H.R.6111

Tax Relief and Health Care Act of 2006 (Enrolled as Agreed to or Passed by Both House and Senate)

SEC. 101. PHYSICIAN PAYMENT AND QUALITY IMPROVEMENT.

(a) One-Year Increase in Medicare Physician Fee Schedule Conversion Factor- Section 1848(d) of the Social Security Act (42 U.S.C. 1395w-4(d)) is amended by adding at the end the following new paragraph:

`(7) CONVERSION FACTOR FOR 2007-

`(A) IN GENERAL- The conversion factor that would otherwise be applicable under this subsection for 2007 shall be the amount of such conversion factor divided by the product of--

`(i) 1 plus the Secretary's estimate of the percentage increase in the MEI (as defined in section 1842(i)(3)) for 2007 (divided by 100); and

`(ii) 1 plus the Secretary's estimate of the update adjustment factor under paragraph (4)(B) for 2007.

`(B) NO EFFECT ON COMPUTATION OF CONVERSION FACTOR FOR 2008- The conversion factor under this subsection shall be computed under paragraph (1)(A) for 2008 as if subparagraph (A) had never applied.'.

(b) Quality Reporting System- Section 1848 of the Social Security Act (42 U.S.C. 1395w-4) is amended by adding at the end the following new subsection:

`(k) Quality Reporting System-

`(1) IN GENERAL- The Secretary shall implement a system for the reporting by eligible professionals of data on quality measures specified under paragraph (2). Such data shall be submitted in a form and manner specified by the Secretary (by program instruction or otherwise), which may include submission of such data on claims under this part.

`(2) USE OF CONSENSUS-BASED QUALITY MEASURES-

`(A) FOR 2007-

`(i) IN GENERAL- For purposes of applying this subsection for the reporting of data on quality measures for covered professional services furnished during the period beginning July 1, 2007, and ending December 31, 2007, the quality measures specified under this paragraph are the measures identified as 2007 physician quality measures under the Physician Voluntary Reporting

Program as published on the public website of the Centers for Medicare & Medicaid Services as of the date of the enactment of this subsection, except as may be changed by the Secretary based on the results of a consensus-based process in January of 2007, if such change is published on such website by not later than April 1, 2007.

`(ii) SUBSEQUENT REFINEMENTS IN APPLICATION PERMITTED- The Secretary may, from time to time (but not later than July 1, 2007), publish on such website (without notice or opportunity for public comment) modifications or refinements (such as code additions, corrections, or revisions) for the application of quality measures previously published under clause (i), but may not, under this clause, change the quality measures under the reporting system.

`(iii) IMPLEMENTATION- Notwithstanding any other provision of law, the Secretary may implement by program instruction or otherwise this subsection for 2007.

`(B) FOR 2008-

`(i) IN GENERAL- For purposes of reporting data on quality measures for covered professional services furnished during 2008, the quality measures specified under this paragraph for covered professional services shall be measures that have been adopted or endorsed by a consensus organization (such as the National Quality Forum or AQA), that include measures that have been submitted by a physician specialty, and that the Secretary identifies as having used a consensus-based process for developing such measures. Such measures shall include structural measures, such as the use of electronic health records and electronic prescribing technology.

`(ii) PROPOSED SET OF MEASURES- Not later than August 15, 2007, the Secretary shall publish in the Federal Register a proposed set of quality measures that the Secretary determines are described in clause (i) and would be appropriate for eligible professionals to use to submit data to the Secretary in 2008. The Secretary shall provide for a period of public comment on such set of measures.

`(iii) FINAL SET OF MEASURES- Not later than November 15, 2007, the Secretary shall publish in the Federal Register a final set of quality measures that the Secretary determines are described in

clause (i) and would be appropriate for eligible professionals to use to submit data to the Secretary in 2008.

`(3) COVERED PROFESSIONAL SERVICES AND ELIGIBLE PROFESSIONALS DEFINED- For purposes of this subsection:

`(A) COVERED PROFESSIONAL SERVICES- The term `covered professional services' means services for which payment is made under, or is based on, the fee schedule established under this section and which are furnished by an eligible professional.

`(B) ELIGIBLE PROFESSIONAL- The term `eligible professional' means any of the following:

`(i) A physician.

`(ii) A practitioner described in section 1842(b)(18)(C).

`(iii) A physical or occupational therapist or a qualified speech-language pathologist.

`(4) USE OF REGISTRY-BASED REPORTING- As part of the publication of proposed and final quality measures for 2008 under clauses (ii) and (iii) of paragraph (2)(B), the Secretary shall address a mechanism whereby an eligible professional may provide data on quality measures through an appropriate medical registry (such as the Society of Thoracic Surgeons National Database), as identified by the Secretary.

`(5) IDENTIFICATION UNITS- For purposes of applying this subsection, the Secretary may identify eligible professionals through billing units, which may include the use of the Provider Identification Number, the unique physician identification number (described in section 1833(q)(1)), the taxpayer identification number, or the National Provider Identifier. For purposes of applying this subsection for 2007, the Secretary shall use the taxpayer identification number as the billing unit.

`(6) EDUCATION AND OUTREACH- The Secretary shall provide for education and outreach to eligible professionals on the operation of this subsection.

`(7) LIMITATIONS ON REVIEW- There shall be no administrative or judicial review under section 1869, section 1878, or otherwise, of the development and implementation of the reporting system under paragraph (1), including identification of quality measures under paragraph (2) and the application of paragraphs (4) and (5).

`(8) IMPLEMENTATION- The Secretary shall carry out this subsection acting through the Administrator of the Centers for Medicare & Medicaid Services.'.

(c) Transitional Bonus Incentive Payments for Quality Reporting in 2007-

(1) IN GENERAL- With respect to covered professional services furnished during a reporting period (as defined in paragraph (6)(C)) by an eligible professional, if--

(A) there are any quality measures that have been established under the physician reporting system that are applicable to any such services furnished by such professional for such period, and

(B) the eligible professional satisfactorily submits (as determined under paragraph (2)) to the Secretary data on such quality measures in accordance with such reporting system for such reporting period,

in addition to the amount otherwise paid under part B of title XVIII of the Social Security Act, subject to paragraph (3), there also shall be paid to the eligible professional (or to an employer or facility in the cases described in clause (A) of section 1842(b)(6) of the Social Security Act (42 U.S.C. 1395u(b)(6))) from the Federal Supplementary Medical Insurance Trust Fund established under section 1841 of such Act (42 U.S.C. 1395t) an amount equal to 1.5 percent of the Secretary's estimate (based on claims submitted not later than two months after the end of the reporting period) of the allowed charges under such part for all such covered professional services furnished during the reporting period.

(2) SATISFACTORY REPORTING DESCRIBED- For purposes of paragraph (1), an eligible professional shall be treated as satisfactorily submitting data on quality measures for covered professional services for a reporting period if quality measures have been reported as follows:

(A) THREE OR FEWER QUALITY MEASURES APPLICABLE- If there are no more than 3 quality measures that are provided under the physician reporting system and that are applicable to such services of such professional furnished during the period, each such quality measure has been reported under such system in at least 80 percent of the cases in which such measure is reportable under the system.

(B) FOUR OR MORE QUALITY MEASURES APPLICABLE- If there are 4 or more quality measures that are provided under the physician reporting system and that are applicable to such services of such professional furnished during the period, at least 3 such quality measures have been reported under such system in at least 80 percent of the cases in which the respective measure is reportable under the system.

(3) PAYMENT LIMITATION-

(A) IN GENERAL- In no case shall the total payment made under this subsection to an eligible professional (or to an employer or facility in the cases described in clause (A) of

section 1842(b)(6) of the Social Security Act) exceed the product of--

(i) the total number of quality measures for which data are submitted under the physician reporting system for covered professional services of such professional that are furnished during the reporting period; and

(ii) 300 percent of the average per measure payment amount specified in subparagraph (B).

(B) AVERAGE PER MEASURE PAYMENT AMOUNT SPECIFIED- The average per measure payment amount specified in this subparagraph is an amount, estimated by the Secretary (based on claims submitted not later than two months after the end of the reporting period), equal to--

(i) the total of the amount of allowed charges under part B of title XVIII of the Social Security Act for all covered professional services furnished during the reporting period on claims for which quality measures are reported under the physician reporting system; divided by

(ii) the total number of quality measures for which data are reported under such system for covered professional services furnished during the reporting period.

(4) FORM OF PAYMENT- The payment under this subsection shall be in the form of a single consolidated payment.

(5) APPLICATION-

(A) PHYSICIAN REPORTING SYSTEM RULES- Paragraphs (5), (6), and (8) of section 1848(k) of the Social Security Act, as added by subsection (b), shall apply for purposes of this subsection in the same manner as they apply for purposes of such section.

(B) COORDINATION WITH OTHER BONUS PAYMENTS- The provisions of this subsection shall not be taken into account in applying subsections (m) and (u) of section 1833 of the Social Security Act (42 U.S.C. 1395l) and any payment under such subsections shall not be taken into account in computing allowable charges under this subsection.

(C) IMPLEMENTATION- Notwithstanding any other provision of law, the Secretary may implement by program instruction or otherwise this subsection.

(D) VALIDATION-

(i) IN GENERAL- Subject to the succeeding provisions of this subparagraph, for purposes of determining whether a measure is applicable to the covered professional services of an eligible

professional under paragraph (2), the Secretary shall presume that if an eligible professional submits data for a measure, such measure is applicable to such professional.

(ii) METHOD- The Secretary shall validate (by sampling or other means as the Secretary determines to be appropriate) whether measures applicable to covered professional services of an eligible professional have been reported.

(iii) DENIAL OF PAYMENT AUTHORITY- If the Secretary determines that an eligible professional has not reported measures applicable to covered professional services of such professional, the Secretary shall not pay the bonus incentive payment.

(E) LIMITATIONS ON REVIEW-

(i) IN GENERAL- There shall be no administrative or judicial review under section 1869 or 1878 of the Social Security Act or otherwise of--

(I) the determination of measures applicable to services furnished by eligible professionals under this subsection;

(II) the determination of satisfactory reporting under paragraph (2);

(III) the determination of the payment limitation under paragraph (3); and

(IV) the determination of the bonus incentive payment under this subsection.

(ii) TREATMENT OF DETERMINATIONS- A determination under this subsection shall not be treated as a determination for purposes of section 1869 of the Social Security Act.

(6) DEFINITIONS- For purposes of this subsection:

(A) ELIGIBLE PROFESSIONAL; COVERED PROFESSIONAL SERVICES- The terms `eligible professional' and `covered professional services' have the meanings given such terms in section 1848(k)(3) of the Social Security Act, as added by subsection (b).

(B) PHYSICIAN REPORTING SYSTEM- The term `physician reporting system' means the system established under section 1848(k) of the Social Security Act, as added by subsection (b).

(C) REPORTING PERIOD- The term `reporting period' means the period beginning on July 1, 2007, and ending on December 31, 2007.

(D) SECRETARY- The term `Secretary' means the Secretary of Health and Human Services.

(d) Physician Assistance and Quality Initiative Fund- Section 1848 of the Social Security Act, as amended by subsection (b), is further amended by adding at the end the following new subsection:

`(l) Physician Assistance and Quality Initiative Fund-

`(1) ESTABLISHMENT- The Secretary shall establish under this subsection a Physician Assistance and Quality Initiative Fund (in this subsection referred to as the `Fund') which shall be available to the Secretary for physician payment and quality improvement initiatives, which may include application of an adjustment to the update of the conversion factor under subsection (d).

`(2) FUNDING-

`(A) AMOUNT AVAILABLE- There shall be available to the Fund for expenditures an amount equal to $1,350,000,000.

`(B) TIMELY OBLIGATION OF ALL AVAILABLE FUNDS FOR SERVICES FURNISHED DURING 2008- The Secretary shall provide for expenditures from the Fund in a manner designed to provide (to the maximum extent feasible) for the obligation of the entire amount specified in subparagraph (A) for payment with respect to physicians' services furnished during 2008.

`(C) PAYMENT FROM TRUST FUND- The amount specified in subparagraph (A) shall be available to the Fund, as expenditures are made from the Fund, from the Federal Supplementary Medical Insurance Trust Fund under section 1841.

`(D) FUNDING LIMITATION- Amounts in the Fund shall be available in advance of appropriations in accordance with subparagraph (B) but only if the total amount obligated from the Fund does not exceed the amount available to the Fund under subparagraph (A). The Secretary may obligate funds from the Fund only if the Secretary determines (and the Chief Actuary of the Centers for Medicare & Medicaid Services and the appropriate budget officer certify) that there are available in the Fund sufficient amounts to cover all such obligations incurred consistent with the previous sentence.

`(E) CONSTRUCTION- In the case that expenditures from the Fund are applied to, or otherwise affect, a conversion factor under subsection (d) for a year, the conversion factor under such subsection shall be computed for a subsequent year as if such application or effect had never occurred.'.

(e) Implementation- For purposes of implementing the provisions of, and amendments made by, this section, the Secretary of Health and Human Services shall provide for the transfer, from the Federal Supplementary Medical Insurance Trust Fund established under section

1841 of the Social Security Act (42 U.S.C. 1395t), of $60,000,000 to the Centers for Medicare & Medicaid Services Program Management Account for the period of fiscal years 2007, 2008, and 2009.