

111TH CONGRESS
2D SESSION

H. R. 5803

To amend title XVIII of the Social Security Act to protect Medicare beneficiaries' access to home health services under the Medicare Program.

IN THE HOUSE OF REPRESENTATIVES

JULY 21, 2010

Mr. MCGOVERN (for himself and Mr. JONES) 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 protect Medicare beneficiaries' access to home health services under the Medicare Program.

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 “Home Health Care
5 Access Protection Act of 2010”.

1 **SEC. 2. PROTECTING ACCESS TO MEDICARE HOME HEALTH**
2 **SERVICES.**

3 Section 1895(b)(3)(B) of the Social Security Act (42
4 U.S.C. 1395fff(b)(3)(B)), as amended by section 3401(e)
5 of the Patient Protection and Affordable Care Act, is
6 amended—

7 (1) in clause (iv), by striking “Insofar as” and
8 inserting “Subject to clause (vii), insofar as”; and

9 (2) by adding at the end the following new
10 clause:

11 “(vii) SPECIAL RULES FOR CASE MIX
12 CHANGES FOR 2011 AND LATER.—

13 “(I) IN GENERAL.—The adjust-
14 ment under clause (iv) shall only be
15 made for years beginning with 2011
16 using standards developed by the Sec-
17 retary consistent with the processes
18 described in subclause (II) taking into
19 account the criteria described in sub-
20 clause (III).

21 “(II) PROCESSES AND CRITERIA
22 FOR EVALUATING CHANGES IN CASE
23 MIX.—For purposes of subclause (I),
24 the processes described in this sub-
25 clause are the following:

1 “(aa) In developing stand-
2 ards referred to in such sub-
3 clause, the Secretary shall con-
4 vene a Technical Advisory Group
5 consisting of stakeholders, includ-
6 ing individuals and organizations
7 representing the interests of
8 Medicare beneficiaries, the home
9 health community, health care
10 academia, and health care profes-
11 sionals, in equal numbers from
12 each and limited to parties with-
13 out an existing contractual rela-
14 tionship with the Secretary, to
15 advise the Secretary concerning
16 the establishment of such stand-
17 ards in order to distinguish be-
18 tween real changes in case mix
19 and changes in coding or classi-
20 fication of different units of serv-
21 ices that do not reflect real
22 changes in case mix. The Tech-
23 nical Advisory Group shall be
24 given the opportunity to review
25 and comment on any proposed

1 rulemaking or final determina-
2 tion by the Secretary on such
3 standards prior to such rule-
4 making or determination.

5 “(bb) If the Secretary en-
6 gages an outside contractor to
7 participate in the evaluation of
8 case mix changes described in
9 item (aa), the Secretary shall
10 only utilize a contractor that has
11 not previously participated in the
12 design and establishment of the
13 case mix adjustment factors
14 under this subparagraph.

15 “(cc) If the Secretary deter-
16 mines that any increase in case
17 mix relates to changes in the vol-
18 ume or nature of services pro-
19 vided to home health services pa-
20 tients, the Secretary shall evalu-
21 ate such increase through actual
22 review of claims and services and
23 shall not use any proxy or surro-
24 gate for determining whether the
25 change in volume or nature of

1 services is reasonable and nec-
2 essary.

3 “(dd) The Secretary shall
4 establish the standards referred
5 to in item (aa) by regulation.

6 “(ee) With respect to estab-
7 lishment of such standards, the
8 Secretary shall make public all
9 data, reports, and supporting
10 materials, including any com-
11 ments by the Technical Advisory
12 Group pursuant to item (aa), re-
13 garding the standards at the time
14 of notice of such standards.

15 “(III) CRITERIA.—The criteria
16 described in this subclause are the fol-
17 lowing:

18 “(aa) The impact of changes
19 in the program under this title
20 that may affect the characteris-
21 tics of individuals receiving home
22 health services.

23 “(bb) The impact of changes
24 in the provision of health care

1 services by providers of services
2 other than home health agencies.

3 “(cc) Distinctions in the
4 characteristics of individuals ini-
5 tiating home health services from
6 the community and institutional
7 care settings.

8 “(dd) Whether any changes
9 in coding resulted in a change in
10 expenditures overall annually and
11 disregarding changes in coding
12 that do not have an overall ex-
13 penditure impact.

14 “(ee) Any other factors de-
15 termined appropriate by the Sec-
16 retary in consultation with the
17 Technical Advisory Group under
18 subelause (II)(aa).”.

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