

109TH CONGRESS
1ST SESSION

H. R. 1981

To amend title XVIII of the Social Security Act to provide for coverage under the Medicare Program of substitute adult day care services.

IN THE HOUSE OF REPRESENTATIVES

APRIL 28, 2005

Mr. DOGGETT (for himself, Mr. ANDREWS, Mr. BACA, Mr. BECERRA, Mr. BROWN of Ohio, Mr. CARDIN, Mr. CARDOZA, Mr. CONYERS, Mr. CUELLAR, Mr. DELAHUNT, Ms. DELAURO, Mr. EVANS, Mr. FILNER, Mr. FRANK of Massachusetts, Mr. GONZALEZ, Mr. AL GREEN of Texas, Mr. GENE GREEN of Texas, Mr. GRIJALVA, Mr. GUTIERREZ, Mr. HINCHEY, Mr. HINOJOSA, Mr. HONDA, Mr. INSLEE, Ms. JACKSON-LEE of Texas, Mr. JEFFERSON, Ms. EDDIE BERNICE JOHNSON of Texas, Ms. KILPATRICK of Michigan, Mr. LEWIS of Georgia, Mr. LYNCH, Mr. McDERMOTT, Mr. MCGOVERN, Mr. GEORGE MILLER of California, Ms. MOORE of Wisconsin, Mr. MORAN of Virginia, Mrs. NAPOLITANO, Mr. OLVER, Mr. ORTIZ, Mr. PASTOR, Mr. RANGEL, Mr. REYES, Ms. ROYBAL-ALLARD, Mr. RUSH, Ms. LINDA T. SÁNCHEZ of California, Ms. LORETTA SANCHEZ of California, Mr. SANDERS, Ms. SOLIS, Mr. STARK, Mr. THOMPSON of Mississippi, Mr. TIERNEY, Mrs. JONES of Ohio, Ms. WATSON, and Mr. WAXMAN) 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 amend title XVIII of the Social Security Act to provide for coverage under the Medicare Program of substitute adult day care services.

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 Adult Day
5 Care Services Act of 2005”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

8 (1) Adult day care offers services, including
9 medical care, rehabilitation therapies, dignified as-
10 sistance with activities of daily living, nutrition ther-
11 apy, health monitoring, social interaction, stimu-
12 lating activities, and transportation, to seniors who
13 are frail, physically challenged, or cognitively im-
14 paired at no extra cost to the medicare program.

15 (2) The care given at adult day care centers
16 provides seniors and their familial caregivers support
17 that is critical to keeping the senior in the family
18 home.

19 (3) One quarter of all workers provide some
20 form of elder care for those age 65 and older, and
21 by 2007, the number of households involved in
22 caregiving to persons age 50 or older could reach 39
23 million.

24 (4) The pool of potential family caregivers, who
25 are primarily women and who provide an estimated

1 \$257,000,000,000 in “free” services annually, is
 2 dwindling, from 11 potential caregivers for each per-
 3 son needing care today to a projected 4 to 1 ratio
 4 in 2050.

5 (5) Caregiving families tend to have lower in-
 6 comes than non-caregiving families, and the average
 7 caregiver loses \$659,139 in wages, pension benefits,
 8 and Social Security benefits over a lifetime.

9 (6) The loss in productivity in United States
 10 businesses attributable to caregivers for aging or ail-
 11 ing seniors ranges from \$11,000,000,000 to
 12 \$29,000,000,000 annually.

13 (7) Adult day care centers, located in every
 14 State in the United States and the District of Co-
 15 lumbia, serve as quality health options to treat our
 16 Nation’s elderly population, which is about to dra-
 17 matically increase with the aging of the baby boomer
 18 generation.

19 **SEC. 3. MEDICARE COVERAGE OF SUBSTITUTE ADULT DAY**
 20 **CARE SERVICES.**

21 (a) SUBSTITUTE ADULT DAY CARE SERVICES BEN-
 22 EFIT.—

23 (1) IN GENERAL.—Section 1861(m) of the So-
 24 cial Security Act (42 U.S.C. 1395x(m)) is amend-
 25 ed—

1 (A) in the matter preceding paragraph (1),
 2 by inserting “or paragraph (8)” after “para-
 3 graph (7)”;

4 (B) in paragraph (6), by striking “and” at
 5 the end;

6 (C) in paragraph (7), by adding “and” at
 7 the end; and

8 (D) by inserting after paragraph (7), the
 9 following new paragraph:

10 “(8) substitute adult day care services (as de-
 11 fined in subsection (bbb));”.

12 (2) SUBSTITUTE ADULT DAY CARE SERVICES
 13 DEFINED.—Section 1861 of the Social Security Act
 14 (42 U.S.C. 1395x) is amended by adding at the end
 15 the following new subsection:

16 “Substitute Adult Day Care Services; Adult Day Care
 17 Facility

18 “(bbb)(1)(A) The term ‘substitute adult day care
 19 services’ means the items and services described in sub-
 20 paragraph (B) that are furnished to an individual by an
 21 adult day care facility as a part of a plan under subsection
 22 (m) that substitutes such services for a portion of the
 23 items and services described in subparagraph (B)(i) fur-
 24 nished by a home health agency under the plan, as deter-
 25 mined by the physician establishing the plan.

1 “(B) The items and services described in this sub-
2 paragraph are the following items and services:

3 “(i) Items and services described in paragraphs
4 (1) through (7) of subsection (m).

5 “(ii) Transportation of the individual to and
6 from the adult day care facility in connection with
7 any such item or service.

8 “(iii) Meals.

9 “(iv) A program of supervised activities (that
10 meets such criteria as the Secretary determines ap-
11 propriate) designed to promote physical and mental
12 health that are furnished to the individual by the
13 adult day care facility in a group setting for a period
14 of not fewer than 4 and not greater than 12 hours
15 per day.

16 “(v) A medication management program (as de-
17 fined in subparagraph (C)).

18 “(C) For purposes of subparagraph (B)(v), the term
19 ‘medication management program’ means a program of
20 education and services (that meets such criteria as the
21 Secretary determines appropriate) to minimize—

22 “(i) unnecessary or inappropriate use of pre-
23 scription drugs; and

24 “(ii) adverse events due to unintended prescrip-
25 tion drug-to-drug interactions.

1 “(2)(A) Except as provided in subparagraph (B), the
2 term ‘adult day care facility’ means a public agency or
3 private organization, or a subdivision of such an agency
4 or organization, that—

5 “(i) is engaged in providing skilled nursing
6 services and other therapeutic services directly or
7 under arrangement with a home health agency;

8 “(ii) meets such standards established by the
9 Secretary to assure quality of care and such other
10 requirements as the Secretary finds necessary in the
11 interest of the health and safety of individuals who
12 are furnished services in the facility;

13 “(iii) provides the items and services described
14 in paragraph (1)(B); and

15 “(iv) meets the requirements of paragraphs (2)
16 through (8) of subsection (o).

17 “(B) The Secretary may waive the requirement of a
18 surety bond under paragraph (7) of subsection (o) in the
19 case of an agency or organization that provides a com-
20 parable surety bond under State law.

21 “(C) For purposes of payment for home health serv-
22 ices consisting of substitute adult day care services fur-
23 nished under this title, any reference to a home health
24 agency is deemed to be a reference to an adult day care
25 facility.

1 “(D) Nothing in this paragraph shall be construed
2 as prohibiting a home health agency from—

3 “(i) establishing a substitute adult day care fa-
4 cility; or

5 “(ii) providing services under arrangements
6 with a substitute adult day care facility.”.

7 (3) CONFORMING AMENDMENTS.—Sections
8 1814(a)(2)(C) and 1835(a)(2)(A)(i) of the Social
9 Security Act (42 U.S.C. 1395f(a)(2)(C) and
10 1395n(a)(2)(A)(i)) are each amended by striking
11 “section 1861(m)(7)” and inserting “paragraph (7)
12 or (8) of section 1861(m)”.

13 (b) PAYMENT FOR SUBSTITUTE ADULT DAY CARE
14 SERVICES UNDER THE HOME HEALTH PROSPECTIVE
15 PAYMENT SYSTEM.—Section 1895 of the Social Security
16 Act (42 U.S.C. 1395fff) is amended—

17 (1) in the first sentence of paragraph (b)(1), by
18 inserting after “home health services” the following:
19 “or home health services consisting of substitute
20 adult day care services.”; and

21 (2) by adding at the end the following new sub-
22 section:

23 “(f) PAYMENT RATE AND LIMITATION ON PAYMENT
24 FOR SUBSTITUTE ADULT DAY CARE SERVICES.—

25 “(1) PAYMENT RATE.—

1 “(A) IN GENERAL.—The Secretary shall
2 determine each component (as defined by the
3 Secretary) of substitute adult day care services
4 (under section 1861(bbb)(1)(B)(i)) furnished to
5 an individual under the plan of care established
6 under section 1861(m) with respect to such
7 services.

8 “(B) ESTIMATION OF PAYMENT
9 AMOUNT.—The Secretary shall estimate the
10 amount that would otherwise be payable under
11 this section for all home health services under
12 that plan of care other than substitute adult
13 day care services for a week or other period
14 specified by the Secretary.

15 “(C) AMOUNT OF PAYMENT.—The total
16 amount payable for home health services con-
17 sisting of substitute adult day care services
18 under such plan of care is equal to the amount
19 estimated to be payable under subparagraph
20 (B) furnished under the plan by a home health
21 agency.

22 “(2) LIMITATIONS.—

23 “(A) IN GENERAL.—With respect to home
24 health services consisting of substitute adult
25 day care services, no payment may be made

1 under this section for home health services con-
2 sisting of substitute adult day care services de-
3 scribed in clauses (ii) through (v) of section
4 1861(bbb)(1)(B).

5 “(B) LIMITATION ON BALANCE BILLING.—

6 An adult day care facility shall accept as pay-
7 ment in full for substitute adult day care serv-
8 ices (including those services described in
9 clauses (ii) through (v) of section
10 1861(bbb)(1)(B)) furnished by the facility to an
11 individual entitled to benefits under this title
12 the amount of payment provided under this sec-
13 tion for home health services consisting of sub-
14 stitute adult day care services.”.

15 (c) CONSOLIDATED BILLING.—Section 1862(a) of
16 the Social Security Act (42 U.S.C. 1395y(a)), is amend-
17 ed—

18 (1) by striking “or” at the end of paragraph
19 (21);

20 (2) by striking the period at the end of para-
21 graph (22) and inserting “; or”; and

22 (3) by inserting after paragraph (22) the fol-
23 lowing new paragraph:

24 “(23) which are substitute adult day care serv-
25 ices for which payment may be made under section

1 1895(f) and which are furnished to an individual by
2 a substitute adult day care facility pursuant to a
3 plan of care established under section 1861(m) with
4 respect to such services, by an entity other than the
5 substitute adult day care facility, unless the services
6 are furnished under arrangements (as defined in sec-
7 tion 1861(w)(1)) with the entity made by the sub-
8 stitute adult day care facility.”.

9 (d) EFFECTIVE DATE.—The amendments made by
10 this section shall apply to items and services furnished on
11 or after January 1, 2006.

12 (e) RELATIONSHIP TO DEMONSTRATION PROJECT.—
13 (1) Notwithstanding subsection (d) of section 703 of the
14 Medicare Prescription Drug, Improvement, and Mod-
15 ernization Act of 2003 (Public Law 108–173; 117 Stat.
16 2336), the Secretary may terminate the demonstration
17 project for medical adult day care services established
18 under such section 703, but in no case earlier than the
19 date on which the Secretary has fully implemented the
20 preceding provisions of this section. The Secretary shall
21 ensure that individuals receiving medical adult day care
22 services under such demonstration program do not experi-
23 ence any interruption in the receipt of such services by
24 reason of the termination of the demonstration program.

1 (2) Section 703 of the Medicare Prescription Drug,
2 Improvement, and Modernization Act of 2003 (Public Law
3 108–173; 117 Stat. 2336) is amended by striking sub-
4 section (h).

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