

119TH CONGRESS
2D SESSION

S. 5062

To amend title XVIII of the Social Security Act to require medicare administrative contractors, unified program integrity contractors, and qualified independent contractors to pay the legal fees for certain durable medical equipment suppliers that were incorrectly denied payment.

IN THE SENATE OF THE UNITED STATES

JULY 22, 2026

Mr. CASSIDY 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 require medicare administrative contractors, unified program integrity contractors, and qualified independent contractors to pay the legal fees for certain durable medical equipment suppliers that were incorrectly denied payment.

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 “Fee Awards for Incor-
5 rect Reviews DME Appeals Act” or the “FAIR DME Ap-
6 peals Act”.

1 **SEC. 2. PAYMENT OF LEGAL FEES FOR CERTAIN DURABLE**
 2 **MEDICAL EQUIPMENT SUPPLIERS INCOR-**
 3 **RECTLY DENIED PAYMENT.**

4 (a) IN GENERAL.—Section 1869 of the Social Secu-
 5 rity Act (42 U.S.C. 1395ff) is amended by adding at the
 6 end the following new subsection:

7 “(j) PAYMENT OF CERTAIN LEGAL FEES FOR CER-
 8 TAIN DURABLE MEDICAL EQUIPMENT SUPPLIERS INCOR-
 9 RECTLY DENIED PAYMENT.—

10 “(1) IN GENERAL.—

11 “(A) PAYMENT OF FEES.—Notwith-
 12 standing section 504 of title 5, United States
 13 Code and section 2412 of title 28, United
 14 States Code (commonly known as the ‘Equal
 15 Access to Justice Act’), subject to the suc-
 16 ceeding subparagraphs of this paragraph, in the
 17 event a supplier of durable medical equipment
 18 wins a favorable final appeal of an initial deter-
 19 mination (and at the time of such initial deter-
 20 mination, such supplier was a small business
 21 concern, as defined in section 3 of the Small
 22 Business Act (15 U.S.C. 632)) by a covered
 23 contractor arising from or relating to the claims
 24 administration process involving durable med-
 25 ical equipment under this title, such appeal was
 26 heard by the Office of Medicare Hearings and

1 Appeals, and the administrative law judge hear-
2 ing such appeal determines that such initial de-
3 termination was clearly erroneous, was not sup-
4 ported by substantial evidence, or failed to fol-
5 low applicable provisions of law, regulation, or
6 instruction issued by the Secretary in effect at
7 the time of the initial determination, such con-
8 tractor (regardless of whether such contractor
9 is a named party in the appeal) shall pay the
10 reasonable attorney fees (as applicable) and liti-
11 gation costs of such supplier resulting from the
12 appeal of the initial determination—

13 “(i) at each stage of the appeal up to
14 and including the hearing before the Office
15 of Medicare Hearings and Appeals; and

16 “(ii) including any stage of the appeal
17 at which such supplier did not receive a fa-
18 vorable decision.

19 “(B) SPLITTING OF FEES.—If, during the
20 claims administrative process under this title, a
21 covered contractor affirmed an initial deter-
22 mination that resulted in a favorable final ap-
23 peal described in subparagraph (A), such cov-
24 ered contractor and the covered contractor who
25 made the initial determination shall evenly split

1 the reasonable attorney fees and litigation costs
2 described in such subparagraph.

3 “(C) APPLICATION.—A supplier of durable
4 medical equipment seeking the payment of rea-
5 sonable attorney fees and litigation costs under
6 subparagraph (A) shall, by not later than 30
7 days after the date the favorable final appeal
8 was issued—

9 “(i) submit an application for such
10 fees and costs with evidence of such fees
11 and costs to the administrative law judge
12 who heard such appeal; and

13 “(ii) serve such application on each
14 covered contractor that made the initial de-
15 termination or affirmed such initial deter-
16 mination.

17 “(D) CONTRACTOR RESPONSE.—A covered
18 contractor shall have 30 days after the date on
19 which such contractor is served an application
20 under clause (ii) of subparagraph (C) to submit
21 a response to the administrative law judge de-
22 scribed in clause (i) of such subparagraph.

23 “(E) DETERMINATION.—

24 “(i) IN GENERAL.—Not later than 60
25 days after the end of the 30-day period de-

scribed in subparagraph (D), an administrative law judge described in subparagraph (C)(i) shall issue a determination as to the amount (if any) of reasonable attorney fees and litigation costs that shall be awarded to a supplier of durable medical equipment pursuant to subparagraph (A). In making such determination, the administrative law judge shall—

“(I) consider evidence submitted in the application described in subparagraph (C)(i) and any response submitted under subparagraph (D);

“(II) with respect to reasonable attorney fees, use the lodestar method; and

“(III) if more than 1 covered contractor was served under subparagraph (C)(ii), specify the amount owed by each covered contractor.

“(ii) NON-APPEALABLE DECISION.— Any determination made pursuant to clause (i) shall not be appealable.

“(2) INELIGIBILITY OF CERTAIN PAYMENTS.—

Paragraph (1) shall not apply to a favorable final

1 appeal of an initial determination by a covered con-
2 tractor won by a supplier of durable medical equip-
3 ment when the initial unfavorable determination re-
4 sulted from—

5 “(A) such supplier failing to provide any
6 required documentation;

7 “(B) such supplier failing to comply with
8 any billing or submission requirement; or

9 “(C) a covered contractor—

10 “(i) applying current law or guidance
11 issued by the Secretary in effect at the
12 time the initial determination was made,
13 and such law or guidance had changed at
14 the time of the favorable final appeal; or

15 “(ii) applying a local coverage deter-
16 mination in effect at the time of the initial
17 determination.

18 “(3) CLAWBACK.—If, after any reasonable at-
19 torney fees or litigation costs have been awarded to
20 a supplier of durable medical equipment under this
21 subsection, a court or other adjudicator determines
22 that such supplier obtained a favorable final appeal
23 through fraud, misrepresentation, or bad-faith con-
24 duct, such supplier shall be required to return such

1 fees or costs to each covered contractor who was re-
 2 quired to pay such fees or costs to such supplier.

3 “(4) DEFINITIONS.—In this subsection:

4 “(A) COVERED CONTRACTOR.—The term
 5 ‘covered contractor’ means—

6 “(i) an eligible entity with a contract
 7 under section 1893;

8 “(ii) a qualified independent con-
 9 tractor (as defined in subsection (c)(2)); or

10 “(iii) a medicare administrative con-
 11 tractor (as defined in section
 12 1874A(a)(3)).

13 “(B) FAVORABLE.—The term ‘favorable’
 14 means, with respect to an appeal of a decision
 15 arising from or relating to the claims adminis-
 16 tration process under this title, a decision that
 17 is decided in the appellant’s favor with respect
 18 to every issue related to coverage and payment
 19 rules or the application of eligibility, entitle-
 20 ment, or premium rules.

21 “(C) FINAL APPEAL.—The term ‘final ap-
 22 peal’ means the last stage of review available
 23 within the claims administration process under
 24 this title in which—

1 “(i) the only appeal available is a re-
 2 view by the Medicare Appeals Council; and

3 “(ii) an administrative law judge en-
 4 ters a binding determination of the rights
 5 or obligations of the parties.

6 “(D) LITIGATION COSTS.—The term ‘liti-
 7 gation costs’ means, with respect to a favorable
 8 final appeal by a supplier of durable medical
 9 equipment, out-of-pocket expenses (not includ-
 10 ing reasonable attorney fees) incurred in the
 11 course of litigation that are traditionally taxable
 12 or recoverable by a prevailing party under stat-
 13 ute, rule, or contract.

14 “(E) REASONABLE ATTORNEY FEES.—The
 15 term ‘reasonable attorney fees’ means, with re-
 16 spect to a favorable final appeal by a supplier
 17 of durable medical equipment, compensation for
 18 the reasonable time expended by an attorney or
 19 paralegal on legal work necessary to litigation.”.

20 (b) MEDICARE ADMINISTRATIVE CONTRACTORS.—
 21 Section 1874A(d)(4) of the Social Security Act (42 U.S.C.
 22 1395kk–1(d)(4)) is amended—

23 (1) in subparagraph (A), by striking “(B) and
 24 (D)” and inserting “(B), (C), and (D)”; and

25 (2) in subparagraph (C)—

1 (A) by striking “INDEMNIFICATION.—In-
 2 demnification” and inserting “INDEMNIFICA-
 3 TION.—

4 “(i) IN GENERAL.—Subject to clause
 5 (ii), indemnification”; and

6 (B) by adding at the end the following new
 7 clause:

8 “(ii) NO INDEMNIFICATION FOR
 9 LEGAL FEES.—No reasonable attorney fees
 10 or litigation costs awarded to a supplier of
 11 durable medical equipment under section
 12 1869(j) shall be subject to indemnification
 13 by the Secretary under subparagraph
 14 (A).”.

15 (c) UNIFIED PROGRAM INTEGRITY CONTRACTORS.—
 16 Section 1893(e) of the Social Security Act (42 U.S.C.
 17 1395ddd(e)) is amended—

18 (1) by striking “LIABILITY.—The Secretary”
 19 and inserting “LIABILITY.—

20 “(1) IN GENERAL.—Subject to paragraph (2),
 21 the Secretary”; and

22 (2) by adding at the end the following new
 23 paragraph:

24 “(2) PAYMENT OF CERTAIN LEGAL FEES.—Any
 25 regulation promulgated by the Secretary under para-

1 graph (1) shall not include any limitation of a con-
 2 tractor’s liability for any reasonable attorney fees or
 3 litigation costs awarded to a supplier of durable
 4 medical equipment under section 1869(j).”.

5 (d) QUALIFIED INDEPENDENT CONTRACTORS.—Sec-
 6 tion 1869(c)(5) of the Social Security Act (42 U.S.C.
 7 1395ff(c)(5)) is amended—

8 (1) by striking “LIABILITY.—No qualified” and
 9 inserting “LIABILITY.—

10 “(A) IN GENERAL.—Subject to subpara-
 11 graph (B), no qualified”; and

12 (2) by inserting at the end the following new
 13 subparagraph:

14 “(B) PAYMENT OF CERTAIN LEGAL
 15 FEES.—Subparagraph (A) shall not apply to
 16 any reasonable attorney fees or litigation costs
 17 awarded to a supplier of durable medical equip-
 18 ment under subsection (j).”.

19 (e) IMPLEMENTATION.—Not later than 2 years after
 20 the date of enactment of this Act, the Secretary shall pro-
 21 mulgate regulations to carry out the amendments made
 22 by this section.

23 (f) EFFECTIVE DATE.—The amendments made by
 24 this section shall apply to contracts entered into on or
 25 after January 1 of the year following the year in which

- 1 the Secretary promulgates the regulations described in
- 2 subsection (e).

