

106TH CONGRESS
1ST SESSION

S. 1414

To amend title XVIII of the Social Security Act to restore access to home health services covered under the medicare program, and to protect the medicare program from financial loss while preserving the due process rights of home health agencies.

IN THE SENATE OF THE UNITED STATES

JULY 22, 1999

Mr. MACK 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 restore access to home health services covered under the medicare program, and to protect the medicare program from financial loss while preserving the due process rights of home health agencies.

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 “Medicare Home Health
5 Beneficiary Equity and Payment Simplification Act of
6 1999”.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) Research has shown that medicare bene-
4 ficiaries who are in need of home health services
5 that are covered under the medicare program gen-
6 erally fall into 1 of the 4 following categories:

7 (A) Post-hospital, short-stay beneficiaries.

8 (B) Medically stable, long-stay bene-
9 ficiaries.

10 (C) Medically complex, long-stay bene-
11 ficiaries.

12 (D) Medically unstable and complex, ex-
13 tremely high-use beneficiaries.

14 (2) The interim payment system for home
15 health services under the medicare program, enacted
16 as part of the Balanced Budget Act of 1997 and
17 amended by title V of the Tax and Trade Relief Ex-
18 tension Act of 1998 (contained in Division J of Pub-
19 lic Law 105–277), is having the following unin-
20 tended consequences:

21 (A) The sickest, most frail medicare bene-
22 ficiaries are losing access to medically necessary
23 home health services that are otherwise covered
24 under the medicare program.

25 (B) Many high quality, cost-effective home
26 health agencies have had per beneficiary limits

1 under the interim payment system set so low
2 that such agencies are finding it impossible to
3 continue to provide home health services under
4 the medicare program.

5 (C) Many home health agencies are being
6 subjected to aggregate per beneficiary limits
7 under the interim payment system that do not
8 accurately reflect the current patient mix of
9 such agencies, thereby making it impossible for
10 such agencies to compete with similarly situated
11 home health agencies.

12 (D) Medicare beneficiaries that reside in
13 certain States and regions of the country have
14 far less access to home health services under
15 the medicare program than individuals who
16 have identical medical conditions but reside in
17 other States or regions of the country.

18 (E) The health status of home health bene-
19 ficiaries varies significantly in different regions
20 of the country, creating differing needs for
21 home health services.

22 **SEC. 3. PAYMENTS TO HOME HEALTH AGENCIES UNDER**
23 **MEDICARE.**

24 (a) REVISION OF PROSPECTIVE PAYMENT SYSTEM.—

1 (1) IN GENERAL.—Section 1895 of the Social
2 Security Act (42 U.S.C. 1395fff) (as amended by
3 section 5101 of the Tax and Trade Relief Extension
4 Act of 1998 (contained in Division J of Public Law
5 105–277)) is amended—

6 (A) in subsection (a), by striking “for por-
7 tions of cost reporting periods occurring on or
8 after October 1, 2000” and inserting “for cost
9 reporting periods beginning on or after October
10 1, 1999”; and

11 (B) in subsection (b), by striking the last
12 sentence of paragraph (1) and all that follows
13 and inserting the following:

14 “(2) PAYMENT BASIS.—

15 “(A) IN GENERAL.—The prospective pay-
16 ment amount to be paid to a home health agen-
17 cy under this section for all of the home health
18 services (including medical supplies) provided to
19 a beneficiary under this title during the 12-
20 month period beginning on the date that such
21 services are first provided by such agency to
22 such beneficiary pursuant to a plan for fur-
23 nishing such services (and for each subsequent
24 12-month period that services are provided
25 under such plan) shall be an amount equal to

1 the applicable amount specified in subpara-
2 graph (B) for the fiscal year in which the 12-
3 month period begins.

4 “(B) APPLICABLE AMOUNT.—Subject to
5 subparagraphs (C), (D), and (E) and para-
6 graph (5), for purposes of this subsection, the
7 applicable amount is equal to—

8 “(i) \$2,603 for a beneficiary described
9 in subparagraphs (A) and (E) of para-
10 graph (3);

11 “(ii) \$3,335 for a beneficiary de-
12 scribed in paragraph (3)(B);

13 “(iii) \$4,228 for a beneficiary de-
14 scribed in paragraph (3)(C); and

15 “(iv) \$21,864 for a beneficiary de-
16 scribed in paragraph (3)(D).

17 “(C) ANNUAL UPDATE.—

18 “(i) IN GENERAL.—The applicable
19 amount specified in subparagraph (B)
20 shall be adjusted for each fiscal year (be-
21 ginning with fiscal year 2001) in a pro-
22 spective manner specified by the Secretary
23 by the home health market basket percent-
24 age increase applicable to the fiscal year
25 involved.

1 “(ii) HOME HEALTH MARKET BASKET
2 PERCENTAGE INCREASE.—For purposes of
3 clause (i), the term ‘home health market
4 basket percentage increase’ means, with re-
5 spect to a fiscal year, a percentage (esti-
6 mated by the Secretary before the begin-
7 ning of the fiscal year) determined and ap-
8 plied with respect to the mix of goods and
9 services included in home health services in
10 the same manner as the market basket
11 percentage increase under section
12 1886(b)(3)(B)(iii) is determined and ap-
13 plied to the mix of goods and services com-
14 prising inpatient hospital services for the
15 fiscal year.

16 “(D) AREA WAGE ADJUSTMENT.—

17 “(i) IN GENERAL.—The portion of the
18 applicable amount specified in subpara-
19 graph (B) (as updated under subparagraph
20 (C)) that the Secretary estimates to be at-
21 tributable to wages and wage-related costs
22 shall be adjusted for geographic differences
23 in such costs by an area wage adjustment
24 factor for the area in which the home
25 health agency is located.

1 “(ii) ESTABLISHMENT OF AREA WAGE
 2 ADJUSTMENT FACTORS.—The Secretary
 3 shall establish area wage adjustment fac-
 4 tors that reflect the relative level of wages
 5 and wage-related costs applicable to the
 6 furnishing of home health services in a ge-
 7 ographic area compared to the national av-
 8 erage applicable level. Such factors may be
 9 the factors used by the Secretary for pur-
 10 poses of section 1886(d)(3)(E).

11 “(E) MEDICAL SUPPLIES.—The applicable
 12 amount specified in subparagraph (B) shall be
 13 adjusted for each fiscal year (beginning with
 14 fiscal year 2001) in a prospective manner speci-
 15 fied by the Secretary by the percentage increase
 16 (as determined by the Secretary) in the average
 17 costs of medical supplies (as described in sec-
 18 tion 1861(m)(5)) for the fiscal year involved.

19 “(3) DESCRIPTION OF BENEFICIARIES.—

20 “(A) POST-HOSPITAL, SHORT-STAY BENE-
 21 FICIARY.—A beneficiary described in this sub-
 22 paragraph is a beneficiary under this title
 23 who—

24 “(i) has experienced at least one 24-
 25 hour hospitalization within the 14-day pe-

1 riod immediately preceding the date that
2 the beneficiary is first provided services by
3 the home health agency;

4 “(ii) suffers from 1 or more illnesses
5 or injuries which are post-operative or
6 post-trauma; and

7 “(iii) has a prognosis of a prompt and
8 substantial recovery.

9 “(B) MEDICALLY STABLE, LONG-STAY
10 BENEFICIARY.—A beneficiary described in this
11 subparagraph is a beneficiary under this title
12 who—

13 “(i) has not been admitted to a hos-
14 pital within the 6-month period imme-
15 diately preceding the date that the bene-
16 ficiary is first provided services by the
17 home health agency;

18 “(ii) suffers from 1 or more illnesses
19 or injuries requiring acute medical treat-
20 ment or management in the home; and

21 “(iii) is experiencing 1 or more im-
22 pairments in activities of daily living.

23 “(C) MEDICALLY COMPLEX, LONG-STAY
24 BENEFICIARY.—A beneficiary described in this

1 subparagraph is a beneficiary under this title
2 who—

3 “(i) has experienced 2 or more hos-
4 pitalizations or admissions to skilled nurs-
5 ing facilities within the 12-month period
6 immediately preceding the date that the
7 beneficiary is first provided services by the
8 home health agency;

9 “(ii) suffers from 1 or more illnesses
10 or injuries requiring acute medical treat-
11 ment or management in the home; and

12 “(iii) is experiencing 1 or more im-
13 pairments in activities of daily living.

14 “(D) MEDICALLY UNSTABLE AND COM-
15 PLEX, EXTREMELY HIGH-USE BENE-
16 FICIARIES.—A beneficiary described in this sub-
17 paragraph is a beneficiary under this title
18 who—

19 “(i) has experienced 2 or more hos-
20 pitalizations or admissions to skilled nurs-
21 ing facilities within the 6-month period im-
22 mediately preceding the date that the bene-
23 ficiary is first provided services by the
24 home health agency;

1 “(ii) suffers from 1 or more illnesses
2 or injuries requiring acute medical treat-
3 ment or management in the home; and

4 “(iii) is experiencing 2 or more im-
5 pairments in activities of daily living.

6 “(E) OTHER BENEFICIARIES.—A bene-
7 ficiary described in this subparagraph is a bene-
8 ficiary under this title who is not otherwise de-
9 scribed in subparagraphs (A) through (D).

10 “(4) DETERMINATION.—

11 “(A) IN GENERAL.—The determination of
12 which of the subparagraphs under paragraph
13 (3) applies to a beneficiary under this title shall
14 be based on the diagnosis and assessment of a
15 physician who shall have no financial relation-
16 ship with the home health agency that is receiv-
17 ing payments under this title for the provision
18 of home health services to such beneficiary. For
19 purposes of the preceding sentence, any finan-
20 cial relationship shall be determined under rules
21 similar to the rules with respect to referrals
22 under section 1877.

23 “(B) REGULATIONS.—The Secretary shall
24 issues regulations to assist physicians in mak-

1 ing the determination described in subpara-
2 graph (A).

3 “(5) ADDITIONAL PAYMENT AMOUNT.—The
4 Secretary may increase the applicable amount speci-
5 fied in paragraph (2)(B) to be paid to a home health
6 agency if the Secretary determines that such agency
7 is—

8 “(A) experiencing higher than average
9 costs for providing home health services as com-
10 pared to other similarly situated home health
11 agencies; or

12 “(B) providing home health services that
13 are not reflected in the determination of the ap-
14 plicable amount.

15 “(6) NOTICE OF PROSPECTIVE PAYMENT
16 RATE.—Not later than July 1 of each year (begin-
17 ning in 2000), the Secretary shall publish in the
18 Federal Register the applicable amount to be paid to
19 home health agencies for home health services pro-
20 vided to a beneficiary under this title during the fis-
21 cal year beginning October 1 of the year.

22 “(7) PRORATION OF PROSPECTIVE PAYMENT
23 AMOUNTS.—If a beneficiary elects to transfer to, or
24 receive services from, another home health agency
25 within the period covered by the prospective payment

1 amount, the payment shall be prorated between the
2 home health agencies involved.”.

3 (2) CONFORMING AMENDMENTS.—Section 1895
4 of the Social Security Act (42 U.S.C. 1395fff) (as
5 amended by section 5101 of the Tax and Trade Re-
6 lief Extension Act of 1998 (contained in Division J
7 of Public Law 105–277)) is amended—

8 (A) by amending subsection (c) to read as
9 follows:

10 “(c) REQUIREMENT FOR PAYMENT INFORMATION.—
11 With respect to home health services furnished on or after
12 October 1, 1998, no claim for such a service may be paid
13 under this title unless the claim has the unique identifier
14 (provided under section 1842(r)) for the physician who
15 prescribed the services or made the certification described
16 in section 1814(a)(2) or 1835(a)(2)(A).”; and

17 (B) by striking subsection (d).

18 (3) CHANGE IN EFFECTIVE DATE.—Section
19 4603(d) of the Balanced Budget Act of 1997 (42
20 U.S.C. 1395fff note) (as amended by section
21 5101(c)(2) of the Tax and Trade Relief Extension
22 Act of 1998 (contained in Division J of Public Law
23 105–277)) is amended by striking “October 1,
24 2000” and inserting “October 1, 1999”.

1 (4) ELIMINATION OF CONTINGENCY 15 PER-
2 CENT REDUCTION.—Subsection (e) of section 4603
3 of the Balanced Budget Act of 1997 (42 U.S.C.
4 1395fff note) is repealed.

5 (5) EFFECTIVE DATE.—The amendments made
6 by this subsection shall take effect on the date of en-
7 actment of this Act.

8 (b) PAYMENT RATES BASED ON LOCATION OF HOME
9 HEALTH AGENCY RATHER THAN PATIENT.—

10 (1) CONDITIONS OF PARTICIPATION.—Section
11 1891 of the Social Security Act (42 U.S.C.
12 1395bbb) is amended by striking subsection (g).

13 (2) WAGE ADJUSTMENT.—Section
14 1861(v)(1)(L)(iii) (42 U.S.C. 1395x(v)(1)(L)(iii)) is
15 amended by striking “service is furnished” and in-
16 serting “agency is located”.

17 (3) EFFECTIVE DATE.—The amendments made
18 by this subsection shall apply to services provided on
19 or after October 1, 1999.

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