

SEC. 6001. LIMITATION ON MEDICARE EXCEPTION TO THE PROHIBITION ON CERTAIN PHYSICIAN REFERRALS FOR HOSPITALS.

(a) IN GENERAL.—Section 1877 of the Social Security Act (42 U.S.C. 1395nn) is amended—

(1) in subsection (d)(2)—

(A) in subparagraph (A), by striking “and” at the end;

(B) in subparagraph (B), by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following new subparagraph:

“(C) in the case where the entity is a hospital, the hospital meets the requirements of paragraph (3)(D).”;

(2) in subsection (d)(3)—

(A) in subparagraph (B), by striking “and” at the end;

(B) in subparagraph (C), by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following new subparagraph:

“(D) the hospital meets the requirements described in subsection (i)(1) not later than 18 months after the date of the enactment of this subparagraph.”; and

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

“(i) REQUIREMENTS FOR HOSPITALS TO QUALIFY FOR RURAL PROVIDER AND HOSPITAL EXCEPTION TO OWNERSHIP OR INVESTMENT PROHIBITION.—

“(1) REQUIREMENTS DESCRIBED.—For purposes of subsection (d)(3)(D), the requirements described in this paragraph for a hospital are as follows:

“(A) PROVIDER AGREEMENT.—The hospital had—

“(i) physician ownership or investment on *December 31, 2010*; and **section 10601(a)(1) amended this clause by striking ‘February 1’ and inserting ‘August 1’; section 1106(1) of HCERA further amended this clause by striking ‘August 1, 2010’ and inserting ‘December 31, 2010’; shown to reflect probable intent**”

“(ii) a provider agreement under section 1866 in effect on such date.

“(B) LIMITATION ON EXPANSION OF FACILITY CAPACITY.—Except as provided in paragraph (3), the number of operating rooms, procedure rooms, and beds for which the hospital is licensed at any time on or after the date of the enactment of this subsection is no greater than the number of operating rooms, procedure rooms, and beds for which the hospital is licensed as of such date.

“(C) PREVENTING CONFLICTS OF INTEREST.—

“(i) The hospital submits to the Secretary an annual report containing a detailed description of—

“(I) the identity of each physician owner or investor and any other owners or investors of the hospital; and

“(II) the nature and extent of all ownership and investment interests in the hospital.

“(ii) The hospital has procedures in place to require that any referring physician owner or investor discloses to the patient being referred, by a time that permits the patient to make a meaningful decision regarding the receipt of care, as determined by the Secretary—

“(I) the ownership or investment interest, as applicable, of such referring physician in the hospital; and

“(II) if applicable, any such ownership or investment interest of the treating physician.

“(iii) The hospital does not condition any physician ownership or investment interests either directly or indirectly on the physician owner or investor making or influencing referrals to the hospital or otherwise generating business for the hospital.

“(iv) The hospital discloses the fact that the hospital is partially owned or invested in by physicians—

“(I) on any public website for the hospital; and

“(II) in any public advertising for the hospital.

“(D) ENSURING BONA FIDE INVESTMENT.—

“(i) The percentage of the total value of the ownership or investment interests held in the hospital, or in an entity whose assets include the hospital, by physician owners or investors in the aggregate does not exceed such percentage as of the date of enactment of this subsection.

“(ii) Any ownership or investment interests that the hospital offers to a physician owner or investor are not offered on more favorable terms than the terms offered to a person who is not a physician owner or investor.

“(iii) The hospital (or any owner or investor in the hospital) does not directly or indirectly provide loans or financing for any investment in the hospital by a physician owner or investor.

“(iv) The hospital (or any owner or investor in the hospital) does not directly or indirectly guarantee a loan, make a payment toward a loan, or otherwise subsidize a loan, for any individual physician owner or investor or group of physician owners or investors that is related to acquiring any ownership or investment interest in the hospital.

“(v) Ownership or investment returns are distributed to each owner or investor in the hospital in an amount that is directly proportional to the ownership

or investment interest of such owner or investor in the hospital.

“(vi) Physician owners and investors do not receive, directly or indirectly, any guaranteed receipt of or right to purchase other business interests related to the hospital, including the purchase or lease of any property under the control of other owners or investors in the hospital or located near the premises of the hospital.

“(vii) The hospital does not offer a physician owner or investor the opportunity to purchase or lease any property under the control of the hospital or any other owner or investor in the hospital on more favorable terms than the terms offered to an individual who is not a physician owner or investor.

“(E) PATIENT SAFETY.—

“(i) Insofar as the hospital admits a patient and does not have any physician available on the premises to provide services during all hours in which the hospital is providing services to such patient, before admitting the patient—

“(I) the hospital discloses such fact to a patient; and

“(II) following such disclosure, the hospital receives from the patient a signed acknowledgment that the patient understands such fact.

“(ii) The hospital has the capacity to—

“(I) provide assessment and initial treatment for patients; and

“(II) refer and transfer patients to hospitals with the capability to treat the needs of the patient involved.

“(F) LIMITATION ON APPLICATION TO CERTAIN CONVERTED FACILITIES.—The hospital was not converted from an ambulatory surgical center to a hospital on or after the date of enactment of this subsection.

“(2) PUBLICATION OF INFORMATION REPORTED.—The Secretary shall publish, and update on an annual basis, the information submitted by hospitals under paragraph (1)(C)(i) on the public Internet website of the Centers for Medicare & Medicaid Services.

“(3) EXCEPTION TO PROHIBITION ON EXPANSION OF FACILITY CAPACITY.—

“(A) PROCESS.—

“(i) ESTABLISHMENT.—The Secretary shall establish and implement a process under which a hospital that is an applicable hospital (as defined in subparagraph (E)) or is a high Medicaid facility described in subparagraph (F) may apply for an exception from the requirement under paragraph (1)(B). **[As revised by section 1106(2)(A) of HCERA]**

“(ii) OPPORTUNITY FOR COMMUNITY INPUT.—The process under clause (i) shall provide individuals and entities in the community in which the applicable hos-

pital applying for an exception is located with the opportunity to provide input with respect to the application.

“(iii) TIMING FOR IMPLEMENTATION.—The Secretary shall implement the process under clause (i) on February 1, 2012. *【As revised by section 10601(a)(2)(A)】*

“(iv) REGULATIONS.—Not later than January 1, 2012, the Secretary shall promulgate regulations to carry out the process under clause (i). *【As revised by section 10601(a)(2)(B)】*

“(B) FREQUENCY.—The process described in subparagraph (A) shall permit an applicable hospital to apply for an exception up to once every 2 years.

“(C) PERMITTED INCREASE.—

“(i) IN GENERAL.—Subject to clause (ii) and subparagraph (D), an applicable hospital granted an exception under the process described in subparagraph (A) may increase the number of operating rooms, procedure rooms, and beds for which the applicable hospital is licensed above the baseline number of operating rooms, procedure rooms, and beds of the applicable hospital (or, if the applicable hospital has been granted a previous exception under this paragraph, above the number of operating rooms, procedure rooms, and beds for which the hospital is licensed after the application of the most recent increase under such an exception).

“(ii) 100 PERCENT INCREASE LIMITATION.—The Secretary shall not permit an increase in the number of operating rooms, procedure rooms, and beds for which an applicable hospital is licensed under clause (i) to the extent such increase would result in the number of operating rooms, procedure rooms, and beds for which the applicable hospital is licensed exceeding 200 percent of the baseline number of operating rooms, procedure rooms, and beds of the applicable hospital.

“(iii) BASELINE NUMBER OF OPERATING ROOMS, PROCEDURE ROOMS, AND BEDS.—In this paragraph, the term ‘baseline number of operating rooms, procedure rooms, and beds’ means the number of operating rooms, procedure rooms, and beds for which the applicable hospital is licensed as of the date of enactment of this subsection (or, in the case of a hospital that did not have a provider agreement in effect as of such date but does have such an agreement in effect on December 31, 2010, the effective date of such provider agreement). *【As revised by section 1106(2)(B) of HCERA】*

“(D) INCREASE LIMITED TO FACILITIES ON THE MAIN CAMPUS OF THE HOSPITAL.—Any increase in the number of operating rooms, procedure rooms, and beds for which an applicable hospital is licensed pursuant to this paragraph may only occur in facilities on the main campus of the applicable hospital.

“(E) APPLICABLE HOSPITAL.—In this paragraph, the term ‘applicable hospital’ means a hospital—

“(i) that is located in a county in which the percentage increase in the population during the most recent 5-year period (as of the date of the application under subparagraph (A)) is at least 150 percent of the percentage increase in the population growth of the State in which the hospital is located during that period, as estimated by Bureau of the Census;

“(ii) whose annual percent of total inpatient admissions that represent inpatient admissions under the program under title XIX is equal to or greater than the average percent with respect to such admissions for all hospitals located in the county in which the hospital is located;

“(iii) that does not discriminate against beneficiaries of Federal health care programs and does not permit physicians practicing at the hospital to discriminate against such beneficiaries;

“(iv) that is located in a State in which the average bed capacity in the State is less than the national average bed capacity; and

“(v) that has an average bed occupancy rate that is greater than the average bed occupancy rate in the State in which the hospital is located.

“(F) HIGH MEDICAID FACILITY DESCRIBED.—*[As added by section 1106(2)(D) of HCERA]* A high Medicaid facility described in this subparagraph is a hospital that—

“(i) is not the sole hospital in a county;

“(ii) with respect to each of the 3 most recent years for which data are available, has an annual percent of total inpatient admissions that represent inpatient admissions under title XIX that is estimated to be greater than such percent with respect to such admissions for any other hospital located in the county in which the hospital is located; and

“(iii) meets the conditions described in subparagraph (E)(iii).

“(G) PROCEDURE ROOMS.—In this subsection, the term ‘procedure rooms’ includes rooms in which catheterizations, angiographies, angiograms, and endoscopies are performed, except such term shall not include emergency rooms or departments (exclusive of rooms in which catheterizations, angiographies, angiograms, and endoscopies are performed).

“(H) PUBLICATION OF FINAL DECISIONS.—Not later than 60 days after receiving a complete application under this paragraph, the Secretary shall publish in the Federal Register the final decision with respect to such application.

“(I) LIMITATION ON REVIEW.—There shall be no administrative or judicial review under section 1869, section 1878, or otherwise of the process under this paragraph (including the establishment of such process).

“(4) COLLECTION OF OWNERSHIP AND INVESTMENT INFORMATION.—For purposes of subparagraphs (A)(i) and (D)(i) of paragraph (1), the Secretary shall collect physician ownership and investment information for each hospital.

“(5) PHYSICIAN OWNER OR INVESTOR DEFINED.—For purposes of this subsection, the term ‘physician owner or investor’ means a physician (or an immediate family member of such physician) with a direct or an indirect ownership or investment interest in the hospital.

“(6) CLARIFICATION.—Nothing in this subsection shall be construed as preventing the Secretary from revoking a hospital’s provider agreement if not in compliance with regulations implementing section 1866.”.

(b) ENFORCEMENT.—

(1) ENSURING COMPLIANCE.—The Secretary of Health and Human Services shall establish policies and procedures to ensure compliance with the requirements described in subsection (i)(1) of section 1877 of the Social Security Act, as added by subsection (a)(3), beginning on the date such requirements first apply. Such policies and procedures may include unannounced site reviews of hospitals.

(2) AUDITS.—Beginning not later than May 1, 2012, the Secretary of Health and Human Services shall conduct audits to determine if hospitals violate the requirements referred to in paragraph (1). **[As revised by section 10601(b)]**