

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 5347
OFFERED BY MR. SMITH OF MISSOURI**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Health Care Efficiency
3 Through Flexibility Act”.

**4 SEC. 2. ENSURING AVAILABILITY OF APPROPRIATE COL-
5 LECTION TYPES FOR QUALITY REPORTING
6 UNDER THE MEDICARE SHARED SAVINGS
7 PROGRAM.**

8 Section 1899(b)(3)(B) of the Social Security Act (42
9 U.S.C. 1395jjj(b)(3)(B)) is amended—

10 (1) by striking “An ACO shall submit” and in-
11 serting the following:

12 “(i) IN GENERAL.—An ACO shall
13 submit”; and

14 (2) by adding at the end the following new
15 clauses:

16 “(ii) REQUIRED AVAILABILITY OF
17 COLLECTION TYPES FOR CERTAIN
18 YEARS.—For performance years 2025

1 through 2029, the Secretary shall ensure
2 that the following collection types (as de-
3 scribed in section 414.1305 of title 42,
4 Code of Federal Regulations (or a suc-
5 cessor regulation)) are available with re-
6 spect to each measure described in sub-
7 paragraph (A)(i) required to be reported
8 by an ACO under this paragraph:

9 “(I) Electronic clinical quality
10 measures.

11 “(II) MIPS clinical quality meas-
12 ures.

13 “(III) Medicare Clinical Quality
14 Measures for Accountable Care Orga-
15 nizations Participating in the Medi-
16 care Shared Savings Program.

17 “(iii) CLARIFICATION ON APPLICA-
18 TION OF DATA COMPLETENESS REQUIRE-
19 MENTS IN CERTAIN CASES.—

20 “(I) IN GENERAL.—In deter-
21 mining whether data submitted by an
22 ACO with respect to a measure de-
23 scribed in subparagraph (A)(i) for a
24 performance year beginning on or
25 after January 1, 2025, satisfies the

1 data completeness requirements appli-
2 cable to such measure under section
3 414.1340 of title 42, Code of Federal
4 Regulations (or a successor regula-
5 tion) (as applied pursuant to section
6 425.512 of title 42, Code of Federal
7 Regulations (or a successor regula-
8 tion)), the Secretary may not find
9 such data to be unrepresentative of
10 such ACO's performance for such
11 year (as described in paragraph (e) of
12 such section 414.1340) based solely
13 on the fact that such data excludes
14 applicable data from 1 or more ACO
15 participants in such ACO if—

16 “(aa) such data submitted
17 by the ACO otherwise complies
18 with the data completeness re-
19 quirements of such section
20 414.1340; and

21 “(bb) such ACO dem-
22 onstrates to the satisfaction of
23 the Secretary that such ACO
24 participant was unable to collect
25 such data through the collection

1 type (as described in clause (ii))
2 selected by the ACO for the sub-
3 mission of such data.

4 “(II) DEFINITION.—In this
5 clause, the term ‘ACO participant’
6 has the meaning given such term in
7 section 425.20 of title 42, Code of
8 Federal Regulations (or a successor
9 regulation).

10 “(III) IMPLEMENTATION.—The
11 Secretary may implement this clause
12 by program instruction or otherwise.”.

13 **SEC. 3. PILOT PROGRAM FOR DIGITAL QUALITY MEASURE**
14 **REPORTING.**

15 Section 1899(b)(3)(B) of the Social Security Act (42
16 U.S.C. 1395jjj(b)(3)(B)), as amended by section 2, is fur-
17 ther amended by adding at the end the following new
18 clause:

19 “(iv) PILOT PROGRAM FOR DIGITAL
20 QUALITY MEASURE REPORTING.—

21 “(I) IN GENERAL.—For each of
22 performance years 2028 through
23 2032, the Secretary shall establish a
24 digital quality measure reporting pilot
25 program (in this clause referred to as

1 the ‘program’) under which ACOs se-
2 lected under subclause (II) for such
3 performance year report quality meas-
4 ures specified by the Secretary under
5 subclause (III) for such performance
6 year through a digital quality measure
7 collection type specified by the Sec-
8 retary.

9 “(II) SELECTION.—The Sec-
10 retary shall select ACOs to participate
11 in the program for a performance
12 year from ACOs that submit an appli-
13 cation at such time and in such form
14 and manner as specified by the Sec-
15 retary.

16 “(III) SPECIFICATION OF QUAL-
17 ITY MEASURES.—For each perform-
18 ance year of the program, the Sec-
19 retary shall specify 2 measures de-
20 scribed in subparagraph (A)(i) other-
21 wise required to be reported by ACOs
22 for such performance year for which
23 an ACO selected under subclause (II)
24 shall submit data through the collec-
25 tion type specified in subclause (I).

1 “(IV) WAIVER OF REQUIREMENT
2 TO REPORT OTHER MEASURES.—The
3 Secretary may not require an ACO se-
4 lected under subclause (II) for a per-
5 formance year to report data on any
6 measure described in subparagraph
7 (A)(i) otherwise required to be re-
8 ported by an ACO under this para-
9 graph for such performance year,
10 other than such a measure specified
11 under subclause (III) for such per-
12 formance year.

13 “(V) DISREGARD OF DATA FOR
14 CERTAIN MEASURES.—The Secretary
15 may not take into account any data
16 for a measure specified under sub-
17 clause (III) for a performance year
18 submitted by an ACO selected under
19 subclause (II) for such performance
20 year, or any data for a measure with
21 respect to which such ACO is not re-
22 quired to report data for such per-
23 formance year under subclause (IV),
24 in determining—

1 “(aa) whether such ACO has
2 met quality performance stand-
3 ards established by the Secretary
4 under subparagraph (C) for such
5 performance year; or

6 “(bb) any score for the qual-
7 ity performance category (as de-
8 scribed in section
9 1848(q)(2)(A)(i)) for an ACO
10 participant (as defined in clause
11 (iii)(II)) in such ACO for such
12 performance year.

13 “(VI) TECHNICAL ASSISTANCE.—
14 The Secretary shall provide such tech-
15 nical assistance to ACOs selected to
16 participate in the program as is prac-
17 ticable.

18 “(VII) PROVISION OF INFORMA-
19 TION.—Not later than December 31,
20 2032, the Secretary shall publicly post
21 (or include as part of annual rule-
22 making for this section) the following:

23 “(aa) An analysis of the pro-
24 gram.

1 “(bb) Any recommendations
2 for increasing submissions of
3 data for measures described in
4 subparagraph (A)(i) through the
5 collection type specified in sub-
6 clause (I); and
7 “(cc) A proposed timeline
8 for requiring such measures to be
9 submitted through such collection
10 type.”.

