

115TH CONGRESS
1ST SESSION

H. R. 3098

To amend title XVIII of the Social Security Act to provide for coverage of certified adult day services under the Medicare program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 28, 2017

Ms. SÁNCHEZ (for herself, Ms. MICHELLE LUJAN GRISHAM of New Mexico, Ms. ROYBAL-ALLARD, Mr. LOWENTHAL, Mr. CONYERS, Ms. CLARKE of New York, and Mr. LARSEN of Washington) 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 provide for coverage of certified adult day services under the Medicare program, 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 Adult Day
5 Services Act of 2017”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

1 (1) Adult day care can offer services, including
2 medical care, rehabilitation therapies, dignified as-
3 sistance with activities of daily living, nutrition ther-
4 apy, health monitoring, social interaction, stimu-
5 lating activities, and transportation, to seniors and
6 people with disabilities at no extra cost to the Medi-
7 care program.

8 (2) The care given at adult day services centers
9 under an interdisciplinary team provides seniors,
10 people with disabilities, and their familial caregivers
11 with more care hours and additional services that
12 are critical to keeping patients healthier and in the
13 homes of the patients instead of in a nursing home,
14 and reduces the risk of hospital admission or read-
15 mission.

16 **SEC. 3. MEDICARE COVERAGE OF CERTIFIED ADULT DAY**
17 **SERVICES.**

18 (a) MEDICARE CERTIFIED ADULT DAY SERVICES
19 BENEFIT.—

20 (1) DEFINITION.—Section 1861 of the Social
21 Security Act (42 U.S.C. 1395x) is amended by add-
22 ing at the end the following new subsection:

1 “Certified Adult Day Services; Adult Day Services Pro-
2 vider; Certified Adult Day Services Center; Post-In-
3 stitutional Certified Adult Day Services; Certified
4 Adult Day Services Spell of Illness

5 “(jjj)(1)(A) The term ‘certified adult day services’
6 means, subject to paragraph (4), the items and services
7 described in subparagraph (B) that are furnished to an
8 individual who is under the care of a physician—

9 “(i) by an adult day services provider (as de-
10 fined in paragraph (2)) or by another entity under
11 an arrangement with such an adult day services pro-
12 vider to provide such services;

13 “(ii) in accordance with a plan (for furnishing
14 such items and services to such individual) approved
15 and periodically reviewed by such physician; and

16 “(iii) in a certified adult day services center (as
17 defined in paragraph (3)).

18 “(B) For purposes of subparagraph (A), the items
19 and services described in this subparagraph are the fol-
20 lowing:

21 “(i) Part-time or intermittent services (as de-
22 fined in subparagraph (C)(i)) provided by or under
23 the supervision of a registered professional nurse.

1 “(ii) Physical or occupational therapy or
2 speech-language pathology services, or any combina-
3 tion of such services.

4 “(iii) Medical social services under the direction
5 of a physician.

6 “(iv) Nutritional meals, including special diets,
7 as ordered by a physician.

8 “(v) A program of supervised activities (that
9 meets such criteria as the Secretary determines ap-
10 propriate) designed to promote physical and mental
11 health that are furnished in a group setting for a pe-
12 riod of not fewer than 4 and not greater than 8
13 hours per day.

14 “(vi) A medication management program (as
15 defined in subparagraph (C)(ii)).

16 “(vii) Medical supplies (including catheters,
17 catheter supplies, ostomy bags, and supplies related
18 to ostomy care, and a covered osteoporosis drug (as
19 defined in subsection (kk)), but excluding other
20 drugs and biologicals) and durable medical equip-
21 ment.

22 “(viii) Transportation of the individual de-
23 scribed in subparagraph (A) to and from a certified
24 adult day services center in connection with the pro-

1 vision of an item or service described in a previous
2 provision of this subparagraph.

3 “(C)(i) For purposes of subparagraph (B)(i), the
4 term ‘part-time or intermittent services’ means certified
5 adult day services furnished any number of days per week
6 as long as such services are furnished fewer than 8 hours
7 each day. For purposes of sections 1814(a)(2)(C) and
8 1835(a)(2)(A), insofar as such respective section relates
9 to certified adult day services, ‘intermittent’ means cer-
10 tified adult day services that are either provided or needed
11 on fewer than 7 days each week, or less than 8 hours of
12 each day for periods of 21 days or less (with extensions
13 in exceptional circumstances when the need for additional
14 care is finite and predictable).

15 “(ii) For purposes of subparagraph (B)(vi), the term
16 ‘medication management program’ means a program of
17 education and services (that meets such criteria as the
18 Secretary determines appropriate) to minimize—

19 “(I) unnecessary or inappropriate use of pre-
20 scription drugs; and

21 “(II) adverse events due to unintended prescrip-
22 tion drug-to-drug interactions.

23 “(2) The term ‘adult day services provider’ means a
24 provider of home and community-based services that is ap-
25 proved in the applicable State to provide long-term serv-

1 ices and supports, which may include nursing care, phys-
2 ical therapy, occupational therapy, social work services,
3 transportation, and personal care services.

4 “(3) The term ‘certified adult day services center’
5 means a facility—

6 “(A) of a public agency or private organization,
7 or a subdivision of such an agency or organization,
8 that—

9 “(i) is primarily engaged in providing an
10 interdisciplinary approach that includes skilled
11 nursing services and other therapeutic services
12 directly;

13 “(ii) has policies, established by a group of
14 professional personnel (associated with the
15 agency or organization), including one or more
16 physicians and one or more registered profes-
17 sional nurses, to govern the services (referred to
18 in subparagraph (A)) which it provides, and
19 provides for supervision of such services;

20 “(iii) maintains clinical records on all pa-
21 tients;

22 “(iv) in the case of an agency or organiza-
23 tion in any State in which State or applicable
24 local law provides for the licensing or certifi-
25 cation of agencies or organizations of this na-

1 ture, (i) is licensed or certified pursuant to such
2 law, or (ii) is approved, by the agency of such
3 State or locality responsible for licensing or cer-
4 tifying agencies or organizations of this nature,
5 as meeting the standards established for such
6 licensing or certification;

7 “(v) is licensed or certified by the State in-
8 volved or accredited as meeting requirements,
9 including under section 1865, through a nation-
10 ally recognized accrediting agency that is recog-
11 nized by the Secretary;

12 “(vi) has in effect an overall plan and
13 budget that meets the requirements of sub-
14 section (z);

15 “(vii) meets applicable conditions of par-
16 ticipation under section 1891(a) (or similar
17 conditions specified by the Secretary as applica-
18 ble to such an agency or organization) and such
19 other conditions of participation as the Sec-
20 retary may find necessary in the interest of the
21 health and safety of individuals who are fur-
22 nished services by such agency or organization;
23 and

24 “(viii) meets such additional requirements
25 (including conditions relating to bonding or es-

1 tablishing of escrow accounts as the Secretary
2 finds necessary for the financial security of the
3 program) as the Secretary finds necessary for
4 the effective and efficient operation of the pro-
5 gram;

6 “(B) at which such agency or organization pro-
7 vides for items and services described in paragraph
8 (1)(B); and

9 “(C) that complies with all applicable State and
10 local building codes, fire codes, zoning laws, and
11 State licensing building standards that apply to a
12 State licensed or certified or nationally accredited
13 adult day center, and in States where there are no
14 State licensing building standards for adult day cen-
15 ters, building standards based on the standards
16 adopted by a nationally recognized accrediting agen-
17 cy that is recognized by the Secretary and applies to
18 such a center standards that are comparable to the
19 requirements applied to a skilled nursing facility
20 pursuant to section 1819(d)(2)(B).

21 “(4) For purposes of paragraph (1)(A), an item or
22 service furnished to an individual, with respect to a period,
23 shall not be considered an adult day service if—

24 “(A) the individual is—

1 “(i) concurrently receiving similar skilled
2 services under a State plan under section
3 1905(a) or under a home and community-based
4 waiver authorized for a State under section
5 1115, under subsection (c) or (d) of section
6 1915, under a State plan amendment under
7 subsection (i) of section 1915, or under section
8 1902(a)(10)(D); and

9 “(ii) receiving such item or service during
10 such period under such State plan, waiver,
11 amendment, or respective section; or

12 “(B) the individual is receiving such item or
13 service during such period pursuant to a plan of
14 care from a home health agency under section
15 1861(m).

16 “(5) Nothing in this subsection shall be construed as
17 prohibiting a home health agency from—

18 “(A) establishing a State licensed or certified or
19 nationally accredited certified adult day services cen-
20 ter and furnishing certified adult day services; or

21 “(B) providing services under arrangements
22 with such a center.

23 “(6) The term ‘post-institutional certified adult day
24 services’ means certified adult day services furnished to
25 an individual—

1 “(A) after discharge from a hospital or critical
2 access hospital in which the individual was an inpa-
3 tient for not less than 3 consecutive days before
4 such discharge if such certified adult day services
5 were initiated within 14 days after the date of such
6 discharge; or

7 “(B) after discharge from a skilled nursing fa-
8 cility in which the individual was provided post-hos-
9 pital extended care services if such certified adult
10 day services were initiated within 14 days after the
11 date of such discharge.

12 “(7) The term ‘certified adult day services spell of
13 illness’ with respect to any individual means a period of
14 consecutive days—

15 “(A) beginning with the first day (not included
16 in a previous certified adult day services spell of ill-
17 ness)—

18 “(i) on which such individual is furnished
19 post-institutional certified adult day services;
20 and

21 “(ii) which occurs in a month for which
22 the individual is entitled to benefits under part
23 A; and

24 “(B) ending with the close of the first period of
25 60 consecutive days thereafter on each of which the

1 individual is neither an inpatient of a hospital or
2 critical access hospital nor an inpatient of a facility
3 described in section 1819(a)(1) or subsection (y)(1)
4 nor provided home health services or certified adult
5 day services.”.

6 (2) INCLUSION UNDER PART B BENEFIT.—Sec-
7 tion 1832(a)(2) of the Social Security Act (42
8 U.S.C. 1395k(a)(2)) is amended—

9 (A) in subparagraph (I), by striking at the
10 end “and”;

11 (B) in subparagraph (J), by striking at the
12 end the period and inserting “and”; and

13 (C) by adding at the end the following new
14 subparagraph:

15 “(K) certified adult day services (as de-
16 fined in section 1861(iii)(1)(A)).”.

17 (3) INCLUSION UNDER PART A BENEFIT.—Sec-
18 tion 1812(a) of the Social Security Act is amend-
19 ed—

20 (A) in paragraph (4), by striking at the
21 end “and”;

22 (B) in paragraph (5), by striking the pe-
23 riod at the end and inserting “and”; and

24 (C) by adding at the end the following new
25 paragraph:

1 “(6) in the case of individuals not enrolled in
2 part B, certified adult day services (as defined in
3 paragraph (1)(A) of section 1861(iii)), and in the
4 case of individuals so enrolled, post-institutional cer-
5 tified adult day services (as defined in paragraph (6)
6 of such section) furnished during a certified adult
7 day services spell of illness (as defined in paragraph
8 (7) of such section) for up to 100 visits during such
9 spell of illness.”.

10 (b) PAYMENT OF CLAIMS REQUIREMENTS FOR HOME
11 HEALTH SERVICES APPLIED TO CERTIFIED ADULT DAY
12 SERVICES.—

13 (1) PART A.—Section 1814(a)(2)(C) of the So-
14 cial Security Act (42 U.S.C. 1395f(a)(2)(C)) is
15 amended by inserting “or certified adult day serv-
16 ices” after each occurrence of “home health serv-
17 ices”.

18 (2) PART B.—Section 1835(a)(2)(A) of the So-
19 cial Security Act (42 U.S.C. 1395n(a)(2)(A)) is
20 amended—

21 (A) in the matter preceding clause (i), by
22 inserting “or certified adult day services (as de-
23 fined in section 1861(iii)(1)(A))” after “home
24 health services”; and

1 (B) in clause (i), by inserting “or certified
2 adult day services” after “home health serv-
3 ices”.

4 (c) CONFORMING AMENDMENTS.—

5 (1) INTERACTION WITH COVERAGE OF HOME
6 HEALTH SERVICES.—Section 1861(m) of the Social
7 Security Act (42 U.S.C. 1395x(m)) is amended by
8 adding at the end the following new sentence: “An
9 individual described in this subsection, with respect
10 to home health services furnished during a period,
11 shall not include an individual who is receiving com-
12 parable certified adult day services (as defined in
13 section 1861(iii)(1)) during such period.”.

14 (2) INTERMITTENT SERVICES.—Section
15 1861(m) of the Social Security Act (42 U.S.C.
16 1395x(m)) is amended in the last sentence by insert-
17 ing “insofar as such respective section relates to
18 home health services,” after “section
19 1835(a)(2)(A),”.

20 (3) INSTITUTIONAL PLANNING REQUIRE-
21 MENT.—Section 1861(z) of the Social Security Act
22 (42 U.S.C. 1395x(z)) is amended in the matter pre-
23 ceding paragraph (1), by striking “or home health
24 agency” and inserting “home health agency, or cer-
25 tified adult day services center”.

1 (4) INCLUSION AS PROVIDER OF SERVICES.—
2 Section 1861(u) of the Social Security Act (42
3 U.S.C. 1395x(u)) is amended by inserting “certified
4 adult day services center,” after “home health agen-
5 cy,”.

6 (d) PAYMENT FOR CERTIFIED ADULT DAY SERVICES
7 UNDER THE HOME HEALTH PROSPECTIVE PAYMENT
8 SYSTEM.—Section 1895 of the Social Security Act (42
9 U.S.C. 1395fff) is amended by adding at the end the fol-
10 lowing new subsection:

11 “(f) APPLICATION OF HOME HEALTH PROSPECTIVE
12 PAYMENT SYSTEM TO CERTIFIED ADULT DAY SERV-
13 ICES.—

14 “(1) IN GENERAL.—The Secretary shall, in ac-
15 cordance with this subsection, develop a methodology
16 under which the fee schedule and provisions under
17 this section shall apply to certified adult day services
18 (as defined in section 1861(iii)(1)) in a similar man-
19 ner to which such schedule and provisions apply to
20 home health services.

21 “(2) PAYMENT RATE DETERMINATION AND
22 LIMITATIONS.—Under such methodology, the fol-
23 lowing shall apply, with respect to certified adult day
24 services furnished to an individual during a period
25 specified by the Secretary under a plan of care es-

1 tablished under section 1861(iii) for which payment
2 may be made under this title:

3 “(A) DETERMINATION OF COMPONENTS.—

4 The Secretary shall determine each component
5 (as defined by the Secretary) of such certified
6 adult day services.

7 “(B) ESTIMATION OF PAYMENT

8 AMOUNT.—The Secretary shall estimate the
9 amount that would otherwise be payable under
10 this section for the components of services de-
11 termined under subparagraph (A) if such serv-
12 ices were furnished by a home health agency
13 (or, if such component or service would not oth-
14 erwise be so payable under this section if so
15 furnished, the amount that would be payable
16 under this section for a comparable home
17 health service furnished by a home health agen-
18 cy) during such period.

19 “(C) AMOUNT OF PAYMENT.—The total

20 amount payable under this section for such cer-
21 tified adult day services furnished to such indi-
22 vidual during such period shall be 98 percent of
23 the amount estimated to be payable for such
24 services (or comparable services) under sub-
25 paragraph (B) for such period.

1 “(D) LIMITATION.—No payment may be
2 made under this section for certified adult day
3 services described in clauses (iv) through (vi)
4 and (ix) of section 1861(iii)(1)(A).

5 “(3) LIMITATION ON BALANCE BILLING.—A
6 certified adult day services center shall accept as
7 payment in full for certified adult day services de-
8 scribed in clauses (i) through (iii), (vii) through
9 (viii), and (x) through (xii) of section 1861(iii)(1)(A)
10 furnished by the center to an individual entitled to
11 benefits under this title the amount of payment pro-
12 vided under this section for home health services
13 consisting of items and services described in such re-
14 spective clauses.”.

15 (e) CONSOLIDATED BILLING.—Section 1862(a) of
16 the Social Security Act (42 U.S.C. 1395y(a)) is amend-
17 ed—

18 (1) by striking “or” at the end of paragraph
19 (24);

20 (2) by striking the period at the end of para-
21 graph (25) and inserting, “or”; and

22 (3) by inserting after paragraph (25) the fol-
23 lowing new paragraph:

24 “(26) which are certified adult day services for
25 which payment may be made under section 1895(f)

1 and which are furnished to an individual by a State
2 licensed or certified or nationally accredited certified
3 adult day services center pursuant to a plan of care
4 established under section 1861(iii) with respect to
5 such services, by an entity other than such facility,
6 unless the services are furnished under arrange-
7 ments (as defined in section 1861(w)(1)) with the
8 entity made by such facility.”.

9 (f) TEMPORARY INCREASE FOR CERTIFIED ADULT
10 DAY SERVICES FURNISHED IN A RURAL AREA.—

11 (1) IN GENERAL.—With respect to episodes and
12 visits ending on or after January 1, 2016, and be-
13 fore January 1, 2018, in the case of certified adult
14 day services (as defined in section 1861(iii)(1)(A) of
15 the Social Security Act, as added by subsection (a)),
16 furnished in a rural area (as defined in section
17 1886(d)(2)(D) of such Act (42 U.S.C.
18 1395ww(d)(2)(D))), the Secretary of Health and
19 Human Services shall increase the payment amount
20 otherwise made under section 1895 of such Act (42
21 U.S.C. 1395fff) for such services by 3 percent.

22 (2) WAIVING BUDGET NEUTRALITY.—The Sec-
23 retary shall not reduce the standard prospective pay-
24 ment amount (or amounts) under section 1895 of
25 the Social Security Act (42 U.S.C. 1395fff) applica-

1 ble to such certified adult day services furnished
2 during a period to offset the increase in payments
3 resulting from the application of paragraph (1).

4 (3) NO EFFECT ON SUBSEQUENT PERIODS.—
5 The payment increase provided under paragraph (1)
6 for a period under such paragraph—

7 (A) shall not apply to episodes and visits
8 ending after such period; and

9 (B) shall not be taken into account in cal-
10 culating the payment amounts applicable for
11 episodes and visits occurring after such period.

12 (g) ADULT DAY SERVICES PROVIDER TECHNICAL
13 ASSISTANCE.—In order to facilitate the development of
14 certified adult day services under title XVIII of the Social
15 Security Act, the Secretary of Health and Human Services
16 shall, as deemed necessary by the Secretary, provide adult
17 day services providers (as defined in section 1861(iii)(2)
18 of such Act) with technical assistance, consultation, tools,
19 and other resources to assist them with the application
20 process and implementation of certified adult day services
21 (as defined in such section).

22 (h) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to items and services furnished on
24 or after January 1, 2018.

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