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2^D SESSION

S. 2970

To amend title XVIII of the Social Security Act to assure fair and adequate payment for high-risk medicare beneficiaries and to establish payment incentives and to evaluate clinical methods for assuring quality services to people with serious and disabling chronic conditions.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 19, 2002

Mr. FEINGOLD 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 assure fair and adequate payment for high-risk medicare beneficiaries and to establish payment incentives and to evaluate clinical methods for assuring quality services to people with serious and disabling chronic conditions.

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 “Promoting Care for
5 the Frail Elderly Act of 2002”.

1 **SEC. 2. PROMOTION OF CARE FOR THE FRAIL ELDERLY.**

2 (a) REVISIONS TO RISK ADJUSTMENT METHOD-
3 OLOGY.—

4 (1) IN GENERAL.—The Secretary shall revise
5 the risk adjustment methodology under section
6 1853(a)(3) of the Social Security Act (42 U.S.C.
7 1395w–23(a)(3)) applicable to payments to
8 Medicare+Choice organizations offering, whether di-
9 rectly or under a contract, specialized programs for
10 frail elderly or at-risk beneficiaries to take into ac-
11 count variations in costs incurred by such organiza-
12 tions.

13 (2) METHODS CONSIDERED.—In revising the
14 risk adjustment methodology under paragraph (1),
15 the Secretary shall consider—

16 (A) hybrid risk adjustment payment sys-
17 tems, such as partial capitation;

18 (B) new diagnostic and service markers
19 that accurately predict high risk;

20 (C) including structural components to re-
21 duce payment lag and to account for specific
22 risk factors, such as high end-of-life costs and
23 high death rates;

24 (D) providing for adjustments to payment
25 amounts for beneficiaries with comorbidities;

1 (E) testing concurrent risk adjustment
2 methodologies;

3 (F) testing payment methods using data
4 from specialized programs for frail elderly or
5 at-risk beneficiaries; and

6 (G) the recommendations contained in the
7 report required to be submitted under sub-
8 section (e)(2).

9 (3) IMPLEMENTATION.—The Secretary shall
10 implement the revisions required under paragraph
11 (1) not later than January 1, 2006.

12 (b) INTERIM CONTINUATION OF BLENDED RATE FOR
13 SPECIALIZED PROGRAMS FOR FRAIL ELDERLY AND AT-
14 RISK MEDICARE BENEFICIARIES RESIDING IN INSTITU-
15 TIONS.—In the case of a Medicare+Choice organization
16 that offers a Medicare+Choice plan that offers, either di-
17 rectly or under a contract, a specialized program for frail
18 elderly or at-risk beneficiaries that exclusively serves bene-
19 ficiaries in institutions or beneficiaries who are entitled to
20 medical assistance under a State plan under title XIX,
21 notwithstanding section 1853(a)(3)(C)(ii) of the Social
22 Security Act (42 U.S.C. 1395w-23(a)(3)(C)(ii)), such or-
23 ganization shall be paid according to the method described
24 in subclause (I) of such section until such time as the Sec-

1 retary has implemented the revised risk adjustment meth-
 2 odology required under subsection (a).

3 (c) INTERIM CONTINUATION OF PAYMENT METH-
 4 ODOLOGIES FOR DEMONSTRATION PROGRAMS.—Notwith-
 5 standing any other provision of law, payment methodolo-
 6 gies for medicare demonstration programs for specialized
 7 programs for frail elderly or at-risk beneficiaries (as de-
 8 fined in subsection (f)) shall continue under the terms and
 9 conditions of the demonstration authority for such pro-
 10 grams in effect during 2002, including the risk adjustment
 11 factors and formula used for paying such demonstration
 12 programs. Such terms and conditions shall continue to
 13 apply with respect to each specialized program for frail
 14 elderly or at-risk beneficiaries offered by a
 15 Medicare+Choice organization that participated in a dem-
 16 onstration program after the termination of such program
 17 until such time as the Secretary has implemented the re-
 18 vised risk adjustment methodology required under sub-
 19 section (a).

20 (d) DEMONSTRATION PROGRAM FOR
 21 MEDICARE+CHOICE PAYMENT REFORM FOR SPECIAL-
 22 IZED PROGRAMS.—

23 (1) IN GENERAL.—The Secretary shall establish
 24 a 5-year demonstration program to develop and
 25 evaluate—

1 (A) payment models that pay appropriately
2 for specialized Medicare+Choice plans that ex-
3 clusively serve, or serve a disproportionate num-
4 ber of, frail elderly or at-risk beneficiaries (ei-
5 ther directly or under a contract); and

6 (B) clinical models that improve outcomes.

7 (2) REQUIREMENTS.—A Medicare+Choice or-
8 ganization that offers, either directly or under a con-
9 tract, a specialized program for frail elderly or at-
10 risk beneficiaries may participate in the demonstra-
11 tion program under this subsection if such
12 Medicare+Choice organization meets the following
13 requirements:

14 (A) PLAN COMPOSITION.—The specialized
15 program for frail elderly or at-risk beneficiaries
16 shall—

17 (i) serve frail elderly or at-risk bene-
18 ficiaries exclusively;

19 (ii) serve a disproportionate number
20 of frail or at-risk beneficiaries; or

21 (iii) serve a disproportionate number
22 of frail or at-risk beneficiaries who are also
23 entitled to benefits under a State plan
24 under title XIX.

1 (B) CLINICAL CAPACITY.—The specialized
2 program for frail elderly or at-risk beneficiaries
3 shall employ a clinical delivery system that
4 meets the needs of frail elderly or at-risk bene-
5 ficiaries, including—

6 (i) initiatives to prevent, delay, or
7 minimize the progression of chronic disease
8 and disabilities;

9 (ii) high-risk screening to identify risk
10 of hospitalization, nursing home placement,
11 functional decline, death, and other factors
12 that increase the costs of care provided;

13 (iii) staff with special training in
14 chronic care and geriatric care such as
15 geriatricians, geriatric nurse practitioners,
16 and geriatric care managers;

17 (iv) initiatives for promoting integra-
18 tion of care, financing, and administrative
19 functions across health care settings; and

20 (v) clinical protocols for specific high
21 cost conditions identified by the Secretary
22 for which outcomes will be evaluated as
23 part of the demonstration program under
24 this subsection.

1 (C) DATA COLLECTION.—Each
2 Medicare+Choice organization that participates
3 in the demonstration program under this sub-
4 section shall collect such data in such format as
5 the Secretary may require to monitor the qual-
6 ity of services provided, outcomes, and costs, in-
7 cluding functional and diagnostic data and in-
8 formation collected through the Health Out-
9 comes Survey or another appropriate mecha-
10 nism.

11 (D) QUALITY ASSURANCE.—Each
12 Medicare+Choice organization that participates
13 in the demonstration program under this sec-
14 tion shall employ such quality standards and
15 track such quality indicators as the Secretary
16 may specify that are relevant to the special
17 needs of enrollees. The Secretary shall identify
18 such quality standards and indicators prior to
19 implementing the demonstration program under
20 this subsection.

21 (3) PAYMENT.—

22 (A) MINIMUM AMOUNT.—The Secretary
23 shall ensure that each Medicare+Choice organi-
24 zation that participates in the demonstration
25 program under this subsection is not paid less

1 than the amount that would have been paid
2 with respect to each frail elderly or at-risk ben-
3 eficiary enrolled in a specialized program for
4 frail elderly or at-risk beneficiaries offered by
5 such organization than would have been paid
6 with respect to such beneficiaries if such bene-
7 ficiaries received benefits under the original
8 medicare fee-for-service program under parts A
9 and B of title XVIII of the Social Security Act.

10 (B) MODEL.—The Secretary shall estab-
11 lish a payment model applicable under the dem-
12 onstration program that is based upon the
13 CMS–HCC 61 significant condition model.

14 (C) PAYMENT FOR STANDARD BENE-
15 FITS.—The Secretary shall pay
16 Medicare+Choice organizations participating in
17 the demonstration program under the standard
18 CMS–HCC 61-condition model for nonfrail
19 members and under a special frailty-adjusted
20 payment for the frail or at-risk members based
21 on requirements under parts A and B of title
22 XVIII of the Social Security Act.

23 (D) PAYMENT FOR ADDITIONAL BENE-
24 FITS.—Medicare+Choice organizations that
25 participate in the demonstration program and

1 that agree to an additional mandate for benefits
2 exceeding those required under parts A and B
3 of title XVIII of the Social Security Act shall
4 be compensated separately for providing such
5 benefits.

6 (E) FRAILTY ADJUSTER.—The Secretary
7 shall establish and apply a frailty adjuster that
8 is structured as an add-on payment in relation
9 to the amount of underpayment resulting from
10 the standard formula.

11 (F) REINSURANCE.—The Secretary shall
12 provide reinsurance above a specified threshold.

13 (G) FINANCIAL INCENTIVES.—The Sec-
14 retary shall provide for financial incentives for
15 Medicare+Choice organizations that participate
16 in the demonstration program, including bonus
17 payments that shall be made in relation to
18 meeting predefined outcome targets.

19 (4) WAIVER AUTHORITY.—The Secretary may
20 waive such requirements of titles XI and XVIII of
21 the Social Security Act as may be necessary to carry
22 out the demonstration program under this sub-
23 section.

24 (5) FUNDING.—From the sums already author-
25 ized to be appropriated for demonstration projects to

1 be conducted by the Secretary, \$25,000,000 may be
2 appropriated to carry out the demonstration pro-
3 gram under this subsection.

4 (6) BUDGET NEUTRALITY ADJUSTMENT FAC-
5 TOR.—Upon enactment of this subsection, the Sec-
6 retary shall provide for an adjustment to
7 Medicare+Choice payment rates for the year to en-
8 sure that the aggregate payments under this part in
9 that year shall be equal to aggregate payments that
10 would have been made under the Medicare+Choice
11 program in that year if this subsection had not been
12 enacted.

13 (e) MEDPAC STUDY TO IDENTIFY FRAILTY INDICA-
14 TORS AND DEVELOP FRAILTY ADJUSTMENT TO
15 MEDICARE+CHOICE PAYMENTS.—

16 (1) STUDY.—

17 (A) IN GENERAL.—The Medicare Payment
18 Advisory Commission, in consultation with pri-
19 vate organizations representing
20 Medicare+Choice organizations that offer spe-
21 cialized programs for frail elderly or at-risk
22 beneficiaries, shall conduct a study on the feasi-
23 bility and advisability of establishing a frailty
24 adjustment to the Medicare+Choice risk ad-
25 justment methodology that ensures that an ap-

1 appropriate level of payment is made to
2 Medicare+Choice plans that serve a dispropor-
3 tionate number of frail or at-risk beneficiaries.

4 (B) STUDY PARAMETERS.—The study shall
5 identify indicators of frailty, medical com-
6 plexity, or risk that result in higher costs for
7 certain risk groups within the medicare popu-
8 lation such as institutionalized residents, nurs-
9 ing home certifiable residents living in the com-
10 munity, beneficiaries with multiple complex
11 chronic conditions, beneficiaries with late-stage
12 diseases or conditions, medicare beneficiaries
13 with functional or cognitive impairments that
14 limit the ability of such beneficiaries to live
15 independently, and other indicators of higher
16 health care utilization.

17 (C) FRAILITY INDICATORS.—The indicators
18 of frailty described in subparagraph (B) may
19 include—

20 (i) specific diagnoses or clusters of di-
21 agnoses;

22 (ii) the presence of multiple serious
23 chronic conditions;

24 (iii) certain groupings of chronic con-
25 ditions;

1 (iv) the presence of functional impair-
2 ments or, alone or in combination with di-
3 agnostic factors, a specific hierarchy of
4 functional loss; or

5 (v) other factors that result in the
6 need for complex medical care or higher
7 medical costs.

8 (2) REPORT.—Not later than the date that is
9 2 years after the date of enactment of this Act, the
10 Medicare Payment Advisory Commission shall sub-
11 mit to Congress and the Secretary a report on the
12 study conducted under paragraph (1) together with
13 such recommendations for legislation or administra-
14 tive action as the Secretary determines appropriate.

15 (f) DEFINITIONS.—In this section:

16 (1) ACTIVITIES OF DAILY LIVING.—The term
17 “activities of daily living” means each of the fol-
18 lowing:

- 19 (A) Eating.
20 (B) Toileting.
21 (C) Transferring.
22 (D) Bathing.
23 (E) Dressing.
24 (F) Continence.

1 (2) DISPROPORTIONATE.—The term “dis-
2 proportionate” means, in relation to the composition
3 of a Medicare+Choice plan, a higher percentage of
4 frail or at-risk beneficiaries than the national aver-
5 age for all Medicare+Choice plans.

6 (3) FRAIL OR AT-RISK BENEFICIARY.—The
7 term “frail or at-risk beneficiary” means an indi-
8 vidual who—

9 (A) has a level of disability such that the
10 individual is unable to perform for a period of
11 at least 90 days due to a loss of functional
12 capacity—

13 (i) at least 2 activities of daily living;

14 or

15 (ii) such number of instrumental ac-
16 tivities of daily living that is equivalent (as
17 determined by the Secretary) to the level
18 of disability described in clause (i);

19 (B) requires substantial supervision to pro-
20 tect the individual from threats to health and
21 safety due to severe cognitive impairment;

22 (C) has multiple medically complex chronic
23 conditions;

24 (D) is at risk of hospitalization, nursing
25 home placement, functional decline, or death

1 within 12 months or other factors that increase
2 the costs of medical care; and

3 (E) has a severity of condition that makes
4 the individual frail or disabled (as determined
5 under guidelines approved by the Secretary).

6 (4) SECRETARY.—The term “Secretary” means
7 the Secretary of Health and Human Services.

8 (5) SPECIALIZED PROGRAMS FOR FRAIL ELDER-
9 LY OR AT-RISK BENEFICIARIES.—The term “special-
10 ized programs for frail elderly or at-risk bene-
11 ficiaries” means—

12 (A) demonstrations approved by the Sec-
13 retary for purposes of testing the integration of
14 acute and expanded care services under prepaid
15 financing which include prescription drugs and
16 other noncovered ancillary services, care coordi-
17 nation, and home and community-based serv-
18 ices, such as the social health maintenance or-
19 ganization demonstration project authorized
20 under section 2355 of the Deficit Reduction Act
21 of 1984 and expanded under section
22 4207(b)(4)(B)(i) of the Omnibus Reconciliation
23 Act of 1990;

24 (B) demonstrations approved by the Sec-
25 retary for purposes of improving quality of care

1 and preventing hospitalizations for nursing
2 home residents, such as the EverCare dem-
3 onstration project;

4 (C) demonstrations approved by the Sec-
5 retary for purposes of testing methods for inte-
6 grating medicare and medicaid benefits for the
7 dually eligible, such as the Minnesota Senior
8 Health Options program, the Wisconsin Part-
9 nership program, the Massachusetts Senior
10 Care Organization program, and the Rochester
11 Continuing Care Network program (Seniors
12 Health Plus);

13 (D) demonstrations approved by the Sec-
14 retary under subsection (d);

15 (E) specialized provider-based programs
16 that focus on improving the quality of care pro-
17 vided to, and preventing the hospitalizations of,
18 residents of skilled nursing facilities; and

19 (F) such other demonstrations or pro-
20 grams approved by the Secretary for similar
21 purposes, as determined by the Secretary.

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