

106TH CONGRESS
1ST SESSION

S. 1358

To amend title XVIII of the Social Security Act to provide more equitable payments to home health agencies under the medicare program.

IN THE SENATE OF THE UNITED STATES

JULY 13 (legislative day, JULY 12), 1999

Mr. JEFFORDS (for himself, Mr. REED, Mr. ENZI, and Mr. LEAHY) 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 provide more equitable payments to home health agencies under the medicare program.

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 “Preserve Access to
5 Care in the Home (PATCH) Act of 1999”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—Congress finds the following:

8 (1) Home health services are a vital component
9 of the benefits that are provided to beneficiaries

1 under the medicare program under title XVIII of the
2 Social Security Act.

3 (2) Home health services under the medicare
4 program enable homebound individuals who are at
5 great risk for costly institutionalized care to stay in
6 their own homes and communities.

7 (3) Implementation of the home health interim
8 payment system under the medicare program has in-
9 advertently exacerbated payment disparities for
10 home health services between regions, penalizing ef-
11 ficient, low-cost home health agencies in rural areas
12 and providing insufficient compensation for the care
13 of higher acuity, medically complex patients.

14 (4) The frequency and volume of prepayment
15 medical reviews, including requests for medical
16 records, and other administrative changes imposed
17 upon home health agencies, particularly those agen-
18 cies that are located in rural areas, has had a dev-
19 astating effect on smaller care agencies.

20 (5) The combination of insufficient payments
21 and new administrative changes has precipitated the
22 closure of nearly 2,000 home health agencies and
23 branch offices and has forced many surviving agen-
24 cies to shrink their service areas or limit the types

1 of patients they may serve, resulting in restricted ac-
2 cess to home health services in many areas.

3 (6) The scheduled additional 15 percent across
4 the board reduction in home health payments under
5 the medicare program will severely compromise ex-
6 isting access to home health services, particularly in
7 low-cost rural areas.

8 (b) PURPOSES.—The purposes of this Act are as fol-
9 lows:

10 (1) To ensure access to care for patients with
11 high medical needs by establishing a process for
12 home health agencies to exclude high acuity, medi-
13 cally complex patients from the per-beneficiary limits
14 under the interim payment system for home health
15 services and instead receive cost-based reimburse-
16 ment for services provided such patients.

17 (2) To eliminate the 15 percent across the
18 board reduction in home health payments under the
19 medicare program.

20 (3) To bring relief from certain administrative
21 requirements to home health agencies with—

22 (A) strong, established compliance records;

23 and

24 (B) a history of claim denial rates of less
25 than 5 percent.

1 **SEC. 3. ELIMINATION OF AUTOMATIC 15 PERCENT REDUC-**
 2 **TION IN HOME HEALTH PAYMENTS.**

3 (a) CONTINGENCY REDUCTION.—Section 4603 of the
 4 Balanced Budget Act of 1997 (42 U.S.C. 1395fff note)
 5 (as amended by section 5101(c)(3) of the Tax and Trade
 6 Relief Extension Act of 1998 (contained in division J of
 7 Public Law 105–277)) is amended by striking subsection
 8 (e).

9 (b) PROSPECTIVE PAYMENT SYSTEM.—Section
 10 1895(b)(3)(A) of the Social Security Act (42 U.S.C.
 11 1395fff(b)(3)(A)) is amended—

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

15 (2) in the matter preceding clause (ii), by strik-
 16 ing “but if the reduction in limits described in clause
 17 (ii) had been in effect”; and

18 (3) by striking clause (ii).

19 **SEC. 4. OUTLIER PAYMENTS FOR HOME HEALTH SERVICES.**

20 (a) WAIVER OF APPLICABLE HOME HEALTH PAY-
 21 MENT LIMITS FOR 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 of the Tax and Trade Re-
 25 lief Extension Act of 1998 (contained in Division J
 26 of Public Law 105–277) is amended—

1 (A) by redesignating clause (ix) as clause
2 (x); and

3 (B) by inserting after clause (viii) the fol-
4 lowing:

5 “(ix)(I) Notwithstanding the applicable limit under
6 this subparagraph, in the case of a provider that dem-
7 onstrates to the Secretary that with respect to an indi-
8 vidual to whom the provider furnished home health serv-
9 ices appropriate to the individual’s condition (as deter-
10 mined by the Secretary) at a reasonable cost (as deter-
11 mined by the Secretary), and that such reasonable cost
12 significantly exceeded such applicable limit because of un-
13 usual variations in the type or amount of medically nec-
14 essary care required to treat the individual, the Secretary,
15 upon application by the provider, shall pay to such pro-
16 vider for such individual such reasonable cost.

17 “(II) The Secretary shall establish such criteria as
18 is required for payment under this clause, including a de-
19 scription of the type of patient, patient condition, unusual
20 variations, and home health service that qualifies for such
21 payment.

22 “(III) In making determinations under subclause (I),
23 the Secretary shall use data from the cost report, or from
24 other data collected by the Secretary, of the provider for
25 such year.

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

5 “(V) In the case of an application for payment under
 6 this clause that is approved by the Secretary, a home
 7 health agency may elect to receive payment on a quarterly
 8 basis.”.

9 (b) EFFECTIVE DATE.—The amendment made by
 10 subsection (a) shall take effect on September 30, 1999,
 11 and apply with respect to each application for payment
 12 of reasonable costs for outliers submitted by any home
 13 health agency for cost reporting periods ending on or after
 14 such date.

15 **SEC. 5. CLARIFICATION OF THE DEFINITION OF HOME-**
 16 **BOUND.**

17 (a) IN GENERAL.—The last sentence of sections
 18 1814(a) and 1835(a) of the Social Security Act (42 U.S.C.
 19 1395f(a); 1395n(a)) are each amended—

20 (1) by striking “leave home,” and inserting
 21 “leave home and”; and

22 (2) by striking “, and that absences” and all
 23 that follows before the period.

1 (b) EFFECTIVE DATE.—The amendments made by
 2 subsection (a) shall apply to items and services provided
 3 on or after the date of enactment of this Act.

4 **SEC. 6. REVIEW OF CLAIMS SUBMITTED BY HOME HEALTH**
 5 **AGENCIES.**

6 (a) IN GENERAL.—Section 1816(c)(2) of the Social
 7 Security Act (42 U.S.C. 1395h(c)(2)) is amended by add-
 8 ing at the end the following:

9 “(D)(i) Each agreement under this section shall pro-
 10 vide that if the average finalized denial rate of claims sub-
 11 mitted by a home health agency (determined for the 3
 12 most recent cost reporting periods ending before the date
 13 of such determination) is less than 5 percent—

14 “(I) no prepayment medical review, including
 15 requests for medical records and focused medical re-
 16 views, may be conducted with respect to a claim sub-
 17 mitted by such agency (absent probable cause that
 18 the particular claim is invalid) during the agency’s
 19 next succeeding cost reporting period; and

20 “(II) post-payment review of claims submitted
 21 by the agency during the agency’s next succeeding
 22 cost reporting period shall not exceed 10 percent of
 23 the dollar value of all of the services provided by the
 24 agency for which a claim for reimbursement is filed
 25 under this title during such period.

1 “(ii) For purposes of clause (i), the finalized denial
 2 rate of claims submitted by a home health agency for any
 3 cost reporting period is equal to the percentage deter-
 4 mined by dividing—

5 “(I) the dollar value of all of the services pro-
 6 vided by the agency for which—

7 “(aa) a claim for reimbursement is filed
 8 under this title during such period; and

9 “(bb) a denial for such claim has become
 10 final after all rights to request reconsideration
 11 or to appeal have been exhausted, by

12 “(II) the dollar value of all of the services pro-
 13 vided by the agency for which a claim for reimburse-
 14 ment is—

15 “(aa) filed under this title during such pe-
 16 riod; and

17 “(bb) reviewed by the Secretary or an
 18 agency or organization with an agreement
 19 under this section.”.

20 (b) EFFECTIVE DATE.—The amendment made by
 21 subsection (a) shall take effect on the date of enactment
 22 of this Act and shall apply to agreements entered into or
 23 renewed on or after such date.

1 **SEC. 7. RESTORATION OF PERIODIC INTERIM PAYMENTS**
 2 **FOR HOME HEALTH AGENCIES.**

3 Section 4603(b) of Public Law 105–33 is repealed.

4 **SEC. 8. SENSE OF THE SENATE REGARDING THE IMPE-**
 5 **MENTATION OF PPS FOR HOME HEALTH**
 6 **SERVICES.**

7 It is the sense of the Senate that the Secretary of
 8 Health and Human Services should—

9 (1) ensure that the prospective payment system
 10 for home health services under section 1895 of the
 11 Social Security Act (42 U.S.C. 1395fff) provides for
 12 appropriate payment of services that are provided to
 13 beneficiaries;

14 (2) ensure that reimbursement rates under such
 15 system —

16 (A) include incentives to provide services
 17 efficiently to all beneficiaries; and

18 (B) do not create unintentional incentives
 19 to discriminate against beneficiaries with medi-
 20 cally complex conditions;

21 (3) ensure that the establishment of the case
 22 mix adjustment for such services under subsection
 23 (b)(4) of such section—

24 (A) does not penalize agencies that serve
 25 beneficiaries with medically complex conditions;

1 (B) provides some predictive value and ac-
2 counts for a fair portion of the variation in
3 costs associated with providing services to bene-
4 ficiaries; and

5 (C) takes into account such variables as
6 the health status, age, and socioeconomic status
7 of beneficiaries;

8 (4) establish a nationally uniform process to en-
9 sure that fiscal intermediaries have the training and
10 ability to provide timely and accurate coverage and
11 payment information to home health agencies under
12 the medicare program under title XVIII of such Act
13 (42 U.S.C. 1395 et seq.);

14 (5) assess the costs to home health agencies of
15 implementing new regulations and interpretations
16 associated with the prospective payment system for
17 home health services and consider the impact of
18 such costs on the ability of such agencies to provide
19 home health services to beneficiaries; and

20 (6) provide periodic updates to Congress and
21 home health agencies regarding the progress by the
22 Secretary of implementing the prospective payment
23 system for home health services.

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