

Section-by-Section Analysis

Short Title and Table of Contents

This Act may be cited as the “Independent Medicare Advisory Council Act of 2009.”

Independent Medicare Advisory Council

Section (a) – Definitions

This section defines certain terms used in the statute.

Section (b) – Establishment of Council, Terms of Office and Membership, Salary

This section establishes the Independent Medicare Advisory Council, and sets forth terms of office for its members, including that the Council would be composed of five Members, who would be appointed by the President, by and with the advice and consent of the Senate. Members of the Council would hold terms of five years. The members would be physicians or have specialized expertise in medicine or health care policy. The President would be able to remove members of the Council for cause.

The President would designate a member of the Council as Chairman of the Council. The Chairman of the Council would have the authority to (1) appoint and supervise personnel employed under the Council (other than personnel employed regularly and full time in the immediate offices of members other than the Chairman), (2) distribute business among personnel appointed and supervised by the Chairman and among administrative units of the Council, and (3) use and expend funds.

Members of the Council would be paid under the Executive Schedule Level III, and the Chairman of the Council under Executive Schedule Level II.

Section (c) – Authority to Make Annual Medicare Payment Updates

The Council would have the authority to recommend to the President two packages of annual payment update rates for certain Medicare payment systems. By December 31 of each year, the Council would be required to transmit to the President a report containing annual update recommendations for those payment systems that operate on a calendar year basis, including payments for physicians, outpatient Part B services, home health, durable medical equipment and

prosthetics, clinical laboratories, ambulance services, ESRD and FTE resident amounts. By October 1 of each year, the Council would be required to transmit to the President a report containing annual update recommendations for those payment systems that operate on a fiscal year basis, including market basket updates to hospitals, skilled nursing facilities, and inpatient rehabilitation facilities, as well as adjustments to hospice care and long-term care facilities.

The Council would be required to make an annual payment update recommendation for each payment system specified, but would also be able to recommend the update provided under current law. The package of payment recommendations of the Council would be required to be designed in such a manner that its implementation would not result in any increase in the aggregate level of net expenditures under the Medicare program compared to the aggregate level that would have occurred absent such implementation. The Chief Actuary of the Centers for Medicare & Medicaid Services would report whether this requirement has been met. If the Chief Actuary determines that the recommendations do not satisfy the no-increase-in-net-expenditures requirement, then the annual payment updates would revert to current law.

Section (d) – Authority to Recommend Medicare Reforms

In addition to making annual Medicare payment recommendations, the Council would have the authority to recommend broader Medicare reforms. The bill also enumerates the sections of the Social Security Act with which the Council's reform recommendations must remain consistent, including: (1) Medicare's financing structure; (2) areas where the Secretary currently can exercise discretion; and (3) certain specified program administration procedures (such provisions relating to administrative and judicial review).

The bill would require that the package of recommendations for Medicare reforms also be designed in such a manner that their implementation would not result in any increase in the aggregate level of net expenditures under the Medicare program compared to the aggregate level that would have occurred absent such implementation; and either (1) improve the quality of medical care received by the beneficiaries of the Medicare program, or (2) improve the efficiency of the Medicare program's operation. The Chief Actuary of the Centers for Medicare & Medicaid Services would report whether the no-increase-in-net-expenditures requirement has been met. If the Chief Actuary determines that the recommendations do not satisfy that requirement, the recommendations would become null and void and current law would remain in effect. The Secretary would report on certain implementation aspects of the Council's recommendations.

Section (e) – Five-Year Start-Up Period

The Council may not make annual payment update or payment reform recommendations before September 15, 2014.

Section (f) – Review by the President

Within 30 days after transmittal of a report on annual payment updates by the Council, the President would be required transmit to the Council and to the Congress a message containing the President's approval or disapproval of the Council's report. Within 30 days after submission of the reports of the Chief Actuary and Secretary concerning the Council's Medicare reform recommendations, the President would be required to transmit to the Council and to the Congress a message containing the President's approval or disapproval of the Council's report on Medicare reform recommendations. The President would be required to approve or disapprove each report containing annual payment updates or Medicare reforms as a package. The President's message would include a copy of the relevant report of the Council, as well as either a certification of approval of the report or the reasons for disapproval of the report.

Section (g) – Review by Congress

If the President approves a package of recommendations by the Council, the Secretary of Health and Human Services may not implement them for 30 days or if a joint resolution of Congress disapproving the package of recommendations is enacted.

Section (h) – Authority of the Secretary to Implement the Council's Recommendations

If the President approves an annual payment update recommendation submitted by the Council, then, subject to section (g), the Secretary would be required to promulgate regulations to implement that recommendation. If the President approves a payment reform recommendation submitted by the Council, then, subject to section (g), the Secretary would be required to promulgate regulations to implement that recommendation, notwithstanding any provisions of the Social Security Act, except those excluded from the scope of reform by Section (d).

Section (i) – Annual Report

By March 1 of each year (beginning in the year 2016), the Council would be required to submit to the Congress a report on any recommendations made by the Council during the preceding

eighteen months, including the performance of the Secretary in implementing such recommendations.

Section (j) – Limitation on Judicial Review

Within 30 days of the President’s approval of a recommendation, the bill would permit expedited judicial review by the U.S. Court of Appeals for the District of Columbia, but solely on the ground that that the Council’s recommendation exceeded the scope of the Council’s authority for determining annual payment updates or making payment reforms. The Chief Actuary’s determination would serve as conclusive evidence that the no-increase-in-net-expenditures requirements have been met. No other judicial review of the recommendations of the Council, or of the President’s approval or disapproval of those recommendations, would be available.

Section (k) – Authorization of Appropriations

The bill would authorize such sums as necessary for the Council to carry out its duties and functions. Sixty percent of the funds appropriated would be transferred from the Federal Hospital Insurance Trust and 40 percent of such appropriation would be transferred from the Federal Supplementary Medical Insurance Trust Fund.