

116TH CONGRESS
1ST SESSION

H. R. 3912

To amend title XVIII of the Social Security Act to increase awareness, expand preventative services, and improve care for individuals with end-stage renal disease, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 23, 2019

Mr. LEWIS (for himself and Mr. BUCHANAN) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title XVIII of the Social Security Act to increase awareness, expand preventative services, and improve care for individuals with end-stage renal 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.**

4 This Act may be cited as the “Chronic Kidney Dis-
5 ease Improvement in Research and Treatment Act”.

1 **TITLE I—INCREASING AWARE-**
2 **NESS, EXPANDING PREVENT-**
3 **ATIVE SERVICES, AND IM-**
4 **PROVING CARE COORDINA-**
5 **TION**

6 **SEC. 101. INCREASING ACCESS TO MEDICARE KIDNEY DIS-**
7 **EASE EDUCATION BENEFIT.**

8 (a) IN GENERAL.—Section 1861(ggg) of the Social
9 Security Act (42 U.S.C. 1395x(ggg)) is amended—

10 (1) in paragraph (1)—

11 (A) in subparagraph (A), by inserting “or
12 stage V” after “stage IV”; and

13 (B) in subparagraph (B), by inserting “or
14 of a physician assistant, nurse practitioner, or
15 clinical nurse specialist (as defined in section
16 1861(aa)(5)) assisting in the treatment of the
17 individual’s kidney condition” after “kidney
18 condition”; and

19 (2) in paragraph (2)—

20 (A) by striking subparagraph (B); and

21 (B) in subparagraph (A)—

22 (i) by striking “(A)” after “(2)”;

23 (ii) by striking “and” at the end of
24 clause (i);

1 (iii) by striking the period at the end
2 of clause (ii) and inserting “; and”;

3 (iv) by redesignating clauses (i) and
4 (ii) as subparagraphs (A) and (B), respec-
5 tively; and

6 (v) by adding at the end the following:

7 “(C) a renal dialysis facility subject to the
8 requirements of section 1881(b)(1) with per-
9 sonnel who—

10 “(i) provide the services described in
11 paragraph (1); and

12 “(ii) is a physician (as defined in sub-
13 section (r)(1)) or a physician assistant,
14 nurse practitioner, or clinical nurse spe-
15 cialist (as defined in subsection (aa)(5)).”.

16 (b) PAYMENT TO RENAL DIALYSIS FACILITIES.—
17 Section 1881(b) of the Social Security Act (42 U.S.C.
18 1395rr(b)) is amended by adding at the end the following
19 new paragraph:

20 “(15) For purposes of paragraph (14), the sin-
21 gle payment for renal dialysis services under such
22 paragraph shall not take into account the amount of
23 payment for kidney disease education services (as
24 defined in section 1861(ggg)). Instead, payment for
25 such services shall be made to the renal dialysis fa-

1 cility on an assignment-related basis under section
2 1848.”.

3 (c) EFFECTIVE DATE.—The amendments made by
4 this section apply to kidney disease education services fur-
5 nished on or after January 1, 2020.

6 **SEC. 102. UNDERSTANDING CURRENT UTILIZATION OF PAL-**
7 **LIATIVE CARE SERVICES.**

8 (a) STUDY.—

9 (1) IN GENERAL.—The Comptroller General of
10 the United States (in this section referred to as the
11 “Comptroller General”) shall conduct a study on the
12 utilization of palliative care in treating individuals
13 with advanced kidney disease, from stage 4 through
14 stage 5, including individuals with kidney failure on
15 dialysis through any progression of the disease. Such
16 study shall include an analysis of—

17 (A) how palliative care can be utilized to
18 improve the quality of life of those with kidney
19 disease and facilitate care tailored to their indi-
20 vidual goals and values;

21 (B) the successful use of palliative care in
22 the care of patients with other chronic diseases
23 and serious illnesses;

1 (C) the utilization of palliative care at any
2 point in an illness, including when used at the
3 same time as curative treatment; and

4 (D) other areas determined appropriate by
5 the Comptroller General.

6 (2) DEFINITION OF PALLIATIVE CARE.—In this
7 section, the term “palliative care” means patient
8 and family centered care that optimizes quality of
9 life by anticipating, preventing, and treating suf-
10 fering. Such term includes care that is furnished
11 throughout the continuum of the illness that ad-
12 dresses physical, intellectual, emotional, social, and
13 spiritual needs and that facilitates patient autonomy,
14 access to information and choice.

15 (b) REPORT.—Not later than 1 year after the date
16 of the enactment of this Act, the Comptroller General shall
17 submit to the Congress a report on the study conducted
18 under subsection (a), together with such recommendations
19 as the Comptroller General determines to be appropriate.

20 **SEC. 103. IMPROVING ACCESS IN UNDERSERVED AREAS.**

21 (a) DEFINITION OF PRIMARY CARE SERVICES.—Sec-
22 tion 331(a)(3)(D) of the Public Health Service Act (42
23 U.S.C. 254d(a)(3)(D)) is amended by inserting “and in-
24 cludes renal dialysis services” before the period at the end.

1 (b) NATIONAL HEALTH SERVICE CORPS SCHOLAR-
2 SHIP PROGRAM.—Section 338A(a)(2) of the Public Health
3 Service Act (42 U.S.C. 2541(a)(2)) is amended by insert-
4 ing “, including nephrology health professionals” before
5 the period at the end.

6 (c) NATIONAL HEALTH SERVICE CORPS LOAN RE-
7 PAYMENT PROGRAM.—Section 338B(a)(2) of the Public
8 Health Service Act (42 U.S.C. 2541–1(a)(2)) is amended
9 by inserting “, including nephrology health professionals”
10 before the period at the end.

11 **SEC. 104. IMPROVING CARE COORDINATION FOR DIALYSIS**
12 **PATIENTS.**

13 (a) HOSPITALS REQUIRED TO PROVIDE INFORMA-
14 TION.—Section 1881 of the Social Security Act (42 U.S.C.
15 1395rr) is amended by adding at the end the following
16 new subsection:

17 “(i) HOSPITALS REQUIRED TO PROVIDE INFORMA-
18 TION.—

19 “(1) IN GENERAL.—The Secretary shall estab-
20 lish a process under which a hospital or a critical ac-
21 cess hospital shall provide a renal dialysis facility
22 with health and treatment information with respect
23 to an individual who is discharged from the hospital
24 or critical access hospital and who subsequently re-
25 ceives treatment at facility.

1 “(2) ELEMENTS.—Under the process estab-
2 lished under paragraph (1)—

3 “(A) the request for the health information
4 may be initiated by the individual prior to dis-
5 charge or upon request by the renal dialysis fa-
6 cility after the patient is discharged; and

7 “(B) the information must be provided to
8 the facility within 7 days of the request being
9 made.”.

10 **TITLE II—INCENTIVIZING INNO-**
11 **VATION FOR TRULY INNOVA-**
12 **TIVE NEW DRUGS,**
13 **BIOLOGICALS, DEVICES, AND**
14 **OTHER TECHNOLOGIES.**

15 **SEC. 201. MAINTAIN AN ECONOMICALLY STABLE DIALYSIS**
16 **INFRASTRUCTURE.**

17 (a) IN GENERAL.—Section 1881(b)(14) of the Social
18 Security Act (42 U.S.C. 1395rr(b)(14)) is amended—

19 (1) in subparagraph (D), in the matter pre-
20 ceding clause (i), by striking “Such system” and in-
21 serting “Subject to subparagraph (J), such system”;
22 and

23 (2) by adding at the end the following new sub-
24 paragraph:

1 “(J) For payment for renal dialysis services
2 furnished on or after January 1, 2020, under the
3 system under this paragraph—

4 “(i) the payment adjustment described in
5 clause (i) of subparagraph (D)—

6 “(I) shall not take into account
7 comorbidities; and

8 “(II) shall only take into account age
9 for purposes of distinguishing between in-
10 dividuals who are under 18 years of age
11 and those who are 18 years of age and
12 older but shall not include any other ad-
13 justment for age;

14 “(ii) the Secretary shall reassess any ad-
15 justments related to patient weight under such
16 clause;

17 “(iii) the payment adjustment described in
18 clause (ii) of such subparagraph shall not be in-
19 cluded;

20 “(iv) the standardization factor described
21 in the final rule published in the Federal Reg-
22 ister on November 8, 2012 (77 Fed. Reg.
23 67470), shall be established using the most cur-
24 rently available data (and not historical data)
25 and adjusted on an annual basis, based on such

1 available data, to account for any change in uti-
2 lization of drugs and any modification in adjus-
3 tors applied under this paragraph; and

4 “(v) take into account reasonable costs for
5 determining the payment rate consistent with
6 paragraph (2)(B).”.

7 (b) INCLUSION OF NETWORK FEE AS AN ALLOW-
8 ABLE COST.—Section 1881(b)(14) of the Social Security
9 Act (42 U.S.C. 1395rr(b)(14)), as amended by subsection
10 (a), is amended by adding at the end the following new
11 subparagraph:

12 “(K) Not later than January 1, 2020, the Sec-
13 retary shall amend the ESRD facility cost report to
14 include the per treatment network fee (as described
15 in paragraph (7)) as an allowable cost or offset to
16 revenue.”.

17 (c) AFFIRMATION OF AVAILABILITY OF BAD DEBT
18 REIMBURSEMENT FOR NON-COMPOSITE RATE SERV-
19 ICES.—

20 (1) REPEAL OF MIPPA BAD DEBT RULE OF
21 CONSTRUCTION.—Section 153(b)(4) of the Medicare
22 Improvements for Patients and Providers Act (42
23 U.S.C. 1395rr note) is repealed.

24 (2) BAD DEBT PAYMENTS.—Section
25 1881(b)(14) of the Social Security Act (42 U.S.C.

1 1395rr(b)), as amended by subsections (a) and (b),
2 is further amended by adding at the end the fol-
3 lowing new subparagraphs:

4 “(L) Notwithstanding any other provision of
5 this title, the Secretary shall provide payments for
6 any unrecovered amount for any bad debt attrib-
7 utable to deductible and coinsurance for any item or
8 service reimbursed under the system under this
9 paragraph or bad debt described in section
10 153(b)(4) of the Medicare Improvements for Pa-
11 tients and Providers Act of 2008. Such payments for
12 any unrecovered amount shall be made in addition
13 to payments made under such system and such drug
14 designation process.

15 “(M) The additional payments made under sub-
16 paragraph (L)—

17 “(i) shall not be considered an adjustment
18 under subparagraph (D); and

19 “(ii) shall not be implemented in a budget
20 neutral manner.”.

21 (3) EFFECTIVE DATE.—Paragraph (1) and the
22 amendments made by paragraph (2) shall apply to
23 payments beginning on January 1, 2020.

1 (d) PRODUCTIVITY ADJUSTMENT.—Section
2 1886(b)(3)(B)(xi) of the Social Security Act (42 U.S.C.
3 1395ww(b)(3)(B)(xi)) is amended—

4 (1) in subclause (I), by striking “For 2012”
5 and inserting “Subject to subclause (IV), for 2012”;
6 and

7 (2) by adding at the end, the following new sub-
8 clause:

9 “(IV) For 2020 through 2024,
10 the productivity adjustment described
11 in subclause (II) shall be zero for a
12 payment system for any year in which
13 the Medicare Payment Advisory Com-
14 mission established under section
15 1805 estimates that payments pro-
16 vided under such payment system, on
17 an aggregate national basis, exceed
18 costs, on an aggregate national basis,
19 by 3.0 percent or less.”.

20 (e) PAYMENT FOR NEW AND INNOVATIVE DRUGS
21 AND BIOLOGICALS THAT ARE RENAL DIALYSIS SERV-
22 ICES.—Section 1881(b)(14) of the Social Security Act (42
23 U.S.C. 1395ww(b)(14)), as amended by subsections (a),
24 (b), and (c), is further amended by adding the following
25 new subparagraph:

1 “(N) PAYMENT FOR NEW AND INNOVATIVE
2 DRUGS, BIOLOGICALS, AND DEVICES THAT ARE
3 RENAL DIALYSIS SERVICES.—

4 “(i) IN GENERAL.—For drugs or
5 biologicals determined to be within a func-
6 tional category, the Secretary, in consulta-
7 tion with stakeholders, shall ensure that
8 the single payment amount is adequate to
9 cover the cost of new innovative drugs or
10 biologicals and increase the single payment
11 amount if it is not. The Secretary shall use
12 the cost and utilization data collected dur-
13 ing the two-year transitional period, as set
14 forth in the final regulation entitled ‘Medi-
15 care Program; End-Stage Renal Disease
16 Prospective Payment System, Payment for
17 Renal Dialysis Services Furnished to Indi-
18 viduals With Acute Kidney Injury, End-
19 Stage Renal Disease Quality Incentive Pro-
20 gram, Durable Medical Equipment, Pros-
21 thetics, Orthotics and Supplies (DMEPOS)
22 Competitive Bidding Program (CBP) and
23 Fee Schedule Amounts, and Technical
24 Amendments To Correct Existing Regula-
25 tions Related to the CBP for Certain

1 DMEPOS’ published on November 14,
2 2018 (83 Fed. Reg. 56922 et seq.).

3 “(ii) MONEY TO FOLLOW THE PA-
4 TIENT.—The Secretary through notice and
5 comment rulemaking shall implement a
6 policy for any drug or biological that is not
7 provided to the average patient that results
8 in the amount by which the single payment
9 amount is increased pursuant to this
10 clause shall be paid only when a provider
11 or renal dialysis facility has demonstrated
12 that it has administered the drug or bio-
13 logical to a patient.”.

14 (f) NEW DEVICES AND OTHER TECHNOLOGIES.—As
15 part of the promulgation of the annual rule for the Medi-
16 care end-stage renal disease prospective payment system
17 under section 1881(b)(14) of the Social Security Act (42
18 U.S.C. 1395rr(b)(14)) for calendar year 2021 and in con-
19 sultation with stakeholders, the Secretary of Health and
20 Human Services shall establish a process for identifying
21 and determining appropriate payment amounts for incor-
22 porating new devices and technologies into the bundled
23 payment under such system.

1 **TITLE III—IMPROVING THE AC-**
2 **CURACY AND TRANSPARENCY**
3 **OF END-STAGE RENAL DIS-**
4 **EASE QUALITY PROGRAMS**

5 **SEC. 301. IMPROVE PATIENT DECISION MAKING AND**
6 **TRANSPARENCY BY CONSOLIDATING AND**
7 **MODERNIZING QUALITY PROGRAMS.**

8 (a) MEASURES.—Section 1881(h)(2) of the Social
9 Security Act (42 U.S.C. 1395rr(h)(2)) is amended—

10 (1) by striking subparagraph (A) and inserting
11 the following:

12 “(A) IN GENERAL.—The measures speci-
13 fied under this paragraph with respect to the
14 year involved shall be selected in consultation
15 with stakeholders to promote improvement in
16 beneficiary outcomes and shared decision-mak-
17 ing with beneficiaries and their caregivers.
18 When selecting measures specified under this
19 paragraph, the Secretary shall take into ac-
20 count clinical gaps in care, underutilization that
21 may lead to beneficiary harm, patient safety,
22 and outcomes.”.

23 (2) by adding at the end the following new sub-
24 paragraphs:

1 “(F) WEIGHTING LIMITATION.—No single
2 measure specified by the Secretary or individual
3 measure within a composite measure so speci-
4 fied may be weighted less than 10 percent of
5 the total performance score.

6 “(G) STATISTICALLY VALID AND RELI-
7 ABLE.—In specifying measures under subpara-
8 graph (A), the Secretary shall only specify
9 measures that have been shown to be statis-
10 tically valid and reliable through testing.”.

11 (b) ENDORSEMENT.—Section 1881(h)(2)(B) of the
12 Social Security Act (42 U.S.C. 1395rr(h)(2)(B)) is
13 amended—

14 (1) in clause (ii), by adding at the end the fol-
15 lowing new sentence: “The exception under the pre-
16 ceding sentence shall not apply to a measure that
17 the entity with a contract under section 1890(a) (or
18 a similar entity) considered but failed to endorse.”;
19 and

20 (2) by adding at the end the following new
21 clause:

22 “(iii) COMPOSITE MEASURES.—
23 Clauses (i) and (ii) shall apply to com-
24 posite measures in the same manner as

1 such clauses apply to individual meas-
2 ures.”.

3 (c) REQUIREMENTS FOR DIALYSIS FACILITY COM-
4 PARE STAR RATING PROGRAM.—Section 1881(h)(6) of
5 the Social Security Act (42 U.S.C. 1395rr(h)(6)) is
6 amended by adding at the end the following new subpara-
7 graph:

8 “(E) REQUIREMENTS FOR ANY DIALYSIS
9 FACILITY COMPARE STAR RATING PROGRAM.—
10 To the extent that the Secretary maintains a
11 dialysis facility compare star rating program,
12 under such a program the Secretary shall—

13 “(i) assign stars using the same meth-
14 odology and total performance score re-
15 sults from the quality incentive program
16 under this subsection;

17 “(ii) determine the stars using the
18 same methodology used under such quality
19 incentive program; and

20 “(iii) not use a forced bell curve when
21 determining the stars or rebaselining the
22 stars.”.

23 (d) INCENTIVE PAYMENTS.—

24 (1) IN GENERAL.—Section 1881(h)(1) of the
25 Social Security Act (42 U.S.C. 1395rr(h)(1)) is

1 amended by adding at the end the following new
2 subparagraph:

3 “(D) INCENTIVE PAYMENTS.—

4 “(i) IN GENERAL.—In the case of a
5 provider of services or a renal dialysis fa-
6 cility that the Secretary determines exceeds
7 the attainment performance standards
8 under paragraph (4) with respect to a
9 year, the Secretary may make a bonus
10 payment to the provider or facility (pursu-
11 ant to a process established by the Sec-
12 retary).

13 “(ii) FUNDING.—The total amount of
14 bonus payments under clause (i) in a year
15 shall be equal to the total amount of re-
16 duced payments in a year under subpara-
17 graph (A).

18 “(iii) NO EFFECT IN SUBSEQUENT
19 YEARS.—The provisions of subparagraph
20 (C) shall apply to a bonus payment under
21 this subparagraph in the same manner
22 subparagraph (C) applies to a reduction
23 under such subparagraph.”.

1 (2) EFFECTIVE DATE.—The amendments made
2 by this section shall apply to items and services fur-
3 nished on or after January 1, 2020.

4 **TITLE IV—EMPOWERING** 5 **PATIENTS**

6 **SEC. 401. MEDIGAP COVERAGE FOR BENEFICIARIES WITH** 7 **END-STAGE RENAL DISEASE.**

8 (a) GUARANTEED AVAILABILITY OF MEDIGAP POLI-
9 CIES TO ALL ESRD MEDICARE BENEFICIARIES.—

10 (1) IN GENERAL.—Section 1882(s) of the So-
11 cial Security Act (42 U.S.C. 1395ss(s)) is amend-
12 ed—

13 (A) in paragraph (2)—

14 (i) in subparagraph (A), by striking
15 “is 65” and all that follows through the
16 period at the end and inserting the fol-
17 lowing: “is—

18 “(i) 65 years of age or older and is
19 enrolled for benefits under part B; or

20 “(ii) is entitled to benefits under
21 226A(b) and is enrolled for benefits under
22 part B.”; and

23 (ii) in subparagraph (D), in the mat-
24 ter preceding clause (i), by inserting “(or

1 is entitled to benefits under 226A(b))”
2 after “is 65 years of age or older”; and

3 (B) in paragraph (3)(B)—

4 (i) in clause (ii), by inserting “(or is
5 entitled to benefits under 226A(b))” after
6 is 65 years of age or older; and

7 (ii) in clause (vi), by inserting “(or
8 under 226A(b))” after “at age 65”.

9 (2) EFFECTIVE DATE.—The amendments made
10 by paragraph (1) shall apply to Medicare supple-
11 mental policies effective on or after January 1,
12 2021.

13 (b) ADDITIONAL ENROLLMENT PERIOD FOR CER-
14 TAIN INDIVIDUALS.—

15 (1) ONE-TIME ENROLLMENT PERIOD.—

16 (A) IN GENERAL.—In the case of an indi-
17 vidual described in paragraph (2), the Secretary
18 of Health and Human Services shall establish a
19 one-time enrollment period during which such
20 an individual may enroll in any Medicare sup-
21 plemental policy under section 1882 of the So-
22 cial Security Act (42 U.S.C. 1395ss) of the in-
23 dividual’s choosing.

24 (B) ENROLLMENT PERIOD.—The enroll-
25 ment period established under subparagraph

1 (A) shall begin on January 1, 2021, and shall
2 end June 30, 2021.

3 (2) INDIVIDUAL DESCRIBED.—An individual de-
4 scribed in this paragraph is an individual who—

5 (A) is entitled to hospital insurance bene-
6 fits under part A of title XVIII of the Social
7 Security Act under section 226A(b) of such Act
8 (42 U.S.C. 426–1(b));

9 (B) is enrolled for benefits under part B of
10 such title XVIII; and

11 (C) would not, but for the provisions of,
12 and amendments made by, subsection (a) be eli-
13 gible for the guaranteed issue of a Medicare
14 supplemental policy under paragraph (2) or (3)
15 of section 1882(s) of such Act (42 U.S.C.
16 1395ss(s)).

17 **SEC. 402. ALLOWING INDIVIDUALS WITH KIDNEY FAILURE**
18 **TO RETAIN ACCESS TO PRIVATE INSURANCE.**

19 (a) IN GENERAL.—Section 1862(b)(1)(C) of the So-
20 cial Security Act (42 U.S.C. 1395y(b)(1)(C)) is amend-
21 ed—

22 (1) in the last sentence, by inserting “and be-
23 fore January 1, 2020” after “prior to such date”;
24 and

1 (2) by adding at the end the following new sen-
2 tence: “Effective for items and services furnished on
3 or after January 1, 2020 (with respect to periods
4 beginning on or after the date that is 42 months
5 prior to such date), clauses (i) and (ii) shall be ap-
6 plied by substituting ‘42-month’ for ‘12-month’ each
7 place it appears.”.

8 (b) EFFECTIVE DATE.—The amendments made by
9 this subsection shall take effect on the date of enactment
10 of this Act. For purposes of determining an individual’s
11 status under section 1862(b)(1)(C) of the Social Security
12 Act (42 U.S.C. 1395y(b)(1)(C)), as amended by sub-
13 section (a), an individual who is within the coordinating
14 period as of the date of enactment of this Act shall have
15 that period extended to the full 42 months described in
16 the last sentence of such section, as added by the amend-
17 ment made by subsection (a)(2).

○