

106TH CONGRESS
1ST SESSION

H. CON. RES. 138

Expressing the sense of the Congress concerning the adverse impact of the current administration Medicare payment policy for noninvasive positive pressure ventilators on individuals with severe respiratory diseases.

IN THE HOUSE OF REPRESENTATIVES

JUNE 22, 1999

Mr. TOWNS submitted the following concurrent resolution; which was referred to the Committee on Commerce, and in addition to the Committee on Ways and Means, 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

CONCURRENT RESOLUTION

Expressing the sense of the Congress concerning the adverse impact of the current administration Medicare payment policy for noninvasive positive pressure ventilators on individuals with severe respiratory diseases.

Whereas patients with severe respiratory diseases are the sickest of the sick;

Whereas severe respiratory diseases are the third leading cause of death;

Whereas many of these patients use noninvasive positive pressure ventilators (hereafter in this concurrent resolution referred to as “NPPVs”), and clinically these pa-

tients need frequent and substantial servicing which adds quality and productivity to their lives;

Whereas the Health Care Financing Administration (hereafter in this concurrent resolution referred to as “HCFA”) coded NPPVs in 1992 into the frequent and substantial servicing payment category under the medicare program;

Whereas in 1993 Congress codified and reaffirmed in specific amendments to the Social Security Act that NPPVs should be retained in that payment category;

Whereas the Food and Drug Administration’s 1995 Guidance for Ventilators determined that NPPVs belong in a separate and distinct category from respiratory assist devices which are used to treat less sick patients with sleep apnea in the capped rental category under the medicare program;

Whereas the clinical criteria agreed upon at the 1998 NPPV Consensus Conference reinforced and substantiated the long standing clinical practice of providing frequent and substantial service for NPPV users;

Whereas for more than 7 years, all of the actions of HCFA and the Durable Medical Equipment Regional Carriers (in this concurrent resolution referred to as “DMERC”) under the medicare program agreed with and backed the payment of NPPVs in the frequent and substantial servicing category;

Whereas any attempt by HCFA to change NPPVs from the frequent and substantial servicing payment category to the capped rental payment category requires the advance approval of Congress; and

Whereas the DMERC's June 1, 1999, Medical Policy on NPPVs includes 2 last minute material additions (relating to prerequisite trials and carbon dioxide levels) which were not subject to review and comment and which are inconsistent with the clinical guidelines agreed to by the country's leading respiratory physicians at the 1998 NPPV Consensus Conference: Now, therefore, be it

1 *Resolved by the House of Representatives (the Senate*
 2 *concurring)*, That (a) it is the sense of the Congress
 3 that—

4 (1) the DMERC's June 1, 1999, Medical Policy
 5 on Individuals With Severe Respiratory Diseases,
 6 particularly the provisions described in subsection
 7 (b), should conform fully to the clinical criteria
 8 agreed upon at the 1998 NPPV Consensus Con-
 9 ference; and

10 (2) medicare payment for NPPVs should con-
 11 tinue in the frequent and substantial service cat-
 12 egory until otherwise provided by Act of Congress.

13 (b) The provisions described in this subsection are
 14 provisions that—

15 (1) require physicians to write an off-label pre-
 16 scription for a prerequisite trial of 2 or 3 months
 17 using a different device before the doctor can pre-
 18 scribe an NPPV for patients with severe respiratory
 19 diseases; and

1 (2) deny NPPV coverage for patients with
2 chronic obstructive pulmonary disease unless they
3 have carbon dioxide levels below 55 millimeters of
4 mercury and they have a sleep oximetry test which
5 shows sustained oxygen saturation levels below 88
6 percent.

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