

106TH CONGRESS  
1ST SESSION

# S. 1574

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

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 10, 1999

Mr. CONRAD (for himself, Mr. FEINGOLD, and Mr. CHAFEE) 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 improve 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 “The Fairness in Medi-  
5       care Home Health Access Act of 1999”.

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

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

8               (1) Home health care is a vital component of  
9       the medicare program under title XVIII of the So-  
10      cial Security Act.

1           (2) Home health services provided under the  
2        medicare program enable medicare beneficiaries who  
3        are homebound and greatly risk costly institutional-  
4        ized care to continue to live in their own homes and  
5        communities.

6           (3) Implementation of the interim payment sys-  
7        tem for home health services has inadvertently exac-  
8        erbated payment disparities for home health services  
9        among regions, penalizing efficient, low-cost pro-  
10       viders in rural areas and providing insufficient com-  
11       pensation for the care of medicare beneficiaries with  
12       acute, medically complex conditions.

13          (4) The combination of insufficient payments  
14        and new administrative changes has reduced the ac-  
15        cess of medicare beneficiaries to home health serv-  
16        ices in many areas by forcing home health agencies  
17        to provide fewer services, to shrink their service  
18        areas, or to limit the types of conditions for which  
19        they provide treatment.

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

22           (1) To improve access to care for medicare  
23        beneficiaries with high medical needs by establishing  
24        a process for home health agencies to exclude serv-  
25        ices provided to medicare beneficiaries with acute,

1 medically complex conditions from payment limits  
2 and to receive payment based on the reasonable  
3 costs of providing such services through a process  
4 that is feasible for the Health Care Financing Ad-  
5 ministration to administer.

6 (2) To ensure that the 15 percent contingency  
7 reduction in medicare payments for home health  
8 services established under the Balanced Budget Act  
9 of 1997 does not occur under the interim payment  
10 system for home health services.

11 (3) To reduce the scheduled 15 percent reduc-  
12 tion in the cost limits and per beneficiary limits to  
13 10 percent and to phase-in the additional 5 percent  
14 reduction in such limits after the initial 3 years of  
15 the prospective payment system for home health  
16 services.

17 (4) To address the unique challenges of serving  
18 medicare beneficiaries in rural and underserved  
19 areas by increasing the per visit cost limit under the  
20 interim payment system for home health services.

21 (5) To refine the home health consolidated bill-  
22 ing provision to ensure that medicare beneficiaries  
23 requiring durable medical equipment services do not  
24 experience a break in the continuum of care during  
25 episodes of home health care.

1           (6) To eliminate the requirement that home  
 2           health agencies identify the length of time of a serv-  
 3           ice visit in 15 minute increments.

4           (7) To express the sense of the Senate that the  
 5           Secretary of Health and Human Services should es-  
 6           tablish a uniform process for disseminating informa-  
 7           tion to fiscal intermediaries to ensure timely and ac-  
 8           curate information to home health agencies and  
 9           beneficiaries.

10 **SEC. 3. ADEQUATELY ACCOUNTING FOR THE NEEDS OF**  
 11 **MEDICARE BENEFICIARIES WITH ACUTE,**  
 12 **MEDICALLY COMPLEX CONDITIONS.**

13           (a) WAIVER OF PER BENEFICIARY LIMITS FOR  
 14 OUTLIERS.—Section 1861(v)(1)(L) of the Social Security  
 15 Act (42 U.S.C. 1395x(v)(1)(L)), as amended by section  
 16 5101 of the Tax and Trade Relief Extension Act of 1998  
 17 (contained in Division J of Public Law 105–277), is  
 18 amended—

19           (1) by redesignating clause (ix) as clause (x);  
 20           and

21           (2) by inserting after clause (viii) the following:

22           “(ix)(I) Notwithstanding the applicable per bene-  
 23 ficiary limit under clause (v), (vi), or (viii), but subject  
 24 to the applicable per visit limit under clause (i), in the  
 25 case of a provider that demonstrates to the Secretary that

1 with respect to an individual to whom the provider fur-  
2 nished home health services appropriate to the individual's  
3 condition (as determined by the Secretary) at a reasonable  
4 cost (as determined by the Secretary), and that such rea-  
5 sonable cost significantly exceeded such applicable per  
6 beneficiary limit because of unusual variations in the type  
7 or amount of medically necessary care required to treat  
8 the individual, the Secretary, upon application by the pro-  
9 vider, shall pay to such provider for such individual such  
10 reasonable cost.

11 “(II) The total amount of the additional payments  
12 made to home health agencies pursuant to subclause (I)  
13 in any fiscal year shall not exceed an amount equal to 2  
14 percent of the amounts that would have been paid under  
15 this subparagraph in such year if this clause had not been  
16 enacted.”.

17 (b) EFFECTIVE DATE.—The amendment made by  
18 subsection (a) shall take effect on the date of enactment  
19 of this Act, and apply with respect to each application for  
20 payment of reasonable costs for outliers submitted by any  
21 home health agency for cost reporting periods ending on  
22 or after October 1, 1999.

1 **SEC. 4. PROTECTION OF THE ACCESS OF MEDICARE BENE-**  
 2 **FICIARIES TO HOME HEALTH SERVICES BY**  
 3 **ADDRESSING THE 15 PERCENT CONTIN-**  
 4 **GENCY REDUCTION IN INTERIM PAYMENTS**  
 5 **FOR HOME HEALTH SERVICES.**

6 (a) **ELIMINATION OF CONTINGENCY REDUCTION.**—  
 7 Section 4603 of the Balanced Budget Act of 1997 (42  
 8 U.S.C. 1395fff note), as amended by section 5101(c)(3)  
 9 of the Tax and Trade Relief Extension Act of 1998 (con-  
 10 tained in division J of Public Law 105–277), is amended  
 11 by striking subsection (e).

12 (b) **EFFECTIVE DATE.**—The amendment made by  
 13 subsection (a) shall take effect as if included in the enact-  
 14 ment of the Balanced Budget Act of 1997 (Public Law  
 15 105–33; 111 Stat. 251).

16 **SEC. 5. PROTECTION OF THE ACCESS OF MEDICARE BENE-**  
 17 **FICIARIES TO HOME HEALTH SERVICES**  
 18 **THROUGH A PHASE-IN OF THE 15 PERCENT**  
 19 **REDUCTION IN PROSPECTIVE PAYMENTS**  
 20 **FOR HOME HEALTH SERVICES.**

21 (a) **PHASE-IN OF 15 PERCENT REDUCTION.**—Section  
 22 1895(b)(3)(A)(ii) (42 U.S.C. 1395fff(b)), as amended by  
 23 section 5101(c)(1)(B) of the Tax and Trade Relief Exten-  
 24 sion Act of 1998 (contained in division J of Public Law  
 25 105–277), is amended—

1 (1) in paragraph (3)(A)(ii), by striking “15”  
 2 and inserting “10”; and

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

4 “(7) SPECIAL RULE FOR PAYMENTS BEGINNING  
 5 WITH FISCAL YEAR 2004.—Beginning with fiscal year  
 6 2004, payment under this section shall be made as  
 7 if ‘15’ had been substituted for ‘10’ in clause (ii) of  
 8 paragraph (3)(A) when computing the initial basis  
 9 under such paragraph.”.

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

13 **SEC. 6. INCREASE IN PER VISIT COST LIMIT TO 112 PER-**  
 14 **CENT OF THE NATIONAL MEDIAN.**

15 Section 1861(v)(1)(L)(i) of the Social Security Act  
 16 (42 U.S.C. 1395x(v)(1)(L)(i)), as amended by section  
 17 5101(b) of the Tax and Trade Relief Extension Act of  
 18 1998 (contained in division J of Public Law 105–277),  
 19 is amended—

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

21 (2) in subclause (V)—

22 (A) by inserting “and before October 1,  
 23 1999,” after “October 1, 1998,”; and

24 (B) by striking the period and inserting “,  
 25 or”; and

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

2 “(VI) October 1, 1999, 112 percent of such me-  
3 dian.”.

4 **SEC. 7. REFINEMENT OF HOME HEALTH AGENCY CONSOLI-**  
5 **DATED BILLING.**

6 (a) IN GENERAL.—Section 1842(b)(6)(F) of the So-  
7 cial Security Act (42 U.S.C. 1395u(b)(6)(F)) is amended  
8 by inserting “(including medical supplies described in sec-  
9 tion 1861(m)(5), but excluding durable medical equipment  
10 described in such section)” after “home health services”.

11 (b) CONFORMING AMENDMENT.—Section  
12 1862(a)(21) of the Social Security Act (42 U.S.C.  
13 1395y(a)(21)) is amended by inserting “(including med-  
14 ical supplies described in section 1861(m)(5), but exclud-  
15 ing durable medical equipment described in such section)”  
16 after “home health services”.

17 (c) EFFECTIVE DATE.—The amendments made by  
18 this section shall take effect as if included in the amend-  
19 ments made by section 4603 of the Balanced Budget Act  
20 of 1997 (Public Law 105–33; 111 Stat. 467).

21 **SEC. 8. ELIMINATION OF TIMEKEEPING REQUIREMENTS**  
22 **UNDER THE PROSPECTIVE PAYMENT SYSTEM**  
23 **FOR HOME HEALTH AGENCIES.**

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

1           (1) by striking “unless—” and all that follows  
 2           through “(1) the” and inserting “unless the”; and  
 3           (2) by striking “1835(a)(2)(A);” and all that  
 4           follows through the period and inserting  
 5           “1835(a)(2)(A).”.

6           (b) EFFECTIVE DATE.—The amendments made by  
 7           subsection (a) shall take effect on the date of enactment  
 8           of this Act.

9   **SEC. 9. SENSE OF THE SENATE REGARDING THE TIMELI-**  
 10                   **NESS AND ACCURACY OF INTERMEDIARY**  
 11                   **COMMUNICATIONS TO HOME HEALTH AGEN-**  
 12                   **CIES.**

13           It is the sense of the Senate that the Secretary of  
 14           Health and Human Services should establish a nationally  
 15           uniform process that ensures that each fiscal intermediary  
 16           (as defined in section 1816(a) of the Social Security Act  
 17           (42 U.S.C. 1395h(a))) and each carrier (as defined in sec-  
 18           tion 1842(f) of such Act (42 U.S.C. 1395u(f))) has the  
 19           training and ability necessary to provide timely, accurate,  
 20           and consistent coverage and payment information to each  
 21           home health agency and to each individual eligible to have  
 22           payment made under the medicare program under title  
 23           XVIII of such Act (42 U.S.C. 1395 et seq.).

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