

**[Section 3201 (and the amendments made by such section, as previously amended by section 10318) was repealed by section 1102(a) of HCERA. Section 1102(b) of HCERA amended section 1853 of SSA to provide for a phase-in of modified MA benchmarks under a blended benchmark amount under a new subsection (n); section 1102(c) of HCERA further amended section 1853 of SSA to apply a percentage quality increase under a new subsection (o). Sections 1102(b)-(c) of HCERA shown below]**

(b) **[Sec. 1102(b) of HCERA:]** Phase-in of Modified Benchmarks.—Section 1853 of the Social Security Act (42 U.S.C. 1395w-23) is amended—

(1) in subsection (j)(1)(A), by striking “(or, beginning with 2007,  $\frac{1}{12}$  of the applicable amount determined under subsection (k)(1)) for the area for the year” and inserting “for the area for the year (or, for 2007, 2008, 2009, and 2010,  $\frac{1}{12}$  of the applicable amount determined under subsection (k)(1) for the area for the year; for 2011,  $\frac{1}{12}$  of the applicable amount determined under subsection (k)(1) for the area for 2010; and, beginning with 2012,  $\frac{1}{12}$  of the blended benchmark amount determined under subsection (n)(1) for the area for the year”;

(2) by adding at the end the following new subsection:

“(n) DETERMINATION OF BLENDED BENCHMARK AMOUNT.—

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

“(A) for 2012 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; 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 this 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

“(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.—If, for a year after 2012, there is a change in the quartile in which an area is ranked compared to the previous year, the applicable percentage for the area in the year shall be the average of—

“(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—

“(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 sub-

paragraph (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)  $\frac{3}{4}$  of the applicable amount for the area and year; and

“(II)  $\frac{1}{4}$  of the amount specified in paragraph (2)(A) for the area and year;

“(ii) for 2013 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;

“(iii) for 2014 the sum of—

“(I)  $\frac{1}{4}$  of the applicable amount for the area and year; and

“(II)  $\frac{3}{4}$  of the amount specified in paragraph (2)(A) for the area and year; and

“(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 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; and

“(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; and

“(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

“(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.—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.”

(c) **[Sec. 1102(c) of HCERA:]** Applicable Percentage Quality Increases.—Section 1853 of such Act (42 U.S.C. 1395w–23), as amended by subsection (b), is amended—

(1) in subsection (j), by inserting “subject to subsection (o),” after “For purposes of this part,”;

(2) in subsection (n)(2)(B), as added by subsection (b), by inserting “, subject to subsection (o)” after “as follows”; and

(3) by adding at the end the following new subsection:

“(o) APPLICABLE PERCENTAGE QUALITY INCREASES.—

“(1) IN GENERAL.—Subject to the succeeding paragraphs, in the case of a qualifying plan with respect to a year beginning with 2012, the applicable percentage under subsection (n)(2)(B) shall be increased on a plan or contract level, as determined by the Secretary—

“(A) for 2012, by 1.5 percentage points;

“(B) for 2013, by 3.0 percentage points; and

“(C) for 2014 or a subsequent year, by 5.0 percentage points.

“(2) INCREASE FOR QUALIFYING PLANS IN QUALIFYING COUNTIES.—The increase applied under paragraph (1) for a qualifying plan located in a qualifying county for a year shall be doubled.

“(3) QUALIFYING PLANS AND QUALIFYING COUNTY DEFINED; APPLICATION OF INCREASES TO LOW ENROLLMENT AND NEW PLANS.—For purposes of this subsection:

“(A) QUALIFYING PLAN.—

“(i) IN GENERAL.—The term ‘qualifying plan’ means, for a year and subject to paragraph (4), a plan that had a quality rating under paragraph (4) of 4 stars or higher based on the most recent data available for such year.

“(ii) APPLICATION OF INCREASES TO LOW ENROLLMENT PLANS.—

“(I) 2012.—For 2012, the term ‘qualifying plan’ includes an MA plan that the Secretary determines is not able to have a quality rating under paragraph (4) because of low enrollment.

“(II) 2013 AND SUBSEQUENT YEARS.—For 2013 and subsequent years, for purposes of determining whether an MA plan with low enrollment (as defined by the Secretary) is included as a qualifying plan, the Secretary shall establish a method to apply to MA plans with low enrollment (as defined by the Secretary) the computation of quality rating and the rating system under paragraph (4).

“(iii) APPLICATION OF INCREASES TO NEW PLANS.—

“(I) IN GENERAL.—A new MA plan that meets criteria specified by the Secretary shall be treated as a qualifying plan, except that in applying paragraph (1), the applicable percentage under subsection (n)(2)(B) shall be increased—

“(aa) for 2012, by 1.5 percentage points;

“(bb) for 2013, by 2.5 percentage points;

and

“(cc) for 2014 or a subsequent year, by 3.5 percentage points.

“(II) NEW MA PLAN DEFINED.—The term ‘new MA plan’ means, with respect to a year, a plan offered by an organization or sponsor that has not had a contract as a Medicare Advantage organization in the preceding 3-year period.

“(B) QUALIFYING COUNTY.—The term ‘qualifying county’ means, for a year, a county—

“(i) that has an MA capitation rate that, in 2004, was based on the amount specified in subsection (c)(1)(B) for a Metropolitan Statistical Area with a population of more than 250,000;

“(ii) for which, as of December 2009, of the Medicare Advantage eligible individuals residing in the

county at least 25 percent of such individuals were enrolled in Medicare Advantage plans; and

“(iii) that has per capita fee-for-service spending that is lower than the national monthly per capita cost for expenditures for individuals enrolled under the original medicare fee-for-service program for the year.

“(4) QUALITY DETERMINATIONS FOR APPLICATION OF INCREASE.—

“(A) QUALITY DETERMINATION.—The quality rating for a plan shall be determined according to a 5-star rating system (based on the data collected under section 1852(e)).

“(B) PLANS THAT FAILED TO REPORT.—An MA plan which does not report data that enables the Secretary to rate the plan for purposes of this paragraph shall be counted as having a rating of fewer than 3.5 stars.

“(5) EXCEPTION FOR PACE PLANS.—This subsection shall not apply to payments to a PACE program under section 1894.”.

(4) DETERMINATION OF MEDICARE PART D LOW-INCOME BENCHMARK PREMIUM.—*[Amended section 1860D–14(b)(2)(B)(iii) of SSA, as amended by section 3302]*