AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 2581

OFFERED BY M__. _____

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Preservation of Access for Seniors in Medicare Advantage Act of 2015''.

SEC. 2. DEMONSTRATION PROGRAM.

(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall establish a 3-year demonstration program to test the use of value-based insurance design methodologies (as defined in subsection (c)(1)) under eligible Medicare Advantage plans offered by Medicare Advantage organizations under part C of title XVIII of the Social Security Act (42 U.S.C. 1395w–21 et seq.). The Secretary may extend the program to a duration of 4 or 5 years, as determined necessary by the Secretary in coordination with the Centers for Medicare and Medicaid Innovation.

(b) DEMONSTRATION PROGRAM DESIGN.—

(1) SELECTION OF MEDICARE ADVANTAGE SITES AND ELIGIBLE MEDICARE ADVANTAGE

PLANS.—Not later than two years after the date of the enactment of this Act, the Secretary shall—

(A) select at least two Medicare Advantage sites with respect to which to conduct the demonstration program under this section; and

(B) approve eligible Medicare Advantage plans to participate in such demonstration program.

In selecting Medicare Advantage sites under subparagraph (A), the Secretary shall take into account area differences as well as the availability of health maintenance organization plans and preferred provider organization plans offered in such sites.

(2) START OF DEMONSTRATION.—The demonstration program shall begin not later than the third plan year beginning after the date of the enactment of this Act.

(3) ELIGIBLE MEDICARE ADVANTAGE PLANS.—For purposes of this section, the term ''eligible Medicare Advantage plan'' means a Medicare Advantage plan under part C of title XVIII of the Social Security Act (42 U.S.C. 1395w–21 et seq.) that meets the following requirements:

(A) The plan is an Medicare Advantage regional plan (as defined in paragraph (4) of sec-

tion 1859(b) of such Act (42 U.S.C. 1395w–28(b))) or Medicare Advantage local plan (as defined in paragraph (5) of such section) offered in the Medicare Advantage region selected under paragraph (1)(A).

(B) The plan has—

(i)(I) a quality rating under section 1853(n)(4) of such Act (42 U.S.C. 1395w–23(n)(4)) of 4 stars or higher based on the most recent data available for such year, or (II) in the case of a specialized Medicare Advantage plan for special needs individuals, as defined in section 1859(b)(6)(A) of such Act (42 U.S.C. 1395w–28(b)(6)(A)), a quality rating under 1853(n)(4) of such Act (42 U.S.C. 1395w–23(n)(4)) equal to or higher than the national average for special needs plans (excluding Institutional-Special needs plans) based on the most recent data available for such year; and

(ii) at least 20 percent of the population to whom the plan is offered in a service area consists of subsidy eligible individuals (as defined in section 1860D–

14(a)(3)(A) of the Social Security Act (42 U.S.C. 1395w–114(a)(3)(A))).

(4) DISCLOSURE TO BENEFICIARIES.—The Secretary shall provide to each individual eligible to enroll under a Medicare Advantage plan approved to participate under the demonstration program during a plan year for which the plan is so selected—

(A) notification that the plan is participating in such demonstration program;

(B) background information on the demonstration program;

(C) clinical data derived from the studies resulting from the demonstration program; and

(D) notification of the potential benefits that the individual will receive, and of the other potential impacts that the individual will experience, on account of the participation of the plan in the demonstration program.

(c) VALUE-BASED INSURANCE DESIGN METHODOLOGIES.—

(1) DEFINITION.—For purposes of this section, the term ''value-based insurance design methodology'' means a methodology for identifying specific prescription medications, and clinical services that are payable under title XVIII of the Social Security

Act, for which the reduction of copayments, coinsurance, or both, would improve the management of specific chronic clinical conditions because of the high value and effectiveness of such medications and services for such specific chronic clinical conditions, as approved by the Secretary.

(2) USE OF METHODOLOGIES TO REDUCE COPAYMENTS AND COINSURANCE.—A Medicare Advantage organization offering an eligible Medicare Advantage plan approved to participate under the demonstration program, for each plan year for which the plan is so selected and using value-based insurance design methodologies—

(A) shall identify each prescription medication and clinical service covered under such plan for which the plan proposes to reduce or eliminate the copayment or coinsurance, with respect to the management of specific chronic clinical conditions (as specified by the Secretary) of Medicare Advantage eligible individuals (as defined in section 1851(a)(3) of the Social Security Act (42 U.S.C. 1395w–21(a)(3))) enrolled under such plans, for such plan year;

(B) may, for such plan year, reduce or eliminate copayments, coinsurance, or both for such prescription medication and clinical services so identified with respect to the management of such conditions of such individuals—

(i) if such reduction or elimination is evidence-based and for the purpose of encouraging such individuals in such plan to use such prescription medications and clinical services (such as preventive care, primary care, specialty visits, diagnostic tests, procedures, and durable medical equipment) with respect to such conditions; and

(ii) for the purpose of encouraging such individuals in such plan to use health care providers that such organization has identified with respect to such plan year as being high value providers; and

(C) if a reduction or elimination is applied pursuant to subparagraph (B), with respect to such medication and clinical services, shall, for such plan year, count toward the deductible applicable to such individual under such plan amounts that would have been payable by the individual as copayment or coinsurance for such

medication and services if the reduction or elimination had not been applied.

(3) PROHIBITION OF INCREASES OF COPAYMENTS AND COINSURANCE.—In no case may any Medicare Advantage plan participating in the demonstration program increase, for any plan year for which the plan is so participating, the amount of copayments or coinsurance for any item or service covered under such plan for purposes of discouraging the use of such item or service.

(d) REPORT ON IMPLEMENTATION.—

(1) IN GENERAL.—Not later than 1 year after the date on which the demonstration program under this section begins under subsection (b)(2), the Secretary shall submit to Congress a report on the status of the implementation of the demonstration program.

(2) ELEMENTS.—The report required by paragraph (1) shall, with respect to eligible Medicare Advantage plans participating in the demonstration program for the first plan year of such program, include the following:

(A) A list of each medication and service identified pursuant to subsection (c)(2)(A) for such plan with respect to such plan year.

(B) For each such medication or service so identified, the amount of the copayment or coinsurance required under such plan with respect to such plan year for such medication or service and the amount of the reduction of such copayment or coinsurance from a previous plan year.

(C) For each provider identified pursuant to subsection (c)(2)(B)(ii) for such plan with respect to such plan year, a statement of the amount of the copayment or coinsurance required under such plan with respect to such plan year and the amount of the reduction of such copayment or coinsurance from the previous plan year.

(e) REVIEW AND ASSESSMENT OF UTILIZATION OF VALUE-BASED INSURANCE DESIGN METHODOLOGIES.—

(1) IN GENERAL.—The Secretary shall enter into a contract or agreement with an independent entity to review and assess the implementation of the demonstration program under this section. The review and assessment shall include the following:

(A) An assessment of the utilization of value-based insurance design methodologies by Medicare Advantage plans participating under such program.

(B) An analysis of whether reducing or eliminating the copayment or coinsurance for each medication and clinical service identified pursuant to subsection (c)(2)(A) resulted in increased adherence to medication regimens, increased service utilization, improvement in quality metrics, better health outcomes, and enhanced beneficiary experience.

(C) An analysis of the extent to which costs to Medicare Advantage plans under part C of title XVIII of the Social Security Act participating in the demonstration program is less than costs to Medicare Advantage plans under such part that are not participating in the demonstration program.

(D) An analysis of whether reducing or eliminating the copayment or coinsurance for providers identified pursuant to subsection (c)(2)(B)(ii) resulted in improvement in quality metrics, better health outcomes, and enhanced beneficiary experience.

(E) An analysis, for each provider so identified, the extent to which costs to Medicare Advantage plans under part C of title XVIII of the Social Security Act participating in the dem-

onstration program is less than costs to Medicare Advantage plans under such part that are not participating in the demonstration program.

(F) Such other matters as the Secretary considers appropriate.

(2) REPORT.—The contract or agreement entered into under paragraph (1) shall require such entity to submit to the Secretary a report on the review and assessment conducted by the entity under such paragraph in time for the inclusion of the results of such report in the report required by paragraph (3). Such report shall include a description, in clear language, of the manner in which the entity conducted the review and assessment.

(3) REPORT TO CONGRESS.—Not later than 4 years after the date on which the demonstration program begins under subsection (b)(2), the Secretary shall submit to Congress a report on the review and assessment of the demonstration program conducted under this subsection. The report shall include the following:

(A) A description of the results of the review and assessment included in the report submitted pursuant to paragraph (2).

(B) Such recommendations as the Secretary considers appropriate for enhancing the utilization of the methodologies applied under the demonstration program to all Medicare Advantage plans under part C of title XVIII of the Social Security Act so as to reduce copayments and coinsurance under such plans paid by Medicare beneficiaries for high-value prescription medications and clinical services for which coverage is provided under such plans and to otherwise improve the quality of health care provided under such plans.

(4) OVERSIGHT REPORT.—Not later than three years after the date of the enactment of this Act, the Comptroller General of the United States shall submit to Congress a report on the demonstration program that includes an assessment, with respect to individuals enrolled under Medicare Advantage plans approved to participate under the demonstration program, of the impact that the age, co-morbidities, and geographic regions of such individuals had upon the implementation of the demonstration program by the plans with respect to such individuals.

(f) SAVINGS.—In no case may any reduction in beneficiary copayments or coinsurance resulting from the im-

plementation of the demonstration program under this section result in expenditures under parts A, B, and D of the title XVIII of the Social Security Act that are greater than such expenditures without application of this section.

(g) EXPANSION OF DEMONSTRATION PROGRAM.—Taking into account the review and assessment conducted under subsection (e), the Secretary may, through notice and comment rulemaking, expand (including implementation on a nationwide basis) the duration and scope of the demonstration program under title XVIII of the Social Security Act, other than under the original medicare fee-for-service program under parts A and B of such title, to the extent determined appropriate by the Secretary, if the requirements of paragraphs (1), (2) and (3) of subsection (c) of section 1115A of the Social Security Act (42 U.S.C. 1315a), as applied to the testing of a model under subsection (b) of such section, applied to the demonstration under this section.

(h) WAIVER AUTHORITY.—The Secretary may waive such provisions of titles XI and XVIII of the Social Security Act as may be necessary to carry out the demonstration program under this section.

(i) IMPLEMENTATION FUNDING.—For purposes of carrying out the demonstration program under this sec-

tion, the Secretary shall provide for the transfer from the Federal Hospital Insurance Trust Fund under section 1817 of the Social Security Act (42 U.S.C. 1395i) and the Federal Supplementary Insurance Trust Fund under section 1841 of the Social Security Act (42 U.S.C. 1395t), including the Medicare Prescription Drug Account in such Trust Fund, in such proportion as determined appropriate by the Secretary, of such sums as may be necessary.

SEC. 3. PRESERVATION OF MEDICARE BENEFICIARY CHOICE UNDER MEDICARE ADVANTAGE.

Section 1851(e)(2) of the Social Security Act (42 U.S.C. 1395w–21(e)(2)) is amended—

(1) in subparagraph (C)—

(A) in the heading, by inserting ''FROM 2011 THROUGH 2015'' after ''45-DAY PERIOD''; and

(B) by inserting ''and ending with 2015'' after ''beginning with 2011''; and

(2) by adding at the end the following new subparagraph:

''(G) CONTINUOUS OPEN ENROLLMENT AND DISENROLLMENT FOR FIRST 3 MONTHS IN 2016 AND SUBSEQUENT YEARS.—

''(i) IN GENERAL.—Subject to clause (ii) and subparagraph (D), at any time

during the first 3 months of a year (beginning with 2016), or, if the individual first becomes a Medicare eligible individual (and does not have coverage under the original medicare fee-for-service program under parts A and B) during a year (beginning with 2016), during the first 3 months of such year in which the individual is a Medicare Advantage eligible individual, a Medicare Advantage eligible individual may change the election under subsection (a)(1).

''(ii) LIMITATION OF ONE CHANGE DURING OPEN ENROLLMENT PERIOD EACH YEAR.—An individual may change the election pursuant to clause (i) only once during the applicable 3-month period described in such clause in each year. The limitation under this clause shall not apply to changes in elections effected during an annual, coordinated election period under paragraph (3) or during a special enrollment period under paragraph (4).

''(iii) LIMITED APPLICATION TO PART D.—Clauses (i) and (ii) of this subpara-

graph shall only apply with respect to changes in enrollment in a prescription drug plan under part D in the case of an individual who, previous to such change in enrollment, is enrolled in a Medicare Advantage plan.

''(iv) LIMITATIONS ON MARKETING.—Pursuant to subsection (j), no unsolicited marketing or marketing materials may be sent to an individual described in clause (i) during the continuous open enrollment and disenrollment period established for the individual under such clause, notwithstanding marketing guidelines established by the Centers for Medicare & Medicaid Services.''.

SEC. 4. TREATMENT OF INFUSION DRUGS FURNISHED THROUGH DURABLE MEDICAL EQUIPMENT.

Section 1842(o)(1) of the Social Security Act (42 U.S.C. 1395u(o)(1)) is amended—

(1) in subparagraph (C), by inserting ''(and including a drug or biological described in subparagraph (D)(i) furnished on or after January 1, 2017)'' after ''2005''; and

(2) in subparagraph (D)—

(A) by striking ''infusion drugs'' and inserting ''infusion drugs or biologicals'' each place it appears; and

(B) in clause (i)—

(i) by striking ''2004'' and inserting ''2004, and before January 1, 2017''; and

(ii) by striking ''for such drug''.

SEC. 5. SENSE OF CONGRESS REGARDING THE IMPLEMENTATION AND DISTRIBUTION OF QUALITY INCENTIVE PAYMENTS TO MEDICARE ADVANTAGE PLANS.

It is the sense of Congress that—

(1) the Secretary of Health and Human Services has incorrectly interpreted subsection (n) of section 1853 of the Social Security Act (42 U.S.C. 1395w–23) as prohibiting the provision of any Medicare quality incentive payments under subsection (o) of such section with respect to Medicare Advantage plans that exceed the payment benchmark cap under such subsection (n) for the area served by such plans; and

(2) the Secretary should immediately apply quality incentive payments under such subsection (o) with respect to such Medicare Advantage plans with-

out regard to the limits set forth in such subsection (n).

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