

115TH CONGRESS  
1ST SESSION

# S. 2175

To amend title XVIII of the Social Security Act to preserve Medicare beneficiary access to ventilators, and for other purposes.

---

IN THE SENATE OF THE UNITED STATES

NOVEMBER 30, 2017

Mr. CASSIDY (for himself, Mr. MANCHIN, and Mr. GRASSLEY) 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 preserve Medicare beneficiary access to ventilators, 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 “Beneficiary Res-  
5       piratory Equipment Access and Transparency to Home  
6       Ventilator Care Act of 2017” or the “BREATH Act of  
7       2017”.

1 **SEC. 2. PROMOTING EVIDENCE-BASED CARE FOR CERTAIN**  
 2 **VENTILATORS AND OTHER ITEMS OF DURA-**  
 3 **BLE MEDICAL EQUIPMENT.**

4 Section 1834 of the Social Security Act (42 U.S.C.  
 5 1395m) is amended by adding at the end the following  
 6 new subsection:

7 “(v) APPROPRIATE USE CRITERIA FOR CERTAIN  
 8 VENTILATORS.—

9 “(1) IN GENERAL.—Not later than January 1,  
 10 2018, subject to paragraph (2), and in consultation  
 11 with medical experts and applicable stakeholders, the  
 12 Secretary shall establish and implement policies and  
 13 standards for determining the appropriate use of  
 14 ventilators as described in subsection (a)(3)(A).

15 “(2) DELAY IN IMPLEMENTATION OF APPRO-  
 16 PRIATE USE CRITERIA FOR USE BY CERTAIN INDIV-  
 17 IDUALS.—The Secretary may, as the Secretary de-  
 18 termines appropriate, delay until such date as the  
 19 Secretary determines appropriate but not later than  
 20 January 1, 2020, the establishment and implementa-  
 21 tion of appropriate use criteria as described in para-  
 22 graph (1) (which may be the same appropriate use  
 23 criteria established and implemented under such  
 24 paragraph) for ventilators furnished to individuals  
 25 diagnosed with neuromuscular or other thoracic re-  
 26 strictive diseases or cystic fibrosis.”.

1 **SEC. 3. REIMBURSEMENT FOR HOME MECHANICAL VEN-**  
 2 **TILATORS.**

3 (a) IN GENERAL.—Section 1834(a)(3) of the Social  
 4 Security Act (42 U.S.C. 1395m(a)(3)) is amended—

5 (1) in subparagraph (B)—

6 (A) in clause (iii), by striking “and” at the  
 7 end;

8 (B) in clause (iv)—

9 (i) by inserting “, except as provided  
 10 in clause (v),” after “subsequent year”;  
 11 and

12 (ii) by striking the period at the end  
 13 and inserting “; and”; and

14 (C) by adding at the end the following new  
 15 clause:

16 “(v) for an item or device furnished  
 17 on or after January 1, 2018, in the case  
 18 of a ventilator described in subparagraph  
 19 (A), the payment rate determined for the  
 20 ventilator under subparagraph (D) for the  
 21 year.”; and

22 (2) by adding at the end the following new sub-  
 23 paragraphs:

24 “(D) 2018 AND SUBSEQUENT YEARS PAY-  
 25 MENT RATES FOR VENTILATORS.—For purposes  
 26 of subparagraph (B)(v), the payment rate de-

1           terminated under this subparagraph for a venti-  
2           lator described in subparagraph (A) is the fol-  
3           lowing:

4                   “(i) 2018.—For 2018, the payment  
5                   amount specified in subparagraph (B) for  
6                   an item or device furnished on or after  
7                   July 1, 2017, and before January 1, 2018,  
8                   increased by the covered item update for  
9                   2018.

10                  “(ii) 2019.—For 2019, the rate deter-  
11                  mined under clause (i) for 2018—

12                           “(I) increased by the covered  
13                           item update for 2019; and

14                           “(II) if applicable, increased by  
15                           the budget neutrality adjustment  
16                           under subparagraph (E).

17                  “(iii) 2020 AND SUBSEQUENT  
18                  YEARS.—For 2020 and subsequent years,  
19                  the rate determined under this subpara-  
20                  graph for an item or device furnished on  
21                  December 31 of the previous year, in-  
22                  creased by the covered item update for the  
23                  year.

1           “(E) BUDGET NEUTRALITY ADJUSTMENT  
2           OF PAYMENT RATES FOR VENTILATORS FOR  
3           2019.—

4           “(i) IN GENERAL.—Subject to the  
5           succeeding clauses of this subparagraph,  
6           the Secretary shall implement the provi-  
7           sions of subparagraphs (B)(v) and (D) in  
8           a budget neutral manner and any budget  
9           neutrality adjustment under this subpara-  
10          graph shall be limited to payments for a  
11          ventilator described in subparagraph (A)  
12          furnished during 2019.

13          “(ii) COMPUTATION OF AGGREGATE  
14          BUDGET NEUTRALITY ADJUSTMENT.—The  
15          aggregate budget neutrality adjustment  
16          under this subparagraph shall be an  
17          amount equal to the difference (if any) be-  
18          tween—

19               “(I) aggregate payments under  
20               this part for ventilators described in  
21               subparagraph (A) furnished during  
22               2017, as adjusted under subclause (I)  
23               of clause (iii); and

24               “(II) aggregate payments under  
25               this part for such ventilators fur-

1 nished during 2018, as adjusted  
2 under subclause (II) of such clause.

3 “(iii) ADJUSTMENTS.—For purposes  
4 of clause (ii)—

5 “(I) payments described in sub-  
6 clause (I) of such clause shall be in-  
7 creased by the covered item update  
8 for 2018; and

9 “(II) payments described in sub-  
10 clause (II) of such clause shall be in-  
11 creased or decreased by the percent-  
12 age change in the total number of in-  
13 dividuals enrolled under this part  
14 (other than Medicare Advantage en-  
15 rollees) from 2017 to 2018.”.

○