

105<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 2054

To amend title XVIII of the Social Security Act to require the Secretary of Veterans Affairs and the Secretary of Health and Human Services to carry out a model project to provide the Department of Veterans Affairs with medicare reimbursement for medicare health-care services provided to certain medicare-eligible veterans.

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## IN THE SENATE OF THE UNITED STATES

MAY 8, 1998

Mr. JEFFORDS (for himself, Mr. ROCKEFELLER, Mr. SPECTER, Mr. HOLLINGS, Mr. MURKOWSKI, Mr. LEAHY, and Mr. HAGEL) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend title XVIII of the Social Security Act to require the Secretary of Veterans Affairs and the Secretary of Health and Human Services to carry out a model project to provide the Department of Veterans Affairs with medicare reimbursement for medicare health-care services provided to certain medicare-eligible veterans.

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 “Veterans’ Equality for  
5 Treatment and Services Act of 1998 (VETS)”.

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1 **SEC. 2. MEDICARE SUBVENTION FOR VETERANS.**

2 Title XVIII of the Social Security Act (42 U.S.C.  
3 1395 et seq.) (as amended by section 4015 of the Bal-  
4 anced Budget Act of 1997 (Public Law 105–33; 111 Stat.  
5 337)) is amended by adding at the end the following:

6 “MEDICARE SUBVENTION FOR VETERANS

7 “SEC. 1897. (a) DEFINITIONS.—In this section:

8 “(1) ADMINISTERING SECRETARIES.—The term  
9 ‘administering Secretaries’ means the Secretary and  
10 the Secretary of Veterans Affairs acting jointly.

11 “(2) DEMONSTRATION PROJECT; PROJECT.—  
12 The terms ‘demonstration project’ and ‘project’  
13 mean the demonstration project carried out under  
14 this section.

15 “(3) MILITARY RETIREE.—The term ‘military  
16 retiree’ means a member or former member of the  
17 Armed Forces who is entitled to retired pay.

18 “(4) TARGETED MEDICARE-ELIGIBLE VET-  
19 ERAN.—The term ‘targeted medicare-eligible vet-  
20 eran’ means an individual who—

21 “(A) is a veteran (as defined in section  
22 101(2) of title 38, United States Code) and is  
23 described in section 1710(a)(3) of title 38,  
24 United States Code; and

1           “(B) is entitled to benefits under part A of  
2           this title and is enrolled under part B of this  
3           title.

4           “(5) TRUST FUNDS.—The term ‘trust funds’  
5           means the Federal Hospital Insurance Trust Fund  
6           established in section 1817 and the Federal Supple-  
7           mentary Medical Insurance Trust Fund established  
8           in section 1841.

9           “(b) DEMONSTRATION PROJECT.—

10           “(1) IN GENERAL.—

11           “(A) ESTABLISHMENT.—The administer-  
12           ing Secretaries are authorized to establish a  
13           demonstration project (under an agreement en-  
14           tered into by the administering Secretaries)  
15           under which the Secretary shall reimburse the  
16           Secretary of Veterans Affairs, from the trust  
17           funds, for medicare health care services fur-  
18           nished to certain targeted medicare-eligible vet-  
19           erans.

20           “(B) AGREEMENT.—The agreement en-  
21           tered into under subparagraph (A) shall include  
22           at a minimum—

23           “(i) a description of the benefits to be  
24           provided to the participants of the dem-

1 onstration project established under this  
2 section;

3 “(ii) a description of the eligibility  
4 rules for participation in the demonstration  
5 project, including any criteria established  
6 under subsection (c) and any cost sharing  
7 under subsection (d);

8 “(iii) a description of how the dem-  
9 onstration project will satisfy the require-  
10 ments under this title;

11 “(iv) a description of the sites selected  
12 under paragraph (2);

13 “(v) a description of how reimburse-  
14 ment and maintenance of effort require-  
15 ments under subsection (l) will be imple-  
16 mented in the demonstration project; and

17 “(vi) a statement that the Secretary  
18 shall have access to all data of the Depart-  
19 ment of Veterans Affairs that the Sec-  
20 retary determines is necessary to conduct  
21 independent estimates and audits of the  
22 maintenance of effort requirement, the an-  
23 nual reconciliation, and related matters re-  
24 quired under the demonstration project.

1           “(2) NUMBER OF SITES.—Subject to para-  
2           graphs (3) and (4), the administering Secretaries  
3           shall establish a plan for the selection of up to 12  
4           medical centers under the jurisdiction of the Sec-  
5           retary of Veterans Affairs and located in geographi-  
6           cally dispersed locations to participate in the project.

7           “(3) GENERAL CRITERIA.—The selection plan  
8           shall favor selection of those medical centers that  
9           are suited to serve targeted medicare-eligible individ-  
10          uals because—

11                   “(A) there is a high potential demand by  
12                   targeted medicare-eligible veterans for their  
13                   services;

14                   “(B) they have sufficient capability in bill-  
15                   ing and accounting to participate;

16                   “(C) they have favorable indicators of  
17                   quality of care, including patient satisfaction;

18                   “(D) they deliver a range of services re-  
19                   quired by targeted medicare-eligible veterans;  
20                   and

21                   “(E) they meet other relevant factors iden-  
22                   tified in the plan.

23           “(4) REQUIRED SITES.—At least 1 of each of  
24           the following medical centers shall be selected for in-  
25           clusion in the demonstration project:

1           “(A) MEDICAL CENTER NEAR CLOSED  
2 BASE.—A medical center that is in the same  
3 catchment area as a military medical facility  
4 which was closed pursuant to either of the fol-  
5 lowing laws:

6           “(i) The Defense Base Closure and  
7 Realignment Act of 1990.

8           “(ii) Title II of the Defense Author-  
9 ization Amendments and Base Closure and  
10 Realignment Act.

11           “(B) MEDICAL CENTER IN A RURAL  
12 AREA.—A medical center that is located in a  
13 rural area that does not have reasonably avail-  
14 able and accessible private health care provid-  
15 ers.

16           “(5) RESTRICTION.—No new facilities will be  
17 built or expanded with funds from the demonstration  
18 project.

19           “(6) DURATION.—The administering Secretar-  
20 ies shall conduct the demonstration project during  
21 the 3-year period beginning on January 1, 1999.

22           “(c) VOLUNTARY PARTICIPATION.—Participation of  
23 targeted medicare-eligible veterans in the demonstration  
24 project shall be voluntary, subject to the capacity of par-  
25 ticipating medical centers and the funding limitations

1 specified in subsection (l), and shall be subject to such  
2 terms and conditions as the administering Secretaries may  
3 establish. In the case of a demonstration project at a medi-  
4 cal center described in subsection (b)(3), targeted medi-  
5 care-eligible veterans who are military retirees shall be  
6 given preference in participating in the project.

7       “(d) COST SHARING.—The Secretary of Veterans Af-  
8 fairs may establish cost-sharing requirements for veterans  
9 participating in the demonstration project. If such cost  
10 sharing requirements are established, those requirements  
11 shall be the same as the requirements that apply to tar-  
12 geted medicare-eligible patients at nongovernmental facili-  
13 ties.

14       “(e) CREDITING OF PAYMENTS.—A payment received  
15 by the Secretary of Veterans Affairs under the demonstra-  
16 tion project shall be credited to the applicable Department  
17 of Veterans Affairs medical appropriation and (within that  
18 appropriation) to funds that have been allotted to the  
19 medical center that furnished the services for which the  
20 payment is made. Any such payment received during a fis-  
21 cal year for services provided during a prior fiscal year  
22 may be obligated by the Secretary of Veterans Affairs dur-  
23 ing the fiscal year during which the payment is received.

24       “(f) AUTHORITY TO WAIVE CERTAIN MEDICARE RE-  
25 QUIREMENTS.—The Secretary may, to the extent nec-

1 essary to carry out the demonstration project, waive any  
2 requirement under this title. If the Secretary waives any  
3 such requirement, the Secretary shall include a description  
4 of such waiver in the agreement described in subsection  
5 (b)(1)(B).

6 “(g) INSPECTOR GENERAL.—Nothing in the agree-  
7 ment entered into under subsection (b) shall limit the In-  
8 spector General of the Department of Health and Human  
9 Services from investigating any matters regarding the ex-  
10 penditure of funds under this title for the demonstration  
11 project, including compliance with the provisions of this  
12 title and all other relevant laws.

13 “(h) REPORT.—At least 30 days prior to the com-  
14 mencement of the demonstration project, the administer-  
15 ing Secretaries shall submit a copy of the agreement en-  
16 tered into under subsection (b) to the committees of juris-  
17 diction in Congress.

18 “(i) MANAGED HEALTH CARE PLANS.—

19 “(1) IN GENERAL.—In carrying out the dem-  
20 onstration project, the Secretary of Veterans Affairs  
21 may establish and operate managed health care  
22 plans.

23 “(2) REQUIREMENTS.—Any managed health  
24 care plan established in accordance with paragraph  
25 (1) shall be operated by or through a Department of

1 Veterans Affairs medical center or group of medical  
2 centers and may include the provision of health care  
3 services through other facilities under the jurisdic-  
4 tion of the Secretary of Veterans Affairs as well as  
5 public and private entities under arrangements made  
6 between the Department and the other public or pri-  
7 vate entity concerned. Any such managed health  
8 care plan shall be established and operated in con-  
9 formance with standards prescribed by the admin-  
10 istering Secretaries.

11 “(3) MINIMUM BENEFITS.—The administering  
12 Secretaries shall prescribe the minimum health care  
13 benefits to be provided under a managed health care  
14 plan to veterans enrolled in the plan that shall in-  
15 clude at least all health care services covered under  
16 the medicare program under this title.

17 “(4) INCLUSION IN NUMBER OF SITES.—The  
18 establishment of a managed health care plan under  
19 this section shall be counted as the selection of a  
20 medical center for purposes of applying the numeri-  
21 cal limitation under subsection (b)(1).

22 “(j) MEDICAL CENTER REQUIREMENTS.—The Sec-  
23 retary of Veterans Affairs may establish a managed health  
24 care plan using 1 or more medical centers and other facili-  
25 ties only after the Secretary of Veterans Affairs submits

1 to Congress a report setting forth a plan for the use of  
2 such centers and facilities. The plan may not be imple-  
3 mented until the Secretary of Veterans Affairs has re-  
4 ceived from the Inspector General of the Department of  
5 Veterans Affairs, and has forwarded to Congress, certifi-  
6 cation of each of the following:

7           “(1) The cost accounting system of the Veter-  
8           ans Health Administration (known as the Decision  
9           Support System) is operational and is providing reli-  
10          able cost information on care delivered on an inpa-  
11          tient and outpatient basis at such centers and facili-  
12          ties.

13           “(2) The centers and facilities have operated in  
14          conformity with the eligibility reform amendments  
15          made by title I of the Veterans Health Care Act of  
16          1996 for not less than 3 months.

17           “(3) The centers and facilities have developed a  
18          credible plan (on the basis of market surveys, data  
19          from the Decision Support System, actuarial analy-  
20          sis, and other appropriate methods and taking into  
21          account the level of payment under subsection (1)  
22          and the costs of providing covered services at the  
23          centers and facilities) to minimize, to the extent fea-  
24          sible, the risk that appropriated funds allocated to  
25          the centers and facilities will be required to meet the

1 centers' and facilities' obligation to targeted medi-  
2 care-eligible veterans under the demonstration  
3 project.

4 “(4) The centers and facilities collectively have  
5 available capacity to provide the contracted benefits  
6 package to a sufficient number of targeted medicare-  
7 eligible veterans.

8 “(5) The entity administering the health plan  
9 has sufficient systems and safeguards in place to  
10 minimize any risk that instituting the managed care  
11 model will result in reducing the quality of care de-  
12 livered to enrollees in the demonstration project or  
13 to other veterans receiving care under paragraphs  
14 subsection (1) or (2) of section 1710(a) of title 38,  
15 United States Code.

16 “(k) RESERVES.—The Secretary of Veterans Affairs  
17 shall maintain such reserves as may be necessary to en-  
18 sure against the risk that appropriated funds, allocated  
19 to medical centers and facilities participating in the dem-  
20 onstration project through a managed health care plan  
21 under this section, will be required to meet the obligations  
22 of those medical centers and facilities to targeted medi-  
23 care-eligible veterans.

24 “(l) PAYMENTS BASED ON REGULAR MEDICARE  
25 PAYMENT RATES.—

1           “(1) PAYMENTS.—

2                   “(A) IN GENERAL.—Subject to the suc-  
3 ceeding provisions of this subsection, the Sec-  
4 retary shall reimburse the Secretary of Veter-  
5 ans Affairs for services provided under the dem-  
6 onstration project at the following rates:

7                           “(i) NONCAPITATION.—Except as pro-  
8 vided in clause (ii) and subject to subpara-  
9 graphs (B) and (D), at a rate equal to 95  
10 percent of the amounts that otherwise  
11 would be payable under this title on a  
12 noncapitated basis for such services if the  
13 medical center were not a Federal medical  
14 center, were participating in the program,  
15 and imposed charges for such services.

16                           “(ii) CAPITATION.—Subject to sub-  
17 paragraphs (B) and (D), in the case of  
18 services provided to an enrollee under a  
19 managed health care plan established  
20 under subsection (i), at a rate equal to 95  
21 percent of the amount paid to a  
22 Medicare+Choice organization under part  
23 C with respect to such an enrollee.

24           In cases in which a payment amount may not  
25 otherwise be readily computed, the Secretaries

1 shall establish rules for computing equivalent or  
2 comparable payment amounts.

3 “(B) EXCLUSION OF CERTAIN AMOUNTS.—  
4 In computing the amount of payment under  
5 subparagraph (A), the following shall be ex-  
6 cluded:

7 “(i) DISPROPORTIONATE SHARE HOS-  
8 PITAL ADJUSTMENT.—Any amount attrib-  
9 utable to an adjustment under subsection  
10 (d)(5)(F) of section 1886 of the Social Se-  
11 curity Act (42 U.S.C. 1395ww).

12 “(ii) DIRECT GRADUATE MEDICAL  
13 EDUCATION PAYMENTS.—Any amount at-  
14 tributable to a payment under subsection  
15 (h) of such section.

16 “(iii) PERCENTAGE OF INDIRECT  
17 MEDICAL EDUCATION ADJUSTMENT.—40  
18 percent of any amount attributable to the  
19 adjustment under subsection (d)(5)(B) of  
20 such section.

21 “(iv) PERCENTAGE OF CAPITAL PAY-  
22 MENTS.—67 percent of any amounts at-  
23 tributable to payments for capital-related  
24 costs under subsection (g) of such section.

1           “(C) PERIODIC PAYMENTS FROM MEDI-  
2 CARE TRUST FUNDS.—Payments under this  
3 subsection shall be made—

4                   “(i) on a periodic basis consistent  
5 with the periodicity of payments under this  
6 title; and

7                   “(ii) in appropriate part, as deter-  
8 mined by the Secretary, from the trust  
9 funds.

10           “(D) ANNUAL LIMIT ON MEDICARE PAY-  
11 MENTS.—The amount paid to the Department  
12 of Veterans Affairs under this subsection for  
13 any year for the demonstration project may not  
14 exceed \$50,000,000.

15           “(2) REDUCTION IN PAYMENT FOR VA FAILURE  
16 TO MAINTAIN EFFORT.—

17                   “(A) IN GENERAL.—In order to avoid  
18 shifting onto the medicare program under this  
19 title costs previously assumed by the Depart-  
20 ment of Veterans Affairs for the provision of  
21 medicare-covered services to targeted medicare-  
22 eligible veterans, the payment amount under  
23 this subsection for the project for a fiscal year  
24 shall be reduced by the amount (if any) by  
25 which—

1           “(i) the amount of the VA effort level  
2           for targeted veterans (as defined in sub-  
3           paragraph (B)) for the fiscal year ending  
4           in such year, is less than

5           “(ii) the amount of the VA effort level  
6           for targeted veterans for fiscal year 1998.

7           “(B) VA EFFORT LEVEL FOR TARGETED  
8           VETERANS DEFINED.—For purposes of sub-  
9           paragraph (A), the term ‘VA effort level for  
10          targeted veterans’ means, for a fiscal year, the  
11          amount, as estimated by the administering Sec-  
12          retaries, that would have been expended under  
13          the medicare program under this title for VA-  
14          provided medicare-covered services for targeted  
15          veterans (as defined in subparagraph (C)) for  
16          that fiscal year if benefits were available under  
17          the medicare program for those services. Such  
18          amount does not include expenditures attrib-  
19          utable to services for which reimbursement is  
20          made under the demonstration project.

21          “(C) VA-PROVIDED MEDICARE-COVERED  
22          SERVICES FOR TARGETED VETERANS.—For  
23          purposes of subparagraph (B), the term ‘VA-  
24          provided medicare-covered services for targeted

1 veterans' means, for a fiscal year, items and  
2 services—

3 “(i) that are provided during the fis-  
4 cal year by the Department of Veterans  
5 Affairs to targeted medicare-eligible veter-  
6 ans;

7 “(ii) that constitute hospital care and  
8 medical services under chapter 17 of title  
9 38, United States Code; and

10 “(iii) for which benefits would be  
11 available under the medicare program  
12 under this title if they were provided other  
13 than by a Federal provider of services that  
14 does not charge for those services.

15 “(3) ASSURING NO INCREASE IN COST TO MEDI-  
16 CARE PROGRAM.—

17 “(A) MONITORING EFFECT OF DEM-  
18 ONSTRATION PROGRAM ON COSTS TO MEDICARE  
19 PROGRAM.—

20 “(i) IN GENERAL.—The Secretaries,  
21 in consultation with the Comptroller Gen-  
22 eral, shall closely monitor the expenditures  
23 made under the medicare program for tar-  
24 geted medicare-eligible veterans during the  
25 period of the demonstration project com-

1           pared to the expenditures that would have  
2           been made for such veterans during that  
3           period if the demonstration project had not  
4           been conducted.

5           “(ii) ANNUAL REPORT BY THE COMP-  
6           TROLLER GENERAL.—Not later than De-  
7           cember 31 of each year during which the  
8           demonstration project is conducted, the  
9           Comptroller General shall submit to the  
10          Secretaries and the appropriate committees  
11          of Congress a report on the extent, if any,  
12          to which the costs of the Secretary under  
13          the medicare program under this title in-  
14          creased during the preceding fiscal year as  
15          a result of the demonstration project.

16          “(B) REQUIRED RESPONSE IN CASE OF IN-  
17          CREASE IN COSTS.—

18                 “(i) IN GENERAL.—If the administer-  
19                 ing Secretaries find, based on subpara-  
20                 graph (A), that the expenditures under the  
21                 medicare program under this title in-  
22                 creased (or are expected to increase) dur-  
23                 ing a fiscal year because of the demonstra-  
24                 tion project, the administering Secretaries  
25                 shall take such steps as may be needed—

1                   “(I) to recoup for the medicare  
2                   program the amount of such increase  
3                   in expenditures; and

4                   “(II) to prevent any such in-  
5                   crease in the future.

6                   “(ii) STEPS.—Such steps—

7                   “(I) under clause (i)(I) shall in-  
8                   clude payment of the amount of such  
9                   increased expenditures by the Sec-  
10                  retary of Veterans Affairs from the  
11                  current medical care appropriation of  
12                  the Department of Veterans Affairs to  
13                  the trust funds; and

14                  “(II) under clause (i)(II) shall in-  
15                  clude suspending or terminating the  
16                  demonstration project (in whole or in  
17                  part) or lowering the amount of pay-  
18                  ment under paragraph (1)(A).

19                  “(m) EVALUATION AND REPORTS.—

20                  “(1) INDEPENDENT EVALUATION.—The admin-  
21                  istering Secretaries shall arrange for an independent  
22                  entity with expertise in the evaluation of health serv-  
23                  ices to conduct an evaluation of the demonstration  
24                  project. The entity shall submit annual reports on  
25                  the demonstration project to the administering Sec-

1       retaries and to the committees of jurisdiction in the  
2       Congress. The first report shall be submitted not  
3       later than 12 months after the date on which the  
4       demonstration project begins operation, and the final  
5       report not later than 3<sup>1</sup>/<sub>2</sub> years after that date. The  
6       evaluation and reports shall include an assessment,  
7       based on the agreement entered into under sub-  
8       section (b), of the following:

9               “(A) The cost to the Department of Veter-  
10              ans Affairs of providing care to veterans under  
11              the project.

12             “(B) Compliance of participating medical  
13              centers with applicable measures of quality of  
14              care, compared to such compliance for other  
15              medicare-participating medical centers.

16             “(C) A comparison of the costs of medical  
17              centers’ participation in the program with the  
18              reimbursements provided for services of such  
19              medical centers.

20             “(D) Any savings or costs to the medicare  
21              program under this title from the project.

22             “(E) Any change in access to care or qual-  
23              ity of care for targeted medicare-eligible veter-  
24              ans participating in the project.

1           “(F) Any effect of the project on the ac-  
2           cess to care and quality of care for targeted  
3           medicare-eligible veterans not participating in  
4           the project and other veterans not participating  
5           in the project.

6           “(G) The provision of services under man-  
7           aged health care plans under subsection (l), in-  
8           cluding the circumstances (if any) under which  
9           the Secretary of Veterans Affairs uses reserves  
10          described in subsection (k) and the Secretary of  
11          Veterans Affairs’ response to such cir-  
12          cumstances (including the termination of man-  
13          aged health care plans requiring the use of such  
14          reserves).

15          “(H) Any effect that the demonstration  
16          project has on the enrollment in  
17          Medicare+Choice organizations under part C of  
18          this title in the established site areas.

19          “(2) REPORT ON EXTENSION AND EXPANSION  
20          OF DEMONSTRATION PROJECT.—Not later than six  
21          months after the date of the submission of the pe-  
22          nultimate report under paragraph (1), the admin-  
23          istering Secretaries shall submit to Congress a re-  
24          port containing their recommendation as to—

1           “(A) whether to extend the demonstration  
2 project or make the project permanent;

3           “(B) whether to expand the project to  
4 cover additional sites and areas and to increase  
5 the maximum amount of reimbursement (or the  
6 maximum amount of reimbursement permitted  
7 for managed health care plans under this sec-  
8 tion) under the project in any year; and

9           “(C) whether the terms and conditions of  
10 the project should be continued (or modified) if  
11 the project is extended or expanded.”.

○