

[DISCUSSION DRAFT]113TH CONGRESS
2^D SESSION**H. R.** _____

To amend title XVIII of the Social Security Act to provide bundled payments for post-acute care services under parts A and B of Medicare, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. MCKINLEY introduced the following bill; which was referred to the Committee on _____

A BILL

To amend title XVIII of the Social Security Act to provide bundled payments for post-acute care services under parts A and B of Medicare, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Bundling and Coordi-
5 nating Post-Acute Care Act of 2014” and as the
6 “BACPAC Act of 2014”.

7 **SEC. 2. PURPOSES.**

8 The purposes of this Act are to—

1 (1) foster the delivery of high-quality post-acute
2 care services in the most cost-effective manner pos-
3 sible;

4 (2) preserve the ability of patients, with the
5 guidance of their physicians, to select their preferred
6 providers of post-acute care services;

7 (3) promote competition among post-acute care
8 providers on the basis of quality, cost, account-
9 ability, and customer service;

10 (4) achieve long-term sustainability by ensuring
11 operational stability through regional breadth and
12 the engagement of experienced care PAC coordina-
13 tors;

14 (5) advance innovation in fields including tele-
15 health, care coordination, medication management,
16 and hospitalization avoidance; and

17 (6) provide for the financial security of the
18 Medicare program by achieving substantial program
19 savings through maximized efficiencies, cost avoid-
20 ance, and outcomes improvement.

1 **SEC. 3. PROVIDING BUNDLED PAYMENTS FOR POST-ACUTE**
2 **CARE SERVICES UNDER PARTS A AND B OF**
3 **MEDICARE.**

4 Title XVIII of the Social Security Act is amended by
5 inserting after section 1866E (42 U.S.C. 1395cc-5) the
6 following new section:

7 “PROVIDING BUNDLED PAYMENTS FOR POST-ACUTE CARE
8 SERVICES

9 “SEC. 1866F. (a) IN GENERAL.—For a PAC bundle
10 with respect to qualifying discharges occurring on or after
11 January 1, 2016, instead of the payment otherwise pro-
12 vided under parts A and B, there shall be paid a single
13 payment amount (determined under subsection (d) and as
14 limited under paragraph (4) of such subsection) to be paid
15 to a PAC coordinator (as described in subsection (c)) se-
16 lected by an individual under such subsection.

17 “(b) PAC-RELATED DEFINITIONS.—In this section:

18 “(1) PAC BUNDLE.—The term ‘PAC bundle’
19 means PAC services furnished to an individual dur-
20 ing a PAC period in a PAC area.

21 “(2) PAC SERVICES.—

22 “(A) IN GENERAL.—The term ‘PAC serv-
23 ices’ includes—

24 “(i) post-hospital extended care serv-
25 ices, subject to subparagraph (C)(i);

1 “(ii) home health services, subject to
2 subparagraph (C)(ii);

3 “(iii) inpatient services provided in a
4 rehabilitation facility, subject to subpara-
5 graph (C)(iii);

6 “(iv) inpatient hospital services pro-
7 vided by a long-term care hospital, subject
8 to subparagraph (C)(iv);

9 “(v) durable medical equipment;

10 “(vi) outpatient prescription drugs
11 and biologicals;

12 “(vii) outpatient occupational or
13 speech-language therapy; and

14 “(viii) skilled nursing facility services.

15 “(B) EXCEPTIONS.—Such term does not
16 include—

17 “(i) physicians’ services;

18 “(ii) hospice care;

19 “(iii) outpatient hospital services;

20 “(iv) ambulance services; and

21 “(v) outpatient physical therapy serv-
22 ices.

23 “(C) NONAPPLICATION OF CERTAIN COV-
24 ERAGE LIMITATIONS.—

1 “(i) WAIVER OF SKILLED NURSING
2 FACILITY THREE DAY STAY REQUIRE-
3 MENT.—In applying subparagraph (A)(i),
4 the 3-day stay requirement described in
5 section 1861(i) (requiring that an individ-
6 ual’s inpatient stay in a discharging hos-
7 pital be for a duration of not less than 3
8 consecutive days) shall not apply.

9 “(ii) WAIVER OF HOMEBOUND RE-
10 QUIREMENT FOR HOME HEALTH SERV-
11 ICES.—In applying subparagraph (A)(ii),
12 the requirements cited in sections
13 1814(a)(2)(C) and 1835(a)(2)(A) that
14 home health services are or were required
15 because the individual is or was confined to
16 the home of the individual shall not apply.

17 “(iii) NONAPPLICATION OF REHABILI-
18 TATION FACILITY PERCENTAGE REQUIRE-
19 MENT.—In applying subparagraph (A)(iii),
20 any requirement that a specified percent-
21 age of the inpatient population served by
22 the facility require intensive rehabilitation
23 services for treatment of one or more of
24 the conditions specified in section
25 412.29(b)(2) of title 42, Code of Federal

1 Regulations, as of December 19, 2013,
2 shall not apply.

3 “(iv) NONAPPLICATION OF LONG-
4 TERM CARE HOSPITAL PERCENTAGE RE-
5 QUIREMENT.—In applying subparagraph
6 (A)(iv), any requirement that a specified
7 percentage of the discharged Medicare in-
8 patient population of the long-term care
9 hospital or its satellite facility be admitted
10 to the hospital or its satellite facility from
11 its co-located hospital shall not apply.

12 “(3) PAC PERIOD.—The term ‘PAC period’
13 means the period beginning on the date of a quali-
14 fying discharge (as defined in paragraph (10)) and
15 ending on the date that is the earlier of the fol-
16 lowing:

17 “(A) The date that is 90 days after the
18 date of such discharge.

19 “(B) The date on which the individual is
20 admitted to a hospital for purposes of receiving
21 services for a condition that is not related to
22 the condition for which the individual received
23 the acute care inpatient hospital services de-
24 scribed in paragraph (10)(A).

1 “(4) PAC AREA.—The term ‘PAC area’ means
2 an area with respect to which a PAC coordinator
3 has a PAC agreement in effect under subsection
4 (c)(1)(B).

5 “(5) PAC PHYSICIAN.—The term ‘PAC physi-
6 cian’ means, with respect to an individual receiving
7 a PAC bundle, the physician who has primary re-
8 sponsibility with respect to supervising the delivery
9 of services during the course of a PAC period.

10 “(6) PAC PROVIDER.—The term ‘PAC pro-
11 vider’ means, with respect to PAC services, the pro-
12 vider of services or supplier furnishing such services.

13 “(7) PAC NETWORK AGREEMENT.—The term
14 ‘PAC network agreement’ means, in the case that an
15 individual has selected a PAC coordinator under
16 subsection (c)(4)(A) for the furnishing of PAC serv-
17 ices, an agreement of a PAC coordinator with one
18 or more PAC providers to provide such services to
19 such individual.

20 “(8) PAC READMISSION.—The term ‘PAC re-
21 admission’ means, with respect to an individual re-
22 ceiving a PAC bundle, the individual’s admission to
23 a hospital within 90 days of the date of the quali-
24 fying discharge of the individual, for purposes of re-
25 ceiving services for a condition that is related to the

1 condition for which the individual received the acute
2 care inpatient hospital services described in para-
3 graph (10)(A).

4 “(9) PAC ASSESSMENT TOOL.—The term ‘PAC
5 assessment tool’ means the Continuity Assessment
6 Record and Evaluation (CARE) tool (or such equiv-
7 alent assessment tool as the Secretary may specify).

8 “(10) QUALIFYING DISCHARGE.—Subject to
9 subsection (e), the term ‘qualifying discharge’ means
10 a discharge after receiving acute care inpatient hos-
11 pital services (as defined by the Secretary) [in a
12 subsection (d) hospital (as defined in section
13 1886(d)(1)(B))] for which the discharge plan in-
14 cludes the furnishing of PAC services.

15 “(11) CRG.—The term ‘CRG’ means a condi-
16 tion-related group established under subsection
17 (d)(1).

18 “(c) PAC COORDINATORS.—

19 “(1) IN GENERAL.—In this section, the term
20 ‘PAC coordinator’ means an entity (such as a hos-
21 pital, health insurance issuer, third-party benefit
22 manager, or PAC provider) that—

23 “(A) is certified, under a process estab-
24 lished by the Secretary, as meeting appropriate
25 requirements specified by the Secretary, includ-

1 ing the requirements specified in paragraph (2);
2 and

3 “(B) has entered into and has in effect a
4 PAC agreement with the Secretary described in
5 paragraph (3).

6 “(2) REQUIREMENTS.—The requirements speci-
7 fied in this paragraph, with respect to an entity
8 serving a PAC area, are the following:

9 “(A) FINANCIAL SOLVENCY.—The entity
10 has the capacity, and provides sufficient assur-
11 ances of solvency, to bear financial risk as a
12 PAC coordinator under this section.

13 “(B) CAPACITY TO MANAGE CARE AND
14 FUNDING.—The entity has the capability to
15 manage the care and funding for PAC services
16 in such area.

17 “(C) PAC NETWORK AGREEMENTS.—

18 “(i) NETWORK CAPACITY TO SERVE
19 PAC AREA.—The entity has entered into
20 PAC network agreements with one or more
21 PAC providers in a PAC area in a manner
22 sufficient to ensure the availability of PAC
23 services for individuals residing in the area
24 who select the entity for the furnishing of
25 PAC services.

1 “(ii) LIMITATION ON BALANCE BILL-
2 ING.—Such a PAC network agreement
3 shall provide that the PAC provider shall
4 accept as payment in full for PAC services
5 furnished by such PAC provider the appli-
6 cable amount described in paragraph
7 (3)(C).

8 “(iii) QUALITY ASSURANCE.—Such a
9 PAC network agreement shall provide that
10 the PAC provider shall have in effect a
11 written plan of quality assurance and im-
12 provement, and procedures implementing
13 such plan, that meet such quality stand-
14 ards as the Secretary may specify.

15 “(D) CREDIT-WORTHINESS.—The entity
16 has demonstrated credit-worthiness.

17 “(E) MEDICAL DIRECTOR.—The entity em-
18 ploys or contracts with a medical director who
19 has an appropriate medical background.

20 “(3) TERMS OF PAC AGREEMENT.—The PAC
21 agreement described in this paragraph between an
22 entity and the Secretary shall, with respect to the
23 PAC area specified under subparagraph (B), have
24 such terms and conditions as are specified by the

1 Secretary consistent with this section and shall in-
2 clude the following:

3 “(A) CARE COORDINATION.—With respect
4 to an individual who selects the entity under
5 paragraph (4)(A)—

6 “(i) the entity shall select one or more
7 PAC providers in such area to furnish, di-
8 rectly or indirectly, clinically appropriate
9 PAC services (as determined through the
10 use of the PAC assessment tool) to the in-
11 dividual; and

12 “(ii) the entity shall coordinate the
13 furnishing of all such services for the indi-
14 vidual.

15 “(B) PAC AREA COVERED.—The PAC
16 agreement shall specify the PAC area under the
17 PAC agreement.

18 “(C) PAYMENT AMOUNT FOR PAC SERV-
19 ICES.—For PAC services furnished by a PAC
20 provider and furnished with respect to a quali-
21 fying discharge that occurs—

22 “(i) before January 1, 2019, the enti-
23 ty shall pay the PAC provider under the
24 PAC network agreement between the enti-
25 ty and the PAC provider—

1 “(I) with respect to such PAC
2 services that are services for which
3 the PAC provider would receive pay-
4 ment under this title without regard
5 to this section, an amount that is not
6 less than the amount that would oth-
7 erwise be paid to such PAC provider
8 under this title for such services; and

9 “(II) with respect to such PAC
10 services that are services for which
11 the PAC provider would not receive
12 payment under this title without re-
13 gard to this section, an amount speci-
14 fied under such PAC network agree-
15 ment; and

16 “(ii) on or after January 1, 2019, the
17 entity shall pay the PAC provider under
18 such PAC network agreement an amount
19 specified under such agreement.

20 “(D) DISTRIBUTION OF SAVINGS.—Insofar
21 as the payment amount to a PAC coordinator
22 under subsection (d)(3) for a PAC bundle fur-
23 nished to an individual is greater than the ag-
24 gregate amounts paid to PAC providers under
25 subparagraph (C) for such bundle for such indi-

1 vidual, the entity shall not retain an amount
2 greater than 70 percent of such savings and
3 shall pay an amount equivalent to—

4 “(i) not less than 10 percent of such
5 savings to such PAC providers;

6 “(ii) not less than 10 percent of such
7 savings to the PAC physician of the indi-
8 vidual; and

9 “(iii) in the case that there is no PAC
10 readmission of the individual, not less than
11 10 percent of such savings to the hospital
12 discharging the individual immediately
13 prior to the furnishing of such services.

14 Payments shall be made under each of clauses
15 (i), (ii), and (iii) to individuals and entities
16 independent of whether payment may be made
17 to such an individual or entity under another
18 such clause.

19 “(E) MAINTENANCE OF ADVISORY COM-
20 MITTEE.—The entity shall maintain an advisory
21 committee of PAC providers and of patient
22 stakeholders to advise the entity regarding its
23 activities under this section.

24 “(4) SELECTION AND CHANGE OF SELECTION
25 OF PAC COORDINATORS BY INDIVIDUAL.—

1 “(A) IN GENERAL.—The Secretary shall
2 establish a process for the selection and change
3 of selection of a PAC coordinator by an indi-
4 vidual who is receiving inpatient hospital serv-
5 ices and whose discharge has been or is likely
6 to be classified as a qualifying discharge.

7 “(B) LIMITATION ON SELECTION DUE TO
8 NETWORK ADEQUACY.—The process established
9 under subparagraph (A) may not allow an indi-
10 vidual to select (or to change a selection to) a
11 PAC coordinator in a PAC area unless the PAC
12 coordinator has entered into PAC network
13 agreements with such PAC providers in such
14 PAC area such that the PAC coordinator has a
15 sufficient number and range of health care pro-
16 fessionals and providers willing to provide serv-
17 ices under the terms of the PAC agreement.

18 “(5) CONSTRUCTION RELATING TO PAC COOR-
19 DINATORS OFFERING NON-PAC SERVICES.—Nothing
20 in this section shall be construed as prohibiting PAC
21 providers from offering, either directly or indirectly,
22 services that contribute to patient care, safety, and
23 readmission avoidance (such as medication manage-
24 ment, telehealth technologies, home environment

1 services, and transportation services) that are not
2 PAC services.

3 “(6) CONSTRUCTION REGARDING FLEXIBILITY
4 IN THE DELIVERY OF PAC SERVICES.—Nothing in
5 this section shall be construed to prevent a PAC net-
6 work agreement from permitting a PAC provider to
7 subcontract for the furnishing of PAC services that
8 the PAC provider is otherwise obligated to provide
9 under the agreement so long as the subcontractor
10 meets the same terms and conditions in furnishing
11 such services as would apply if the PAC provider
12 were to provide such services.

13 “(d) PAYMENT AMOUNTS.—

14 “(1) CLASSIFICATION OF CONDITIONS BY CRGS;
15 METHODOLOGY FOR CLASSIFICATION.—The Sec-
16 retary shall establish a classification of the condi-
17 tions of individuals receiving a PAC bundle by CRG
18 and a methodology for classifying specific PAC bun-
19 dles within these groups. The methodology shall, to
20 the extent feasible, classify such bundles through the
21 use of the PAC assessment tool.

22 “(2) COMPUTATION OF BASE RATE.—

23 “(A) IN GENERAL.—The Secretary shall
24 compute an average payment rate for PAC bun-
25 dles classified in each CRG and furnished dur-

1 ing a PAC period ending in the base year se-
2 lected under subparagraph (B).

3 “(B) BASE YEAR SELECTION.—The Sec-
4 retary shall select as a base year the most re-
5 cent year ending before the date of the enact-
6 ment of this section for which data are available
7 to carry out this section.

8 “(C) BUDGET-NEUTRAL COMPUTATION.—
9 The average payment rate for a PAC bundle
10 classified in a CRG shall be computed in a
11 manner so that, if it had been applied in the
12 base year, the aggregate payments for PAC
13 bundles classified in such CRG and furnished
14 during a PAC period ending in such year would
15 be equivalent to the aggregate payments under
16 this title for such bundles.

17 “(3) CALCULATION OF PAYMENT AMOUNT
18 BASED ON BASE RATE.—Subject to the succeeding
19 provisions of this subsection, the amount of the sin-
20 gle payment described in this paragraph, with re-
21 spect to a PAC bundle classified within a CRG and
22 furnished to an individual during a PAC period end-
23 ing—

24 “(A) in 2016, is the base average payment
25 rate for such bundle computed under paragraph

1 (2), increased by such percentage as the Sec-
2 retary estimates is the average rate of increase
3 in payments under this title for such bundle be-
4 tween the base year and 2016; and

5 “(B) in a subsequent year, is the amount
6 of the single payment for such bundle computed
7 under this paragraph for the previous year, in-
8 creased by a percentage specified by the Sec-
9 retary consistent with paragraph (4).

10 “(4) CALCULATION OF ANNUAL PERCENTAGE
11 INCREASE.—In calculating the percentage increases
12 applied under paragraph (3)(B), the Secretary shall
13 ensure that total expenditures for all PAC bundles
14 provided in accordance with this section do not ex-
15 ceed **[X]** percent of the **[applicable baseline]** over
16 the 8-fiscal year period beginning with fiscal year
17 2016.

18 “(5) ADJUSTMENT FOR READMISSIONS DURING
19 PAC PERIOD.—The amount paid to a PAC coordi-
20 nator under this subsection for a PAC bundle in a
21 PAC period that includes a PAC readmission shall
22 be reduced by an amount equal to the aggregate
23 amount of payments made for such PAC readmis-
24 sion of such individual.

1 “(6) ADJUSTMENT FOR GEOGRAPHIC AND RISK
2 FACTORS.—The Secretary shall adjust the amount
3 of payment described in paragraph (3) with respect
4 to services furnished to an individual in a PAC area
5 in a budget-neutral manner for a year—

6 “(A) by an appropriate factor that reflects
7 variations in costs for the furnishing of PAC
8 bundles among different geographic areas;

9 “(B) by an appropriate factor that ac-
10 counts for variations in costs for the furnishing
11 of such PAC services to the individual based
12 upon the health status of the individual; and

13 “(C) by an amount that accounts for his-
14 torical local (hospital referral cluster) pricing.

15 “(7) ADJUSTMENT IN CASE OF CHANGE OF SE-
16 LECTION BY INDIVIDUAL.—In the case of a change
17 of selection of PAC coordinator by the individual
18 under subsection (c)(4) during a PAC period, the
19 Secretary shall adjust the amount of payment de-
20 scribed in paragraph (3) in order to provide appro-
21 priate partial payments to be paid to the PAC coor-
22 dinator selected initially by the individual and to the
23 PAC coordinator selected under the change of selec-
24 tion by the individual. The method of calculating the
25 respective amounts of such appropriate partial pay-

1 ments shall be based on the method used for the
2 Home Health Partial Episode Payment adjustment.

3 “(8) USE OF PAC ASSESSMENT TOOL FOR PUR-
4 POSES OF ADJUSTMENT FOR RISK FACTORS.—In de-
5 termining an appropriate factor under paragraph
6 (6)(B) with respect to an individual, the Secretary
7 shall take into account an assessment of the indi-
8 vidual conducted using the PAC assessment tool.

9 “(e) PHASE-IN.—

10 “(1) DETERMINATION OF PAC EXPENDITURES
11 BY CRG.—Based on the most recent data available,
12 the Secretary shall determine the aggregate amount
13 of expenditures under this title for PAC services fur-
14 nished during the PAC period for each CRG (as de-
15 fined in paragraph (b)(11)).

16 “(2) RANKING OF CRGS BY VOLUME OF EX-
17 PENDITURE.—The Secretary shall rank the CRGs in
18 order based on the aggregate amount of expendi-
19 tures for PAC services described in clause (i) for
20 each CRG.

21 “(3) GROUPING OF CRGS.—The Secretary shall
22 group CRGs into four groups as follows:

23 “(A) FIRST GROUP.—The first group con-
24 sists of the CRGs that have the highest rank
25 under clause (ii) and that collectively account

1 for 25 percent of the aggregate amount of ex-
2 penditures for PAC services described in clause
3 (i).

4 “(B) SECOND GROUP.—The second group
5 consists of the CRGs that have the next highest
6 rank under clause (ii) after the first group in
7 subclause (I) and that collectively account for
8 25 percent of the aggregate amount of expendi-
9 tures for PAC services described in clause (i).

10 “(C) THIRD GROUP.—The third group con-
11 sists of the CRGs that have the next highest
12 rank under clause (ii) after the second group in
13 subclause (II) and that collectively account for
14 25 percent of the aggregate amount of expendi-
15 tures for PAC services described in clause (i).

16 “(D) FOURTH GROUP.—The fourth group
17 consists of the CRGs that are not included in
18 the first, second, or third group under this
19 clause.

20 “(4) PHASE-IN BY CRG GROUPING.—In apply-
21 ing this section for discharges in—

22 “(A) 2016, only discharges that are classi-
23 fied within the first group under subclause (I)
24 of clause (iii) shall be included;

1 “(B) 2017, only discharges that are classi-
2 fied within the first or second group under sub-
3 clause (I) or (II) of clause (iii) shall be in-
4 cluded;

5 “(C) 2018, only discharges that are classi-
6 fied within the first, second, or third group
7 under subclause (I), (II), or (III) of clause (iii)
8 shall be included; and

9 “(D) 2019 and subsequent years, dis-
10 charges that are classified within any group of
11 CRGs shall be included.”.

12 **SEC. 4. TRANSITIONAL CARE MANAGEMENT PAYMENTS**
13 **FOR PHYSICIANS.**

14 For purposes of encouraging transitional care man-
15 agement by PAC physicians (as defined in section
16 1866F(b)(5) of the Social Security Act), in carrying out
17 section 1848(e) of the Social Security Act (42 U.S.C.
18 1395w-4(e)), the Secretary of Health and Human Serv-
19 ices shall establish a new Transitional Care Management
20 (TCM) code to pay for care management by such a PAC
21 physician or revise and expand the use of existing TCM
22 codes 99495 and 99494.