

110TH CONGRESS
1ST SESSION

H. R. 3865

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

OCTOBER 17, 2007

Mr. MCGOVERN (for himself and Mr. JONES of North Carolina) 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 2007".

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

3 (a) IN GENERAL.—Section 1895(b)(3) of the Social
4 Security Act (42 U.S.C. 1395fff(b)(3)) is amended—

5 (1) in subparagraph (B)(iv), by adding at the
6 end the following: “Such adjustment shall not be
7 made with respect to home health services for pay-
8 ment in 2008 and in making such an adjustment
9 with respect to home health services for payment in
10 a subsequent year, the Secretary shall evaluate
11 changes in case mix using standards developed by
12 the Secretary consistent with the processes described
13 in subparagraph (D)(i) and taking into account the
14 criteria described in subparagraph (D)(ii).”; and

15 (2) by adding at the end the following new sub-
16 paragraph:

17 “(D) PROCESSES AND CRITERIA FOR
18 EVALUATING CHANGES IN CASE MIX.—For pur-
19 poses of subparagraph (B)(iv)—

20 “(i) PROCESSES.—The processes de-
21 scribed in this clause are the following:

22 “(I) In developing standards re-
23 ferred to in such subparagraph, the
24 Secretary shall convene a Technical
25 Advisory Group consisting of stake-
26 holders, including individuals and or-

1 organizations representing the interests
2 of Medicare beneficiaries, the National
3 Association for Home Care & Hospice,
4 and the Visiting Nurse Associations of
5 America, health care academia, and
6 health care professionals, in equal
7 numbers from each and limited to
8 parties without an existing contractual
9 relationship with the Secretary, to ad-
10 vise the Secretary concerning the es-
11 tablishment of such standards in
12 order to distinguish between real
13 changes in case mix and changes in
14 coding or classification of different
15 units of services that do not reflect
16 real changes in case mix. The Tech-
17 nical Advisory Group shall be given
18 the opportunity to review and com-
19 ment on any proposed rulemaking or
20 final determination by the Secretary
21 on such standards prior to such rule-
22 making or determination.

23 “(II) If the Secretary engages an
24 outside contractor to participate in
25 the evaluation of case mix changes de-

1 scribed in subclause (I), the Secretary
2 shall only utilize a contractor that has
3 not previously participated in the de-
4 sign and establishment of the case
5 mix adjustment factors under sub-
6 paragraph (B).

7 “(III) If the Secretary deter-
8 mines that any increase in case mix
9 relates to changes in the volume or
10 nature of services provided to home
11 health services patients, the Secretary
12 shall evaluate that increase through
13 actual review of claims and services
14 and shall not use any proxy or surro-
15 gate for determining whether the
16 change in volume or nature of services
17 is reasonable and necessary.

18 “(IV) The Secretary shall estab-
19 lish the standards referred to in sub-
20 clause (I) by regulation.

21 “(V) With respect to establish-
22 ment of such standards, the Secretary
23 shall make public all data, reports,
24 and supporting materials, including
25 any comments by the Technical Advi-

1 sory Group pursuant to subclause (I),
2 regarding the standards at the time of
3 notice of such standards.

4 “(ii) CRITERIA.—The criteria de-
5 scribed in this clause are the following:

6 “(I) The impact of changes in
7 the program under this title that may
8 affect the characteristics of individ-
9 uals receiving home health services.

10 “(II) The impact of changes in
11 the provision of health care services
12 by providers of services other than
13 home health agencies.

14 “(III) Distinctions in the charac-
15 teristics of individuals initiating home
16 health services from the community
17 and institutional care settings.

18 “(IV) Whether any changes in
19 coding resulted in a change in expend-
20 itures overall annually and dis-
21 regarding changes in coding that do
22 not have an overall expenditure im-
23 pact.

24 “(V) Any other factors deter-
25 mined appropriate by the Secretary in

1 consultation with the Technical Advi-
2 sory Group under clause (i)(I).”.

3 (b) VOIDING OF PROPOSED CASE MIX ADJUST-
4 MENT.—The Secretary of Health and Human Services
5 shall not take any action to implement or otherwise carry
6 out provisions contained in the final rule published on Au-
7 gust 29, 2007, on pages 49762–49945 of volume 72 of
8 the Federal Register, insofar as such provisions propose
9 to make a case mix adjustment to the standardized pay-
10 ment amounts under the prospective payment system for
11 home health services under section 1895 of the Social Se-
12 curity Act (42 U.S.C. 1395fff) to account for changes in
13 coding that were not related to an underlying change in
14 patient health status. The Secretary shall republish any
15 rates specified in such rule to take into account the appli-
16 cation of the previous sentence. The Secretary shall only
17 institute an adjustment under subparagraph (B)(iv) of
18 such section in compliance with subparagraph (D) of such
19 section, as added by subsection (a)(2).

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