

108TH CONGRESS  
2D SESSION

# S. 2983

To establish hospice demonstration projects and a hospice grant program for beneficiaries under the medicare program under title XVIII of the Social Security Act, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

NOVEMBER 16, 2004

Mr. WYDEN introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To establish hospice demonstration projects and a hospice grant program for beneficiaries under the medicare program under title XVIII of the Social Security 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.**

4 This Act may be cited as the “Medicare Hospice  
5 Demonstration Act of 2004”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

1           (1) Each year more than  $\frac{1}{3}$  of the people who  
2 die suffer from a chronic illness.

3           (2) Approximately  $\frac{1}{3}$  of Americans are unsure  
4 about whom to contact to get the best care during  
5 life's last stages.

6           (3) Americans want a team of professionals to  
7 care for the patient at the end of life.

8           (4) Americans want emotional and spiritual  
9 support for the patient and family.

10          (5) Ninety percent of Americans do not realize  
11 that hospice care is a benefit provided under the  
12 medicare program under title XVIII of the Social  
13 Security Act.

14          (6) Data of the Centers for Medicare & Med-  
15 icaid Services show that beneficiaries were enrolled  
16 in hospice for an average of less than 7 weeks in  
17 1998, far less than the full 6-month benefit under  
18 the medicare program.

19          (7) According to the most recent data available,  
20 although more medicare beneficiaries are enrolled in  
21 hospice, the medicare length of stay has declined.

22          (8) Use of hospice among medicare beneficiaries  
23 has been decreasing, from a high of 59 days in 1995  
24 to less than 48 days in 1998.

1 **SEC. 3. HOSPICE DEMONSTRATION PROJECTS AND HOS-**  
2 **PICE EDUCATION GRANTS.**

3 (a) DEFINITIONS.—In this section:

4 (1) DEMONSTRATION PROJECT.—The term  
5 “demonstration project” means a demonstration  
6 project established by the Secretary under sub-  
7 section (b)(1).

8 (2) HOSPICE CARE.—The term “hospice care”  
9 means the items and services described in subpara-  
10 graphs (A) through (I) of section 1861(dd)(1) of the  
11 Social Security Act (42 U.S.C. 1395x(dd)(1)) that  
12 are provided to a seriously ill medicare beneficiary  
13 under a demonstration project by a hospice program  
14 (or by others under an arrangement with such a  
15 program) under a written plan for providing such  
16 care to such beneficiary established and periodically  
17 reviewed by the beneficiary’s attending physician, by  
18 the medical director of the program, and by the  
19 interdisciplinary group described in section  
20 1861(dd)(2)(B) of such Act (42 U.S.C.  
21 1395x(dd)(2)(B)).

22 (3) HOSPICE PROGRAM.—The term “hospice  
23 program” has the meaning given that term in sec-  
24 tion 1861(dd)(2) of the Social Security Act (42  
25 U.S.C. 1395x(dd)(2)).

1           (4) MEDICARE BENEFICIARY.—The term  
2           “medicare beneficiary” means any individual who is  
3           entitled to benefits under part A or enrolled under  
4           part B of the medicare program.

5           (5) MEDICARE PROGRAM.—The term “medicare  
6           program” means the health benefits program under  
7           title XVIII of the Social Security Act (42 U.S.C.  
8           1395 et seq.).

9           (6) SECRETARY.—The term “Secretary” means  
10          the Secretary of Health and Human Services.

11          (7) SERIOUSLY ILL.—The term “seriously ill”  
12          has the meaning given such term by the Secretary  
13          (in consultation with hospice programs and academic  
14          experts in end-of-life care), except that the Secretary  
15          may not limit such term to individuals who are ter-  
16          minally ill (as defined in section 1861(dd)(3) of the  
17          Social Security Act (42 U.S.C. 1395x(dd)(3))).

18          (b) HOSPICE DEMONSTRATION PROJECTS.—

19               (1) ESTABLISHMENT.—The Secretary shall es-  
20               tablish demonstration projects in accordance with  
21               the provisions of this subsection to increase the util-  
22               ity of the hospice care for seriously ill medicare  
23               beneficiaries.

24               (2) PARTICIPATION.—

1 (A) HOSPICE PROGRAMS.—Except as pro-  
2 vided in paragraph (4)(A), only a hospice pro-  
3 gram with an agreement under section 1866 of  
4 the Social Security Act (42 U.S.C. 1395cc), a  
5 consortium of such hospice programs, or a  
6 State hospice association may participate in the  
7 demonstration program.

8 (B) SERIOUSLY ILL MEDICARE BENE-  
9 FICIARIES.—The Secretary shall permit any se-  
10 riously ill medicare beneficiary residing in the  
11 service area of a hospice program participating  
12 in a demonstration project to participate in  
13 such project on a voluntary basis.

14 (3) SERVICES UNDER DEMONSTRATION  
15 PROJECTS.—The provisions of section 1814(i) of the  
16 Social Security Act (42 U.S.C. 1395f(i)) shall apply  
17 to the payment for hospice care provided under the  
18 demonstration projects, except that—

19 (A) notwithstanding section 1862(a)(1)(C)  
20 of such Act (42 U.S.C. 1395y(a)(1)(C)), the  
21 Secretary shall provide for reimbursement for  
22 items and services provided under the sup-  
23 portive and comfort care benefit established  
24 under paragraph (3);

1 (B) any licensed nurse practitioner or phy-  
2 sician assistant may admit a seriously ill medi-  
3 care beneficiary as the primary care provider  
4 when necessary and within the scope of practice  
5 of such practitioner or assistant under State  
6 law;

7 (C) if an underserved community included  
8 in a demonstration project does not have a  
9 qualified social worker, any professional (other  
10 than a social worker) who has the necessary  
11 knowledge, skills, and ability to provide medical  
12 social services may provide such services;

13 (D) the Secretary shall waive any require-  
14 ment that nursing facilities used for respite  
15 care have skilled nurses on the premises 24  
16 hours per day;

17 (E) the Secretary shall permit respite care  
18 to be provided to the seriously ill medicare ben-  
19 eficiary at home; and

20 (F) the Secretary shall waive reimburse-  
21 ment regulations to provide—

22 (i) reimbursement for consultations  
23 and preadmission informational visits, even  
24 if the seriously ill medicare beneficiary  
25 does not elect hospice care at that time;

1 (ii) except with respect to the sup-  
2 portive and comfort care benefit under  
3 paragraph (3), a minimum payment for  
4 hospice care provided under the dem-  
5 onstration projects based on the provision  
6 of hospice care to a seriously ill medicare  
7 beneficiary for a period of 14 days, that—

8 (I) the Secretary shall pay to any  
9 hospice program participating in a  
10 demonstration project and providing  
11 such care (regardless of the length of  
12 stay of the seriously ill medicare bene-  
13 ficiary); and

14 (II) may not be less than the  
15 amount of payment that would have  
16 been made for hospice care if payment  
17 had been made at the daily rate of  
18 payment for such care under section  
19 1814(i) of the Social Security Act (42  
20 U.S.C. 1395f(i));

21 (iii) an increase in the reimbursement  
22 rates for hospice care to offset—

23 (I) changes in hospice care and  
24 oversight under the demonstration  
25 projects;

1 (II) the higher costs of providing  
2 hospice care in rural areas due to lack  
3 of economies of scale or large geo-  
4 graphic areas; and

5 (III) the higher costs of pro-  
6 viding hospice care in urban under-  
7 served areas due to unique costs spe-  
8 cifically associated with people living  
9 in those areas, including providing se-  
10 curity;

11 (iv) direct payment of any nurse prac-  
12 titioner or physician assistant practicing  
13 within the scope of State law in relation to  
14 hospice care provided by such practitioner  
15 or assistant; and

16 (v) a per diem rate of payment for in-  
17 home care under subparagraph (E) that  
18 reflects the range of care needs of the seri-  
19 ously ill medicare beneficiary and that—

20 (I) in the case of a seriously ill  
21 medicare beneficiary that needs rou-  
22 tine care, is not less than 150 percent,  
23 and not more than 200 percent, of the  
24 routine home care rate for hospice  
25 care; and



1 (II) in the case of a seriously ill  
2 medicare beneficiary that needs acute  
3 care, is equal to the continuous home  
4 care day rate for hospice care.

5 (4) SUPPORTIVE AND COMFORT CARE BEN-  
6 EFIT.—

7 (A) IN GENERAL.—For purposes of the  
8 demonstration projects, the Secretary shall es-  
9 tablish a supportive and comfort care benefit  
10 for any eligible seriously ill medicare beneficiary  
11 (as defined in subparagraph (C)).

12 (B) PARTICIPATION.—Any individual or  
13 entity with an agreement under section 1866 of  
14 the Social Security Act (42 U.S.C. 1395cc) may  
15 furnish items or services covered under the sup-  
16 portive and comfort care benefit.

17 (C) BENEFIT.—Under the supportive and  
18 comfort care benefit, any eligible seriously ill  
19 medicare beneficiary may—

20 (i) continue to receive benefits for dis-  
21 ease and symptom modifying treatment  
22 under the medicare program (and the Sec-  
23 retary may not require or prohibit any spe-  
24 cific treatment or decision);

(ii) receive case management and hospice care through a hospice program participating in a demonstration project (for which payment shall be made under paragraph (2)(F)(ii)); and

(iii) receive information and education in order to better understand the utility of hospice care.

(D) PAYMENT.—The Secretary shall establish procedures under which the Secretary pays for items and services furnished to seriously ill medicare beneficiaries under the supportive and comfort care benefit on a fee-for-service basis.

(E) ELIGIBLE SERIOUSLY ILL MEDICARE BENEFICIARY DEFINED.—

(i) IN GENERAL.—In this paragraph, the term “eligible seriously ill medicare beneficiary” means any seriously ill medicare beneficiary that meets the criteria approved by the Secretary under clause (ii).

(ii) APPROVAL OF CRITERIA.—

(I) IN GENERAL.—With respect to each demonstration project, the Secretary shall approve criteria for determining whether a seriously ill

1 medicare beneficiary is eligible for  
2 hospice care under a demonstration  
3 project that has been developed by  
4 hospice programs in consultation with  
5 researchers in end-of-life care and the  
6 broader medical community.

7 (II) DATA COMPARABILITY.—The  
8 Secretary may only approve criteria  
9 that ensures that each demonstration  
10 project yields comparable data with  
11 respect to eligible seriously ill medi-  
12 care beneficiaries on—

13 (aa) the utilization of serv-  
14 ices by such beneficiaries;

15 (bb) the cost of providing  
16 services to such beneficiaries, in-  
17 cluding any costs associated with  
18 providing services before an indi-  
19 vidual is terminally ill (as defined  
20 in section 1861(dd)(3)(A) of the  
21 Social Security Act (42 U.S.C.  
22 1395x(dd)(3)(A))); and

23 (cc) the effect of the dem-  
24 onstration project on the quality  
25 of care of such beneficiaries.

1 (III) LIMITATION.—The Sec-  
 2 retary may not approve criteria if the  
 3 purpose of such criteria is to segment  
 4 services or to provide a benefit for the  
 5 chronically ill.

6 (5) CONDUCT OF DEMONSTRATION  
 7 PROJECTS.—

8 (A) SITES.—The Secretary shall conduct  
 9 demonstration projects in at least 3, but not  
 10 more than 6, sites (which may be statewide).

11 (B) SELECTION OF SITES.—

12 (i) IN GENERAL.—Except as provided  
 13 in clause (ii), the Secretary shall select  
 14 demonstration sites on the basis of pro-  
 15 posals submitted under subparagraph (C)  
 16 that are located in geographic areas that—

17 (I) include both urban and rural  
 18 hospice programs; and

19 (II) are geographically diverse  
 20 and readily accessible to a significant  
 21 number of seriously ill medicare bene-  
 22 ficiaries.

23 (ii) EXCEPTIONS.—

24 (I) UNDERSERVED URBAN  
 25 AREAS.—If a geographic area does

1 not have any rural hospice program  
2 available to participate in a dem-  
3 onstration project, such area may sub-  
4 stitute an underserved urban area,  
5 but the Secretary shall give priority to  
6 those proposals that include a rural  
7 hospice program.

8 (II) SPECIFIC SITE.—The Sec-  
9 retary shall select as a demonstration  
10 site the State in which (according to  
11 the Hospital Referral Region of Resi-  
12 dence, 1994–1995, as listed in the  
13 Dartmouth Atlas of Health Care  
14 1998) the largest metropolitan area of  
15 the State had the lowest percentage of  
16 medicare beneficiary deaths in a hos-  
17 pital when compared to the largest  
18 metropolitan area of each other State,  
19 and the percentage of enrollees who  
20 experienced intensive care during the  
21 last 6 months of life was 21.5 percent.

22 (C) PROPOSALS.—

23 (i) IN GENERAL.—The Secretary shall  
24 accept proposals by any State hospice asso-  
25 ciation, hospice program, or consortium of

1 hospice programs at such time, in such  
2 manner, and in such form as the Secretary  
3 may reasonably require.

4 (ii) RESEARCH DESIGNS.—The Sec-  
5 retary shall permit research designs that  
6 use time series, sequential implementation  
7 of the intervention, randomization by wait  
8 list, and other designs that allow the  
9 strongest possible implementation of the  
10 demonstration projects, while still allowing  
11 strong evaluation about the merits of the  
12 demonstration projects.

13 (D) FACILITATION OF EVALUATION.—The  
14 Secretary shall design the program to facilitate  
15 the evaluation conducted under paragraph (7).

16 (6) DURATION.—The Secretary shall complete  
17 the demonstration projects within a period of 6½  
18 years that includes a period of 18 months during  
19 which the Secretary shall complete the evaluation  
20 under paragraph (7).

21 (7) EVALUATION.—During the 18-month period  
22 following the first 5 years of the demonstration  
23 projects, the Secretary shall complete an evaluation  
24 of the demonstration projects in order to deter-  
25 mine—

1 (A) the short-term and long-term costs and  
2 benefits of changing hospice care provided  
3 under the medicare program to include the  
4 items, services, and reimbursement options pro-  
5 vided under the demonstration projects;

6 (B) whether any increase in payments for  
7 the hospice care provided under the medicare  
8 program are offset by savings in other parts of  
9 the medicare program;

10 (C) the projected cost of implementing the  
11 demonstration projects on a national basis; and

12 (D) in consultation with hospice organiza-  
13 tions and hospice programs (including organiza-  
14 tions and providers that represent rural areas),  
15 whether a payment system based on diagnosis-  
16 related groups is useful for administering the  
17 hospice care provided under the medicare pro-  
18 gram.

19 (8) REPORTS TO CONGRESS.—

20 (A) PRELIMINARY REPORT.—Not later  
21 than 3 years after the date of enactment of this  
22 Act, the Secretary shall submit to the Com-  
23 mittee on Ways and Means of the House of  
24 Representatives and to the Committee on Fi-

1 nance of the Senate a preliminary report on the  
 2 progress made in the demonstration projects.

3 (B) INTERIM REPORT.—Not later than 30  
 4 months after the implementation of the dem-  
 5 onstration projects, the Secretary, in consulta-  
 6 tion with participants in the projects, shall sub-  
 7 mit to the committees described in subpara-  
 8 graph (A) an interim report on the demonstra-  
 9 tion projects.

10 (C) FINAL REPORT.—Not later than the  
 11 date on which the demonstration projects end,  
 12 the Secretary shall submit a final report to the  
 13 committees described in subparagraph (A) on  
 14 the demonstration projects that includes the re-  
 15 sults of the evaluation conducted under para-  
 16 graph (7) and recommendations for appropriate  
 17 legislative changes.

18 (9) WAIVER OF MEDICARE REQUIREMENTS.—

19 The Secretary shall waive compliance with such re-  
 20 quirements of the medicare program to the extent  
 21 and for the period the Secretary finds necessary to  
 22 conduct the demonstration projects.

23 (10) SPECIAL RULES FOR PAYMENT OF  
 24 MEDICARE+CHOICE ORGANIZATIONS.—The Sec-  
 25 retary shall establish procedures under which the



1 Secretary provides for an appropriate adjustment in  
 2 the monthly payments made under section 1853 of  
 3 the Social Security Act (42 U.S.C. 1395w-23) to  
 4 any Medicare+Choice organization offering a  
 5 Medicare+Choice plan to reflect the participation of  
 6 each seriously ill medicare beneficiary enrolled in  
 7 such plan in a demonstration project.

8 (c) HOSPICE EDUCATION GRANT PROGRAM.—

9 (1) IN GENERAL.—The Secretary shall establish  
 10 a Hospice Education Grant program under which  
 11 the Secretary awards education grants to entities  
 12 participating in the demonstration projects for the  
 13 purpose of providing information about—

14 (A) the hospice care under the medicare  
 15 program; and

16 (B) the benefits available to medicare  
 17 beneficiaries under the demonstration projects.

18 (2) USE OF FUNDS.—Grants awarded under  
 19 paragraph (1) shall be used—

20 (A) to provide—

21 (i) individual or group education to  
 22 medicare beneficiaries and the families of  
 23 such beneficiaries; and

1                   (ii) individual or group education of  
 2                   the medical and mental health community  
 3                   caring for medicare beneficiaries; and

4                   (B) to test strategies to improve the gen-  
 5                   eral public knowledge about hospice care under  
 6                   the medicare program and the benefits available  
 7                   to medicare beneficiaries under the demonstra-  
 8                   tion projects.

9           (d) FUNDING.—

10           (1) HOSPICE DEMONSTRATION PROJECTS.—

11                   (A) IN GENERAL.—Except as provided in  
 12                   subparagraph (B), the Secretary shall provide  
 13                   for the transfer from the Federal Hospital In-  
 14                   surance Trust Fund under section 1817 of the  
 15                   Social Security Act (42 U.S.C. 1395i) such  
 16                   sums as may be necessary to carry out this sec-  
 17                   tion.

18                   (B) SUPPORTIVE AND COMFORT CARE  
 19                   BENEFIT.—The Secretary shall provide for the  
 20                   transfer from the Federal Hospital Insurance  
 21                   Trust Fund under section 1817 of the Social  
 22                   Security Act (42 U.S.C. 1395i) and the Federal  
 23                   Supplementary Medical Insurance Trust Fund  
 24                   established under section 1841 of such Act (42  
 25                   U.S.C. 1395t), in such proportion as the Sec-

1           retary determines is appropriate, such sums as  
2           may be necessary to provide for payment of the  
3           costs attributable to the supportive and comfort  
4           care benefit.

5           (2) HOSPICE EDUCATION GRANTS.—The Sec-  
6           retary shall expend such sums as may be necessary  
7           for the purposes of carrying out the Hospice Edu-  
8           cation Grant program established under subsection  
9           (c)(1) from the Research and Demonstration Budget  
10          of the Centers for Medicare & Medicaid Services.

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