

110TH CONGRESS
1ST SESSION

S. 2181

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

IN THE SENATE OF THE UNITED STATES

OCTOBER 17, 2007

Ms. COLLINS (for herself, Mr. CASEY, Mr. BOND, Ms. CANTWELL, Mr. ROBERTS, and Mr. REED) introduced the following bill; which was read twice and referred to the Committee on Finance

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”.

6 **SEC. 2. PROTECTING ACCESS TO MEDICARE HOME HEALTH**
7 **SERVICES.**

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

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

11 (2) by adding at the end the following new sub-
12 paragraph:

13 “(D) PROCESSES AND CRITERIA FOR
14 EVALUATING CHANGES IN CASE MIX.—For pur-
15 poses of subparagraph (B)(iv)—

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

18 “(I) In developing standards re-
19 ferred to in such subparagraph, the
20 Secretary shall convene a Technical
21 Advisory Group consisting of stake-
22 holders, including individuals and or-
23 ganizations representing the interests
24 of Medicare beneficiaries, the National
25 Association for Home Care & Hospice,

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

20 “(II) If the Secretary engages an
21 outside contractor to participate in
22 the evaluation of case mix changes de-
23 scribed in subclause (I), the Secretary
24 shall only utilize a contractor that has
25 not previously participated in the de-

1 sign and establishment of the case
2 mix adjustment factors under sub-
3 paragraph (B).

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

15 “(IV) The Secretary shall estab-
16 lish the standards referred to in sub-
17 clause (I) by regulation.

18 “(V) With respect to establish-
19 ment of such standards, the Secretary
20 shall make public all data, reports,
21 and supporting materials, including
22 any comments by the Technical Advi-
23 sory Group pursuant to subclause (I),
24 regarding the standards at the time of
25 notice of such standards.

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

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

7 “(II) The impact of changes in
8 the provision of health care services
9 by providers of services other than
10 home health agencies.

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

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

21 “(V) Any other factors deter-
22 mined appropriate by the Secretary in
23 consultation with the Technical Advi-
24 sory Group under clause (i)(I).”.

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

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