

117TH CONGRESS  
1ST SESSION

# H. R. 5125

To amend title XI of the Social Security Act to clarify parameters for model testing and add accountability to model expansion under the Center for Medicare and Medicaid Innovation, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

AUGUST 27, 2021

Mr. SMITH of Nebraska (for himself, Mr. BUCHANAN, Mr. WENSTRUP, and Mr. SMITH of Missouri) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means, and Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend title XI of the Social Security Act to clarify parameters for model testing and add accountability to model expansion under the Center for Medicare and Medicaid Innovation, 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 “Strengthening Innova-  
5 tion in Medicare and Medicaid Act”.

1 **SEC. 2. SENSE OF CONGRESS.**

2 It is the sense of Congress that:

3 (1) The Center for Medicare and Medicaid In-  
4 novation (CMI) represents a valuable tool for testing  
5 innovative health care payment and service delivery  
6 models which can improve the coordination, quality,  
7 and efficiency of health care services.

8 (2) The model testing process is intended to  
9 test concepts on a limited scale first in Phase I, then  
10 assess initial results, and, if results merit, expand  
11 the model to a larger test in Phase II to confirm the  
12 initial results.

13 (3) Starting model testing on a limited scale,  
14 assessing results, and then expanding the model to  
15 confirm initial results protects the integrity of the  
16 Medicare program by minimizing unintentional  
17 losses or negative impacts to the patients or pro-  
18 viders participating in Phase I model testing.

19 (4) CMI should focus its attention on models  
20 most likely to succeed and should continually assess  
21 models and terminate those which are not gener-  
22 ating results in keeping with its purpose—lowering  
23 costs while maintaining or preserving patient out-  
24 comes.

25 (5) Mandatory models may be necessary to test  
26 certain payment models but should be used judi-

1 ciously and be as limited in scope as possible to min-  
 2 imize accidental adverse impacts.

3 (6) As CMI may waive certain provisions of  
 4 Medicare regulations, Congress may block models  
 5 which functionally alter or change the underlying ex-  
 6 isting statutes.

7 **SEC. 3. DEFINING CMI MODEL TESTING PARAMETERS.**

8 (a) SCOPE AND DURATION OF MODELS.—Section  
 9 1115A(a) of the Social Security Act (42 U.S.C. 1315a(a))  
 10 is amended by adding at the end the following new para-  
 11 graph:

12 “(6) SCOPE AND DURATION OF MODELS TEST-  
 13 ED.—beginning on or after the date of the enact-  
 14 ment of the Strengthening Innovation In Medicare  
 15 and Medicaid Act, for purposes of testing new pay-  
 16 ment and service delivery models, the Secretary shall  
 17 limit testing of a Phase 1 model to—

18 “(A) a period not to exceed 5 years; and

19 “(B) to the lesser of ten percent of appli-  
 20 cable individuals or 500,000 beneficiaries.”.

21 (b) CAP ON PHASE 1 MODEL TESTING.—Section  
 22 1115A(a) of the Social Security Act (42 U.S.C. 1315a(a)),  
 23 as amended by subsection (a), is further amended by add-  
 24 ing at the end the following new paragraph:

1           “(7) PHASE 1 MODEL LIMITATIONS.—During  
2           each fiscal year starting with Fiscal Year 2023, CMI  
3           shall initiate Phase 1 testing of no more than six  
4           new models each fiscal year. Additionally, CMI shall  
5           not concurrently test more than five Phase 1 models  
6           which involve mandatory, involuntary, or compulsory  
7           participation.”.

8           (c) REQUIRED WAIVERS FOR HARDSHIP.—Section  
9   1115A(a) of the Social Security Act (42 U.S.C. 1315a(a)),  
10   as amended by subsection (a), is further amended by add-  
11   ing at the end the following new paragraph:

12           “(8) HARDSHIP WAIVERS.—Not later than 60  
13           days after the enactment of the Strengthening Inno-  
14           vation in Medicare and Medicaid Act, the Secretary  
15           shall develop and implement a plan to allow applica-  
16           ble providers of services or supplies to request a  
17           waiver from any requirement of a model if the Sec-  
18           retary determines that such requirement would re-  
19           sult in undue economic hardship to such provider or  
20           supplier or loss of access to such healthcare services  
21           or supplies for vulnerable populations.”.

22           (d) MONITORING IMPACT.—Section 1115A(a) of the  
23   Social Security Act (42 U.S.C. 1315a(a)), as amended by  
24   subsections (a) and (b), is further amended by adding at  
25   the end the following new paragraph:

1 “(9) MONITORING IMPACT.—Not later than 60  
2 days after the enactment of the Strengthening Inno-  
3 vation in Medicare and Medicaid Act, the Secretary  
4 shall develop and implement a plan to—

5 “(A) monitor continuously and on a real-  
6 time basis the effect of a model under sub-  
7 section (b) on applicable individuals, and miti-  
8 gate any adverse impact, such as inappropriate  
9 reductions in care or reduced access to care;

10 “(B) assess and track the impact of deliv-  
11 ery and payment models on health disparities,  
12 using existing measures such as, but not limited  
13 to, the National Quality Forum Healthcare Dis-  
14 parities and Cultural Competency Measures;  
15 and

16 “(C) mitigate any adverse impact that the  
17 Secretary determines could affect beneficiary  
18 health.”.

19 **SEC. 4. IMPLEMENTATION OF TESTING AND EXPANSION OF**  
20 **MODELS WITH CONGRESSIONAL INACTION.**

21 Section 1115A(d) of the Social Security Act (42  
22 U.S.C. 1315a(d)) is amended by adding at the end the  
23 following new paragraph:

1           “(4) IMPLEMENTATION OF TESTING AND EX-  
2           PANSION OF MODELS WITH CONGRESSIONAL INAC-  
3           TION.—

4           “(A) The Secretary shall transmit a pro-  
5           posal for the testing, expansion, or modification  
6           of a model under subsections (b) and (c), in-  
7           cluding a proposed effective date and a sum-  
8           mary of the determinations and certification  
9           made under paragraphs (1) through (3) of sub-  
10          section (c), if applicable, to the Committee on  
11          Ways and Means and the Committee on Energy  
12          and Commerce of the House of Representatives  
13          and to the Committee on Finance and the Com-  
14          mittee on Health, Education, Labor, and Pen-  
15          sions of the Senate.

16          “(B) The testing, expansion, or modifica-  
17          tion of a model proposed in a report submitted  
18          under subparagraph (A) shall be carried out by  
19          the Secretary if Congress does not, within 45  
20          days of receiving such report, pass a joint reso-  
21          lution disapproving of the proposed testing or  
22          expansion in accordance with the following pro-  
23          cedure:

24                  “(i) The succeeding subparagraphs of  
25                  this paragraph are enacted by Congress as

1 an exercise of the rulemaking power of the  
2 Senate and the House of Representatives,  
3 respectively, and as such they shall be  
4 deemed a part of the rules of each House,  
5 respectively, but applicable only with the  
6 respect to the procedure to be followed in  
7 that House in the case of resolutions de-  
8 scribed in subparagraph (B). They shall  
9 supersede other rules only to the extent  
10 that they are inconsistent therewith. They  
11 are enacted with full recognition of the  
12 constitutional right of either House to  
13 change the rules (so far as relating to the  
14 procedure of that House) at any time, in  
15 the same manner and to the same extent  
16 as in the case of any rule of that House.

17 “(ii) For the purpose of the suc-  
18 ceeding paragraphs of this subsection, ‘res-  
19 olution’ means only a joint resolution, the  
20 matter after the resolving clause of which  
21 is as follows: ‘That Congress disapproves  
22 the model expansion requested pursuant to  
23 section 1115A(c) of the Social Security Act  
24 transmitted by the Secretary on  
25 \_\_\_\_\_, and such an expansion shall

1 not proceed.’, the blank space therein  
2 being filled with the date on which the Sec-  
3 retary’s message proposing such expansion  
4 was delivered.

5 “(iii) Upon receipt of a report sub-  
6 mitted to Congress under subparagraph  
7 (c)(4), each House shall provide copies of  
8 the report to the chairman and ranking  
9 member of the Committee on Ways and  
10 Means and the Committee on Energy and  
11 Commerce of the House of Representatives  
12 and to the Committee on Finance and the  
13 Committee on Health, Education, Labor,  
14 and Pensions of the Senate.

15 “(iv) A resolution shall be referred to  
16 the Committee on Ways and Means and  
17 the Committee on Energy and Commerce  
18 of the House of Representatives and to the  
19 Committee on Finance and the Committee  
20 on Health, Education, Labor, and Pen-  
21 sions of the Senate.

22 “(v) If a committee to which has been  
23 referred a resolution has not reported it  
24 before the expiration of 10 legislative days  
25 after its introduction, it shall then (but not



1 before) be in order to move to discharge  
2 the committee from further consideration  
3 of that resolution, or to discharge the com-  
4 mittee from further consideration of any  
5 other resolution with respect to the pro-  
6 posed expansion which has been referred to  
7 the committee. The motion to discharge  
8 may be made only by a person favoring the  
9 resolution, shall be highly privileged (ex-  
10 cept that it may not be made after the  
11 committee has reported a resolution with  
12 respect to the same proposed expansion),  
13 and debate thereon shall be limited to not  
14 more than 1 hour, to be divided equally be-  
15 tween those favoring and those opposing  
16 the resolution. An amendment to the mo-  
17 tion is not in order, and it is not in order  
18 to move to reconsider the vote by which  
19 the motion is agreed to or disagreed to. If  
20 the motion to discharge is agreed to or dis-  
21 agreed to, the motion may not be renewed,  
22 nor may another motion to discharge the  
23 committee be made with respect to any  
24 other resolution with respect to the same  
25 proposed expansion.

1           “(vi) When the committee has re-  
2           ported, or has been discharged from fur-  
3           ther consideration of a resolution, it is at  
4           any time thereafter in order (even though  
5           a previous motion to the same effect has  
6           been disagreed to) to move to proceed to  
7           the consideration of the resolution. The  
8           motion is highly privileged and is not de-  
9           batable. An amendment to the motion is  
10          not in order, and it is not in order to move  
11          to reconsider the vote by which the motion  
12          is agreed to or disagreed to. Debate on the  
13          resolution shall be limited to not more than  
14          2 hours, which shall be divided equally be-  
15          tween those favoring and those opposing  
16          the resolution. A motion further to limit  
17          debate is not debatable. An amendment to,  
18          or motion to recommit, the resolution is  
19          not in order, and it is not in order to move  
20          to reconsider the vote by which the resolu-  
21          tion is agreed to or disagreed to.

22          “(vii) Motions to postpone, made with  
23          respect to the discharge from committee,  
24          or the consideration of, a resolution and  
25          motions to proceed to the consideration of

1 other business shall be decided without de-  
2 bate. Appeals from the decision of the  
3 Chair relating to the application of the  
4 rules of the Senate or the House of Rep-  
5 resentatives, as the case may be, to the  
6 procedure relating to a resolution shall be  
7 decided without debate.

8 “(viii) COORDINATION WITH ACTION  
9 BY THE OTHER HOUSE.—If, before the  
10 passage by one House of a joint resolution  
11 of that House, that House receives from  
12 the other House a joint resolution, then  
13 the following procedures shall apply:

14 “(I) The joint resolution of the  
15 other House shall not be referred to a  
16 committee.

17 “(II) With respect to a joint res-  
18 olution of the House receiving the res-  
19 olution, the procedure in that House  
20 shall be the same as if no joint resolu-  
21 tion had been received from the other  
22 House; but the vote on passage shall  
23 be on the joint resolution of the other  
24 House.

1 “(ix) If one House fails to introduce  
2 or consider a joint resolution under this  
3 section, the joint resolution of the other  
4 House shall be entitled to expedited floor  
5 procedures under this section.

6 “(x) If, following passage of the joint  
7 resolution in the Senate, the Senate then  
8 receives the companion measure from the  
9 House of Representatives, the companion  
10 measure shall not be debatable.

11 “(xi) If Congress passes a joint reso-  
12 lution, the period beginning on the date  
13 the President is presented with the joint  
14 resolution and ending on the date the  
15 President takes action with respect to the  
16 joint resolution shall be disregarded in  
17 computing the 45-calendar day period de-  
18 scribed in subsection (c)(4).

19 “(xii) If the President vetoes the joint  
20 resolution—

21 “(I) the period beginning on the  
22 date the President vetoes the joint  
23 resolution and ending on the date the  
24 Congress receives the veto message  
25 with respect to the joint resolution

1 shall be disregarded in computing the  
2 45-calendar day period described in  
3 subsection (c)(4), and

4 “(II) debate on a veto message in  
5 the Senate under this section shall be  
6 1 hour equally divided between the  
7 majority and minority leaders or their  
8 designees.”.

9 **SEC. 5. PUBLIC INPUT.**

10 Section 115A(d) of the Social Security Act (42  
11 U.S.C. 1315a(d)) is amended by Section 3, is further  
12 amended by adding at the end of the following new para-  
13 graphs:

14 “(5) PUBLIC INPUT.—The Secretary shall use a  
15 process involving advance public notice and an op-  
16 portunity for stakeholder input and public comments  
17 to ensure transparency and accountability regarding  
18 the establishment, testing, implementation, evalua-  
19 tion, and expansion of a model under section  
20 1115A(b) and (c). Such public notice shall describe  
21 and define the standards, criteria, and processes  
22 that the Secretary will use for selecting and evalu-  
23 ating—

24 “(A) during initial stages of model develop-  
25 ment;

1           “(B) prior to testing under subsection  
2           (b)(1);

3           “(C) prior to modification of non-contrac-  
4           tual models under subsection (b)(3)(B); and

5           “(D) following evaluation of a model under  
6           subsection (b)(4) and prior to rulemaking under  
7           subsection (c).

8           Such notice shall explain the basis for the Sec-  
9           retary’s determination that the conditions set forth  
10          in section 115A(c) of the Social Security Act (42  
11          U.S.C. 1315a(c)) have been met. Additionally, the  
12          notice shall explain the basis for selection and the  
13          standards established by the Secretary under the  
14          regulations issued under paragraph (1), and any ad-  
15          ditional factors that will be used to test the model’s  
16          impact on quality of care, patient-centeredness, and  
17          innovation. The notice shall provide a minimum 45-  
18          day period for public comment. The Secretary shall  
19          take stakeholder comments into consideration when  
20          determining whether or how to refine the model or  
21          whether to proceed with testing under subsection  
22          (b)(1).

23          “(6) CONSULTATION.—In carrying out the du-  
24          ties under this subsection, the CMI shall consult  
25          representatives of relevant Federal agencies, and

1 clinical and analytical experts with expertise in medi-  
2 cine and health care management, specifically such  
3 experts with expertise in—

4 “(A) the health care needs of minority,  
5 rural and underserved populations; and

6 “(B) the financial needs of safety net,  
7 community-based, rural, and critical access pro-  
8 viders, including federally qualified health cen-  
9 ters.

10 The CMI shall use open door forums or other mech-  
11 anisms to seek external feedback from interested  
12 parties and incorporate that feedback into the devel-  
13 opment of models.”.

14 **SEC. 6. REESTABLISHING JUDICIAL REVIEW.**

15 Section 1115A(g) of the Social Security Act (42  
16 U.S.C. 1315a(g)) is amended—

17 (1) in the matter preceding subparagraph (A)  
18 by inserting after “or otherwise” the following: “(ex-  
19 cept as may be necessary to enforce requirements of  
20 this section or other laws or constitutional provisions  
21 intended to protect beneficiaries of affected pro-  
22 grams)”;

23 (2) by striking subparagraph (C);

24 (3) in subparagraph (D), by adding at the end  
25 “; and”;

1 (4) by redesignating subparagraph (D) as sub-  
2 paragraph (C);

3 (5) in subparagraph (E), at the end, by striking  
4 “; and”;

5 (6) by redesignating subparagraph (E) as sub-  
6 paragraph (D); and

7 (7) by striking subparagraph (F).

8 **SEC. 7. REVISION OF REPORTING REQUIREMENT.**

9 Section 1115A(g) of the Social Security Act (42  
10 U.S.C. 1315a(g)) is amended—

11 (1) by striking “and not less than once every  
12 other year thereafter” and inserting “and, for years  
13 before 2020, not less than once biennially (and, for  
14 years beginning with 2020, not less than annually)  
15 thereafter”; and

16 (2) by adding at the end the following new sen-  
17 tence: “With respect to 2020 and each subsequent  
18 year, the Secretary shall submit each such report by  
19 not later than December 15 of such year.”.

20 **SEC. 8. ADDRESSING OVERLAP IN VALUE-BASED CARE PRO-**  
21 **GRAMS.**

22 (a) IN GENERAL.—

23 (1) CMI.—Section 1115A(a)(5) of the Social  
24 Security Act (42 U.S.C. 1315a(a)(5)) is amended by  
25 adding at the end the following new sentence: “In



1       establishing such limits, the Secretary shall take into  
 2       account payment and service delivery models in  
 3       progress in such geographic areas.”.

4           (2) REPEAL OF MEDICARE DUPLICATION PRO-  
 5       HIBITION.—Section 1899(b) of the Social Security  
 6       Act (42 U.S.C. 1395jjj(b)) is amended by striking  
 7       paragraph (4)(A).

8       (b) REPORT.—Not later than 60 days after the date  
 9       of the enactment of this Act, the Secretary of Health and  
 10      Human Services shall conduct an assessment and submit  
 11      to Congress a report on alternative payment model overlap  
 12      under the Medicare program under title XVIII of the So-  
 13      cial Security Act. Such report shall include a description  
 14      of and recommendations relating to—

15           (1) appropriate participation in multiple alter-  
 16      native payment models for health care providers;

17           (2) feasibility of adequate evaluation of alter-  
 18      native payment models if participants are partici-  
 19      pating in multiple arrangements; and

20           (3) obstacles created by competing incentives  
 21      with respect to alternative payment models.

22      **SEC. 9. MODEL ELIGIBILITY AND QUALITY OF CARE.**

23           (a) CLARIFICATION OF MODEL ELIGIBILITY.—Sec-  
 24      tion 1115A of the Social Security Act (42 U.S.C. 1315a)  
 25      is amended—

1 (1) by striking “also” before “improve”; and

2 (2) in subsection (b)(2)(A), by inserting after  
3 the second sentence the following new sentence:

4 “The Secretary may also focus on models solely  
5 aimed at implementing practices to demonstrate ways to  
6 significantly improve the care, patient safety, and health  
7 outcomes of individuals receiving benefits under the appli-  
8 cable title in anticipation that quality of care benefits and  
9 potential direct or indirect savings will over time accrue  
10 to the Medicare or Medicaid program.”.

11 (b) ADDITIONAL OPPORTUNITY.—Section  
12 1115A(b)(2)(B) of the Social Security Act (42 U.S.C.  
13 1315a(b)(2)(B)) is amended by adding at the end the fol-  
14 lowing new clause:

15 “(xxviii) Implementing newly recog-  
16 nized and evidence-based, professionally  
17 supported care delivery practices and bun-  
18 dles to improve the efficient and effective  
19 delivery of hospital-based care and lead to  
20 enhanced patient outcomes, reductions in  
21 readmissions, or avoidance of costly med-  
22 ical errors or complications.”.

23 (c) INCLUSION OF INDIRECT SAVINGS.—Section  
24 1115A(b)(3)(A) of the Social Security Act (42 U.S.C.  
25 1315a(b)(3)(A)) is amended by inserting at the end “or

1 that savings cannot be made indirectly over time when  
 2 testing quality of care delivery models.”.

3 (d) EVALUATING QUALITY OF CARE.—Section  
 4 1115A(b)(4) of the Social Security Act (42 U.S.C.  
 5 1315a(b)(4)) is amended—

6 (1) in subparagraph (A), by amending clause (i)  
 7 to read as follows:

8 “(i) the quality of care furnished  
 9 under the model, including the measure-  
 10 ment of patient-level outcomes, patient-  
 11 centeredness, and any unintended con-  
 12 sequences, such as access to services, using  
 13 criteria determined appropriate by the Sec-  
 14 retary for each model; and”;

15 (2) in subparagraph (C), by striking “and” be-  
 16 fore “patient-centered care” and inserting “, are ap-  
 17 propriate to issues of quality outcomes related to the  
 18 medical conditions under study, and are”.

19 **SEC. 10. GAO REPORT.**

20 Not later than 12 months after the date of enactment  
 21 of this Act, the Comptroller General of the United States  
 22 shall submit to Congress a report on the efforts of the  
 23 Center for Medicare and Medicaid Innovation to attract,  
 24 retain, and develop emerging experts, including underrep-  
 25 resented individuals in medicine, such as women, racial

1 and ethnic minorities, and other groups. Such report shall  
2 include an analysis of the role minority staff play in model  
3 development and operational decisions on an ongoing  
4 bases and of the impact of the existing authority provided  
5 to the Center for Medicare and Medicaid Innovation to  
6 address workforce shortages and gaps in priority areas.

7 **SEC. 11. EFFECTIVE DATE.**

8 Except as otherwise provided in the previous sections  
9 of this Act (or the amendments made by such sections),  
10 such amendments shall apply with respect to the testing,  
11 expansion, or modification of models on or after January  
12 1, 2022.

○