

117TH CONGRESS
1ST SESSION

S. 2562

To amend title XVIII of the Social Security Act to improve extended care services by providing Medicare beneficiaries with an option for cost effective home-based extended care under the Medicare program, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 29, 2021

Ms. STABENOW (for herself, Mr. YOUNG, Ms. HASSAN, Ms. COLLINS, Mr. CASEY, Mr. LANKFORD, Mr. CARDIN, and Ms. LUMMIS) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend title XVIII of the Social Security Act to improve extended care services by providing Medicare beneficiaries with an option for cost effective home-based extended care under the Medicare program, 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 “Choose Home Care
5 Act of 2021”.

1 **SEC. 2. ESTABLISHMENT OF A HOME-BASED EXTENDED**
2 **CARE SERVICES BENEFIT AS PART OF MEDI-**
3 **CARE.**

4 (a) IMPROVED SUPPORT FOR HEALTH CARE AT
5 HOME.—

6 (1) IN GENERAL.—Section 1812 of the Social
7 Security Act (42 U.S.C. 1395d) is amended—

8 (A) in subsection (a)—

9 (i) in paragraph (2)(A), by inserting
10 “(reduced by the number of days of home-
11 based extended care services furnished
12 under paragraph (6) during such spell of
13 illness)” after “spell of illness”;

14 (ii) in paragraph (4), by striking
15 “and” at the end;

16 (iii) in paragraph (5), by striking the
17 period at the end and inserting “; and”;
18 and

19 (iv) by adding at the end the following
20 new paragraph:

21 “(6)(A) home-based extended care services for a
22 30-day episode for individuals who otherwise qualify
23 for post-hospital extended care services under para-
24 graph (2)(A);

1 “(B) to the extent provided in subsection (f),
 2 home-based extended care services that are not post-
 3 hospital home-based extended care services; and

4 “(C) in such circumstances as the Secretary
 5 may specify, home-based extended care services for
 6 one or more subsequent 30-day episode or episodes
 7 up to a maximum of 100 days of home-based ex-
 8 tended care services in a spell of illness.”;

9 (B) in subsection (b)—

10 (i) in paragraph (2), by striking “or”
 11 at the end;

12 (ii) in paragraph (3), by striking the
 13 period at the end and inserting “; or”; and

14 (iii) by inserting after paragraph (3)
 15 the following new paragraph:

16 “(4) home-based extended care services fur-
 17 nished to an individual after such services have been
 18 furnished to the individual for a 30-day episode dur-
 19 ing such spell, except as provided by the Secretary
 20 pursuant to subparagraph (B) or (C) of subsection
 21 (a)(6).”; and

22 (C) in subsection (f)—

23 (i) in paragraph (1)—

24 (I) by inserting “and, under sub-
 25 section (a)(6)(B), of home-based ex-

1 tended care services, as applicable,”
 2 after “extended care services” the
 3 first place it appears;

4 (II) by inserting “or post-hospital
 5 home-based extended care services”
 6 after “post-hospital extended care
 7 services”; and

8 (III) by inserting “or subsection
 9 (a)(6), as applicable” before the pe-
 10 riod; and

11 (ii) in paragraph (2)—

12 (I) in subparagraph (A), by in-
 13 serting “or subsection (a)(6)(B), as
 14 applicable” after “subsection
 15 (a)(2)(B)”; and

16 (II) in subparagraph (B), by
 17 striking “subsection” and inserting
 18 “subsections”.

19 (2) COINSURANCE AND DEDUCTIBLE.—Section
 20 1813(a)(3) of the Social Security Act (42 U.S.C.
 21 1395e(a)(3)) is amended by inserting the following
 22 before the period: “(or, in the case where an indi-
 23 vidual is furnished post-hospital home-based ex-
 24 tended care services, after such services (or a com-
 25 bination of such services and post-hospital extended

1 care services) have been furnished to him for 20
2 days during such spell)”.
3

3 (3) CERTIFICATION REQUIREMENT.—Section
4 1814(a)(2) of the Social Security Act (42 U.S.C.
5 1395f(a)(2)) is amended—

6 (A) in the matter preceding subparagraph
7 (A), by inserting “or (E)” after “subparagraph
8 (C)”;

9 (B) in subparagraph (C), by striking “or”
10 at the end;

11 (C) in subparagraph (D), by inserting “or”
12 after the semicolon; and

13 (D) by adding at the end the following new
14 subparagraph:

15 “(E) in the case of post-hospital home-
16 based extended care services, such services are
17 or were required to be furnished because the in-
18 dividual otherwise needs or needed and qualifies
19 for extended care services in a skilled nursing
20 facility payable under this part under subpara-
21 graph (B), and such individual does not qualify
22 for services in an inpatient rehabilitation facil-
23 ity or long-term care hospital payable under
24 this part;”.

1 (4) POST-HOSPITAL EXTENDED CARE SERV-
 2 ICES.—Section 1861(i) of the Social Security Act
 3 (42 U.S.C. 1395x(i)) is amended, in the second sen-
 4 tence—

5 (A) by striking “or (B)” and inserting
 6 “(B)”; and

7 (B) by inserting the following before the
 8 period “, or (C) in the case of an individual re-
 9 ceiving post-hospital home-based extended care
 10 services, within 30 days after discharge from a
 11 hospital”.

12 (5) DEFINITION OF HOME-BASED EXTENDED
 13 CARE SERVICES.—Section 1861 of the Social Secu-
 14 rity Act (42 U.S.C. 1395x) is amended by adding at
 15 the end the following new subsection:

16 “Home-Based Extended Care Services

17 “(III)(1) The term ‘home-based extended care serv-
 18 ices’ means the following items and services furnished to
 19 an individual in the individual’s home by a home health
 20 agency (as defined in subsection (o) including the addi-
 21 tional requirements under paragraph (9) of such sub-
 22 section), or by others under arrangements with such agen-
 23 cy:

24 “(A) Nursing care, other than as described in
 25 subsection (m), including when provided using tele-

1 communications technology as a supplement to daily
2 in-person care.

3 “(B) Physical or occupational therapy or
4 speech-language pathology services, other than as
5 described in subsection (m), including when provided
6 using telecommunications as a supplement to daily
7 in-person care.

8 “(C) Meals and nutritional support.

9 “(D) Remote patient monitoring as a supple-
10 ment to in-person care other than as described in
11 subsection (m).

12 “(E) Medical social services other than as de-
13 scribed in subsection (m).

14 “(F) Services of a home health aide other than
15 as described in subsection (m) and personal care
16 services.

17 “(G) Respite care, family caregiver and other
18 unpaid caregiver supports, education, and training
19 resources.

20 “(H) Assistance with adherence to drugs pre-
21 scribed for the individual.

22 “(I) Medical supplies, appliances, and equip-
23 ment, other than those described in subsection (m),
24 for use in the home, including related to bathing,
25 dressing, toileting, walking, or feeding.

1 “(J) Nonemergency medical transportation
2 other than ambulance services.

3 “(K) Care coordination and integration, includ-
4 ing providing discharge planning and care transi-
5 tions support to the individual and family and other
6 unpaid caregivers, including referral for person-cen-
7 tered counseling or options counseling from their
8 State’s Aging and Disability Resource Center/No
9 Wrong Door System, upon completion of a 30-day
10 episode or one or more subsequent 30-day episode or
11 episodes, if applicable, under section 1812(a)(6)(C).
12 To the greatest extent possible, care transitions sup-
13 port services provided as part of home-based ex-
14 tended care services should use evidence-based mod-
15 els and practices, particularly those that employ
16 face-to-face visits.

17 “(L) Such other items and services as the home
18 health agency determines are necessary for the care
19 of the individual in the home.

20 “(2) Nothing in this subsection shall be construed as
21 impacting an individual’s eligibility for transition of care
22 services under any other provision of this title or otherwise
23 for which the individual is eligible.”.

1 (6) DISCHARGE PLANNING.—Section
 2 1861(ee)(2) of the Social Security Act (42 U.S.C.
 3 1395x(ee)(2)) is amended—

4 (A) in subparagraph (D)—

5 (i) by striking “hospice care and post-
 6 hospital extended care services” and insert-
 7 ing “hospice care, post-hospital extended
 8 care services, post-hospital home-based ex-
 9 tended care services, and services furnished
 10 by inpatient rehabilitation facilities and
 11 units and long-term care hospitals”; and

12 (ii) by inserting “and home-based ex-
 13 tended care services” after “home health
 14 services”; and

15 (B) by adding at the end the following new
 16 subparagraph:

17 “(I) The discharge planning evaluation and dis-
 18 charge plan for an individual who meets applicable
 19 standards and criteria for extended care services
 20 under section 1812, and who does not need services
 21 provided by an inpatient rehabilitation facility or
 22 unit or a long-term care hospital, shall include, in
 23 addition to the items described in subparagraph
 24 (D)—

1 “(i) an evaluation, in coordination with a
2 qualified home health agency, of the appro-
3 priateness of home-based extended care serv-
4 ices, including consideration of patient charac-
5 teristics, including but not limited to functional,
6 cognitive, and behavioral competencies and defi-
7 cits and primary and secondary diagnoses, the
8 availability of able and willing caregivers, the
9 scope of home-based extended care services
10 needed and other services (if applicable), the
11 length of time such services would be needed,
12 the availability of the level of services needed,
13 and the need for and availability of health care
14 services following completion of home-based ex-
15 tended care services, the individual’s place of
16 care preferences, and the integration of and
17 consideration of social determinants, inclusive
18 of race and ethnicity and the availability of and
19 access to quality services, into measures used to
20 determine eligibility of a beneficiary to receive
21 home-based extended care services;

22 “(ii) a consultation with the individual as
23 to the findings of such evaluation, including
24 consideration of the individual’s place of care
25 preferences, goals regarding care, family care-

giver concerns, and the ability of the individual to safely and effectively receive care in the home;

“(iii) the provision of caregiver training resources to family and other unpaid caregivers including guidance on medical, nursing, and personal care tasks; and

“(iv) obtaining verbal consent from the individual that is recorded in the individual’s inpatient care record if the individual chooses to receive home-based extended care services.

Clauses (i), (ii), and (iii) shall not preempt any applicable State law requirements. Clause (iv) shall preempt any State law requirements relating to consent for home-based extended care services. The Secretary shall establish, through notice and comment rulemaking, the right to an expedited appeal of any adverse determination regarding the determination to provide the individual with the option of home-based extended care services and the scope of home-based extended care services needed by the individual.”.

(7) **ADDITIONAL REQUIREMENTS.**—Section 1861(o) of the Social Security Act (42 U.S.C. 1395x(o)) is amended—

1 (A) in paragraph (7)(B), by striking “and”
2 at the end;

3 (B) in paragraph (8), by inserting “and”
4 at the end; and

5 (C) by inserting after paragraph (8) the
6 following new paragraph:

7 “(9) for purposes of furnishing post-hospital
8 home-based extended care services under section
9 1812(a)(6), meets such additional requirements and
10 conditions as the Secretary finds necessary, includ-
11 ing—

12 “(A) the provision of care on a 24-hour
13 basis;

14 “(B) the ability to provide all items and
15 services described in subsection (lll);

16 “(C) the provision of necessary and cov-
17 ered services;

18 “(D) education, training, and supervision
19 requirements for those providing home-based
20 extended care services; and

21 “(E) compliance with all requirements and
22 conditions when such services are provided
23 under arrangement as described in subsection
24 (m) to ensure that others providing care under
25 such arrangement with such agency are held to

1 the same standards (requirements and condi-
2 tions) as the agency;”.

3 (8) HOME-BASED EXTENDED CARE SERVICES
4 ADD-ON.—Section 1895 of the Social Security Act
5 (42 U.S.C. 1395fff) is amended by adding at the
6 end the following new subsection:

7 “(f) HOME-BASED EXTENDED CARE SERVICES ADD-
8 ON.—

9 “(1) IN GENERAL.—An add-on payment in ad-
10 dition to the amount otherwise payable under this
11 section for home health services shall be made to a
12 home health agency that meets the additional re-
13 quirements of section 1861(o)(9) and provides home-
14 based extended care services under section
15 1812(a)(6).

16 “(2) PAYMENT AMOUNT.—Subject to para-
17 graphs (3) and (4), the amount of such add-on pay-
18 ment for home-based extended care services provided
19 to an individual shall be determined as follows:

20 “(A) DETERMINATION.—Such amount
21 shall be determined based on the following:

22 “(i) The following four case-mix clas-
23 sifications, determined by the number of
24 hours of personal care services provided to
25 an individual, as follows:

1 “(I) Up to 60 hours, including an
2 initial assessment.

3 “(II) 61 to 120 hours.

4 “(III) 121 to 240 hours.

5 “(IV) 241 to 360 hours of per-
6 sonal care services.

7 “(ii) In calculating the number of
8 hours of personal care services under
9 clause (i), part-time or intermittent serv-
10 ices provided by home health aides under
11 sections 1812(a)(2) and 1835(a)(2)(A)
12 shall not be included.

13 “(iii) Such other factors as the Sec-
14 retary determines appropriate.

15 “(B) FIXED BASE AMOUNT.—The Sec-
16 retary shall provide a fixed base amount for
17 each of the 4 case-mix classifications described
18 in subclauses (I) through (IV) of subparagraph
19 (A)(i) as follows:

20 “(i) 2022.—For services furnished
21 during 2022, a fixed base amount of—

22 “(I) in the case of the case-mix
23 classification described in subclause
24 (I) of subparagraph (A)(i), \$2,010;

1 “(II) in the case of the case-mix
 2 classification described in subclause
 3 (II) of such subparagraph, \$4,020;

4 “(III) in the case of the case-mix
 5 classification described in subclause
 6 (III) of such subparagraph, \$7,360;
 7 and

8 “(IV) in the case of the case-mix
 9 classification described in subclause
 10 (IV) of such subparagraph, \$10,720,
 11 respectively.

12 “(ii) 2023 AND SUBSEQUENT
 13 YEARS.—For services furnished during
 14 2023, or a subsequent year, a fixed base
 15 amount equal to the amount determined
 16 under this subparagraph for the preceding
 17 year for the applicable case-mix classifica-
 18 tion, updated by the home health applica-
 19 ble increase percentage under subsection
 20 (b)(3)(B) applicable to the year involved.

21 “(C) AREA WAGE INDEX ADJUSTMENT.—
 22 The fixed base amount determined under sub-
 23 paragraph (B) shall be subject to the applicable
 24 area wage index under subsection (b)(4)(C).

1 “(3) ALTERNATIVE ADD-ON PAYMENT
2 MODEL.—For services furnished in 2023, or in a
3 subsequent year, the Secretary may apply an alter-
4 native model of payment that shall be based on rel-
5 evant and reliable data on patient characteristics
6 that reflect the variations in resource use and inten-
7 sity within a patient case mix.

8 “(4) LIMITATION.—Notwithstanding any other
9 provision in this section, the amount of the addi-
10 tional payment under this subsection to a home
11 health agency for home-based extended care services,
12 in combination with the amount of payment for
13 home health services under this section for a unit of
14 services furnished to an individual, shall not result
15 in a total amount of payment under this section for
16 such services that exceeds an amount equal to 80
17 percent of the national median 30-day payment
18 amount for extended care services furnished in a
19 skilled nursing facility under section 1812 for the
20 most recent fiscal year prior to the payment year for
21 which data is available, updated based on the skilled
22 nursing facility market basket percentage change
23 under section 1888(e)(5)(B). The Secretary may ad-
24 just the amount of the additional payment for home-
25 based extended care services under this subsection in

1 order to comply with the limitation under the pre-
2 ceding sentence.”.

3 (b) TRANSPARENCY IN NOTICE AND COMMENT
4 RULEMAKING.—In establishing standards and procedures
5 under the provisions of, and amendments made by, this
6 Act, the Secretary of Health and Human Services (in this
7 section referred to as the “Secretary”) shall include full
8 transparency through notice and comment rulemaking of
9 the methodology, assumptions, evidence, and all data used
10 in support of proposed payment rates, standards for eligi-
11 bility and payment for services, provider conditions for
12 participation, and any other matter related to the imple-
13 mentation of such provisions and amendments.

14 (c) STAKEHOLDER INPUT.—In establishing any pro-
15 posed standards and procedures under the provisions of,
16 and amendments made by, this Act, the Secretary shall
17 solicit written input on such proposed standards and pro-
18 cedures from providers, representatives of providers, Medi-
19 care beneficiaries, families, and related stakeholder groups
20 and consider such input in the development of such stand-
21 ards and procedures.

22 (d) ANNUAL REPORT TO CONGRESS.—For calendar
23 year 2022, and each calendar year thereafter, the Sec-
24 retary shall submit a report to Congress on the coverage
25 of home-based extended care services under the Medicare

1 program (42 U.S.C. 1395 et seq.) pursuant to the provi-
2 sions of, and amendments made by, this Act. Each report
3 submitted under this subsection shall include the fol-
4 lowing:

5 (1) The total number of individuals receiving
6 such services pursuant to such provisions and
7 amendments, including which services such individ-
8 uals received, how long such individuals received
9 such services, and what the average hours were per
10 individual, and the total amount of expenditures for
11 such services under the Medicare program, including
12 an itemization of expenditures associated with home
13 health care and in-home support services.

14 (2) An analysis of the efficiency and effective-
15 ness of the processes for discharge planning evalua-
16 tion and discharge planning under section
17 1861(ee)(2)(I) of the Social Security Act, as added
18 by subsection (a)(6), an itemization of the diagnoses,
19 treatment protocols, and outcomes of individuals re-
20 ceiving benefits (including family or other unpaid
21 caregivers, as applicable), an evaluation comparing
22 clinical outcomes and patient experience for similar
23 patients receiving home-based extended care services
24 and services in skilled nursing facilities, an evalua-
25 tion (which shall include audits) of whether home-

1 based extended care services are being appropriately
2 targeted to individuals who need and would benefit
3 from the scope, level, and duration of such home-
4 based extended care services and whether individuals
5 receiving such services are receiving the appropriate
6 scope, level and duration of care, and the cost effec-
7 tiveness of furnishing home-based extended care
8 services in relation to alternative skilled nursing fa-
9 cility costs.

10 (3) Data by race and ethnicity as it applies to
11 eligibility, decision on participation of the bene-
12 ficiary, utilization rates, and availability of quality
13 home health services in defined locales, as well as
14 any protocol or changes in practice that were insti-
15 tuted to address existing inequities.

16 (4) Recommendations for such administrative
17 or legislative action as the Secretary determines nec-
18 essary to improve the furnishing of such services.

19 (e) PROGRAM INTEGRITY.—The Secretary shall take
20 such actions and establish safeguards as are reasonable
21 and necessary under existing law to ensure the program
22 integrity of the provision of home-based extended care
23 services pursuant to the provisions of, and amendments
24 made by, this Act.

25 (f) IMPLEMENTATION.—

1 (1) ESTABLISHMENT OF STANDARDS AND PRO-
2 CEDURES.—Not later than July 1, 2021, or as soon
3 as practical after enactment of this Act during a
4 public health emergency period described in section
5 1135(g) of the Social Security Act (42 U.S.C.
6 1320b–5(g)), the Secretary shall establish standards
7 and procedures related to furnishing home-based ex-
8 tended care services pursuant to the provisions of,
9 and amendments made by, this Act.

10 (2) PROVISION OF INFORMATION REGARDING
11 THE HOME-BASED EXTENDED CARE SERVICES BEN-
12 EFIT.—The Secretary shall provide comprehensive
13 information to Medicare beneficiaries and other
14 stakeholders regarding the establishment and avail-
15 ability of the home-based extended care services ben-
16 efit under the Medicare program under title XVIII
17 of the Social Security Act (42 U.S.C. 1395 et seq.)
18 pursuant to the provisions of, and amendments
19 made by, this Act. Such information shall be in ad-
20 dition to any publication of standards and proce-
21 dures with respect to such services in the Federal
22 Register and Code of Federal Regulations.

23 (3) AUTHORIZATION OF PAYMENTS DURING
24 PUBLIC HEALTH EMERGENCY PERIOD.—Notwith-
25 standing any other provision of law, the Secretary is

1 authorized to make payments for home-based ex-
2 tended care services as described in section 1895(f)
3 of the Social Security Act, as added by subsection
4 (a)(8), for such services furnished prior to 2022 dur-
5 ing any period in which there exists such a public
6 health emergency period.

○