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(Original Signature of Member)

110TH CONGRESS
1ST SESSION

H. R.

To amend titles XI and XVIII of the Social Security Act to modernize the quality improvement organization (QIO) program.

IN THE HOUSE OF REPRESENTATIVES

Mr. BURGESS introduced the following bill; which was referred to the Committee on _____

A BILL

To amend titles XI and XVIII of the Social Security Act to modernize the quality improvement organization (QIO) program.

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 “Medicare Quality Improvement Organization Moderniza-
6 tion Act of 2007”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Quality improvement activities.
- Sec. 3. Improved program administration.
- Sec. 4. Data disclosure.
- Sec. 5. Use of evaluation and competition.
- Sec. 6. Quality improvement funding.
- Sec. 7. Qualifications for QIOs.
- Sec. 8. Coordination with medicaid.
- Sec. 9. Conforming name to “quality improvement organizations”.

1 **SEC. 2. QUALITY IMPROVEMENT ACTIVITIES.**

2 (a) INCLUSION OF QUALITY IMPROVEMENT FUNC-
3 TIONS.—Section 1154(a) of the Social Security Act (42
4 U.S.C. 1320c-3(a)) is amended by adding at the end the
5 following new paragraph: “

6 “(18) The organization shall offer quality im-
7 provement assistance to providers, practitioners,
8 Medicare Advantage organizations offering Medicare
9 Advantage plans under part C of title XVIII, and
10 prescription drug sponsors offering prescription drug
11 plans under part D of such title, including the fol-
12 lowing:

13 “(A) Education on quality improvement
14 initiatives, strategies, and techniques.

15 “(B) Instruction on how to collect, submit,
16 aggregate, and interpret data on measures that
17 may be used for quality improvement, public re-
18 porting, and payment.

19 “(C) Instruction on how to conduct root-
20 cause analyses.

1 “(D) Technical assistance for providers
2 and practitioners in beneficiary education to fa-
3 cilitate patient self-management.

4 “(E) Facilitating cooperation among var-
5 ious local stakeholders in quality improvement.

6 “(F) Facilitating adoption of procedures
7 that encourage timely candid feedback from pa-
8 tients and their families concerning perceived
9 problems.

10 “(G) Guidance on redesigning clinical proc-
11 esses, including the adoption and effective use
12 of health information technology, to improve the
13 coordination, effectiveness, and safety of care.

14 “(H) Assistance in improving the quality
15 of care delivered in rural and frontier areas and
16 reducing health care disparities among racial
17 and ethnic minorities, as well as gender dispari-
18 ties, including efforts to prevent or address any
19 inconsistencies or delays in the rate of adoption
20 of health information technology and in the ef-
21 fective use of such technology among such enti-
22 ties that treat racial and ethnic minorities or
23 individuals dually eligible for benefits under this
24 title and title XVIII or that furnish such serv-
25 ices in rural areas.

1 “(I) Assistance in improving coordination
2 of care as patients transition between providers
3 and practitioners, including developing the ca-
4 pacity to securely exchange electronic health in-
5 formation and helping providers and practi-
6 tioners to effectively use secure electronic health
7 information to improve quality.”.

8 (b) MEDICARE QUALITY ACCOUNTABILITY PRO-
9 GRAM.—Paragraph (14) of section 1154(a) of such Act
10 (42 U.S.C. 1320c-3(a)) is amended to read as follows:

11 “(14)(A) The organization shall conduct a re-
12 view of all written complaints about the quality of
13 services (for which payment may otherwise be made
14 under title XVIII) not meeting professionally recog-
15 nized standards of health care, if the complaint is
16 filed with the organization by an individual entitled
17 to benefits for such services under such title (or a
18 person acting on the individual’s behalf). Before the
19 organization concludes that the quality of services
20 does not meet professionally recognized standards of
21 health care, the organization must provide the prac-
22 titioner or person concerned with reasonable notice
23 and opportunity for discussion.

1 “(B) The organization shall establish and oper-
2 ate a Medicare quality accountability program con-
3 sistent with the following:

4 “(i) The organization shall actively educate
5 Medicare beneficiaries of their right to bring
6 quality concerns to Quality Improvement Orga-
7 nizations.

8 “(ii) The organization shall report findings
9 of its investigations to the beneficiary involved
10 or a representative of such beneficiary, regard-
11 less of whether such findings involve a provider,
12 physician or other practitioner, or plan. Such
13 report shall describe whether the organization
14 confirms the allegations in the complaint and
15 any actions taken by the provider, practitioner,
16 or plan, respectively, with respect to such find-
17 ings. Such findings may not be used in any
18 form in a medical malpractice action.

19 “(iii) The organization shall assist pro-
20 viders, practitioners, and plans in adopting best
21 practices for soliciting and welcoming feedback
22 about patient concerns, and assist providers,
23 practitioners, and plans in remedying patient-
24 reported problems that are confirmed by the or-
25 ganization and shall report findings of patient

1 reported problems to the provider, practitioner,
2 or plan involved before disclosing investigation
3 results to the patient or patient's representa-
4 tive.

5 “(iv) The organization shall determine
6 whether the complaint allegations about clinical
7 quality of care are confirmed and assist pro-
8 viders, practitioners, and plans in remedying
9 confirmed complaints.

10 “(v) The organization shall assist pro-
11 viders, practitioners, and plans in preventing re-
12 currence of quality problems caused by unsafe
13 systems of care, and refer to an appropriate
14 regulatory body providers, practitioners, or
15 plans that are unwilling or unable to improve.

16 “(vi) The organization shall publish annual
17 quality reports in each State in which the orga-
18 nization operates, including aggregate com-
19 plaint data and provider performance on stand-
20 ardized quality measures.

21 “(vii) The organization shall promote bene-
22 ficiary awareness of standardized quality meas-
23 ures that may be used for evaluating care and
24 for choosing providers, practitioners and plans.

1 “(C) The Secretary shall monitor and report to
2 Congress, regarding—

3 “(i) the reliability of complaint determina-
4 tions by Quality Improvement Organizations;

5 “(ii) the effect of disclosure of complaint
6 findings on the availability of primary- and spe-
7 cialty-care physician reviewers;

8 “(iii) changes resulting from the systems
9 change process described in subparagraph
10 (B)(v); and

11 “(iv) trends in civil litigation filed by Medi-
12 care beneficiaries or their representatives.”.

13 **SEC. 3. IMPROVED PROGRAM ADMINISTRATION.**

14 Part B of title XI of the Social Security Act is
15 amended by adding at the end the following new section:

16 “PROGRAM ADMINISTRATION

17 “SEC. 1164. (a) IMPROVED PROGRAM MANAGE-
18 MENT.—

19 “(1) REPORT ON MANAGEMENT OF THE QIO
20 PROGRAM.—The Comptroller General of the United
21 States shall submit to Congress, no later than
22 March 31, 2010, a report on the implementation by
23 the Secretary and the Director of the Office of Man-
24 agement and Budget of this part and their overall
25 management of the program under this part.

1 “(2) PROGRAM MANAGEMENT.—The report
2 under paragraph (1) shall include a review of all of
3 the following:

4 “(A) Implementation of the priorities, rec-
5 ommendations, and strategies of the strategic
6 advisory committee under subsection (c)(1).

7 “(B) Implementation of appropriate pro-
8 gram and contractor evaluation.

9 “(C) Ensuring timely issuance of state-
10 ments of work.

11 “(D) Ensuring timely and priority QIO ac-
12 cess to Medicare data for quality improvement
13 purposes.

14 “(E) Ensuring timely apportionment of
15 funding.

16 “(F) Ensuring funding levels are commen-
17 surate with new work added to the QIO con-
18 tract, as described in the second sentence of
19 section 1159(b)(1).

20 “(G) The process of developing the appor-
21 tionment request and determining the funding
22 allocation to QIOs.

23 “(H) The identification of and progress to-
24 wards measures of effective management by the
25 Secretary of the QIO program.

1 “(I) A review of the experience and quali-
2 fications of staff of the Centers for Medicare
3 & Medicaid Services in overseeing the pro-
4 gram.

5 “(3) INNOVATION.—The Secretary shall ensure
6 that Quality Improvement Organizations are pro-
7 vided maximum freedom in designing and applying
8 intervention strategies for local quality improvement.

9 “(b) ASSURING DATA ACCESS.—The Secretary shall
10 ensure that Quality Improvement Organizations have
11 timely, top priority access to Medicare data for all parts
12 of Medicare pertinent to the contract activities, in a form
13 allowing the data to be integrated and analyzed by such
14 organizations according to the needs of partners and
15 Medicare beneficiaries in each jurisdiction.

16 “(c) SETTING STRATEGIC PRIORITIES.—

17 “(1) APPOINTMENT OF STRATEGIC ADVISORY
18 COMMITTEE.—The Secretary shall appoint an inde-
19 pendent strategic advisory committee, composed of
20 national quality measurement and improvement ex-
21 perts, that includes at least three representatives of
22 organizations holding contracts under this part and
23 at least one appropriately qualified representative of
24 each of the following:

25 “(A) Medicare beneficiaries.

1 “(B) The Agency for Healthcare Research
2 and Quality.

3 “(C) The Federal Employee Health Bene-
4 fits Program.

5 “(D) The Indian Health Service.

6 “(E) The TRICARE program.

7 “(F) The Veterans Health Affairs pro-
8 gram.

9 “(G) State Medicaid programs.

10 “(H) Private purchasers.

11 “(I) Health care providers.

12 “(J) Physicians.

13 “(K) Other health care practitioners.

14 “(2) DUTIES OF COMMITTEE.—Such committee
15 shall set national strategic priorities for improve-
16 ment in the quality of care, consistent with the In-
17 stitute of Medicine’s six aims for health care im-
18 provement, including safety, effectiveness, patient
19 centeredness, timeliness, efficiency and equity, and
20 update these in time to permit preparation of a draft
21 statement of work and funding request for each pro-
22 gram cycle under this part.

23 “(3) INDEPENDENT EVALUATION.—The com-
24 mittee should ensure that the Quality Improvement
25 Organization program is evaluated by an inde-

1 pendent entity using a study design, such as a cross-
2 over design, to allow for an assessment of program
3 performance in a way that does not have an adverse
4 impact on providers, practitioners, and plans that
5 may work with the Organization.

6 “(4) FUNDING.—The Secretary shall allocate
7 funds for the strategic advisory committee from the
8 portion of the funding that does not directly fund
9 the contracts with Quality Improvement Organiza-
10 tions, as required under section 1159(b).

11 “(d) TAKING INTO ACCOUNT RECOMMENDATIONS
12 FROM STAKEHOLDERS IN STATEMENTS OF WORK.—Each
13 statement of work under this part for a contract period
14 beginning on or after August 1, 2008, shall include a task
15 for the contracting Quality Improvement Organization to
16 convene stakeholders to identify high priority quality prob-
17 lems for work in the next contract period that are relevant
18 to Medicare beneficiaries in the State. Each such organi-
19 zation shall propose, as part of such statement, one or
20 more projects to the Secretary taking into consideration
21 the recommendations of such stakeholders, along with sug-
22 gested performance measures to evaluate progress on such
23 item.

24 “(e) ALLOCATION OF RESOURCES TO PRIORITY
25 AREAS.—The Secretary shall allocate at least 20 percent

1 of the funding that directly funds contracts with Quality
2 Improvement Organizations under section 1159(b) to pro-
3 mote improvement in one or more locally defined priority
4 areas identified under subsection (d).

5 “(f) QUALITY COORDINATION.—Quality Improve-
6 ment Organizations holding contracts under this part shall
7 be an integral part of Federal performance improvement
8 initiatives and each organization’s activities shall be co-
9 ordinated with initiatives developed by the Secretary and
10 other Federal agencies.”.

11 **SEC. 4. DATA DISCLOSURE.**

12 Section 1160 of the Social Security Act (42 U.S.C.
13 1320c-9) is amended—

14 (1) in subsection (a)(3), by striking “subsection
15 (b)” and inserting “subsections (b) and (f)”; and

16 (2) by adding at the end the following new sub-
17 section:

18 “(f)(1) An organization with a contract with the Sec-
19 retary under this part may share individual-specific data
20 with a physician treating the individual, for quality im-
21 provement and patient safety purposes.

22 “(2) The Secretary shall promulgate, not later than
23 180 days after the date of the enactment of this sub-
24 section, a regulation that permits the sharing of data
25 under paragraph (1).

1 “(3) Nothing in this subsection shall be construed to
2 limit, alter, or affect the requirements imposed by the reg-
3 ulations promulgated under section 264(c) of the Health
4 Insurance Portability and Accountability Act of 1996.”.

5 **SEC. 5. USE OF EVALUATION AND COMPETITION.**

6 Section 1153 of the Social Security Act (42 U.S.C.
7 1320c-2) is amended—

8 (1) by amending paragraph (3) of subsection
9 (c) to read as follows:

10 “(3) contract terms are consistent with sub-
11 section (j);”;

12 (2) in subsection (c)(1), by inserting “, at the
13 sole discretion of the organization,” after “or may
14 subcontract”;

15 (3) in subsection (e), by striking “(1) Except as
16 provided” and all that follows through “(2)”;

17 (4) by adding at the end the following new sub-
18 sections:

19 “(j)(1) Subject to the succeeding provisions of this
20 subsection, each contract with an organization under this
21 section shall be for an initial term of five years, beginning
22 and ending on a common date for all contractors as re-
23 quired under this subsection and shall be renewable for
24 5 year terms thereafter.

1 “(2) If an incumbent organization achieves excellent
2 performance as described in paragraph (3), then the Sec-
3 retary may renew the contract with that organization
4 without full and open competition, but in no case may an
5 organization be permitted to hold a contract for more than
6 10 years without being subject to full and open competi-
7 tion.

8 “(3) Before publishing a request for proposal for a
9 contract period, the Secretary shall, in consultation with
10 the strategic advisory committee appointed under section
11 1164(c)(1), establish measurable goals for each task to be
12 included in such proposal. The contract shall include per-
13 formance thresholds by which an organization holding a
14 contract under this section may demonstrate excellent per-
15 formance. The Secretary may not establish such perform-
16 ance thresholds in such a way as to predetermine or limit
17 either the number or percentage of organizations which
18 may demonstrate excellent performance.

19 “(4) The Secretary shall publish the request for pro-
20 posals no later than four months prior to the beginning
21 of such contract period.

22 “(5) The Secretary shall utilize the strategic advisory
23 committee appointed under section 1164(c)(1) to qualify
24 the validity, reliability, and feasibility of measures to be
25 used in evaluating the performance of organizations hold-

1 ing a contract under this section. Before any performance
2 measure may be used for such purpose, it must have been
3 designated by such committee to be valid, reliable, and fea-
4 sible for use under similar circumstances, as demonstrated
5 in at least one reliable and valid study.

6 “(6) In the case of an open competition for a contract
7 under this section, if the incumbent organization bidding
8 for the contract in the State in which it holds the contract
9 demonstrates excellent performance in fulfilling the terms
10 of such contract during the previous contract period, the
11 Secretary shall award such organization a bonus equiva-
12 lent to ten percent of the total possible score for the pro-
13 posal.

14 “(7) The Secretary may not reduce the amount of
15 a contract award below the amount proposed by the bidder
16 prevailing in a competitive bidding process.

17 “(8) The Secretary shall design the process for per-
18 formance evaluation of contracts under this section—

19 “(A) to avoid interfering with the work of con-
20 tractors with plans, providers, and practitioners;

21 “(B) to hold harmless and not penalize contrac-
22 tors when performance is impaired or delayed by
23 failures of the Secretary, personnel of the Depart-
24 ment of Health and Human Services, or contractors

1 of the Secretary, to provide timely deliverables by
2 other entities;

3 “(C) to use a continuous measurement strategy
4 with provision for frequent performance updates for
5 evaluating interim progress; and

6 “(D) to require that evaluation metrics be mon-
7 itored and permit their adjustment based on experi-
8 ence or evolving science over the course of a contract
9 cycle.

10 “(k)(1) The Secretary shall extend each contract
11 under this section the contract period for which began on
12 or after August 1, 2005, and before February 1, 2006,
13 so that the subsequent contract period begins on October
14 1, 2009.

15 “(2) The Secretary shall apportion adequate funding
16 so that organizations with contracts extended under this
17 subsection can perform existing and new tasks, as deter-
18 mined by the Secretary, during the period of the contract
19 extension.

20 “(3) There are authorized to be appropriated such
21 sums as are necessary to respond to increased personnel
22 requirements resulting from starting all contracts simulta-
23 neously, as provided under this subsection.”.

1 **SEC. 6. QUALITY IMPROVEMENT FUNDING.**

2 Section 1159 of the Social Security Act (42 U.S.C.
3 1320c-8) is amended—

4 (1) by inserting “(a)” before “Expenses in-
5 curred”; and

6 (2) by adding at the end the following new sub-
7 section:

8 “(b)(1) The aggregate annual funding for contracts
9 under this part that begin after August 1, 2008, shall not
10 be less than \$421,666,000. In addition, there are author-
11 ized to be apportioned for contract periods in subsequent
12 years such additional amounts as may be necessary to ade-
13 quately fund any resource needs in excess of the amount
14 provided under the previous sentence.

15 “(2) At least 80 percent of the funding under this
16 part in a contract period shall be expended to directly fund
17 the contracts held by organizations, as required under sec-
18 tion 1153(b).

19 “(3) The Secretary shall determine the resource
20 needs for a contract period in consultation with represent-
21 atives from existing contractors. The determination shall
22 take into account factors including any new work added
23 via contract modification during the course of the contract
24 period or added from one contract cycle to the next cycle.
25 New work includes—

1 “(A) additional core contract tasks, require-
2 ments, deliverables, and performance thresholds;

3 “(B) technical assistance for additional pro-
4 viders, practitioners, and health plans and additional
5 provider settings;

6 “(C) increased outreach and communications to
7 Medicare beneficiaries, providers, practitioners, and
8 plans; and

9 “(D) increased volume of medical reviews.

10 “(4) With respect to the apportionment of funds
11 under this part for a contract period—

12 “(A) the Secretary shall submit a proposed ap-
13 portionment to the Director of the Office of Manage-
14 ment and Budget no later than 1 year before the
15 first date of the contract period;

16 “(B) such Director shall approve an proposed
17 apportionment no later than 9 months before the
18 first date of such contract period;

19 “(C) for tasks the Secretary proposes to con-
20 tinue from the previous contract period, if the ap-
21 portionment is not authorized by the deadline speci-
22 fied in subparagraph (B), funding shall continue for
23 the next contract period at a level no less than the
24 level for the previous contract period, increased by
25 the percentage increase in the consumer price index

1 for all urban consumers during the preceding 12-
2 month period.

3 “(5) Organizations with a contract under this part
4 may enter into contracts with public or private entities in-
5 cluding providers, practitioners, and payers other than the
6 Secretary, to provide quality improvement or other serv-
7 ices if there are arrangements made to avoid or mitigate
8 potential conflicts of interest.

9 “(6) Such organizations shall have the ability to meet
10 the terms of a contract by allocating funds to functions
11 established by the Secretary at its discretion. The Sec-
12 retary shall review whether the organization met the func-
13 tions and goals set out for the organization, regardless of
14 allocation of funds at the initial acceptance of the con-
15 tract.

16 “(7) Organizations with a contract under this part
17 may utilize funding allocated to such contracts to pay for
18 food costs directly related to fulfilling contract require-
19 ments.”.

20 **SEC. 7. QUALIFICATIONS FOR QIOS.**

21 (a) IN GENERAL.—Subsection (b) of section 1153 of
22 the Social Security Act (42 U.S.C. 1320c-2) is amended
23 by adding at the end the following new paragraph:

24 “(4)(A) The Secretary shall not enter into or renew
25 a contract under this section with an entity unless the en-

1 tity has demonstrated success in facilitating clinical and
2 administrative system redesign to improve the coordina-
3 tion, effectiveness, and safety of health care, and in facili-
4 tating cooperation among stakeholders in quality improve-
5 ment.

6 “(B) The Secretary shall ensure that the entity com-
7 plies with standards to ensure organizational integrity, in-
8 cluding—

9 “(i) appropriate representation of consumers
10 and other stakeholders in the composition of the
11 governing body;

12 “(ii) market-based compensation of board mem-
13 bers and executives;

14 “(iii) avoidance and mitigation of board mem-
15 ber conflict of interest; and

16 “(iv) safeguards to ensure appropriate travel
17 expenses.

18 To the extent practicable, the Secretary shall utilize stand-
19 ards developed in the private sector for purposes of car-
20 rying out this subparagraph and shall conduct audits as
21 necessary to ensure compliance with such standards.”.

22 (b) USE OF STATES FOR GEOGRAPHIC AREAS.—Sub-
23 section (a) of such section is amended to read as follows:

1 “(a) The Secretary shall designate each State as a
2 geographic area with respect to which contracts under this
3 part will be made.”.

4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to contract periods beginning after
6 the date of the enactment of this Act.

7 **SEC. 8. COORDINATION WITH MEDICAID.**

8 (a) PERMITTING ALTERNATIVE QUALITY IMPROVE-
9 MENT PROGRAM.—Section 1902(a)(30) of the Social Se-
10 curity Act (42 U.S.C. 1396a(a)(30)) is amended by strik-
11 ing “and” at the end of subparagraph (A), by adding
12 “and” at the end of subparagraph (B), and by adding
13 at the end the following new subparagraph:

14 “(C) provide, at the discretion of the State
15 plan, for a quality improvement program in
16 place of the program described in subparagraph
17 (A), in whole or in part, that—

18 “(i) establishes priorities for achieving
19 significant measurable improvement in the
20 quality of health care services provided to
21 individuals eligible under this title, and re-
22 views such priorities at least every five
23 years for the purpose of making appro-
24 priate revisions;

1 “(ii) provides quality improvement assist-
2 ance to providers and practitioners consistent
3 with such priorities; and

4 “(iii) provides for an annual report to
5 the Secretary on quality performance
6 under such plan of providers and practi-
7 tioners using nationally standardized qual-
8 ity measures;”.

9 (b) **ROLE OF QIOS.**—Section 1902(d) of such Act
10 (42 U.S.C. 1396a(d)) is amended—

11 (1) by inserting “(1)” after “(d)”; and

12 (2) by adding at the end the following new
13 paragraph:

14 “(2) If a State contracts with a Quality Improvement
15 Organization having a contract with the Secretary under
16 part B of title XI for the performance of quality improve-
17 ment program activities required by subsection (a)(30)(C),
18 such requirements shall be deemed to be met for those
19 activities by delegation to such an Organization if the con-
20 tract provides for the performance of activities not incon-
21 sistent with part B of title XI and provides for such assur-
22 ances of satisfactory performance by such an entity or or-
23 ganization as the Secretary may prescribe.”.

24 (c) **FUNDING.**—Section 1903(a)(3)(C) of such Act
25 (42 U.S.C. 1396b(a)(3)(C)) is amended—

1 (1) in clause (i), by striking “1902(d)” and in-
2 sserting “1902(d)(1)”; and

3 (2) by adding at the end the following new
4 clause:

5 “(iii) 75 percent of the sums expended
6 with respect to costs incurred during such
7 quarter (as found necessary by the Sec-
8 retary for the proper and efficient adminis-
9 tration of the State plan) as are attrib-
10 utable to the performance of quality im-
11 provement program activities under a con-
12 tract entered into under section 1902(d)(2)
13 by an organization holding a contract
14 under section 1153; and”.

15 (d) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to contract periods beginning after
17 the date of the enactment of this Act.

18 **SEC. 9. CONFORMING NAME TO “QUALITY IMPROVEMENT**
19 **ORGANIZATIONS”.**

20 Part C of title XI of the Social Security Act is amend-
21 ed by striking “utilization and quality control peer review”
22 (and “peer review”) each place it appears before “organi-
23 zation” or “organizations” and inserting “quality im-
24 provement”.