

107TH CONGRESS
2D SESSION

H. R. 4659

To streamline the regulatory processes applicable to home health agencies under the Medicare Program under title XVIII of the Social Security Act and the Medicaid Program under title XIX of such Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 2, 2002

Mr. SUNUNU introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, 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

A BILL

To streamline the regulatory processes applicable to home health agencies under the Medicare Program under title XVIII of the Social Security Act and the Medicaid Program under title XIX of such Act, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Home Health Nurse and Patient Act of 2002”.

1 (b) TABLE OF CONTENTS.—The table of contents of
 2 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings.
- Sec. 3. Definitions.
- Sec. 4. OASIS Task Force (OTF).
- Sec. 5. Elimination of mandatory requirement to collect Outcomes Assessment and Information Set (OASIS) data from certain individuals.
- Sec. 6. Improving the claims review process for dually-eligible medicare and medicaid beneficiaries receiving home health services.
- Sec. 7. Claims Review and Audit Task Force (CRATF).
- Sec. 8. Implementation of Task Force recommendations.

3 **SEC. 2. FINDINGS.**

4 The Congress makes the following findings:

5 (1) The Outcomes Assessment and Information
 6 Set (in this section referred to as “OASIS”) includes
 7 information regarding the health and functional sta-
 8 tus of patients of home health agencies, the use of
 9 health services by such patients, the living conditions
 10 of such patients, and the social support provided to
 11 such patients, that is necessary to assess the quality
 12 of care being provided to medicare and medicaid pa-
 13 tients by home health agencies.

14 (2) According to the Comptroller General of the
 15 United States, the average additional time that is
 16 necessary for a home health agency to comply with
 17 the OASIS requirement for a start-of-care assess-
 18 ment is 61 minutes more than the amount of time
 19 to comply with such requirement estimated by the
 20 Centers for Medicare & Medicaid Services.

1 (3) Existing Federal regulations and associated
2 paperwork requirements are excessively straining
3 home health agencies and their clinical staff, and are
4 often reported by nurses to be the primary contribu-
5 tors to their decreased job satisfaction.

6 (4) Many nurses and home health aides are
7 leaving the home health care profession and patients
8 are staying in the hospital longer than necessary.

9 (5) A 2000 national survey of home health
10 agencies by the Hospital and Healthcare Compensa-
11 tion Service reported a 21 percent turnover rate for
12 registered nurses, a 24 percent turnover rate for li-
13 censed practical nurses, and a 28 percent turnover
14 rate for home health aides.

15 (6) In its May 17, 2001 report titled “Nursing
16 Workforce—Recruitment and Retention of Nurses
17 and Nurse Aides Is a Growing Concern”, the Gen-
18 eral Accounting Office reported that the jobs for
19 nurse aides working in home health care are pro-
20 jected to increase by 58 percent, from 746,000 in
21 1998 to 1,200,000 in 2008.

22 **SEC. 3. DEFINITIONS.**

23 In this Act:

24 (1) COMPREHENSIVE ASSESSMENT OF PA-
25 TIENTS.—The term “comprehensive assessment of

1 patients” means the rule published by the Centers
2 for Medicare & Medicaid Services that requires, as
3 a condition of participation in the medicare pro-
4 gram, a home health agency to provide a patient-
5 specific comprehensive assessment that accurately
6 reflects the patient’s current status and that incor-
7 porates the Outcome and Assessment Information
8 Set (OASIS).

9 (2) CRATF.—The term “CRATF” means the
10 Claims Review and Audit Task Force established
11 under section 7.

12 (3) HOME HEALTH AGENCY.—The term “home
13 health agency” has the meaning given that term
14 under section 1861(o) of the Social Security Act (42
15 U.S.C. 1395x(o)).

16 (4) OUTCOME AND ASSESSMENT INFORMATION
17 SET; OASIS.—The terms “Outcome and Assessment
18 Information Set” and “OASIS” mean the standard
19 provided under the rule relating to data items that
20 must be used in conducting a comprehensive assess-
21 ment of patients.

22 (5) MEDICAID BENEFICIARY.—The term “med-
23 icaid beneficiary” means an individual who is eligible
24 for medical assistance under a State plan under the

1 medicaid program under title XIX of the Social Se-
2 curity Act (42 U.S.C. 1396 et seq.).

3 (6) MEDICARE BENEFICIARY.—The term
4 “medicare beneficiary” means an individual who is
5 entitled to benefits under part A of title XVIII of
6 the Social Security Act (42 U.S.C. 1395c et seq.) or
7 enrolled under part B of such title (42 U.S.C. 1395j
8 et seq.), including an individual who is enrolled in a
9 Medicare+Choice plan under part C of such title
10 (42 U.S.C. 1395w–21 et seq.).

11 (7) OTF.—The term “OTF” means the OASIS
12 Task Force established under section 4.

13 (8) SECRETARY.—The term “Secretary” means
14 the Secretary of Health and Human Services, acting
15 through the Administrator of the Centers for Medi-
16 care & Medicaid Services.

17 **SEC. 4. OASIS TASK FORCE (OTF).**

18 (a) ESTABLISHMENT OF THE OASIS TASK FORCE.—
19 The Secretary shall establish the OASIS Task Force (in
20 this section referred to as the “OTF”) in accordance with
21 the provisions of section 1114(f) of the Social Security Act
22 (42 U.S.C. 1314(f)).

23 (b) MEMBERSHIP.—The OTF shall be composed of
24 11 members appointed by the Secretary as follows:

1 (1) 3 members shall be officers, employees, or
2 designees of the Centers for Medicare & Medicaid
3 Services.

4 (2) 4 members shall be national home health in-
5 dustry representatives.

6 (3) 4 members shall be patient advocates.

7 (c) DATE.—The Secretary shall appoint the members
8 of the OTF not later than the date that is 60 days after
9 the date of the enactment of this Act.

10 (d) STUDY AND REPORT.—

11 (1) STUDY.—The OTF shall conduct a study
12 on the comprehensive assessment of patients to de-
13 termine whether—

14 (A) the number of assessments required
15 during an episode of care or the number of
16 questions asked during each assessment should
17 be decreased to eliminate redundant and
18 uninformative clinical information;

19 (B) a uniform data collection standard is
20 needed to ensure that patients who are not
21 medicare beneficiaries or medicaid beneficiaries
22 receive the same quality of care as patients who
23 are medicare beneficiaries or medicaid bene-
24 ficiaries; and

1 (C) OASIS data should be collected from
 2 medicaid beneficiaries who are not medicare
 3 beneficiaries.

4 (2) REPORT.—Not later than the date that is
 5 6 months after the date of the enactment of this
 6 Act, the OTF shall submit to the Secretary and
 7 Congress a report on the study conducted under
 8 paragraph (1), together with such recommendations
 9 for legislative or administrative action as the OTF
 10 determines appropriate.

11 **SEC. 5. ELIMINATION OF MANDATORY REQUIREMENT TO**
 12 **COLLECT OUTCOMES ASSESSMENT AND IN-**
 13 **FORMATION SET (OASIS) DATA FROM CER-**
 14 **TAIN INDIVIDUALS.**

15 Not later than the date that is 6 months after the
 16 date of the enactment of this Act, the Secretary shall pro-
 17 mulgate a regulation revising the data collection require-
 18 ments under the Outcome and Assessment Information
 19 Set (OASIS) standard that is used as part of the com-
 20 prehensive assessment of patients—

21 (1) to make the use of such data collection re-
 22 quirements optional with respect to patients of home
 23 health agencies who are not medicare beneficiaries
 24 or medicaid beneficiaries; and

1 (2) to eliminate such data collection require-
 2 ments with respect to any patient of a home health
 3 agency to whom only personal care services are fur-
 4 nished.

5 **SEC. 6. IMPROVING THE CLAIMS REVIEW PROCESS FOR DU-**
 6 **ALLY-ELIGIBLE MEDICARE AND MEDICAID**
 7 **BENEFICIARIES RECEIVING HOME HEALTH**
 8 **SERVICES.**

9 (a) IN GENERAL.—The Secretary shall review each
 10 regulation relating to the demand billing process as such
 11 process applies to individuals who are both medicare bene-
 12 ficiaries and medicaid beneficiaries to determine whether
 13 such processes may be conducted in a manner that—

14 (1) is efficient;

15 (2) allows for—

16 (A) the determination of coverage of home
 17 health services under the medicare program
 18 with respect to a patient not later than the date
 19 that is 3 weeks after the date on which the pa-
 20 tient is admitted to the home health agency;
 21 and

22 (B) the expedient submission of a claim
 23 prior to the end of an episode of care that
 24 avoids the submission of a request for antici-

1 pated payment before a final payment deter-
2 mination is made; and

3 (3) does not adversely affect medicare bene-
4 ficiaries, medicaid beneficiaries, or home health
5 agencies in the determination of whether payment
6 may be made under the medicare program for an
7 item or service furnished by a home health agency.

8 (b) IMPLEMENTATION.—Not later than the date that
9 is 6 months after the date of the enactment of this Act,
10 the Secretary shall promulgate a final rule in accordance
11 with section 1871 of the Social Security Act (42 U.S.C.
12 1395hh) revising the processes described in subsection (a)
13 based on the review conducted under such subsection.

14 **SEC. 7. CLAIMS REVIEW AND AUDIT TASK FORCE (CRATF).**

15 (a) ESTABLISHMENT OF THE CLAIMS REVIEW AND
16 AUDIT TASK FORCE.—The Secretary shall establish the
17 Claims Review and Audit Task Force (in this section re-
18 ferred to as the “CRATF”) in accordance with the provi-
19 sions of section 1114(f) of the Social Security Act (42
20 U.S.C. 1314(f)).

21 (b) MEMBERSHIP.—The CRATF shall be composed
22 of 11 members appointed by the Secretary as follows:

23 (1) 5 members shall be officers or employees of
24 the Centers for Medicare & Medicaid Services.

1 (2) 6 members shall be national home health in-
2 dustry representatives.

3 (c) DATE.—The Secretary shall appoint the members
4 of the CRATF not later than the date that is 60 days
5 after the date of the enactment of this Act.

6 (d) STUDY AND REPORT.—

7 (1) STUDY.—

8 (A) IN GENERAL.—The CRATF shall con-
9 duct a study on the processes and policies used
10 to review medical claims submitted by home
11 health agencies, technical denials of payment of
12 such claims, and the statistical sampling meth-
13 odology used to conduct post-payment audits
14 and reviews of such claims.

15 (B) SPECIFIC PROPOSALS CONSIDERED.—
16 In conducting the study under subparagraph
17 (A), the CRATF shall consider the following
18 proposals:

19 (i) Establishing reasonable time limits
20 on regional home health intermediaries for
21 review of claims.

22 (ii) Creating opportunities to use al-
23 ternative dispute resolution to resolve dis-
24 putes involving a claim for payment of a
25 home health agency.

1 (iii) Taking into account the results of
2 all past claim reviews and appeal deter-
3 minations to decide whether the provider
4 should be subject to the proposed audit.

5 (iv) Setting standards for responsible
6 and ethical home health agencies so that
7 agencies that meet those standards would
8 be subject to a minimal number of sam-
9 pling audits, focused medical reviews, and
10 extensive prepayment claim reviews.

11 (v) The elimination of technical deni-
12 als of payment of claims submitted by
13 home health agencies.

14 (vi) Allowing the resubmission of any
15 technically noncompliant claim submitted
16 by a home health agency that has been
17 corrected so that such claim is a clean
18 claim.

19 (vii) Allowing physician assistants and
20 nurse practitioners to certify and make
21 changes to home health care plans to en-
22 sure that home health agencies will be re-
23 imbursed in a timely manner and that care
24 to the medicare beneficiary or medicaid
25 beneficiary would not be interrupted.

(viii) Developing a sampling regulation through the rulemaking process described in section 1871(b)(1) of the Social Security Act (42 U.S.C. 1871(b)(1)).

(ix) Only using the methodology of projecting overpayment to a provider of home health services from a sample of claims where the Secretary has documented a widespread pattern of submitting erroneous claims for payment by that provider for which payment is made under the medicare program.

(2) REPORT.—Not later than the date that is 6 months after the date of the enactment of this Act, the CRATF shall submit to the Secretary and Congress a report on the study conducted under paragraph (1), together with such recommendations for legislative or administrative action as the CRATF determines appropriate.

SEC. 8. IMPLEMENTATION OF TASK FORCE RECOMMENDATIONS.

(a) IMPLEMENTATION OF OTF RECOMMENDATIONS.—Not later than the date that is 6 months after the date on which the Secretary receives the report submitted under section 4(d)(2), the Secretary shall promul-

1 gate a regulation in accordance with section 1871 of the
2 Social Security Act (42 U.S.C. 1395hh) revising the regu-
3 lations relating to the comprehensive assessment of pa-
4 tients in order to implement the recommendations of the
5 OTF contained in such report.

6 (b) IMPLEMENTATION OF CRATF RECOMMENDA-
7 TIONS.—Not later than the date that is 6 months after
8 the date on which the Secretary receives the report sub-
9 mitted under section 7(d)(2), the Secretary shall promul-
10 gate a regulation in accordance with section 1871 of the
11 Social Security Act (42 U.S.C. 1395hh) revising the regu-
12 lations relating to the processes and policies for review of
13 medical claims submitted by home health agencies, tech-
14 nical denials of payment of such claims, and the statistical
15 sampling methodology used to conduct post-payment au-
16 dits and reviews of such claims in order to implement the
17 recommendations of the CRATF contained in such report.

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