

106TH CONGRESS  
1ST SESSION

# S. 1310

To amend title XVIII of the Social Security Act to modify the interim payment system for home health services, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JUNE 30, 1999

Ms. COLLINS (for herself, Mr. BOND, Mr. LEVIN, Mr. BENNETT, Mr. SANTORUM, Mrs. HUTCHISON, Mr. TORRICELLI, Mr. LUGAR, Mr. ALLARD, Mr. SPECTER, Mr. EDWARDS, Mr. BROWNBAC, Mr. LAUTENBERG, Mr. COCHRAN, Mr. ENZI, Mr. FRIST, Mr. HELMS, and Mr. ABRAHAM) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend title XVIII of the Social Security Act to modify the interim payment system for home health services, 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 “Home Health Equity  
5 Act of 1999”.

### 6 **SEC. 2. ELIMINATION OF AUTOMATIC 15 PERCENT REDUC-** 7 **TION IN HOME HEALTH PAYMENTS.**

8 (a) IN GENERAL.—

1           (1) CONTINGENCY REDUCTION.—Section 4603  
 2           of the Balanced Budget Act of 1997 (Public Law  
 3           105–33) (42 U.S.C. 1395fff note), as amended by  
 4           section 5101(c)(3) of the Tax and Trade Relief Ex-  
 5           tension Act of 1998 (contained in Division J of Pub-  
 6           lic Law 105–277), is amended by striking subsection  
 7           (e).

8           (2) PROSPECTIVE PAYMENT SYSTEM.—Section  
 9           1895(b)(3)(A) of the Social Security Act (42 U.S.C.  
 10          1395fff(b)(3)(A)) is amended—

11                   (A) by striking “INITIAL BASIS.—” and all  
 12                   that follows through “Under such system”, and  
 13                   inserting “INITIAL BASIS.—Under such sys-  
 14                   tem”;

15                   (B) in clause (i), by striking “but if the re-  
 16                   duction in limits described in clause (ii) had  
 17                   been in effect”; and

18                   (C) by striking clause (ii).

19 **SEC. 3. OUTLIER PAYMENTS.**

20           (a) WAIVER OF PER BENEFICIARY LIMITS FOR  
 21          OUTLIERS.—

22                   (1) IN GENERAL.—Section 1861(v)(1)(L) of the  
 23                   Social Security Act (42 U.S.C. 1395x(v)(1)(L)), as  
 24                   amended by section 5101(a) of the Tax and Trade

1       Relief Extension Act of 1998 (contained in Division  
2       J of Public Law 105–277) is amended—

3               (A) by redesignating clause (ix) as clause  
4               (x); and

5               (B) by inserting after clause (viii) the fol-  
6       lowing:

7       “(ix)(I) Notwithstanding the applicable per bene-  
8       ficiary limit under clause (v), (vi), or (viii), but subject  
9       to the applicable per visit limit under clause (i), in the  
10      case of a provider that demonstrates to the Secretary that  
11      with respect to an individual to whom the provider fur-  
12      nished home health services appropriate to the individual’s  
13      condition (as determined by the Secretary) at a reasonable  
14      cost (as determined by the Secretary), and that such rea-  
15      sonable cost significantly exceeded such applicable per  
16      beneficiary limit because of unusual variations in the type  
17      or amount of medically necessary care required to treat  
18      the individual, the Secretary, upon application by the pro-  
19      vider, shall pay to such provider for such individual such  
20      reasonable cost.

21       “(II)(aa) The Secretary shall establish such criteria  
22      as is required for payment under this clause, including a  
23      description of the type of individual, condition, unusual  
24      variations, and home health service that qualifies for such  
25      payment.

1 “(bb) In establishing criteria under item (aa), the  
2 Secretary shall consider the information gathered in order  
3 to establish case mix adjustment factors under section  
4 1895(b)(4)(B) and any available Outcomes and Assess-  
5 ment Information Set (OASIS) case mix data.

6 “(III) In making determinations under subclause (I),  
7 the Secretary shall use data from the cost report, or from  
8 other data collected by the Secretary, of the provider for  
9 such year.

10 “(IV) A provider may make an application for pay-  
11 ment under this clause for a fiscal year no earlier than  
12 the end of the cost reporting period beginning in such fis-  
13 cal year.

14 “(V) The total amount of the additional payments  
15 made to home health agencies pursuant to subclause (I)  
16 in any fiscal year shall not be less than an amount equal  
17 to 3 percent of the amounts that would have been paid  
18 under this subparagraph in such year if this clause had  
19 not been enacted and shall not exceed 4 percent of such  
20 amounts.”.

21 (b) EFFECTIVE DATE.—The amendment made by  
22 subsection (a) shall take effect on the date of enactment  
23 of this Act, and apply with respect to each application for  
24 payment of reasonable costs for outliers submitted by any

1 home health agency for cost reporting periods ending on  
2 or after September 30, 1999.

3 **SEC. 4. RECOUPMENT OF OVERPAYMENTS.**

4 (a) 36-MONTH REPAYMENT PERIOD.—

5 (1) IN GENERAL.—Except as provided in para-  
6 graph (2), in the case of an overpayment by the Sec-  
7 retary of Health and Human Services to a home  
8 health agency for home health services furnished  
9 during a cost reporting period beginning on or after  
10 October 1, 1997, as a result of payment limitations  
11 provided for under clause (v), (vi), or (viii) of section  
12 1861(v)(1)(L) of the Social Security Act (42 U.S.C.  
13 1395x(v)(1)(L)), the home health agency may elect  
14 to repay the amount of such overpayment over a 36-  
15 month period beginning on the date of notification  
16 of such overpayment.

17 (2) EXCEPTION.—No home health agency may  
18 make an election under paragraph (1) if any final  
19 adverse action (as defined in section 1128E(g)(1))  
20 has been taken against such agency.

21 (b) NO INTEREST ON OVERPAYMENT AMOUNTS.—In  
22 the case of an agency that makes an election under sub-  
23 section (a), no interest shall accrue on the outstanding  
24 balance of the amount of overpayment during such 36-  
25 month period.

1 (c) TERMINATION.—No election under subsection (a)  
 2 may be made for cost reporting periods, or portions of cost  
 3 reporting periods beginning on or after the date of the  
 4 implementation of the prospective payment system for  
 5 home health services under section 1895 of the Social Se-  
 6 curity Act (42 U.S.C. 1395fff).

7 (d) EFFECTIVE DATE.—The provisions of subsection  
 8 (a) shall take effect as if included in the enactment of the  
 9 Balanced Budget Act of 1997.

10 **SEC. 5. INCREASE IN PAYMENT AMOUNT TO AGENCIES**  
 11 **WITH LIMITS UNDER THE NATIONAL AVER-**  
 12 **AGE.**

13 (a) IN GENERAL.—Section 1861(v)(1)(L)(viii)(I) of  
 14 the Social Security Act (42 U.S.C.  
 15 1395x(v)(1)(L)(viii)(I)), as added by section 5101(a)(3) of  
 16 the Tax and Trade Relief Extension Act of 1998 (con-  
 17 tained in Division J of Public Law 105–277), is amended  
 18 by striking “the limit otherwise imposed under clause (v)”  
 19 and all that follows through the period and inserting “the  
 20 limit for such provider and period shall be an amount  
 21 equal to—

22 “(aa) for cost reporting periods beginning dur-  
 23 ing fiscal year 1999, 90 percent of such median;

24 “(bb) for cost reporting periods beginning dur-  
 25 ing fiscal year 2000, 95 percent of such median; and

1           “(cc) for cost reporting periods beginning dur-  
2           ing or after fiscal year 2001, such median.”.

3           (b) EFFECTIVE DATE.—The provisions of subsection  
4           (a) shall take effect as if included in the enactment of the  
5           Tax and Trade Relief Extension Act of 1998 (contained  
6           in Division J of Public Law 105–277).

7           **SEC. 6. INCREASE IN PER VISIT LIMIT.**

8           Section 1861(v)(1)(L)(i) of the Social Security Act  
9           (42 U.S.C. 1395x(v)(1)(L)(i)), as amended by section  
10          5101(a) of the Tax and Trade Relief Extension Act of  
11          1998 (contained in Division J of Public Law 105–277),  
12          is amended—

13                 (1) in subclause (IV), by striking “or”;

14                 (2) in subclause (V)—

15                         (A) by inserting “and before October 1,  
16                         1999,” after “October 1, 1998,”; and

17                         (B) by striking the period and inserting “,  
18                         or”; and

19                 (3) by adding at the end the following:

20                         “(VI) October 1, 1999, 108 percent of such me-  
21                         dian.”.

1 **SEC. 7. ELIMINATION OF TIMEKEEPING REQUIREMENTS**  
 2 **UNDER THE PROSPECTIVE PAYMENT SYSTEM**  
 3 **FOR HOME HEALTH AGENCIES.**

4 (a) IN GENERAL.—Section 1895(c) of the Social Se-  
 5 curity Act (42 U.S.C. 1395fff(c)) is amended—

6 (1) by striking “unless—” and all that follows  
 7 through “(1) the” and inserting “unless the”; and

8 (2) by striking “1835(a)(2)(A);” and all that  
 9 follows through the period and inserting  
 10 “1835(a)(2)(A).”.

11 (b) EFFECTIVE DATE.—The amendments made by  
 12 subsection (a) shall take effect on the date of enactment  
 13 of this Act.

14 **SEC. 8. PERIODIC INTERIM PAYMENT FOR CERTAIN HOME**  
 15 **HEALTH AGENCIES.**

16 (a) IN GENERAL.—Section 1815(e)(2)(D) of the So-  
 17 cial Security Act (42 U.S.C. 1395g(e)(2)(D)) is amended  
 18 by inserting “until the end of the 12-month period fol-  
 19 lowing the date that the prospective payment system for  
 20 such services is implemented pursuant to section 1895”  
 21 after “services”.

22 (b) CONFORMING AMENDMENT.—Section 4603(b) of  
 23 the Balanced Budget Act of 1997 (Public Law 105–33)  
 24 is repealed.

25 (c) EFFECTIVE DATE.—The amendment made by  
 26 this section shall take effect as if included in the enact-



1 ment of the Balanced Budget Act of 1997 (Public Law  
2 105–33).

3 **SEC. 9. REVISION OF SURETY BOND REQUIREMENT FOR**  
4 **HOME HEALTH AGENCIES.**

5 (a) IN GENERAL.—Section 1861(o) of the Social Se-  
6 curity Act (42 U.S.C. 1395x(o)) is amended by inserting  
7 after the first sentence the following: “The surety bond  
8 required under paragraph (7) shall be used by the Sec-  
9 retary to protect against overpayments made to an agency  
10 based on fraudulent claims or behavior but shall not be  
11 used to protect against overpayments that are not based  
12 on such claims or behavior.”.

13 (b) EFFECTIVE DATE.—The amendment made by  
14 subsection (a) shall take effect on the date of enactment  
15 of this Act.

16 **SEC. 10. EXCLUSION OF ADDITIONAL PART B COSTS FROM**  
17 **DETERMINATION OF PART B MONTHLY PRE-**  
18 **MIUM.**

19 Section 1839(g) of the Social Security Act (42 U.S.C.  
20 1395r(g)) (as added by section 5101(e) of the Tax and  
21 Trade Relief Extension Act of 1998 (contained in division  
22 J of Public Law 105–277)) is amended by striking “sec-  
23 tion 1861(v)(1)(L)(viii) or to the establishment under sec-  
24 tion 1861(v)(1)(L)(i)(V) of a per visit limit at 106 percent  
25 of the median (instead of 105 percent of the median)”

1 and inserting “clauses (viii) and (ix) of section  
2 1861(v)(1)(L) or to the establishment under section  
3 1861(v)(1)(L)(i)(V) of a per visit limit at 106 percent and  
4 108 percent of the median (instead of 105 percent of the  
5 median and 106 percent of the median, respectively)”.

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