

106TH CONGRESS  
1ST SESSION

# H. R. 2356

To amend title XVIII of the Social Security Act to improve review procedures under the Medicare Program by making those procedures more equitable and efficient for beneficiaries and other claimants, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 24, 1999

Mr. THOMAS (for himself, Mr. STARK, Mrs. JOHNSON of Connecticut, Mr. MCCREERY, Mr. SAM JOHNSON of Texas, Mr. CAMP, Mr. RAMSTAD, Mr. ENGLISH, Mr. MCINTOSH, and Mr. LOBIONDO) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on 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

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## A BILL

To amend title XVIII of the Social Security Act to improve review procedures under the Medicare Program by making those procedures more equitable and efficient for beneficiaries and other claimants, 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 Patient Ap-  
5 peals Act of 1999”.

1 **SEC. 2. REVISION OF APPEALS PROCESS.**

2 (a) DEADLINES FOR CONSIDERATION OF AP-  
3 PEALS.—Section 1869 of the Social Security Act (42  
4 U.S.C. 1395ff) is amended—

5 (1) in subsection (a), by inserting “consistent  
6 with subsections (c) and (d)” before the period; and

7 (2) by adding at the end the following new sub-  
8 sections:

9 “(c) DEADLINES FOR RECONSIDERATIONS AND AP-  
10 PEALS UNDER PART A.—Reconsideration and appeals  
11 under subsections (a) and (b) with respect to matters  
12 under part A shall be conducted consistent with the fol-  
13 lowing:

14 “(1) DEADLINES FOR ADMINISTRATIVE AC-  
15 TION.—

16 “(A) RECONSIDERED DETERMINATION.—  
17 The Secretary shall conduct and conclude a re-  
18 consideration of an initial determination, and  
19 mail the notice of reconsidered determination,  
20 by not later than the end of the 60-day period  
21 beginning on the date a request for reconsider-  
22 ation has been timely filed.

23 “(B) HEARING BY ADMINISTRATIVE LAW  
24 JUDGE.—

25 “(i) IN GENERAL.—Except as pro-  
26 vided in clause (ii), an administrative law

1 judge shall conduct and conclude a hearing  
2 and render a decision on such hearing by  
3 not later than the end of the 90-day period  
4 beginning on the date a request for hear-  
5 ing has been timely filed.

6 “(ii) WAIVER OF DEADLINE BY PARTY  
7 SEEKING HEARING.—The 90-day period  
8 under clause (i) shall not apply in the case  
9 of a motion or stipulation by the party re-  
10 questing the hearing to waive such period.

11 “(C) DEPARTMENTAL APPEALS BOARD RE-  
12 VIEW.—The Departmental Appeals Board of  
13 the Department of Health and Human Services  
14 shall conduct and conclude a review of the deci-  
15 sion on a hearing described in subparagraph  
16 (B) and make a decision or remand the case to  
17 the administrative law judge for reconsideration  
18 by not later than the end of the 90-day period  
19 beginning on the date a request for review has  
20 been timely filed.

21 “(2) CONSEQUENCES OF FAILURE TO MEET  
22 DEADLINES.—

23 “(A) IN GENERAL.—(i) In the case of a  
24 failure by the Secretary to mail the notice of re-  
25 considered determination by the end of the pe-

1           riod described in paragraph (1)(A), the party  
2           requesting the reconsideration may request a  
3           hearing before an administrative law judge, not-  
4           withstanding any requirements for a reconsid-  
5           ered determination for purposes of the party’s  
6           right to such hearing.

7           “(ii) In the case of a failure by an admin-  
8           istrative law judge to render a decision by the  
9           end of the period described in paragraph  
10          (1)(B), the party requesting the hearing may  
11          request a review by the Departmental Appeals  
12          Board of the Department of Health and  
13          Human Services, notwithstanding any require-  
14          ments for a hearing for purposes of the party’s  
15          right to such a review.

16          “(B) DAB HEARING PROCEDURE.—In the  
17          case of a request described in subparagraph  
18          (A)(ii), the Departmental Appeals Board shall  
19          review the case de novo.

20          “(d) DEADLINES FOR REVIEWS AND APPEALS  
21          UNDER PART B.—Reviews and appeals under subsections  
22          (a) and (b) with respect to matters under part B shall  
23          be conducted consistent with the following:

24          “(1) DEADLINES.—

1           “(A) REVIEW OF INITIAL DETERMINA-  
2           TION.—A carrier shall conduct and conclude a  
3           review of an initial determination, and mail the  
4           notice of review determination, by not later  
5           than the end of the 60-day period beginning on  
6           the date a request for review has been timely  
7           filed.

8           “(B) CARRIER HEARING.—

9           “(i) DEADLINE FOR DECISION.—A  
10           carrier shall conduct and conclude a hear-  
11           ing, and mail the notice of the decision, by  
12           not later than the end of the 60-day period  
13           beginning on the date a request for a car-  
14           rier hearing has been timely filed.

15           “(ii) OPTION TO PROCEED TO HEAR-  
16           ING BY ADMINISTRATIVE LAW JUDGE.—No  
17           carrier hearing shall be held, and no re-  
18           quirement for a carrier hearing shall apply  
19           with respect to rights to a hearing before  
20           an administrative law judge, if the party to  
21           the carrier review elects a hearing before  
22           an administrative law judge in lieu of a  
23           carrier hearing.

24           “(C) HEARING BY ADMINISTRATIVE LAW  
25           JUDGE.—

1           “(i) IN GENERAL.—Except as pro-  
2           vided in clause (ii), an administrative law  
3           judge shall conduct and conclude a hearing  
4           and render a decision on such hearing by  
5           not later than the end of the 90-day period  
6           beginning on the date a request for hear-  
7           ing has been timely filed.

8           “(ii) WAIVER OF DEADLINE BY PARTY  
9           SEEKING HEARING.—The 90-day period  
10          under clause (i) shall not apply in the case  
11          of a motion or stipulation by the party re-  
12          questing the hearing to waive such period.

13          “(D) DEPARTMENTAL APPEALS BOARD RE-  
14          VIEW.—The Departmental Appeals Board of  
15          the Department of Health and Human Services  
16          shall conduct and conclude a review of the deci-  
17          sion on a hearing described in subparagraph  
18          (C) and make a decision or remand the case to  
19          the administrative law judge for reconsideration  
20          by not later than the end of the 90-day period  
21          beginning on the date a request for review has  
22          been timely filed.

23          “(2) CONSEQUENCES OF FAILURE TO MEET  
24          DEADLINES.—

1           “(A) IN GENERAL.—(i) In the case of a  
2 failure by a carrier to mail notice within the  
3 time period described in subparagraphs (A) and  
4 (B) of paragraph (1), the party requesting the  
5 review or carrier hearing (as the case may be)  
6 may request a hearing before an administrative  
7 law judge, notwithstanding any requirements  
8 for a carrier review or a carrier hearing for pur-  
9 poses of the party’s right to a hearing before  
10 such judge.

11           “(ii) In the case of a failure by an admin-  
12 istrative law judge to render a decision by the  
13 end of the period described in paragraph  
14 (1)(C), the party requesting the hearing may  
15 request a review by the Departmental Appeals  
16 Board, notwithstanding any requirements for a  
17 hearing for purposes of the party’s right to  
18 such a review.

19           “(B) DAB HEARING PROCEDURE.—In the  
20 case of a request described in subparagraph  
21 (A)(ii), the Departmental Appeals Board shall  
22 review the case de novo.”.

23           (b) REVIEW OF NATIONAL AND LOCAL COVERAGE  
24 DECISIONS.—

1           (1) IN GENERAL.—Section 1869(b)(3) of the  
2           Social Security Act (42 U.S.C. 1395ff(b)(3)) is  
3           amended to read as follows:

4           “(3) Review of any coverage determination respecting  
5           whether or not a particular type or class of items or serv-  
6           ices is covered under this title shall be subject to the fol-  
7           lowing limitations:

8           “(A) In the case of any national coverage deter-  
9           mination under section 1862(a)(1), the following  
10          limitations apply:

11           “(i) Such a determination shall not be re-  
12          viewed by any administrative law judge.

13           “(ii) Such a determination shall not be  
14          held unlawful or set aside on the ground that  
15          a requirement of section 553 of title 5, United  
16          States Code, or section 1871(b), relating to  
17          publication in the Federal Register or oppor-  
18          tunity for public comment, was not satisfied.

19           “(iii) Upon the filing of a complaint by an  
20          aggrieved party, such a determination shall be  
21          reviewed by the Departmental Appeals Board of  
22          the Department of Health and Human Services.  
23          In conducting such a review, the Departmental  
24          Appeals Board shall review the record and shall  
25          permit discovery and the taking of evidence to

1 evaluate the reasonableness of the determina-  
2 tion. In reviewing such a determination, the De-  
3 partmental Appeals Board shall defer only to  
4 the reasonable findings of fact, reasonable in-  
5 terpretations of law, and reasonable applica-  
6 tions of fact to law by the Secretary.

7 “(iv) A decision of the Departmental Ap-  
8 peals Board constitutes a final agency action  
9 and is subject to judicial review.

10 “(B) In the case of a local coverage determina-  
11 tion made by a fiscal intermediary or a carrier under  
12 this title, the following limitations apply:

13 “(i) Upon the filing of a complaint by an  
14 aggrieved party, such a determination shall be  
15 reviewed by an administrative law judge of the  
16 Department of Health and Human Services.  
17 The administrative law judge shall review the  
18 record and shall permit discovery and the tak-  
19 ing of evidence to evaluate the reasonableness  
20 of the determination. In reviewing such a deter-  
21 mination, the judge shall defer only to the rea-  
22 sonable findings of fact, reasonable interpreta-  
23 tions of law, and reasonable applications of fact  
24 to law by the Secretary.

1           “(ii) Such a determination may be re-  
2           viewed by the Departmental Appeals Board of  
3           the Department of Health and Human Services.

4           “(iii) A decision of the Departmental Ap-  
5           peals Board constitutes a final agency action  
6           and is subject to judicial review.

7           “(C) In the case of review of a determination  
8           under subparagraph (A)(iii) or (B)(i) where the  
9           moving party alleges that there are no material  
10          issues of fact in dispute, and alleges that the only  
11          issue is the constitutionality of a provision of this  
12          title, or that a regulation, determination, or ruling  
13          by the Secretary is invalid, the moving party may  
14          seek review by a court of competent jurisdiction.”.

15          (2) PENDING NATIONAL COVERAGE DETER-  
16          MINATIONS.—Section 1869(b) of such Act (42  
17          U.S.C. 1395ff(b)) is amended by adding at the end  
18          the following new paragraph:

19          “(6)(A) In the event the Secretary has not issued a  
20          national coverage or noncoverage determination with re-  
21          spect to a particular type or class of items or services,  
22          an affected party may submit to the Secretary a request  
23          to make such a determination with respect to such items  
24          or services. By not later than the end of the 90-day period

1 beginning on the date the Secretary receives such a re-  
2 quest, the Secretary shall take one of the following actions:

3           “(i) Issue a national coverage determination,  
4 with or without limitations.

5           “(ii) Issue a national noncoverage determina-  
6 tion.

7           “(iii) Issue a determination that no national  
8 coverage or noncoverage determination is appro-  
9 priate as of the end of such 90-day period with re-  
10 spect to national coverage of such items or services.

11          “(B) When issuing a determination under subpara-  
12 graph (A), the Secretary shall include a explanation of the  
13 basis for the determination. An action taken under sub-  
14 paragraph (A) is deemed to be a national coverage deter-  
15 mination for purposes of review under paragraph (3)(A).”.

16          (c) STANDING.—Section 1869 of such Act (42 U.S.C.  
17 1395ff), as amended in subsection (a), is further amended  
18 by adding at the end the following new subsection:

19          “(e) An action under this section may only be initi-  
20 ated by an aggrieved person, or class of persons, with re-  
21 spect to claims for rights to, or payments for, items and  
22 services under this title, or coverage of items and services  
23 under this title. Such a person, or class of persons, in-  
24 cludes the following:

1           “(1) Individuals entitled to benefits under part  
2     A, or enrolled under part B, or both.

3           “(2) Providers of services.

4           “(3) Physicians.

5           “(4) Other health care professionals entitled to  
6     payment for services furnished under this title.

7           “(5) Suppliers and manufacturers of items and  
8     services covered, or seeking to be covered, under this  
9     title.”.

10          (d) ELIMINATION OF SUA SPONTE MOTIONS BY THE  
11     SECRETARY ON DECISIONS OF THE PROVIDER REIM-  
12     BURSEMENT REVIEW BOARD.—Section 1878(f)(1) of such  
13     Act (42 U.S.C. 1395oo(f)(1)) is amended—

14           (1) in the first sentence, by striking “unless the  
15     Secretary, on his own motion, and within 60 days  
16     after the provider of services is notified of the  
17     Board’s decision, reverses, affirms, or modifies the  
18     Board’s decision”;

19           (2) in the second sentence, by striking “, or of  
20     any reversal, affirmance, or modification by the Sec-  
21     retary,” and “or of any reversal, affirmance, or  
22     modification by the Secretary is received”; and

23           (3) in the fifth sentence, by striking “ and not  
24     subject to review by the Secretary”.

25          (e) CONFORMING REGULATIONS.—

1           (1) IN GENERAL.—The Secretary of Health and  
2           Human Services shall promptly publish notice of re-  
3           visions in the process under section 1869 of the So-  
4           cial Security Act (42 U.S.C. 1395ff), in order to re-  
5           flect the modifications to such process made by this  
6           section.

7           (2) REFERENCES.—For purposes of this section  
8           and the notice published under paragraph (1), ref-  
9           erence to—

10                   (A) a reconsideration of an initial deter-  
11                   mination in subsection (c)(1)(A) of section  
12                   1869 of the Social Security Act (42 U.S.C.  
13                   1395ff), as added under subsection (a)(2), is a  
14                   reference to a reconsideration of an initial de-  
15                   termination under section 405.715 of title 42 of  
16                   the Code of Federal Regulations;

17                   (B) the requirement to mail the notice of  
18                   reconsidered determination in such subsection,  
19                   as so added, is a reference to such requirement  
20                   under section 405.716 of such title;

21                   (C) a hearing conducted by an administra-  
22                   tive law judge in subsection (c)(1)(B)(i) of such  
23                   section, as so added, is a reference to such a  
24                   hearing under section 405.720 of such title;

1 (D) review conducted by the Departmental  
2 Appeals Board of the Department of Health  
3 and Human Services in paragraphs (1)(C) and  
4 (2)(A)(ii) of subsection (c) of such section  
5 1869, as so added, is a reference to such review  
6 conducted under section 405.724 of such title;

7 (E) a review of an initial determination in  
8 subsection (d)(1)(A) of such section, as so  
9 added, is a reference to such review conducted  
10 under section 405.807 of such title;

11 (F) the requirement to mail the notice of  
12 review determination in such subsection, as so  
13 added, is a reference to such requirement under  
14 section 405.811 of such title;

15 (G) a hearing in subsection (d)(1)(B)(i) of  
16 such section, as so added, is a reference to such  
17 a hearing under section 405.830 of such title;

18 (H) a hearing before an administrative law  
19 judge in subparagraphs (B)(ii) and (C)(i) of  
20 subsection (d)(1) of such section, as so added,  
21 is a reference to such a hearing under section  
22 405.855 of such title; and

23 (I) review conducted by the Departmental  
24 Appeals Board of the Department of Health  
25 and Human Services in paragraphs (1)(D) and

1           (2)(A)(ii) of subsection (d) of such section, as  
2           so added, is a reference to such review con-  
3           ducted under section 405.856 of such title.

4           (f) EFFECTIVE DATE.—This section, and the amend-  
5           ments made by this section, apply as of the date that is  
6           90 days after the date of the enactment of this Act, and  
7           apply to reconsiderations, reviews, motions, and deter-  
8           minations pending before, on, or after such date.

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