

110TH CONGRESS
1ST SESSION

S. 691

To amend title XVIII of the Social Security Act to improve the benefits under the Medicare program for beneficiaries with kidney disease, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 27, 2007

Mr. CONRAD 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 improve the benefits under the Medicare program for beneficiaries with kidney disease, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Kidney Care Quality and Education Act of 2007”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—IMPROVING QUALITY THROUGH PATIENT EDUCATION,
ACCESS, AND SAFETY INITIATIVES

- Sec. 101. Support of public and patient education initiatives regarding kidney disease.
- Sec. 102. Medicare coverage of kidney disease patient education services.
- Sec. 103. Blood flow monitoring demonstration projects.
- Sec. 104. Institute of Medicine Evaluation and report on treatment modalities for patients with kidney failure.
- Sec. 105. Required training for patient care dialysis technicians.

TITLE II—ASSURING QUALITY OF CARE FOR PROVIDERS, FACILITIES, AND PHYSICIANS THAT PROVIDE SERVICES TO INDIVIDUALS WITH END-STAGE RENAL DISEASE WHO ARE ENROLLED IN PART B

- Sec. 201. Establishment of the End-Stage Renal Disease (ESRD) Advisory Committee.
- Sec. 202. Update for the Medicare ESRD composite rate for 2008, 2009, and 2010.
- Sec. 203. Continuous quality improvement initiative in the Medicare end-stage renal disease program.
- Sec. 204. Extension of Medicare secondary payer.

1 TITLE I—IMPROVING QUALITY
2 THROUGH PATIENT EDU-
3 CATION, ACCESS, AND SAFETY
4 INITIATIVES

5 SEC. 101. SUPPORT OF PUBLIC AND PATIENT EDUCATION
6 INITIATIVES REGARDING KIDNEY DISEASE.

7 (a) CHRONIC KIDNEY DISEASE DEMONSTRATION
8 PROJECTS.—

9 (1) IN GENERAL.—The Secretary of Health and
10 Human Services (in this section referred to as the
11 “Secretary”) shall establish demonstration projects
12 to—

13 (A) increase public awareness about the
14 factors that lead to chronic kidney disease, how
15 to prevent it, how to treat it, and how to avoid
16 kidney failure; and

1 (B) enhance surveillance systems and ex-
2 pand research to better assess the prevalence
3 and incidence of chronic kidney disease.

4 (2) SCOPE AND DURATION.—

5 (A) SCOPE.—The Secretary shall select at
6 least 3 States in which to conduct demonstra-
7 tion projects under this subsection. In selecting
8 the States under this subparagraph, the Sec-
9 retary shall take into account the size of the
10 population of individuals with end-stage renal
11 disease who are enrolled in part B of title
12 XVIII of the Social Security Act and ensure the
13 participation of individuals who reside in rural
14 and urban areas.

15 (B) DURATION.—The demonstration
16 projects under this subsection shall be con-
17 ducted for a period that is not longer than 5
18 years that begins on January 1, 2009.

19 (3) EVALUATION AND REPORT.—

20 (A) EVALUATION.—The Secretary shall
21 conduct an evaluation of the demonstration
22 projects conducted under this subsection.

23 (B) REPORT.—Not later than 6 months
24 after the date on which the demonstration
25 projects under this subsection are completed,

1 the Secretary shall submit to Congress a report
2 on the evaluation conducted under subpara-
3 graph (A) together with recommendations for
4 such legislation and administrative action as the
5 Secretary determines appropriate.

6 (4) AUTHORIZATION OF APPROPRIATIONS.—

7 There are authorized to be appropriated to carry out
8 this subsection \$2,000,000 for each of fiscal years
9 2009 through 2013.

10 (b) ESRD SELF-MANAGEMENT DEMONSTRATION
11 PROJECTS.—

12 (1) IN GENERAL.—The Secretary shall establish
13 demonstration projects to enable individuals with
14 end-stage renal disease to develop self-management
15 skills.

16 (2) APPLICATION.—The provisions of para-
17 graph (2) (relating to scope and duration) and para-
18 graph (3) (relating to an evaluation and a report) of
19 subsection (a) shall apply to the demonstration
20 projects under this subsection in the same manner
21 as such provisions apply to the demonstration
22 projects under subsection (a).

23 (3) AUTHORIZATION OF APPROPRIATIONS.—

24 There are authorized to be appropriated to carry out

1 this subsection \$2,000,000 for each of fiscal years
 2 2009 through 2013.

3 **SEC. 102. MEDICARE COVERAGE OF KIDNEY DISEASE PA-**
 4 **TIENT EDUCATION SERVICES.**

5 (a) COVERAGE OF KIDNEY DISEASE EDUCATION
 6 SERVICES.—

7 (1) COVERAGE.—Section 1861(s)(2) of the So-
 8 cial Security Act (42 U.S.C. 1395x(s)(2)) is amend-
 9 ed—

10 (A) in subparagraph (Z), by striking
 11 “and” after the semicolon at the end;

12 (B) in subparagraph (AA), by adding
 13 “and” after the semicolon at the end; and

14 (C) by adding at the end the following new
 15 subparagraph:

16 “(BB) kidney disease education services
 17 (as defined in subsection (ccc));”.

18 (2) SERVICES DESCRIBED.—Section 1861 of
 19 the Social Security Act (42 U.S.C. 1395x) is amend-
 20 ed by adding at the end the following new sub-
 21 section:

22 “Kidney Disease Education Services

23 “(ccc)(1) The term ‘kidney disease education serv-
 24 ices’ means educational services that are—

1 “(A) furnished to an individual with kidney dis-
2 ease who, according to accepted clinical guidelines
3 identified by the Secretary, will require dialysis or a
4 kidney transplant;

5 “(B) furnished, upon the referral of the physi-
6 cian managing the individual’s kidney condition, by
7 a qualified person (as defined in paragraph (2)); and

8 “(C) designed—

9 “(i) to provide comprehensive information
10 regarding—

11 “(I) the management of comorbidities;

12 “(II) the prevention of uremic com-
13 plications; and

14 “(III) each option for renal replace-
15 ment therapy (including home and in-cen-
16 ter as well as vascular access options and
17 transplantation); and

18 “(ii) to ensure that the individual has the
19 opportunity to actively participate in the choice
20 of therapy.

21 “(2) The term ‘qualified person’ means—

22 “(A) a physician (as described in subsection
23 (r)(1));

24 “(B) an individual who—

25 “(i) is—

1 “(I) a registered nurse;

2 “(II) a registered dietitian or nutri-
3 tion professional (as defined in subsection
4 (vv)(2));

5 “(III) a clinical social worker (as de-
6 fined in subsection (hh)(1));

7 “(IV) a physician assistant, nurse
8 practitioner, or clinical nurse specialist (as
9 those terms are defined in subsection
10 (aa)(5)); or

11 “(V) a transplant coordinator; and

12 “(ii) meets such requirements related to
13 experience and other qualifications that the
14 Secretary finds necessary and appropriate for
15 furnishing the services described in paragraph
16 (1); or

17 “(C) a renal dialysis facility subject to the re-
18 quirements of section 1881(b)(1) with personnel
19 who—

20 “(i) provide the services described in para-
21 graph (1); and

22 “(ii) meet the requirements of subpara-
23 graph (A) or (B).

24 “(3) The Secretary shall develop the information to
25 be provided under paragraph (1)(C)(i) and the require-

1 ments under (2)(B)(ii) after consulting with physicians,
2 health educators, professional organizations, accrediting
3 organizations, kidney patient organizations, dialysis facili-
4 ties, transplant centers, network organizations described
5 in section 1881(c)(2), and other knowledgeable persons.

6 “(4) In promulgating regulations to carry out this
7 subsection, the Secretary shall ensure that each bene-
8 ficiary who is entitled to kidney disease education services
9 under this title receives such services in a timely manner
10 to maximize the benefit of those services.

11 “(5) The Secretary shall monitor the implementation
12 of this subsection to ensure that beneficiaries who are eli-
13 gible for kidney disease education services receive such
14 services in the manner described in paragraph (4).

15 “(6) No individual shall be eligible to be provided
16 more than 6 sessions of kidney disease education services
17 under this title.”.

18 (3) PAYMENT UNDER THE PHYSICIAN FEE
19 SCHEDULE.—Section 1848(j)(3) of the Social Secu-
20 rity Act (42 U.S.C. 1395w-4(j)(3)) is amended by
21 inserting “(2)(BB),” after “(2)(AA),”.

22 (4) PAYMENT TO RENAL DIALYSIS FACILI-
23 TIES.—Section 1881(b) of the Social Security Act
24 (42 U.S.C. 1395rr(b)) is amended by adding at the
25 end the following new paragraph:

1 “(14) For purposes of paragraph (12), the sin-
2 gle composite weighted formulas determined under
3 such paragraph shall not take into account the
4 amount of payment for kidney disease education
5 services (as defined in section 1861(ccc)). Instead,
6 payment for such services shall be made to the renal
7 dialysis facility on an assignment-related basis under
8 section 1848.”.

9 (5) LIMITATION ON NUMBER OF SESSIONS.—
10 Section 1862(a)(1) of the Social Security Act (42
11 U.S.C. 1395y(a)(1)) is amended—

12 (A) in subparagraph (M), by striking
13 “and” at the end;

14 (B) in subparagraph (N), by striking the
15 semicolon at the end and inserting “, and”; and

16 (C) by adding at the end the following new
17 subparagraph:

18 “(O) in the case of kidney disease edu-
19 cation services (as defined in section
20 1861(ccc)), which are performed in excess of
21 the number of sessions covered under such sec-
22 tion;”.

23 (6) ANNUAL REPORT TO CONGRESS.—Not later
24 than April 1, 2009, and annually thereafter, the
25 Secretary of Health and Human Services shall sub-

1 mit a report to Congress on the number of Medicare
2 beneficiaries who are entitled to kidney disease edu-
3 cation services (as defined in section 1861(ccc) of
4 the Social Security Act, as added by paragraph (2))
5 under title XVIII of such Act and who receive such
6 services, together with such recommendations for
7 legislative and administrative action as the Secretary
8 determines to be appropriate to fulfill the legislative
9 intent that resulted in the enactment of that sub-
10 section.

11 (b) EFFECTIVE DATE.—The amendments made by
12 this section shall apply to services furnished on or after
13 January 1, 2009.

14 **SEC. 103. BLOOD FLOW MONITORING DEMONSTRATION**
15 **PROJECTS.**

16 (a) ESTABLISHMENT.—The Secretary of Health and
17 Human Services (in this section referred to as the “Sec-
18 retary”) shall establish demonstration projects to evaluate
19 how blood flow monitoring affects the quality and cost of
20 care for Medicare beneficiaries with end-stage renal dis-
21 ease.

22 (b) DURATION.—The demonstration projects under
23 this section shall be conducted for a period of not longer
24 than 5 years that begins on January 1, 2009.

25 (c) EVALUATION AND REPORT.—

1 (1) EVALUATION.—The Secretary shall conduct
2 an evaluation of the demonstration projects con-
3 ducted under this section.

4 (2) REPORT.—Not later than 6 months after
5 the date on which the demonstration projects under
6 this section are completed, the Secretary shall sub-
7 mit to Congress a report on the evaluation con-
8 ducted under paragraph (1) together with rec-
9 ommendations for such legislation and administra-
10 tive action as the Secretary determines appropriate.

11 (d) WAIVER AUTHORITY.—The Secretary shall waive
12 compliance with the requirements of title XVIII of the So-
13 cial Security Act (42 U.S.C. 1395 et seq.) to the extent,
14 and for such period as, the Secretary determines is nec-
15 essary to conduct the demonstration projects.

16 (e) AUTHORIZATION OF APPROPRIATIONS.—

17 (1) IN GENERAL.—Payments for the costs of
18 carrying out the demonstration projects under this
19 section shall be made from the Federal Supple-
20 mentary Medical Insurance Trust Fund under sec-
21 tion 1841 of the Social Security Act (42 U.S.C.
22 1395t).

23 (2) AMOUNT.—There are authorized to be ap-
24 propriated from such Trust Fund \$1,000,000 for

1 each of fiscal years 2009 through 2013 to carry out
2 this section.

3 **SEC. 104. INSTITUTE OF MEDICINE EVALUATION AND RE-**
4 **PORT ON TREATMENT MODALITIES FOR PA-**
5 **TIENTS WITH KIDNEY FAILURE.**

6 (a) EVALUATION.—

7 (1) IN GENERAL.—Not later than 2 months
8 after the date of enactment of this Act, the Sec-
9 retary of Health and Human Services (in this sec-
10 tion referred to as the “Secretary”) shall enter into
11 an arrangement under which the Institute of Medi-
12 cine of the National Academy of Sciences (in this
13 section referred to as the “Institute”) shall conduct
14 an evaluation of the barriers that exist to increasing
15 the number of individuals with end-stage renal dis-
16 ease who elect to receive home dialysis services or
17 other treatment modalities under the Medicare pro-
18 gram under title XVIII of the Social Security Act
19 (42 U.S.C. 1395 et seq.).

20 (2) SPECIFIC MATTERS EVALUATED.—In con-
21 ducting the evaluation under paragraph (1), the In-
22 stitute shall—

23 (A) compare current Medicare home dialy-
24 sis costs and payments with current in-center
25 and hospital dialysis costs and payments;

1 (B) catalogue and evaluate the incentives
2 and disincentives in the current reimbursement
3 system that influence whether patients receive
4 home dialysis services or other treatment mo-
5 dalities;

6 (C) evaluate patient education services and
7 how such services impact the treatment choices
8 made by patients; and

9 (D) consider such other matters as the In-
10 stitute determines appropriate.

11 (3) SCOPE OF REVIEW.—In conducting the
12 evaluation under paragraph (1), the Institute shall
13 consider a variety of perspectives, including the per-
14 spectives of physicians, other health care profes-
15 sionals, hospitals, dialysis facilities, health plans,
16 purchasers, and patients.

17 (b) REPORT.—Not later than 19 months after the
18 date of enactment of this Act, the Institute shall submit
19 to the Secretary and to Congress a report on the evalua-
20 tion conducted under subsection (a)(1). Such report shall
21 contain a detailed description of the findings of such eval-
22 uation and recommendations for implementing incentives
23 to encourage patients to elect to receive home dialysis
24 services or other treatment modalities under the Medicare
25 program.

1 (c) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated such sums as may be
3 necessary for the purposes of conducting the evaluation
4 and preparing the report required by this section.

5 **SEC. 105. REQUIRED TRAINING FOR PATIENT CARE DIALY-**
6 **SIS TECHNICIANS.**

7 (a) IN GENERAL.—Section 1881 of the Social Secu-
8 rity Act (42 U.S.C. 1395rr) is amended by adding the fol-
9 lowing new subsection:

10 “(h)(1) Except as provided in paragraph (3), begin-
11 ning January 1, 2009, a provider of services or a renal
12 dialysis facility may not use any individual as a patient
13 care dialysis technician for more than 4 months unless the
14 individual—

15 “(A) has completed a training program in the
16 care and treatment of an individual with chronic
17 kidney failure who is undergoing dialysis treatment;

18 “(B) has been certified by a nationally recog-
19 nized certification entity for dialysis technicians; and

20 “(C) is competent to provide dialysis-related
21 services.

22 “(2) Beginning January 1, 2010, a provider of serv-
23 ices or a renal dialysis facility may not use on a tem-
24 porary, per diem, leased, or on any basis other than as
25 a permanent employee, any individual as a patient care

1 dialysis technician unless the individual meets the require-
2 ments described in subparagraphs (A), (B), and (C) of
3 paragraph (1).

4 “(3) A provider of services or a renal dialysis facility
5 may permit an individual enrolled in a training program
6 described in paragraph (1)(A) to serve as a patient care
7 dialysis technician while they are so enrolled.

8 “(4) For purposes of paragraph (1), if, since the most
9 recent completion by an individual of a training program
10 described in paragraph (1)(A), there has been a period
11 of 24 consecutive months during which the individual has
12 not performed dialysis-related services for monetary com-
13 pensation, such individual shall be required to complete
14 a new training program or become recertified as described
15 in paragraph (1)(B).

16 “(5) A provider of services or a renal dialysis facility
17 shall provide such regular performance review and regular
18 in-service education as assures that individuals serving as
19 patient care dialysis technicians for the provider or facility
20 are competent to perform dialysis-related services.”.

1 **TITLE II—ASSURING QUALITY**
2 **OF CARE FOR PROVIDERS,**
3 **FACILITIES, AND PHYSICIANS**
4 **THAT PROVIDE SERVICES TO**
5 **INDIVIDUALS WITH END-**
6 **STAGE RENAL DISEASE WHO**
7 **ARE ENROLLED IN PART B**

8 **SEC. 201. ESTABLISHMENT OF THE END-STAGE RENAL DIS-**
9 **EASE (ESRD) ADVISORY COMMITTEE.**

10 (a) IN GENERAL.—Pursuant to section 222 of the
11 Public Health Service Act (42 U.S.C. 217a), the Secretary
12 of Health and Human Services (in this section referred
13 to as the “Secretary”) shall establish within 1 year of the
14 date of enactment of this Act an independent, multidisci-
15 plinary, nonpartisan End-Stage Renal Disease Advisory
16 Committee (in this section referred to as the “Com-
17 mittee”).

18 (b) MEMBERSHIP.—

19 (1) IN GENERAL.—The Committee shall consist
20 of such members as the Secretary may appoint who
21 shall serve for such term as the Secretary may speci-
22 fy. The Secretary shall ensure that a representative
23 of the Centers for Medicare & Medicaid Services is
24 included among the members of the Committee.

1 (2) CONSULTATION.—In appointing members of
2 the Committee, the Secretary shall consult with pa-
3 tients, facilities and providers, physicians, nurses, a
4 representative from the pediatric community, payers
5 and insurers, manufacturers, and a representative of
6 the Centers for Medicare & Medicaid Services who
7 coordinates activities related to end-stage renal dis-
8 ease within the Centers.

9 (c) PURPOSE OF THE COMMITTEE.—

10 (1) DUTIES.—The Committee shall provide a
11 forum for expert discussion and deliberation and the
12 formulation of advice and recommendations to the
13 Secretary regarding Medicare coverage for individ-
14 uals with end-stage renal disease, as described under
15 section 1881 of the Social Security Act (42 U.S.C.
16 1395rr).

17 (2) RECOMMENDATIONS.—

18 (A) ANNUAL RECOMMENDATIONS.—The
19 Committee shall provide annual recommenda-
20 tions to the Secretary regarding—

21 (i) selecting, modifying, and updating
22 clinical and quality of life measures;

23 (ii) modifying the payment structure;

1 (iii) determining hardship criteria to
 2 exempt certain facilities and providers
 3 from the program; and

4 (iv) other issues related to implemen-
 5 tation of a quality initiative by the Sec-
 6 retary.

7 (B) PERIODIC RECOMMENDATIONS.—The
 8 Committee shall provide periodic advice and
 9 recommendations to the Secretary regarding
 10 Medicare coverage for individuals with end-
 11 stage renal disease, as described in such section
 12 1881.

13 **SEC. 202. UPDATE FOR THE MEDICARE ESRD COMPOSITE**
 14 **RATE FOR 2008, 2009, AND 2010.**

15 Section 1881(b)(12)(G) of the Social Security Act
 16 (42 U.S.C. 1395rr(b)(12)(G)), as amended by section 103
 17 of the Tax Relief and Health Care Act of 2006 (Public
 18 Law 109–432), is amended—

19 (1) in clause (i), by striking “and” at the end;

20 (2) in clause (ii)—

21 (A) by inserting “and before January 1,
 22 2008,” after “April 1, 2007”; and

23 (B) by striking the period at the end and
 24 inserting a semicolon; and

1 (3) by adding at the end the following new
2 clauses:

3 “(iii) furnished during 2008, by the amount
4 equal to the ESRD market basket (as developed
5 pursuant to section 422(b) of the Medicare, Med-
6 icaid, and SCHIP Benefits Improvement and Pro-
7 tection Act of 2000 (Public Law 106–554), as en-
8 acted into law by section 1(a)(6) of Public Law 106-
9 554) percentage increase for 2008 above the amount
10 of such composite rate component for such services
11 furnished on December 31, 2007;

12 “(iv) furnished during 2009, by the amount
13 equal to the ESRD market basket (as so developed)
14 percentage increase for 2009 above the amount of
15 such composite rate component for such services fur-
16 nished on December 31, 2008; and

17 “(v) furnished on or after January 1, 2010, by
18 the amount equal to the ESRD market basket (as
19 so developed) percentage increase for 2010 above the
20 amount of such composite rate component for such
21 services furnished on December 31, 2009.”.

1 **SEC. 203. CONTINUOUS QUALITY IMPROVEMENT INITIA-**
 2 **TIVE IN THE MEDICARE END-STAGE RENAL**
 3 **DISEASE PROGRAM.**

4 (a) ESTABLISHMENT OF THE PROGRAM.—Section
 5 1881 of the Social Security Act (42 U.S.C. 1395rr), as
 6 amended by section 105, is amended by adding at the end
 7 the following new subsection:

8 “(i) CONTINUOUS QUALITY IMPROVEMENT INITIA-
 9 TIVE IN THE END-STAGE RENAL DISEASE PROGRAM.—

10 “(1) IN GENERAL.—Not later than January 1,
 11 2008, the Secretary shall establish a 3-year contin-
 12 uous quality improvement initiative (in this section
 13 referred to as the ‘quality initiative’) under which
 14 quality payments are provided to renal dialysis facili-
 15 ties, providers of services, and physicians that pro-
 16 vide items and services to individuals with end-stage
 17 renal disease who are enrolled under part B and
 18 that meet quality benchmarks and demonstrate qual-
 19 ity improvements.

20 “(2) PARTICIPATION.—

21 “(A) FACILITIES AND PROVIDERS.—

22 “(i) IN GENERAL.—Except as pro-
 23 vided in subparagraph (C)(i) and subject
 24 to clause (ii), all independent dialysis fa-
 25 cilities and hospital-based dialysis pro-
 26 viders that provide items and services to

1 individuals with end-stage renal disease
2 who are enrolled in part B shall participate
3 in the quality initiative.

4 “(ii) POSITIVE UPDATE REQUIRED.—
5 The quality initiative shall not apply to fa-
6 cilities and providers in a year unless the
7 ESRD market basket percentage increase
8 described in subsection (b)(12)(G) for such
9 year is positive.

10 “(B) PHYSICIANS.—

11 “(i) IN GENERAL.—Except as pro-
12 vided in subparagraph (C)(i) and subject
13 to clause (ii), all physicians who receive the
14 monthly capitated payment under this title
15 with respect to end-stage renal disease
16 items and services shall participate in the
17 quality initiative.

18 “(ii) POSITIVE UPDATE REQUIRED.—
19 The quality initiative shall not apply to
20 physicians in a year unless the update to
21 the conversion factor under section
22 1848(d) for such year is positive.

23 “(C) PEDIATRIC FACILITIES, PROVIDERS,
24 AND PHYSICIANS.—

1 “(i) IN GENERAL.—Subject to clause
2 (ii), a pediatric facility, provider, or physi-
3 cian who provides items and services to in-
4 dividuals with end-stage renal disease who
5 are enrolled in part B and with at least 50
6 percent of its patients being individuals
7 under 18 years of age shall be required to
8 report data for pediatric-specific measures
9 under this subsection in order to receive
10 the full market basket update during 2008,
11 2009, and 2010 under subsection
12 (b)(12)(G) or the full update under section
13 1848(d).

14 “(ii) POSITIVE UPDATE REQUIRED.—
15 The reporting requirement under clause (i)
16 shall not apply to—

17 “(I) pediatric facilities and pro-
18 viders in a year unless the ESRD
19 market basket percentage increase de-
20 scribed in subsection (b)(12)(G) for
21 such year is positive; and

22 “(II) to pediatric physicians in a
23 year unless the update to the conver-
24 sion factor under section 1848(d) for
25 such year is positive.

1 “(iii) EVALUATION.—The Secretary,
2 in consultation with the End-Stage Renal
3 Disease Advisory Committee established
4 under section 201 of the Kidney Care
5 Quality and Education Act of 2007 (in this
6 subsection referred to as the ‘ESRD Advi-
7 sory Committee’), shall evaluate and make
8 recommendations to Congress regarding
9 the feasibility of incorporating pediatric fa-
10 cilities, providers, and physicians described
11 in clause (i) fully into the quality initiative
12 if the initiative were to extend beyond
13 2010.

14 “(3) DURATION.—The quality initiative shall be
15 conducted during a period of 3 years beginning Jan-
16 uary 1, 2008.

17 “(4) FUNDING.—

18 “(A) BONUS POOL FOR PROVIDERS AND
19 FACILITIES.—During 2008, 2009, and 2010,
20 the Secretary shall set aside at least $\frac{1}{4}$, but no
21 more than $\frac{1}{2}$, of the ESRD market basket
22 amount under subsection (b)(12)(G) for each
23 year, respectively, to establish a bonus pool to
24 be used to provide bonus payments for pro-
25 viders and facilities described in paragraph

1 (2)(A) that demonstrate improvements in qual-
2 ity or attainment of quality benchmarks.

3 “(B) BONUS POOL FOR PHYSICIANS.—
4 During 2008, 2009, and 2010, the Secretary
5 shall set aside at least $\frac{1}{4}$, but no more than $\frac{1}{2}$,
6 of the portion of the physician fee schedule up-
7 date under section 1848(d) that applies to phy-
8 sicians who receive the monthly capitated pay-
9 ment under this title with respect to end-stage
10 renal disease items and services for each year
11 respectively to establish a bonus pool to be used
12 to provide bonus payments for physicians de-
13 scribed in paragraph (2)(B) that demonstrate
14 improvements in quality or attainment of qual-
15 ity benchmarks.

16 “(5) ESTABLISHMENT OF QUALITY INCENTIVE
17 PAYMENTS.—

18 “(A) INCENTIVES FOR REPORTING IN
19 2008.—

20 “(i) IN GENERAL.—During 2008, the
21 Secretary shall make quality incentive pay-
22 ments from the bonus pool described in
23 paragraph (4)(A) to facilities and providers
24 and from the bonus pool described in para-
25 graph (4)(B) to physicians described in

1 subparagraphs (A) and (B) of paragraph
2 (2) for reporting data about clinical and
3 quality of life measures adopted by the
4 Secretary in consultation with the ESRD
5 Advisory Committee.

6 “(ii) EXTENSION.—If the Secretary
7 determines that there are problems associ-
8 ated with reporting that should be resolved
9 before implementing the quality payment
10 system under subparagraph (B), the Sec-
11 retary may extend the reporting period an
12 additional year.

13 “(iii) EXCEPTION TO REPORTING RE-
14 QUIREMENT.—The Secretary shall estab-
15 lish criteria for an application for a hard-
16 ship exception that would allow small or
17 rural facilities and providers to receive the
18 full update under subsection (b)(12)(G)
19 even if they are not able to report data.

20 “(B) QUALITY INCENTIVE PAYMENTS IN
21 2009 AND 2010.—

22 “(i) IN GENERAL.—During 2009 and
23 2010, the Secretary shall make quality in-
24 centive payments from their respective
25 bonus pools under paragraph (4) to facili-

1 ties, providers, and physicians described in
2 subparagraphs (A) and (B) of paragraph
3 (2) with respect to a year if the Secretary
4 determines that the quality of care pro-
5 vided in that year by the facility, provider,
6 or physician to individuals with end-stage
7 renal disease who are enrolled under part
8 B—

9 “(I) has substantially improved
10 (as determined by the Secretary in
11 consultation with the ESRD Advisory
12 Committee) over the prior year; or

13 “(II) exceeds a threshold estab-
14 lished by the Secretary in consultation
15 with the ESRD Advisory Committee.

16 “(ii) REQUIREMENTS.—In deter-
17 mining which facilities, providers, or physi-
18 cians qualify for the quality incentive pay-
19 ments under clause (i), the Secretary shall
20 do the following:

21 “(I) Adopt clinical and quality of
22 life measures in consultation with the
23 ESRD Advisory Committee.

24 “(II) For 2008, ensure that pay-
25 ments will be based on the reporting

1 of data regarding clinical and quality
2 of life measures adopted by the Sec-
3 retary in consultation with the ESRD
4 Advisory Committee.

5 “(III) For 2009 and 2010, sub-
6 ject to subparagraph (C), ensure that
7 payments will be based upon the com-
8 posite score awarded to the facilities,
9 providers, and physicians. The com-
10 posite score will be based upon the
11 submission of data about clinical and
12 quality of life measures adopted by
13 the Secretary in consultation with the
14 ESRD Advisory Committee.

15 “(C) DETERMINATION OF AMOUNT OF IN-
16 CENTIVE PAYMENT.—

17 “(i) IN GENERAL.—Subject to clause
18 (ii), the Secretary shall determine the
19 amount of a quality incentive payment to
20 a facility, provider, or physician based
21 upon a quintile scale of a weighted com-
22 posite score of clinical and quality of life
23 measures.

24 “(ii) LIMITATION.—The Secretary
25 shall establish the quality incentive pay-

1 ments so that the total amount of such
2 payments made in a year—

3 “(I) to facilities and providers
4 from the bonus pool under paragraph
5 (4)(A) is equal to the total amount
6 available for such payments for the
7 year under such paragraph; and

8 “(II) to physicians from the
9 bonus pool under paragraph (4)(B) is
10 equal to the total amount available for
11 such payments for the year under
12 such paragraph.

13 “(D) REQUIREMENTS FOR ESTABLISH-
14 MENT OF THE COMPOSITE SCORE.—In estab-
15 lishing the composite score under this sub-
16 section, the Secretary shall—

17 “(i) consult with the ESRD Advisory
18 Committee to develop the clinical and qual-
19 ity of life measures and formula used to
20 calculate the weighted composite score;

21 “(ii) use a transparent process con-
22 sistent with the requirements of chapter 5
23 of title 5, United States Code (commonly
24 referred to as the ‘Administrative Proce-
25 dure Act’) to develop the measures and the

1 formula used to calculate the weighted
2 composite score; and

3 “(iii) assure that the payments reward
4 facilities, providers, and physicians for—

5 “(I) the attainment of minimum
6 quality targets; and

7 “(II) substantial improvement
8 over the previous year, as dem-
9 onstrated by the movement of a facil-
10 ity, provider, or physician from 1
11 quintile to another.

12 “(6) REQUIREMENTS FOR INCENTIVE PAY-
13 MENTS.—

14 “(A) IN GENERAL.—In order for a facility,
15 provider, or physician to be eligible for quality
16 incentive payments described in paragraph (5)
17 for a year, the provider, facility, or physician
18 must have provided for the submission of data
19 in accordance with subparagraph (B) with re-
20 spect to that year.

21 “(B) SUBMISSION OF DATA.—For 2008,
22 2009, and 2010, each facility, provider, and
23 physician described in subparagraphs (A) and
24 (B) of paragraph (2) shall submit to the Sec-
25 retary such data that the Secretary determines

1 are appropriate for the measurement of health
2 outcomes and other indices of quality, including
3 data necessary for the operation of the contin-
4 uous quality improvement initiative under this
5 subsection. Such data shall be submitted in a
6 form and manner, and at a time, specified by
7 the Secretary for purposes of this subsection.

8 “(C) ATTESTATION REGARDING DATA.—In
9 order for a facility, provider, or physician to be
10 eligible for a quality incentive payment under
11 this subsection for a year, the facility, provider,
12 or physician must have provided the Secretary
13 (under procedures established by the Secretary
14 in consultation with the ESRD Advisory Com-
15 mittee) with an attestation that the data sub-
16 mitted under this subsection for the year are
17 complete and accurate.

18 “(7) PAYMENT METHODS AND TIMING OF PAY-
19 MENT.—

20 “(A) IN GENERAL.—Subject to subpara-
21 graph (B), the payment of quality incentive
22 payments shall be based on such method as the
23 Secretary, in consultation with the ESRD Advi-
24 sory Committee, determines appropriate.

1 “(B) TIMING.—The Secretary shall ensure
2 that quality incentive payments with respect to
3 a year are made by no later than June 30 of
4 the subsequent year.

5 “(8) FEEDBACK.—The Secretary shall provide
6 quality incentive payments and feedback to facilities,
7 providers, and physicians as frequently as possible
8 and as close to the date on which such facilities, pro-
9 viders, and physicians submitted quality data.

10 “(9) TECHNICAL ASSISTANCE.—The Secretary
11 shall identify or establish an appropriately skilled
12 group or organization, such as the ESRD Networks,
13 to provide technical assistance to consistently low-
14 performing facilities, providers, or physicians that
15 are in the bottom quintile.

16 “(10) STREAMLINE REPORTING.—The Sec-
17 retary shall—

18 “(A) evaluate the current data systems
19 used by facilities, providers, and physicians to
20 submit data; and

21 “(B) eliminate redundant reporting by con-
22 solidating all current data reporting into a new
23 web-based system in order to minimize redun-
24 dancy and reduce regulatory and administrative
25 demands.

1 “(11) PUBLIC REPORTING.—

2 “(A) AVAILABILITY TO THE PUBLIC.—The
3 Secretary shall establish procedures for making
4 weighted composite scores calculated under this
5 subsection available to the public in a clear and
6 understandable form, including through its
7 website and the Medicare.gov comparison tool.
8 Such procedures shall ensure that a facility,
9 provider, or physician has the opportunity to re-
10 view the data that is to be made public with re-
11 spect to the facility, provider, or physician prior
12 to such data being made public.

13 “(B) CERTIFICATES.—The Secretary shall
14 provide certificates to facilities, providers, and
15 physicians who provide services to individuals
16 with end-stage renal disease under this title to
17 display in patient areas. The certificate shall in-
18 dicate the weighted composite score obtained by
19 the facility, provider, or physician under the
20 quality initiative.

21 “(C) WEB-BASED QUALITY LIST.—The
22 Secretary shall establish a web-based quality
23 list for facilities, providers, and physicians who
24 provide items and services to individuals with
25 end-stage renal disease who are enrolled under

1 part B that indicates whether measures were
2 met or not.

3 “(12) EVALUATIONS.—

4 “(A) EVALUATION BY THE SECRETARY.—

5 “(i) RECOGNIZING PART A SAVINGS
6 FROM CONTINUOUS QUALITY IMPROVE-
7 MENT INITIATIVE.—Not later than Janu-
8 ary 1, 2010, the Secretary shall evaluate
9 and make recommendations to Congress
10 regarding the feasibility of continuing the
11 quality initiative by funding an annual in-
12 crease to the composite rate by the ESRD
13 market basket amount under subsection
14 (b)(12)(G) through reduced expenditures
15 under the Federal Hospital Insurance
16 Trust Fund as a result of the quality ini-
17 tiative.

18 “(ii) RECOMMENDATIONS FOR AN AN-
19 NUAL UPDATE MECHANISM.—Not later
20 than 12 months after the date of enact-
21 ment of this subsection, the Secretary, act-
22 ing through the Administrator of the Cen-
23 ters for Medicare & Medicaid Services,
24 shall submit a report to Congress using the
25 data collected as part of the quality initia-

1 tive to make recommendations about estab-
2 lishing a permanent update mechanism for
3 the composite rate under this section.

4 “(B) EVALUATION BY MEDPAC.—

5 “(i) STUDY.—The Medicare Payment
6 Advisory Commission shall conduct a study
7 on the advisability and feasibility of mak-
8 ing the quality initiative permanent.

9 “(ii) REPORT.—Not later than June
10 1, 2009, the Commission shall submit a re-
11 port to Congress and the Secretary on the
12 study conducted under clause (i) together
13 with recommendations for such legislation
14 and administrative actions as the Commis-
15 sion considers appropriate, including the
16 need for establishing an annual update
17 mechanism for the composite rate under
18 this section.

19 “(C) EVALUATION BY THE INSTITUTE OF
20 MEDICINE.—

21 “(i) IN GENERAL.—Not later than 2
22 years after the date of enactment of this
23 subsection, the Secretary shall enter into
24 an arrangement under which the Institute
25 of Medicine of the National Academy of

1 Sciences (in this section referred to as the
2 ‘Institute’) shall conduct an evaluation of
3 the effectiveness of the quality initiative.

4 “(ii) SCOPE OF REVIEW.—The Insti-
5 tute shall consider a variety of perspec-
6 tives, including the perspectives of facili-
7 ties, providers, physicians, nurses, other
8 health care professionals, and patients.

9 “(iii) REPORT.—Not later than 3
10 years after the date of enactment of this
11 subsection, the Institute shall submit to
12 the Secretary and to Congress a report on
13 the evaluation conducted under clause (i).
14 Such report shall contain a detailed de-
15 scription of the findings of such evaluation
16 and recommendations for implementing on
17 an ongoing basis the quality initiative.

18 “(iv) AUTHORIZATION OF APPROPRIA-
19 TIONS.—There are authorized to be appro-
20 priated such sums as may be necessary for
21 the purpose of conducting the evaluation
22 and preparing the report required by this
23 subparagraph.”.

24 **SEC. 204. EXTENSION OF MEDICARE SECONDARY PAYER.**

25 (a) EXTENSION.—

1 (1) IN GENERAL.—Section 1862(b)(1)(C) of the
2 Social Security Act (42 U.S.C. 1395y(b)(1)(C)) is
3 amended—

4 (A) in the last sentence, by inserting “,
5 and before January 1, 2008” after “prior to
6 such date”); and

7 (B) by adding at the end the following new
8 sentence: “Effective for items and services fur-
9 nished on or after January 1, 2008 (with re-
10 spect to periods beginning on or after the date
11 that is 42 months prior to such date), clauses
12 (i) and (ii) shall be applied by substituting ‘42-
13 month’ for ‘12-month’ each place it appears in
14 the first sentence.”.

15 (2) EFFECTIVE DATE.—The amendments made
16 by this subsection shall take effect on the date of en-
17 actment of this Act. For purposes of determining an
18 individual’s status under section 1862(b)(1)(C) of
19 the Social Security Act (42 U.S.C. 1395y(b)(1)(C)),
20 as amended by paragraph (1), an individual who is
21 within the coordinating period as of the date of en-
22 actment of this Act shall have that period extended
23 to the full 42 months described in the last sentence
24 of such section, as added by the amendment made
25 by paragraph (1)(B).

1 (b) OIG STUDY AND REPORT.—

2 (1) STUDY.—The Inspector General of the De-
3 partment of Health and Human Services shall con-
4 duct a study on—

5 (A) the enforcement of the provisions of
6 section 1862(b)(1)(C)(ii) of the Social Security
7 Act (42 U.S.C. 1395y(b)(1)(C)(ii)); and

8 (B) how effective such provisions are at
9 protecting individuals on dialysis from receiving
10 differential treatment by health plans once the
11 individual is diagnosed with end stage renal dis-
12 ease.

13 (2) REPORT.—Not later than 1 year after the
14 date of enactment of this Act, the Inspector General
15 of the Department of Health and Human Services
16 shall submit to Congress a report on the study con-
17 ducted under paragraph (1), together with such rec-
18 ommendations as the Inspector General determines
19 appropriate.

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