

107TH CONGRESS  
1ST SESSION

# S. 1169

To streamline the regulatory processes applicable to home health agencies under the medicare program under title XVIII of the Social Security Act and the medicaid program under title XIX of such Act, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JULY 12, 2001

Mr. FEINGOLD (for himself, Mr. MURKOWSKI, Ms. COLLINS, and Mr. KERRY) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To streamline the regulatory processes applicable to home health agencies under the medicare program under title XVIII of the Social Security Act and the medicaid program under title XIX of such Act, 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; TABLE OF CONTENTS.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Home Health Nurse and Patient Act of 2001”.

6       (b) TABLE OF CONTENTS.—The table of contents of  
7       this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings.
- Sec. 3. Definitions.
- Sec. 4. OASIS Task Force (OTF).
- Sec. 5. Elimination of mandatory requirement to collect Outcomes Assessment and Information Set (OASIS) data from certain individuals.
- Sec. 6. Improving the claims review process for dually-eligible medicare and medicaid beneficiaries receiving home health services.
- Sec. 7. Claims Review and Audit Task Force (CRATF).
- Sec. 8. Implementation of Task Force recommendations.

## 1 **SEC. 2. FINDINGS.**

2       The Senate makes the following findings:

3           (1) The Outcomes Assessment and Information  
 4       Set (in this section referred to as “OASIS”) includes  
 5       information regarding the health and functional sta-  
 6       tus of patients of home health agencies, the use of  
 7       health services by such patients, the living conditions  
 8       of such patients, and the social support provided to  
 9       such patients, that is necessary to assess the quality  
 10      of care being provided to medicare and medicaid pa-  
 11      tients by home health agencies.

12          (2) According to the Comptroller General of the  
 13      United States, the average additional time that is  
 14      necessary for a home health agency to comply with  
 15      the OASIS requirement for a start-of-care assess-  
 16      ment is 61 minutes more than the amount of time  
 17      to comply with such requirement estimated by the  
 18      Centers for Medicare & Medicaid Services.

19          (3) Existing Federal regulations and associated  
 20      paperwork requirements are excessively straining

1 home health agencies and their clinical staff, and are  
 2 often reported by nurses to be the primary contribu-  
 3 tors to their decreased job satisfaction.

4 (4) Many nurses and home health aides are  
 5 leaving the home health care profession and patients  
 6 are staying in the hospital longer than necessary.

7 (5) A 2000 national survey of home health  
 8 agencies by the Hospital and Healthcare Compensa-  
 9 tion Service reported a 21 percent turnover rate for  
 10 registered nurses, a 24 percent turnover rate for li-  
 11 censed practical nurses, and a 28 percent turnover  
 12 rate for home health aides.

13 (6) In its May 17, 2001 report titled “Nursing  
 14 Workforce—Recruitment and Retention of Nurses  
 15 and Nurse Aides Is a Growing Concern”, the Gen-  
 16 eral Accounting Office reported that the jobs for  
 17 nurse aides working in home health care are pro-  
 18 jected to increase by 58 percent, from 746,000 in  
 19 1998 to 1,200,000 in 2008.

### 20 **SEC. 3. DEFINITIONS.**

21 In this Act:

22 (1) COMPREHENSIVE ASSESSMENT OF PA-  
 23 TIENTS.—The term “comprehensive assessment of  
 24 patients” means the rule published by the Centers  
 25 for Medicare & Medicaid Services that requires, as

1 a condition of participation in the medicare pro-  
2 gram, a home health agency to provide a patient-  
3 specific comprehensive assessment that accurately  
4 reflects the patient’s current status and that incor-  
5 porates the Outcome and Assessment Information  
6 Set (OASIS).

7 (2) CRATF.—The term “CRATF” means the  
8 Claims Review and Audit Task Force established  
9 under section 7.

10 (3) HOME HEALTH AGENCY.—The term “home  
11 health agency” has the meaning given that term  
12 under section 1861(o) of the Social Security Act (42  
13 U.S.C. 1395x(o)).

14 (4) OUTCOME AND ASSESSMENT INFORMATION  
15 SET; OASIS.—The terms “Outcome and Assessment  
16 Information Set” and “OASIS” mean the standard  
17 provided under the rule relating to data items that  
18 must be used in conducting a comprehensive assess-  
19 ment of patients.

20 (5) MEDICAID BENEFICIARY.—The term “med-  
21 icaid beneficiary” means an individual who is eligible  
22 for medical assistance under a State plan under the  
23 medicaid program under title XIX of the Social Se-  
24 curity Act (42 U.S.C. 1396 et seq.).

1           (6) MEDICARE BENEFICIARY.—The term  
 2           “medicare beneficiary” means an individual who is  
 3           entitled to benefits under part A of title XVIII of  
 4           the Social Security Act (42 U.S.C. 1395c et seq.) or  
 5           enrolled under part B of such title (42 U.S.C. 1395j  
 6           et seq.), including an individual who is enrolled in a  
 7           Medicare+Choice plan under part C of such title  
 8           (42 U.S.C. 1395w–21 et seq.).

9           (7) OTF.—The term “OTF” means the OASIS  
 10          Task Force established under section 4.

11          (8) SECRETARY.—The term “Secretary” means  
 12          the Secretary of Health and Human Services, acting  
 13          through the Administrator of the Centers for Medi-  
 14          care & Medicaid Services.

15 **SEC. 4. OASIS TASK FORCE (OTF).**

16          (a) ESTABLISHMENT OF THE OASIS TASK FORCE.—  
 17          The Secretary shall establish the OASIS Task Force (in  
 18          this section referred to as the “OTF”) in accordance with  
 19          the provisions of section 1114(f) of the Social Security Act  
 20          (42 U.S.C. 1314(f)).

21          (b) MEMBERSHIP.—The OTF shall be composed of  
 22          11 members appointed by the Secretary as follows:

23                  (1) 3 members shall be officers, employees, or  
 24                  designees of the Centers for Medicare & Medicaid  
 25                  Services.

1           (2) 4 members shall be national home health in-  
2       dustry representatives.

3           (3) 4 members shall be patient advocates.

4       (c) DATE.—The Secretary shall appoint the members  
5 of the OTF not later than the date that is 60 days after  
6 the date of enactment of this Act.

7       (d) STUDY AND REPORT.—

8           (1) STUDY.—The OTF shall conduct a study  
9       on the comprehensive assessment of patients to de-  
10      termine whether—

11           (A) the number of assessments required  
12       during an episode of care or the number of  
13       questions asked during each assessment should  
14       be decreased to eliminate redundant and  
15       uninformative clinical information;

16           (B) a uniform data collection standard is  
17       needed to ensure that patients who are not  
18       medicare beneficiaries or medicaid beneficiaries  
19       receive the same quality of care as patients who  
20       are medicare beneficiaries or medicaid bene-  
21       ficiaries; and

22           (C) OASIS data should be collected from  
23       medicaid beneficiaries who are not medicare  
24       beneficiaries.

1           (2) REPORT.—Not later than the date that is  
 2           6 months after the date of enactment of this Act,  
 3           the OTF shall submit to the Secretary and Congress  
 4           a report on the study conducted under paragraph  
 5           (1), together with such recommendations for legisla-  
 6           tive or administrative action as the OTF determines  
 7           appropriate.

8 **SEC. 5. ELIMINATION OF MANDATORY REQUIREMENT TO**  
 9                           **COLLECT OUTCOMES ASSESSMENT AND IN-**  
 10                           **FORMATION SET (OASIS) DATA FROM CER-**  
 11                           **TAIN INDIVIDUALS.**

12           Not later than the date that is 6 months after the  
 13           date of enactment of this Act, the Secretary shall promul-  
 14           gate a regulation revising the data collection requirements  
 15           under the Outcome and Assessment Information Set  
 16           (OASIS) standard that is used as part of the comprehen-  
 17           sive assessment of patients—

18           (1) to make the use of such data collection re-  
 19           quirements optional with respect to patients of home  
 20           health agencies who are not medicare beneficiaries  
 21           or medicaid beneficiaries; and

22           (2) to eliminate such data collection require-  
 23           ments with respect to any patient of a home health  
 24           agency to whom only personal care services are fur-  
 25           nished.

1 **SEC. 6. IMPROVING THE CLAIMS REVIEW PROCESS FOR DU-**  
 2 **ALLY-ELIGIBLE MEDICARE AND MEDICAID**  
 3 **BENEFICIARIES RECEIVING HOME HEALTH**  
 4 **SERVICES.**

5 (a) IN GENERAL.—The Secretary shall review each  
 6 regulation relating to the demand billing process as such  
 7 process applies to individuals who are both medicare bene-  
 8 ficiaries and medicaid beneficiaries to determine whether  
 9 such processes may be conducted in a manner that—

10 (1) is efficient;

11 (2) allows for—

12 (A) the determination of coverage of home  
 13 health services under the medicare program  
 14 with respect to a patient not later than the date  
 15 that is 3 weeks after the date on which the pa-  
 16 tient is admitted to the home health agency;  
 17 and

18 (B) the expedient submission of a claim  
 19 prior to the end of an episode of care that  
 20 avoids the submission of a request for antici-  
 21 pated payment before a final payment deter-  
 22 mination is made; and

23 (3) does not adversely affect medicare bene-  
 24 ficiaries, medicaid beneficiaries, or home health  
 25 agencies in the determination of whether payment



1        may be made under the medicare program for an  
 2        item or service furnished by a home health agency.

3        (b) IMPLEMENTATION.—Not later than the date that  
 4 is 6 months after the date of enactment of this Act, the  
 5 Secretary shall promulgate a final rule in accordance with  
 6 section 1871 of the Social Security Act (42 U.S.C.  
 7 1395hh) revising the processes described in subsection (a)  
 8 based on the review conducted under such subsection.

9        **SEC. 7. CLAIMS REVIEW AND AUDIT TASK FORCE (CRATF).**

10        (a) ESTABLISHMENT OF THE CLAIMS REVIEW AND  
 11 AUDIT TASK FORCE.—The Secretary shall establish the  
 12 Claims Review and Audit Task Force (in this section re-  
 13 ferred to as the “CRATF”) in accordance with the provi-  
 14 sions of section 1114(f) of the Social Security Act (42  
 15 U.S.C. 1314(f)).

16        (b) MEMBERSHIP.—The CRATF shall be composed  
 17 of 11 members appointed by the Secretary as follows:

18                (1) 5 members shall be officers or employees of  
 19        the Centers for Medicare & Medicaid Services.

20                (2) 6 members shall be national home health in-  
 21        dustry representatives.

22        (c) DATE.—The Secretary shall appoint the members  
 23 of the CRATF not later than the date that is 60 days  
 24 after the date of enactment of this Act.

25        (d) STUDY AND REPORT.—

1 (1) STUDY.—

2 (A) IN GENERAL.—The CRATF shall con-  
3 duct a study on the processes and policies used  
4 to review medical claims submitted by home  
5 health agencies, technical denials of payment of  
6 such claims, and the statistical sampling meth-  
7 odology used to conduct post-payment audits  
8 and reviews of such claims.

9 (B) SPECIFIC PROPOSALS CONSIDERED.—  
10 In conducting the study under subparagraph  
11 (A), the CRATF shall consider the following  
12 proposals:

13 (i) Establishing reasonable time limits  
14 on regional home health intermediaries for  
15 review of claims.

16 (ii) Creating opportunities to use al-  
17 ternative dispute resolution to resolve dis-  
18 putes involving a claim for payment of a  
19 home health agency.

20 (iii) Taking into account the results of  
21 all past claim reviews and appeal deter-  
22 minations to decide whether the provider  
23 should be subject to the proposed audit.

24 (iv) Setting standards for responsible  
25 and ethical home health agencies so that

1 agencies that meet those standards would  
2 be subject to a minimal number of sam-  
3 pling audits, focused medical reviews, and  
4 extensive prepayment claim reviews.

5 (v) The elimination of technical deni-  
6 als of payment of claims submitted by  
7 home health agencies.

8 (vi) Allowing the resubmission of any  
9 technically noncompliant claim submitted  
10 by a home health agency that has been  
11 corrected so that such claim is a clean  
12 claim.

13 (vii) Allowing physician assistants and  
14 nurse practitioners to certify and make  
15 changes to home health care plans to en-  
16 sure that home health agencies will be re-  
17 imbursed in a timely manner and that care  
18 to the medicare beneficiary or medicaid  
19 beneficiary would not be interrupted.

20 (viii) Developing a sampling regula-  
21 tion through the rulemaking process de-  
22 scribed in section 1871(b)(1) of the Social  
23 Security Act (42 U.S.C. 1871(b)(1)).

24 (ix) Only using the methodology of  
25 projecting overpayment to a provider of

1 home health services from a sample of  
2 claims where the Secretary has docu-  
3 mented a widespread pattern of submitting  
4 erroneous claims for payment by that pro-  
5 vider for which payment is made under the  
6 medicare program.

7 (2) REPORT.—Not later than the date that is  
8 6 months after the date of enactment of this Act,  
9 the CRATF shall submit to the Secretary and Con-  
10 gress a report on the study conducted under para-  
11 graph (1), together with such recommendations for  
12 legislative or administrative action as the CRATF  
13 determines appropriate.

14 **SEC. 8. IMPLEMENTATION OF TASK FORCE RECOMMENDA-**  
15 **TIONS.**

16 (a) IMPLEMENTATION OF OTF RECOMMENDA-  
17 TIONS.—Not later than the date that is 6 months after  
18 the date on which the Secretary receives the report sub-  
19 mitted under section 4(d)(2), the Secretary shall promul-  
20 gate a regulation in accordance with section 1871 of the  
21 Social Security Act (42 U.S.C. 1395hh) revising the regu-  
22 lations relating to the comprehensive assessment of pa-  
23 tients in order to implement the recommendations of the  
24 OTF contained in such report.

1       (b) IMPLEMENTATION OF CRATF RECOMMENDA-  
2 TIONS.—Not later than the date that is 6 months after  
3 the date on which the Secretary receives the report sub-  
4 mitted under section 7(d)(2), the Secretary shall promul-  
5 gate a regulation in accordance with section 1871 of the  
6 Social Security Act (42 U.S.C. 1395hh) revising the regu-  
7 lations relating to the processes and policies for review of  
8 medical claims submitted by home health agencies, tech-  
9 nical denials of payment of such claims, and the statistical  
10 sampling methodology used to conduct post-payment au-  
11 dits and reviews of such claims in order to implement the  
12 recommendations of the CRATF contained in such report.

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