under this section with
18 the organization and entitled to benefits under part A and
19 enrolled under part B shall be made from the Federal
20 Hospital Insurance Trust Fund and the Federal Supple-
21 mentary Medical Insurance Trust Fund. The portion of
22 that payment to the organization for a month to be paid
23 by each trust fund shall be determined as follows:

24 “(A) In regard to expenditures by eligible orga-
25 nizations having risk-sharing contracts, the alloca-

1 tion shall be determined each year by the Secretary
2 based on the relative weight that benefits from each
3 fund contribute to the adjusted average per capita
4 cost.

5 “(B) In regard to expenditures by eligible orga-
6 nizations operating under a reasonable cost reim-
7 bursement contract, the initial allocation shall be
8 based on the plan’s most recent budget, such alloca-
9 tion to be adjusted, as needed, after cost settlement
10 to reflect the distribution of actual expenditures.

11 The remainder of that payment shall be paid by the
12 former trust fund.

13 “(7) Subject to subsections (c)(2)(B)(ii) and (c)(7),
14 if an individual is enrolled under this section with an eligi-
15 ble organization having a risk-sharing contract, only the
16 eligible organization shall be entitled to receive payments
17 from the Secretary under this title for services furnished
18 to the individual.

19 “(8)(A) In addition to any other payments under the
20 applicable sections (as defined in subparagraph (C)), the
21 Secretary shall, for any fiscal year, make additional pay-
22 ments in an amount equal to the savings amount (as de-
23 fined in subparagraph (D)).

24 “(B) In making the payments under subparagraph
25 (A)—

1 “(i) the Secretary shall allocate the savings
2 amount to each of the applicable sections in the
3 same proportion as payments from such section bear
4 to all such payments (without regard to this para-
5 graph); and

6 “(ii) the Secretary shall make the payments to
7 institutions on the basis of need, and for any savings
8 amount attributable to sections 1886(d)(5)(B) and
9 1886(h), by giving special consideration to institu-
10 tions that have a recent history of training physi-
11 cians who, within 2 years of such training, practice
12 in health professional shortage areas (as defined in
13 section 332(a)(1) of the Public Health Service Act).

14 “(C) In this paragraph, the term ‘applicable sections’
15 means sections 1886(d)(5)(B), 1886(d)(5)(F), and
16 1886(h).

17 “(D) In this paragraph, the term ‘savings amount’
18 means, for any fiscal year, an amount equal to—

19 “(i) the excess of the premiums that would have
20 been paid to all eligible organizations except for the
21 adjustments made under paragraph (1)(G)(2); over

22 “(ii) the total premiums paid to such organiza-
23 tions.

24 “(9)(A) The Secretary shall, to the extent the Sec-
25 retary determines necessary, make annual differential ad-

1 justments to the adjusted capitation rate (determined
2 under paragraph (4)) to reflect the differences in the ap-
3 plicable risk factors of beneficiaries under this title in a
4 medicare payment area relative to such factors of such
5 beneficiaries in all other medicare payment areas.

6 “(B) In subparagraph (B), the term ‘applicable risk
7 factors’ means such risk factors as age, disability status,
8 gender, institutional status, and such other factors as the
9 Secretary determines to be appropriate so as to ensure ac-
10 tuarial equivalence. The Secretary may add to, modify, or
11 substitute for such factors, if such changes will improve
12 the determination of actuarial equivalence.”.

13 (b) REQUIREMENT TO CONTRACT.—Section 1876(c)
14 of the Social Security Act (42 U.S.C. 1395mm(c)) is
15 amended by adding at the end the following:

16 “(9) Each eligible organization shall disclose to the
17 Secretary, as requested by the Secretary, the information
18 that the Secretary determines is necessary to enable the
19 Secretary to adjust the adjusted capitated rate under sub-
20 section (a)(1)(B).”.

21 (c) INFORMATION COLLECTION.—Immediately upon
22 enactment of this Act, the Secretary of Health and
23 Human Services shall begin to collect, from eligible organi-
24 zations under section 1876 of the Social Security Act (42
25 U.S.C. 1395mm) and other relevant sources, the informa-

1 tion the Secretary determines is necessary to enable the
 2 Secretary to the adjust the adjusted capitated rate under
 3 subsection (a)(1)(B) of such section (42 U.S.C.
 4 1395mm(a)(1)(B)).

5 (d) EFFECTIVE DATE.—The amendments made by
 6 subsections (a) and (b) shall apply to contracts entered
 7 into under section 1876 of the Social Security Act (42
 8 U.S.C. 1395mm) on and after the date of enactment of
 9 this Act.

10 **SEC. 3. MANAGED CARE COMPETITIVE PRICING DEM-**
 11 **ONSTRATION PROJECTS.**

12 (a) DEMONSTRATION PROJECTS.—

13 (1) IN GENERAL.—The Secretary of Health and
 14 Human Services (in this section referred to as the
 15 “Secretary”) shall conduct demonstration projects in
 16 every applicable area, as defined in paragraph (2),
 17 for the purpose of establishing competitive pricing
 18 for eligible organizations with risk-sharing contracts
 19 under section 1876 of the Social Security Act (42
 20 U.S.C. 1395mm).

21 (2) APPLICABLE AREA DEFINED.—

22 (A) IN GENERAL.—In paragraph (1), the
 23 term “applicable area” means—

1 (i) the 5 medicare payment areas with
2 the highest adjusted capitation rates in
3 1998; and

4 (ii) any other medicare payment area
5 that the Secretary determines to be appro-
6 priate for conducting a demonstration
7 project under this section.

8 (B) MEDICARE PAYMENT AREA; ADJUSTED
9 CAPITATION RATE.—In subparagraph (A), the
10 terms “medicare payment area” and “adjusted
11 capitation rate” have the meaning given those
12 terms in section 1876(a) of the Social Security
13 Act (42 U.S.C. 1395mm(a)), as amended by
14 section 2 of this Act.

15 (b) REPORT TO CONGRESS.—

16 (1) IN GENERAL.—Not later than December 31,
17 2001, the Secretary shall submit to Congress a re-
18 port regarding the demonstration projects conducted
19 under subsection (a).

20 (2) CONTENTS OF REPORT.—The report de-
21 scribed in paragraph (1) shall include the following:

22 (A) A description of the demonstration
23 projects conducted pursuant to subsection (a).

24 (B) Recommendations for establishing a
25 new payment methodology for eligible organiza-

1 tions with risk-sharing contracts under section
2 1876 of the Social Security Act (42 U.S.C.
3 1395mm), based on the results of the dem-
4 onstration projects conducted pursuant to sub-
5 section (a).

6 (C) Any other information regarding the
7 demonstration projects conducted pursuant to
8 subsection (a) that the Secretary determines
9 would assist Congress in revising the payment
10 methodology for eligible organizations with risk-
11 sharing contracts under section 1876 of the So-
12 cial Security Act (42 U.S.C. 1395mm).

13 (c) WAIVER OF MEDICARE REQUIREMENTS.—The
14 Secretary shall waive compliance with the requirements of
15 titles XI, XVIII, or XIX of the Social Security Act (42
16 U.S.C. 1301 et seq.; 1395 et seq.; 1396 et seq.) to such
17 extent and for such period as the Secretary determines
18 is necessary to conduct demonstration projects under this
19 section.

20 (d) NO ADDITIONAL FUNDING.—The Secretary shall
21 conduct demonstration projects under this section with
22 funds otherwise available to the Secretary.

1 **SEC. 4. REMOVAL OF 50/50 REQUIREMENT FOR HEALTH**
 2 **MAINTENANCE ORGANIZATIONS AND COM-**
 3 **PETITIVE MEDICAL PLANS.**

4 (a) IN GENERAL.—Section 1876 of the Social Secu-
 5 rity Act (42 U.S.C. 1395mm) is amended by striking sub-
 6 paragraph (f).

7 (b) CONFORMING AMENDMENTS.—Section 1876 of
 8 the Social Security Act (42 U.S.C. 1395mm) is amend-
 9 ed—

10 (1) in subsection (e)(3)(A)(i), by striking
 11 “would result in failure to meet the requirements of
 12 subsection (f) or”; and

13 (2) in subsection (i)(1)(C), by striking “(e), and
 14 (f)” and inserting “and (e)”.

15 (c) EFFECTIVE DATE.—The amendments made by
 16 subsections (a) and (b) shall apply to contracts entered
 17 into with the Secretary of Health and Human Services
 18 under section 1876 of the Social Security Act (42 U.S.C.
 19 1395mm) on and after the date of enactment of this Act.

20 **SEC. 5. STUDY AND REPORT TO CONGRESS REGARDING**
 21 **CHANGES IN PAYMENTS TO HEALTH MAINTE-**
 22 **NANCE ORGANIZATIONS AND COMPETITIVE**
 23 **MEDICAL PLANS.**

24 (a) STUDY.—The Secretary of Health and Human
 25 Services shall conduct a thorough study regarding the im-
 26 plementation and effects of the amendments to section

1 1876 of the Social Security Act (42 U.S.C. 1395mm)
2 made by this Act.

3 (b) REPORT.—Not later than 1 year after the date
4 of enactment of this Act, and annually thereafter, the Sec-
5 retary of Health and Human Services shall submit a re-
6 port to Congress that contains a detailed statement of the
7 findings and conclusions of the Secretary regarding the
8 study conducted pursuant to subsection (a), together with
9 the Secretary’s recommendations for such legislation and
10 administrative actions as the Secretary considers appro-
11 priate.

12 (c) PPRC.—In addition to any other duties required
13 by law, the Physician Payment Review Commission estab-
14 lished under section 1845 of the Social Security Act (42
15 U.S.C. 1395w-1) shall—

16 (1) comment on the Secretary of Health and
17 Human Service’s annual report described in sub-
18 section (b); and

19 (2) include such comment in the Commission’s
20 annual report to Congress.

○