

PROPOSED LEGISLATIVE LANGUAGE

- (a) IN GENERAL. – Subsection (n) of section 1853 of the Social Security Act (42 U.S.C. 1395w-23) is amended-
- (1) In paragraph (1) by striking “and (5)”, and by inserting “(5), and (6)”;
 - (2) In paragraph (4) by striking at the beginning of paragraph (4) “In”, and inserting “Subject to paragraph (6), in”;
 - (3) At the end of the subsection by adding the following new paragraph (6):
 - a. “(6) Benchmark parameters for territories. Notwithstanding paragraphs (1), (2) and (4), in no case shall the blended benchmark amount for an area in a territory be less than 80 percent of the national average of the base payment amount specified in subparagraph (2)(E) among the 50 States and the District of Columbia, or greater than the lowest blended benchmark amount for an area among the 50 States and the District of Columbia.”

HOW SSA § 1853(n) WOULD READ UNDER THIS PROPOSED FIX

(n) DETERMINATION OF BLENDED BENCHMARK AMOUNT.—

(1) IN GENERAL.—For purposes of subsection (j), subject to paragraphs (3), (4), (5), and (6), the term “blended benchmark amount” means for an area—

(A) for 2012 the sum of—

(i) 1/2 of the applicable amount for the area; and

(ii) 1/2 of the amount specified in paragraph (2)(A) for the area and year; and

(B) for a subsequent year the amount specified in paragraph (2)(A) for the area and year.

(2) SPECIFIED AMOUNT.—

(A) IN GENERAL.—The amount specified in the subparagraph for an area and year is the product of—

(i) the base payment amount specified in subparagraph (E) for the area and year adjusted to take into account the phase-out in the indirect costs of medical education from capitation rates described in subsection (k)(4); and

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(ii) the applicable percentage for the area for the year specified under subparagraph (B).

(B) APPLICABLE PERCENTAGE.—Subject to subparagraph (D), the applicable percentage specified in this subparagraph for an area for a year in the case of an area that is ranked—

(i) in the highest quartile under subparagraph (C) for the previous year is 95 percent;

(ii) in the second highest quartile under such subparagraph for the previous year is 100 percent;

(iii) in the third highest quartile under such subparagraph for the previous year is 107.5 percent; or

(iv) in the lowest quartile under such subparagraph for the previous year is 115 percent.

(C) PERIODIC RANKING.—For purposes of this paragraph in the case of an area located—

(i) in 1 of the 50 States or the District of Columbia, the Secretary shall rank such area in each year specified under subsection (c)(1)(D)(ii) based upon the level of the amount specified in subparagraph (A)(i) for such areas; or

(ii) in a territory, the Secretary shall rank such areas in each such year based upon the level of the amount specified in subparagraph (A)(i) for such area relative to quartile rankings computed under clause (i).

(D) 1-YEAR TRANSITION FOR CHANGES IN APPLICABLE PERCENTAGE.—

(i) the applicable percentage for the area for the previous year; and

(ii) the applicable percentage that would otherwise apply for the area for the year.

(E) BASE PAYMENT AMOUNT.—Subject to subparagraph (F), the base payment amount specified in this subparagraph—

(i) for 2012 is the amount specified in subsection (c)(1)(D) for the area for the year; or

(ii) for a subsequent year that—

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(I) is not specified under subsection (c)(1)(D)(ii), is the base amount specified in this subparagraph for the area for the previous year, increased by the national per capita MA growth percentage, described in subsection (c)(6) for that succeeding year, but not taking into account any adjustment under subparagraph (C) of such subsection for a year before 2004; and

(II) is specified under subsection (c)(1)(D)(ii), is the amount specified in subsection (c)(1)(D) for the area for the year.

(F) APPLICATION OF INDIRECT MEDICAL EDUCATION PHASE-OUT.—The base payment amount specified in subparagraph (E) for a year shall be adjusted in the same manner under paragraph (4) of subsection (k) as the applicable amount is adjusted under such subsection.

(3) ALTERNATIVE PHASE-INS.—

(A) 4-YEAR PHASE-IN FOR CERTAIN AREAS.—If the difference between the applicable amount (as defined in subsection (k)) for an area for 2010 and the projected 2010 benchmark amount (as defined in subparagraph (C)) for the area is at least \$30 but less than \$50, the blended benchmark amount for the area is—

(i) for 2012 the sum of—

(I) 3/4 of the applicable amount for the area and year; and

(II) 1/4 of the amount specified in paragraph (2)(A) for the area and year;

(ii) for 2013 the sum of—

(I) 1/2 of the applicable amount for the area and year; and

(II) 1/2 of the amount specified in paragraph (2)(A) for the area and year;

(iii) for 2014 the sum of—

(I) 1/4 of the applicable amount for the area and year; and

(II) 3/4 of the amount specified in paragraph (2)(A) for the area and year;

(iv) for a subsequent year the amount specified in paragraph (2)(A) for the area and year.

(B) 6-YEAR PHASE-IN FOR CERTAIN AREAS.—If the difference between the applicable amount (as defined in subsection (k)) for an area for 2010 and the projected 2010

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benchmark amount (as defined in subparagraph (C)) for the area is at least \$50, the blended benchmark amount for the area is—

(i) for 2012 the sum of—

(I) $\frac{5}{6}$ of the applicable amount for the area and year; and

(II) $\frac{1}{6}$ of the amount specified in paragraph (2)(A) for the area and year;

(ii) for 2013 the sum of—

(I) $\frac{2}{3}$ of the applicable amount for the area and year; and

(II) $\frac{1}{3}$ of the amount specified in paragraph (2)(A) for the area and year;

(iii) for 2014 the sum of—

(I) $\frac{1}{2}$ of the applicable amount for the area and year; and

(II) $\frac{1}{2}$ of the amount specified in paragraph (2)(A) for the area and year;

(iv) for 2015 the sum of—

(I) $\frac{1}{3}$ of the applicable amount for the area and year; and

(II) $\frac{2}{3}$ of the amount specified in paragraph (2)(A) for the area and year;

(v) for 2016 the sum of—

(I) $\frac{1}{6}$ of the applicable amount for the area and year; and

(II) $\frac{5}{6}$ of the amount specified in paragraph (2)(A) for the area and year;

(vi) for a subsequent year the amount specified in paragraph (2)(A) for the area and year.

(C) PROJECTED 2010 BENCHMARK AMOUNT.—The projected 2010 benchmark amount described in this subparagraph for an area is equal to the sum of—

(i) $\frac{1}{2}$ of the applicable amount (as defined in subsection (k)) for the area for 2010; and

(ii) $\frac{1}{2}$ of the amount specified in paragraph (2)(A) for the area for 2010 but determined as if there were substituted for the applicable percentage specified in clause (ii) of such paragraph the sum of—

(I) the applicable percent that would be specified under subparagraph (B) of paragraph (2) (determined without regard to subparagraph (D) of such paragraph) for the area for 2010 if any reference in such paragraph to the “previous year” were deemed a reference to 2010; and

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(II) the applicable percentage increase that would apply to a qualifying plan in the area under subsection (o) as if any reference in such subsection to 2012 were deemed a reference to 2010 and as if the determination of a qualifying county under paragraph (3)(B) of such subsection were made for 2010.

(4) CAP ON BENCHMARK AMOUNT.— Subject to paragraph (6), in no case shall the blended benchmark amount for an area for a year (determined taking into account subsection (o)) be greater than the applicable amount that would (but for the application of this subsection) be determined under subsection (k)(1) for the area for the year.

(5) NON-APPLICATION TO PACE PLANS.—This subsection shall not apply to payments to a PACE program under section 1894.

(6) BENCHMARK PARAMETERS FOR TERRITORIES. Notwithstanding paragraphs (1), (2) and (4), in no case shall the blended benchmark amount for an area in a territory be less than 80 percent of the national average of the base payment amount specified in subparagraph (2)(E) among the 50 States and the District of Columbia, or greater than the lowest blended benchmark amount for an area among the 50 States and the District of Columbia.