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.

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SEC. 1. SHORT TITLE.

This Act may be cited as the “Medicare Adult Day Services Act of 2017”.

SEC. 2. FINDINGS.

Congress makes the following findings:
(1) Adult day care can offer services, including medical care, rehabilitation therapies, dignified assistance with activities of daily living, nutrition therapy, health monitoring, social interaction, stimulating activities, and transportation, to seniors and people with disabilities at no extra cost to the Medicare program.

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

SEC. 3. MEDICARE COVERAGE OF CERTIFIED ADULT DAY SERVICES.

(a) Medicare Certified Adult Day Services Benefit.—

(1) Definition.—Section 1861 of the Social Security Act (42 U.S.C. 1395x) is amended by adding at the end the following new subsection:
“Certified Adult Day Services; Adult Day Services Provider; Certified Adult Day Services Center; Post-Institutional Certified Adult Day Services; Certified Adult Day Services Spell of Illness

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

“(i) by an adult day services provider (as defined in paragraph (2)) or by another entity under an arrangement with such an adult day services provider to provide such services;

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

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

“(B) For purposes of subparagraph (A), the items and services described in this subparagraph are the following:

“(i) Part-time or intermittent services (as defined in subparagraph (C)(i)) provided by or under the supervision of a registered professional nurse.
“(ii) Physical or occupational therapy or speech-language pathology services, or any combination of such services.

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

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

“(v) A program of supervised activities (that meets such criteria as the Secretary determines appropriate) designed to promote physical and mental health that are furnished in a group setting for a period of not fewer than 4 and not greater than 8 hours per day.

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

“(vii) Medical supplies (including catheters, catheter supplies, ostomy bags, and supplies related to ostomy care, and a covered osteoporosis drug (as defined in subsection (kk)), but excluding other drugs and biologicals) and durable medical equipment.

“(viii) Transportation of the individual described in subparagraph (A) to and from a certified adult day services center in connection with the pro-
vision of an item or service described in a previous
provision of this subparagraph.

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

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

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

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

“(2) The term ‘adult day services provider’ means a
provider of home and community-based services that is ap-
proved in the applicable State to provide long-term serv-
ices and supports, which may include nursing care, phys-
ical therapy, occupational therapy, social work services,
transportation, and personal care services.

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

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

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

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

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

“(iv) in the case of an agency or organiza-
tion in any State in which State or applicable
local law provides for the licensing or certifi-
cation of agencies or organizations of this na-
ture, (i) is licensed or certified pursuant to such law, or (ii) is approved, by the agency of such State or locality responsible for licensing or certifying agencies or organizations of this nature, as meeting the standards established for such licensing or certification;

“(v) is licensed or certified by the State involved or accredited as meeting requirements, including under section 1865, through a nationally recognized accrediting agency that is recognized by the Secretary;

“(vi) has in effect an overall plan and budget that meets the requirements of subsection (z);

“(vii) meets applicable conditions of participation under section 1891(a) (or similar conditions specified by the Secretary as applicable to such an agency or organization) and such other conditions of participation as the Secretary may find necessary in the interest of the health and safety of individuals who are furnished services by such agency or organization; and

“(viii) meets such additional requirements (including conditions relating to bonding or es-
tablishing of escrow accounts as the Secretary finds necessary for the financial security of the program) as the Secretary finds necessary for the effective and efficient operation of the program;

“(B) at which such agency or organization provides for items and services described in paragraph (1)(B); and

“(C) that complies with all applicable State and local building codes, fire codes, zoning laws, and State licensing building standards that apply to a State licensed or certified or nationally accredited adult day center, and in States where there are no State licensing building standards for adult day centers, building standards based on the standards adopted by a nationally recognized accrediting agency that is recognized by the Secretary and applies to such a center standards that are comparable to the requirements applied to a skilled nursing facility pursuant to section 1819(d)(2)(B).

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

“(A) the individual is—
“(i) concurrently receiving similar skilled services under a State plan under section 1905(a) or under a home and community-based waiver authorized for a State under section 1115, under subsection (c) or (d) of section 1915, under a State plan amendment under subsection (i) of section 1915, or under section 1902(a)(10)(D); and

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

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

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

“(A) establishing a State licensed or certified or nationally accredited certified adult day services center and furnishing certified adult day services; or

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

“(6) The term ‘post-institutional certified adult day services’ means certified adult day services furnished to an individual—
“(A) after discharge from a hospital or critical access hospital in which the individual was an inpatient for not less than 3 consecutive days before such discharge if such certified adult day services were initiated within 14 days after the date of such discharge; or

“(B) after discharge from a skilled nursing facility in which the individual was provided post-hospital extended care services if such certified adult day services were initiated within 14 days after the date of such discharge.

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

“(A) beginning with the first day (not included in a previous certified adult day services spell of illness)—

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

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

“(B) ending with the close of the first period of 60 consecutive days thereafter on each of which the
individual is neither an inpatient of a hospital or
critical access hospital nor an inpatient of a facility
described in section 1819(a)(1) or subsection (y)(1)
nor provided home health services or certified adult
day services.”.

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

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

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

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

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

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

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

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

(C) by adding at the end the following new paragraph:
“(6) in the case of individuals not enrolled in part B, certified adult day services (as defined in paragraph (1)(A) of section 1861(iii)), and in the case of individuals so enrolled, post-institutional certified adult day services (as defined in paragraph (6) of such section) furnished during a certified adult day services spell of illness (as defined in paragraph (7) of such section) for up to 100 visits during such spell of illness.”.

(b) Payment of Claims Requirements for Home Health Services Applied to Certified Adult Day Services.—

(1) Part A.—Section 1814(a)(2)(C) of the Social Security Act (42 U.S.C. 1395f(a)(2)(C)) is amended by inserting “or certified adult day services” after each occurrence of “home health services”.

(2) Part B.—Section 1835(a)(2)(A) of the Social Security Act (42 U.S.C. 1395n(a)(2)(A)) is amended—

(A) in the matter preceding clause (i), by inserting “or certified adult day services (as defined in section 1861(iii)(1)(A))” after “home health services”; and
(B) in clause (i), by inserting “or certified
adult day services” after “home health serv-
ices”.

(c) CONFORMING AMENDMENTS.—

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

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

(3) INSTITUTIONAL PLANNING REQUIRE-
MENT.—Section 1861(z) of the Social Security Act
(42 U.S.C. 1395x(z)) is amended in the matter pre-
ceding paragraph (1), by striking “or home health
agency” and inserting “home health agency, or cer-
tified adult day services center”.
(4) Inclusion as Provider of Services.—Section 1861(u) of the Social Security Act (42 U.S.C. 1395x(u)) is amended by inserting “certified adult day services center,” after “home health agency,”.

(d) Payment for Certified Adult Day Services Under the Home Health Prospective Payment System.—Section 1895 of the Social Security Act (42 U.S.C. 1395fff) is amended by adding at the end the following new subsection:

“(f) Application of Home Health Prospective Payment System to Certified Adult Day Services.—

“(1) In general.—The Secretary shall, in accordance with this subsection, develop a methodology under which the fee schedule and provisions under this section shall apply to certified adult day services (as defined in section 1861(iii)(1)) in a similar manner to which such schedule and provisions apply to home health services.

“(2) Payment rate determination and limitations.—Under such methodology, the following shall apply, with respect to certified adult day services furnished to an individual during a period specified by the Secretary under a plan of care es-
established under section 1861(iii) for which payment may be made under this title:

“(A) Determination of components.—

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

“(B) Estimation of payment amount.—The Secretary shall estimate the amount that would otherwise be payable under this section for the components of services determined under subparagraph (A) if such services were furnished by a home health agency (or, if such component or service would not otherwise be so payable under this section if so furnished, the amount that would be payable under this section for a comparable home health service furnished by a home health agency) during such period.

“(C) Amount of payment.—The total amount payable under this section for such certified adult day services furnished to such individual during such period shall be 98 percent of the amount estimated to be payable for such services (or comparable services) under subparagraph (B) for such period.
“(D) Limitation.—No payment may be made under this section for certified adult day services described in clauses (iv) through (vi) and (ix) of section 1861(iii)(1)(A).

“(3) Limitation on balance billing.—A certified adult day services center shall accept as payment in full for certified adult day services described in clauses (i) through (iii), (vii) through (viii), and (x) through (xii) of section 1861(iii)(1)(A) furnished by the center to an individual entitled to benefits under this title the amount of payment provided under this section for home health services consisting of items and services described in such respective clauses.”.

(c) Consolidated Billing.—Section 1862(a) of the Social Security Act (42 U.S.C. 1395y(a)) is amended—

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

(2) by striking the period at the end of paragraph (25) and inserting, “or”; and

(3) by inserting after paragraph (25) the following new paragraph:

“(26) which are certified adult day services for which payment may be made under section 1895(f)
and which are furnished to an individual by a State licensed or certified or nationally accredited certified adult day services center pursuant to a plan of care established under section 1861(iii) with respect to such services, by an entity other than such facility, unless the services are furnished under arrangements (as defined in section 1861(w)(1)) with the entity made by such facility.”.

(f) Temporary Increase for Certified Adult Day Services Furnished in a Rural Area.—

(1) In general.—With respect to episodes and visits ending on or after January 1, 2016, and before January 1, 2018, in the case of certified adult day services (as defined in section 1861(iii)(1)(A) of the Social Security Act, as added by subsection (a)), furnished in a rural area (as defined in section 1886(d)(2)(D) of such Act (42 U.S.C. 1395ww(d)(2)(D))), the Secretary of Health and Human Services shall increase the payment amount otherwise made under section 1895 of such Act (42 U.S.C. 1395fff) for such services by 3 percent.

(2) Waiving budget neutrality.—The Secretary shall not reduce the standard prospective payment amount (or amounts) under section 1895 of the Social Security Act (42 U.S.C. 1395fff) applic-
ble to such certified adult day services furnished
during a period to offset the increase in payments
resulting from the application of paragraph (1).

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

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

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

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

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