

111TH CONGRESS
1ST SESSION

H. R. 3495

To amend title XVIII of the Social Security Act to ensure access to quality home health services for all Americans, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 31, 2009

Ms. KAPTUR 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 ensure access to quality home health services for all Americans, 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; PURPOSE.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Preserving Equitable Access to Community-based Home
6 Health (PEACH) Act of 2009”.

1 (b) PURPOSE.—It is the purpose of this Act to pre-
2 serve access to home health services for all Americans, re-
3 gardless of their ability to pay or their severity of illness.

4 **SEC. 2. FINDINGS.**

5 The Congress finds the following:

6 (1) The Medicare home health benefit is vulner-
7 able to agency selection of the most profitable bene-
8 ficiaries and avoidance of the most complex and
9 costly beneficiaries.

10 (2) Such “cherry picking” by some home health
11 agencies compromises access to care for the most
12 complex, highest risk beneficiaries.

13 (3) The Government Accountability Office has
14 reported that hospital discharge planners have dif-
15 ficulty placing more than 10 percent of eligible pa-
16 tients in home health due to their extensive care
17 needs.

18 (4) Proposals to reduce Medicare payments to
19 home health agencies (in response to large aggregate
20 margins across all home health agencies) may under-
21 mine the financial viability of mission-driven and
22 non-profit home health agencies, which often have
23 low to negative margins, while allowing high-margin
24 agencies to remain in operation.

1 **SEC. 3. SUPPLEMENTAL PAYMENTS FOR PEACH AGENCIES.**

2 (a) IN GENERAL.—There shall be established a fund
3 (to be known as the “PEACH fund”) from which home
4 health agencies meeting specified criteria shall be paid
5 supplemental amounts in addition to their statutory pay-
6 ment amounts under title XVIII of the Social Security
7 Act. Is this to be a trust fund? Where is this fund to be
8 established? Who adminsters it? What are the sources of
9 funding that goes into the fund? What are the allowed
10 uses of such funding?

11 (b) PEACH PROGRAM.—Title XVIII of the Social Se-
12 curity Act is amended by inserting after section 1895 the
13 following new section:

14 “SUPPLEMENTAL PAYMENTS FOR PEACH AGENCIES

15 “SEC. 1895A. (a) DESIGNATION.—

16 “(1) IN GENERAL.—The Secretary shall des-
17 ignate as a ‘PEACH agency’ any home health agen-
18 cy that meets the criteria under paragraph (2).

19 “(2) CRITERIA.—The Secretary may not des-
20 ignate a home health agency as a PEACH agency
21 unless the home health agency meets the following
22 criteria:

23 “(A) The home health agency is certified
24 for participation under this title.

25 “(B) The home health agency offers—

1 “(i) the complete range of home
2 health services as defined under section
3 1861(m) of this title;

4 “(ii) the complete range of home
5 health services on a 24 hours per day, 7
6 days per week on-call basis; and

7 “(iii) its services to all eligible bene-
8 ficiaries or enrollees under this title and/or
9 title XIX, and uninsured individuals up to
10 its service capacity, regardless of their abil-
11 ity to pay or the complexity or intensity of
12 care they require.

13 “(C) The home health agency provides
14 charity care in an amount greater than or equal
15 to 1 percent of its total revenue.

16 “(D) The home health agency agrees that
17 the Secretary may, by statistical or other
18 means, verify on an annual basis that the agen-
19 cy meets the criteria defined in this paragraph,
20 and that the agency will be subject to disquali-
21 fication from the PEACH program if such cri-
22 teria are not met.

23 “(b) SUPPLEMENTAL PAYMENTS.—

24 “(1) IN GENERAL.—Subject to the availability
25 of funds under subsection (c), the Secretary shall

1 make supplemental payments to PEACH agencies
2 based on information submitted by the agency on an
3 additional schedule in the Medicare cost report.

4 “(2) COST REPORTING.—The Secretary shall
5 implement an additional schedule, as a component of
6 the cost reporting process, on which home health
7 agencies may report information the Secretary
8 deems necessary for designation and payment as a
9 PEACH agency.

10 “(3) AMOUNT AND TIMING FOR FIRST YEAR AS
11 PEACH AGENCY.—

12 “(A) The supplemental payment made to a
13 home health agency for the first year in which
14 such agency is designated a PEACH agency
15 under this section shall be equal to its shortfall
16 in that year, defined as the sum of—

17 “(i) the aggregate reasonable cost of
18 home health services delivered under parts
19 A and B of this title by the PEACH agen-
20 cy for such year, less the aggregate pay-
21 ments received by the PEACH agency pur-
22 suant to section 1895;

23 “(ii) the aggregate actual costs of
24 home health and home and community
25 based services delivered by the agency

1 under sections 1905(a)(7), 1905(a)(22),
2 and 1915(e) through (e) of title XIX for
3 such year, less the aggregate payments re-
4 ceived by the PEACH agency for such
5 services under that title; and

6 “(iii) the aggregate cost of uncompen-
7 sated home health services delivered by the
8 PEACH agency for such year.

9 “(B) The supplemental payment under
10 subparagraph (A) shall be paid within 90 days
11 of receipt of the annual cost report by the Sec-
12 retary.

13 “(4) AMOUNT AND TIMING FOR SUBSEQUENT
14 YEARS.—For each year after the first year in which
15 a home health agency is designated a PEACH agen-
16 cy, a PEACH agency shall receive interim supple-
17 mental payments based on—

18 “(A) the intervals at which the agency sub-
19 mits cost reports; and

20 “(B) the estimated shortfall, as defined in
21 subparagraph (3)(A), for the year or interval in
22 question.

23 “(c) FUNDING.—Supplemental payments under this
24 section shall be—

1 “(1) paid from the PEACH fund, which shall
2 be capped at \$500,000,000 annually and shall be
3 administered by the Secretary; and

4 “(2) paid to PEACH agencies—

5 “(A) pursuant to subsection (b); or

6 “(B) if the PEACH fund is insufficient to
7 cover all the supplemental payments that should
8 be paid under subsection (b), in proportion to
9 each agency’s shortfall relative to the aggregate
10 shortfall of all PEACH agencies for the year in
11 question.

12 In any year in which the Secretary determines that
13 the PEACH fund will not cover the aggregate esti-
14 mated shortfall of all PEACH agencies, the Sec-
15 retary shall make a preliminary supplemental pay-
16 ment to each PEACH agency within 90 days of re-
17 ceipt of its annual cost report and, if funds remain,
18 an additional supplemental payment after all
19 PEACH agency cost reports have been received.

20 “(d) DEFINITIONS.—For purposes of this section—

21 “(1) the term ‘charity care’ means home health
22 services that are provided to an individual who is—

23 “(A) not eligible for payment under this
24 title, under title XIX, or by any other third-
25 party payer; and

1 “(B) unable to pay any portion of the full
2 cost of care, including any amount subsidized
3 or otherwise discounted due to an individual’s
4 inability to pay; and

5 “(2) the term ‘uncompensated care’ means
6 home health services provided to an individual by a
7 home health agency with the knowledge that the in-
8 dividual will be financially unable to pay for the
9 services.”.

10 (c) CONFORMING AMENDMENT.—Section 1895(a) of
11 the Social Security Act is amended by inserting before the
12 period at the end the following: “and the provisions of sec-
13 tion 1895A”.

14 **SEC. 4. REGULATIONS.**

15 The Secretary shall issue such regulations as are nec-
16 essary and appropriate for the implementation of the pro-
17 visions of this Act.

18 **SEC. 5. AUTHORIZATION OF APPROPRIATIONS.**

19 There is authorized for appropriation \$500,000,000
20 for each fiscal year beginning with fiscal year 2010 for
21 purposes of carrying out the purposes of this Act. Is there
22 anything this funds other than the PEACH fund? Should
23 this go into the provision creating that fund?

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