
Documentation

Senate Bill, H.R. 3590

Following is the subsection of the final Senate health-care bill, H.R. 3590, Section 3403, Subsection (d)(3), which attempts to prohibit any future changes to IMAB recommendations, or even to this subsection itself.

H.R.3590: Patient Protection and Affordable Care Act

(Engrossed Amendment as Agreed to by Senate)

SEC. 3403. INDEPENDENT MEDICARE ADVISORY BOARD.

(a) Board—

(1) IN GENERAL—Title XVIII of the Social Secu-

rity Act (42 U.S.C. 1395 et seq.), as amended by section 3022, is amended by adding at the end the following new section:

INDEPENDENT MEDICARE ADVISORY BOARD

Sec. 1899A. (a) Establishment—There is established an independent board to be known as the “Independent Medicare Advisory Board”.

(b) Purpose—It is the purpose of this section to, in accordance with the following provisions of this section, reduce the per capita rate of growth in Medicare spending—

* * *

(d) Congressional Consideration—

* * *

(3) LIMITATION ON CHANGES TO THE BOARD RECOMMENDATIONS—

(A) IN GENERAL—It shall not be in order in the Senate or the House of Representatives to consider any bill, resolution, or amendment, pursuant to this

subsection or conference report thereon, that fails to satisfy the requirements of subparagraphs (A)(i) and (C) of subsection (c)(2).

(B) **LIMITATION ON CHANGES TO THE BOARD RECOMMENDATIONS IN OTHER LEGISLATION**—It shall not be in order in the Senate or the House of Representatives to consider any bill, resolution, amendment, or conference report (other than pursuant to this section) that would repeal or otherwise change the recommendations of the Board if that change would fail to satisfy the requirements of subparagraphs (A)(i) and (C) of subsection (c)(2).

(C) **LIMITATION ON CHANGES TO THIS SUBSECTION**—It shall not be in order in the Senate or the House of Representatives to consider any bill, resolution, amendment, or conference report that would repeal or otherwise change this subsection.

(D) **WAIVER**—This paragraph may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members, duly chosen and sworn.

(E) **APPEALS**—an affirmative vote of three-fifths of the Members of the Senate, duly chosen and sworn, shall be required in the Senate to sustain an appeal of the ruling of the Chair on a point of order raised under this paragraph.

Editor’s note: *Here is Subsection (c)(2)(A)(i) and (C) laying out the requirements for IMAB proposals, referred to above:*

(2) **PROPOSALS**—

(A) **REQUIREMENTS**—each proposal submitted under this section in a proposal year shall meet each of the following requirements:

(i) If the Chief Actuary of the Centers for Medicare & Medicaid Services has made a determination under paragraph (7)(A) in the determination year, the proposal shall include recommendations so that the proposal as a whole (after taking into account recommendations under clause (v)) will result in a net reduction in total Medicare program spending in the implementation year that is at least equal to the applicable savings target established under paragraph (7)(B) for such implementation year. In determining whether a proposal meets the requirement of the preceding sentence, reductions in Medicare program spending during the 3-month period immediately preceding the implemen-

tation year shall be counted to the extent that such reductions are a result of the implementation of recommendations contained in the proposal for a change in the payment rate for an item or service that was effective during such period pursuant to subsection (e)(2)(A).

* * *

(C) **NO INCREASE IN TOTAL MEDICARE PROGRAM SPENDING**—each proposal submitted under this section shall be designed in such a manner that implementation of the recommendations contained in the proposal would not be expected to result, over the 10-year period starting with the implementation year, in any increase in the total amount of net Medicare program spending relative to the total amount of net Medicare program spending that would have occurred absent such implementation.

Editor’s note: *From subsection (d)(4), a clause entitled “Expedited Appeals”:*

(v) **WAIVER AND APPEALS**—this paragraph may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members, duly chosen and sworn. An affirmative vote of three-fifths of the Members of the Senate, duly chosen and sworn, shall be required in the Senate to sustain an appeal of the ruling of the Chair on a point of order raised under this section.

Editor’s note: *And then, it is specified that no one can appeal an action by the Secretary of Health and Human Services implementing recommendations of IMAB:*

(5) **LIMITATION ON REVIEW**—there shall be no administrative or judicial review under section 1869, section 1878, or otherwise of the implementation by the Secretary under this subsection of the recommendations contained in a proposal.

Editor’s note: *There are a dozen or so other times in the Senate bill where appeals of actions are also barred—most of which deal with cost-cutting measures such as “comparative effectiveness research” and similar Nazi-type methods.*