

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 475

To amend title XVIII of the Social Security Act to provide for improved quality and cost control mechanisms to ensure the proper and prudent purchasing of durable medical equipment under the medicare program, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 6, 1993

Mr. PANETTA introduced the following bill; which was referred jointly to the Committees on Ways and Means, and Energy and Commerce

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## A BILL

To amend title XVIII of the Social Security Act to provide for improved quality and cost control mechanisms to ensure the proper and prudent purchasing of durable medical equipment 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 Durable  
5 Medical Equipment Patient Protection Act of 1993”.

1 **SEC. 2. RESTRICTIONS ON CARRIERS.**

2 (a) LIMIT ON NUMBER OF REGIONAL CARRIERS;  
3 PROHIBITION AGAINST CARRIER FORUM SHOPPING.—  
4 Section 1834(a)(12) of the Social Security Act (42 U.S.C.  
5 1395m(a)(12)) is amended to read as follows:

6 “(12) USE OF CARRIERS TO PROCESS  
7 CLAIMS.—

8 “(A) DESIGNATION OF REGIONAL CAR-  
9 RRIERS.—The Secretary may designate, by regu-  
10 lation under section 1842, one carrier for one  
11 or more entire regions (but not more than 5 for  
12 all regions) to process all claims within the re-  
13 gion for covered items under this section.

14 “(B) PROHIBITION AGAINST CARRIER  
15 FORUM SHOPPING.—(i) No supplier of a cov-  
16 ered item may present or cause to be presented  
17 a claim for payment under this part unless such  
18 claim is presented to the appropriate carrier.

19 “(ii) For purposes of clause (i), the term  
20 ‘appropriate carrier’ means the carrier having  
21 jurisdiction over the geographic area of the resi-  
22 dence of the patient to whom the item is fur-  
23 nished, except that—

24 “(I) in the case of a patient who re-  
25 sides not more than 60 miles from a geo-  
26 graphic area over which a second carrier

1 has jurisdiction, such term may include the  
2 second carrier;

3 “(II) in the case of a patient who, at  
4 the time the item that is the subject of the  
5 claim is furnished, is temporarily residing  
6 in a geographic area other than the area of  
7 the patient’s residence, such term may in-  
8 clude the carrier having jurisdiction over  
9 the geographic area in which the patient  
10 temporarily resides; and

11 “(III) such term may include any  
12 other carrier considered by the Secretary  
13 to be the most appropriate carrier with re-  
14 spect to the claim (based on the need to ef-  
15 ficiently administer the processing of the  
16 claim).”.

17 (b) EFFECTIVE DATE.—The amendments made by  
18 subsection (a) shall apply with respect to contracts with  
19 carriers for items furnished on or after January 1, 1994.

20 **SEC. 3. TREATMENT OF CERTAIN ITEMS AS COVERED**  
21 **ITEMS; USING REASONABLE COST AS BASIS**  
22 **FOR DETERMINING PAYMENT AMOUNTS.**

23 (a) TREATMENT OF CERTAIN ITEMS AS COVERED  
24 ITEMS.—

1           (1) IN GENERAL.—Section 1861(n) of the So-  
2           cial Security Act (42 U.S.C. 1395x(n)) is amended  
3           by striking “iron lungs” and inserting “ostomy sup-  
4           plies, tracheostomy supplies, urologicals, surgical  
5           dressings and splints, casts, and other devices used  
6           for reduction of fractures and dislocations, iron  
7           lungs”.

8           (2) TREATMENT AS INEXPENSIVE AND ROU-  
9           TINELY PURCHASED ITEMS.—Section 1834(a)(2)(A)  
10          of such Act (42 U.S.C. 1395m(a)(2)(A)) is amended

11                 (A) by striking “or” at the end of clause  
12                 (i);

13                 (B) by striking the comma at the end of  
14                 clause (ii) and inserting “, or”; and

15                 (C) by inserting after clause (ii) the follow-  
16                 ing new clause:

17                         “(iii) which consists of an ostomy sup-  
18                         ply, tracheostomy supply, urological, or  
19                         surgical dressing or splint, cast, or other  
20                         device used for reduction of fractures and  
21                         dislocations,”.

22          (3) CONFORMING AMENDMENTS.—(A) Section  
23          1834(h)(4)(C) of such Act (42 U.S.C.  
24          1395m(h)(4)(C)) is amended by striking “, catheter

1 supplies” and all that follows through “ostomy care”  
2 and inserting “and catheter supplies”.

3 (B) Section 1861(s) of such Act (42 U.S.C.  
4 1395x(s)) is amended—

5 (i) by striking paragraph (5); and

6 (ii) in paragraph (9), by striking the semi-  
7 colon at the end and inserting the following: “,  
8 but not including ostomy supplies, tracheostomy  
9 supplies, or urologicals;”.

10 (4) EFFECTIVE DATE.—The amendments made  
11 by this subsection shall apply to items furnished on  
12 or after January 1, 1994.

13 (b) STUDY OF FEASIBILITY OF BASING PAYMENT  
14 AMOUNTS ON REASONABLE COSTS.—

15 (1) STUDY.—The Secretary of Health and  
16 Human Services, in consultation with carriers under  
17 part B of the medicare program and representatives  
18 of suppliers of durable medical equipment under the  
19 program, shall conduct a study of the feasibility and  
20 desirability of basing payment amounts for covered  
21 items of durable medical equipment, prosthetic de-  
22 vices, and orthotics and prosthetics under such pro-  
23 gram on the reasonable costs of such items.

24 (2) REPORT.—Not later than January 1, 1995,  
25 the Secretary shall submit a report on the study

1 conducted under paragraph (1) to Congress, and  
2 shall include in the report any recommendations con-  
3 sidered appropriate by the Secretary for changes in  
4 the manner in which payment amounts are deter-  
5 mined under the medicare program for the items  
6 that are the subject of the study.

7 (c) GUIDELINES FOR DETERMINING MEDICAL EF-  
8 FECTIVENESS AND PERMITTING PAYMENT FOR UP-  
9 GRADED ITEMS.—Not later than January 1, 1995, the  
10 Secretary of Health and Human Services shall establish  
11 and publish updated guidelines for carriers under part B  
12 of the medicare program that describe the conditions  
13 under which—

14 (1) covered items of durable medical equipment,  
15 prosthetic devices, and orthotics and prosthetics  
16 shall be considered medically effective when fur-  
17 nished to an elderly patient and when furnished to  
18 a disabled patient; and

19 (2) a supplier of such items may furnish a pa-  
20 tient with an item in excess of or more expensive  
21 than the standard version of the item for which pay-  
22 ment may be made under the program.

1 **SEC. 4. CERTIFICATION AND DISCLOSURE REQUIREMENTS**  
2 **FOR SUPPLIERS OF DURABLE MEDICAL**  
3 **EQUIPMENT.**

4 (a) MANDATORY SUPPLIER CERTIFICATION.—

5 (1) IN GENERAL.—Section 1834(a) of the So-  
6 cial Security Act (42 U.S.C. 1395m(a)) is amended  
7 by adding at the end the following new paragraph:

8 “(17) CERTIFICATION OF SUPPLIERS.—

9 “(A) IN GENERAL.—Notwithstanding any  
10 other provision of this Act, no payment may be  
11 made under this part for any covered item fur-  
12 nished during a year (beginning with 1994) by  
13 any supplier unless the Secretary certifies (or  
14 has certified during the 4 years preceding the  
15 year) that the supplier meets the certification  
16 standards established under subparagraph (B).

17 “(B) ESTABLISHMENT OF STANDARDS.—

18 The Secretary shall establish and publish cer-  
19 tification standards for suppliers on the basis of  
20 such criteria as the Secretary considers appro-  
21 priate, and shall include in the standards a re-  
22 quirement that the supplier furnish the Sec-  
23 retary with the following information:

24 “(i) Whether the items furnished by  
25 the supplier are purchased, warehoused,

1 and shipped directly by the supplier or  
2 under arrangements with other suppliers.

3 “(ii) The identity of subcontracting or  
4 subsidiary entities or entities with which  
5 the provider is doing business which are  
6 advertising or marketing firms directly or  
7 indirectly involved in furnishing covered  
8 items to individuals entitled to benefits  
9 under this title.

10 “(iii) A description of all items and  
11 services furnished by the supplier to indi-  
12 viduals eligible for benefits under this title  
13 and to providers of services or other enti-  
14 ties furnishing items and services for which  
15 payment may be made under this title.

16 “(iv) A list of all States and counties  
17 in which individuals reside to whom the  
18 supplier furnishes items or services for  
19 which payment is made under this title or  
20 under a State plan for medical assistance  
21 under title XIX.

22 “(v) Any additional information the  
23 Secretary considers appropriate.

24 “(C) FEES AUTHORIZED FOR CERTIFI-  
25 CATION.—The Secretary of Health and Human

1 Services may require a supplier to make a pay-  
2 ment of an administrative fee (not to exceed  
3 \$100) with respect to a certification or renewal  
4 of a certification under this paragraph. Any  
5 fees collected by the Secretary pursuant to this  
6 subparagraph shall be deposited in the Federal  
7 Supplementary Medical Insurance Trust Fund  
8 and shall be available only for the administra-  
9 tion of this part.

10 “(D) WAIVER OF REQUIREMENTS FOR  
11 CERTAIN SUPPLIERS.—The Secretary may  
12 waive or modify any of the certification stand-  
13 ards established under subparagraph (B) or the  
14 payment of a fee required under subparagraph  
15 (C) with respect to a supplier if the Secretary  
16 determines that the majority of the items fur-  
17 nished by the supplier are inexpensive or rou-  
18 tinely purchased items under paragraph (2) or  
19 that less than 25 percent of the supplier’s an-  
20 nual gross revenues is attributable to the fur-  
21 nishing of covered items under this title.”.

22 (2) CONFORMING AMENDMENT.—Section  
23 1834(h)(3) of such Act (42 U.S.C. 1395m(h)(3)) is  
24 amended by striking “Paragraph (12)” and insert-  
25 ing “Paragraphs (12) and (17)”.

1 (b) PROHIBITION AGAINST ISSUANCE OF MULTIPLE  
2 PROVIDER NUMBERS.—Section 1834(a)(12) of such Act  
3 (42 U.S.C. 1395m(a)(12)), as amended by section 2(a),  
4 is further amended by adding at the end the following new  
5 subparagraph:

6 “(C) PROHIBITION AGAINST ISSUANCE OF  
7 MULTIPLE PROVIDER NUMBERS.—A carrier  
8 may not issue more than one provider number  
9 to a supplier of a covered item unless the issu-  
10 ance of multiple provider numbers is appro-  
11 priate because of significant differences among  
12 the items the supplier furnishes or the geo-  
13 graphic regions the provider serves. Nothing in  
14 the previous sentence shall be construed to pro-  
15 hibit a carrier from issuing a new provider  
16 number to a supplier to replace an inactive or  
17 obsolete provider number.”.

18 (c) LIMITATION ON EMPLOYMENT RELATIONSHIPS  
19 CONSIDERED BONA FIDE FOR EXEMPTION FROM ANTI-  
20 KICKBACK REQUIREMENTS.—Section 1128B(b)(3)(B) of  
21 such Act (42 U.S.C. 1320a–7b(b)(3)(B)) is amended by  
22 striking the semicolon at the end and inserting the follow-  
23 ing: “, except that any employment relationship between  
24 an employee of a nursing facility and a supplier of covered  
25 items under section 1834(a) or items described in section

1 1834(h) shall not be considered a bona fide employment  
2 relationship for purposes of this subparagraph;”.

3 (d) EFFECTIVE DATE.—The amendments made by  
4 this section shall apply with respect to items or services  
5 furnished on or after January 1, 1994.

6 **SEC. 5. PRIOR APPROVAL AUTHORIZED FOR ITEMS FUR-**  
7 **NISHED BY SUPPLIERS ENGAGED IN FRAUD**  
8 **OR OTHER ABUSIVE PRACTICES.**

9 (a) IN GENERAL.—Section 1834(a) of the Social Se-  
10 curity Act (42 U.S.C. 1395m(a)), as amended by section  
11 4(a), is further amended by adding at the end the follow-  
12 ing new paragraph:

13 “(18) CARRIER DETERMINATIONS OF ITEMS  
14 FURNISHED BY CERTAIN SUPPLIERS IN ADVANCE.—

15 “(A) DEVELOPMENT OF LIST OF SUPPLI-  
16 ERS BY SECRETARY.—The Secretary shall de-  
17 velop and periodically update a list of suppliers  
18 that the Secretary determines (on the basis of  
19 criteria developed and published by the Sec-  
20 retary in consultation with representatives of  
21 suppliers, which may include prior payment ex-  
22 perience)—

23 “(i) have engaged in activities which  
24 make the suppliers subject to a civil mone-

1 tary penalty under section 1128A or to a  
2 criminal penalty under section 1128B;

3 “(ii) have furnished a substantial  
4 number of items for which payment was  
5 not made because of the application of sec-  
6 tion 1862(a)(1); or

7 “(iii) have engaged in a pattern of  
8 overutilization of items.

9 “(B) DETERMINATIONS OF COVERAGE IN  
10 ADVANCE.—A carrier shall determine in ad-  
11 vance whether payment for an item furnished  
12 by a supplier included on the list developed by  
13 the Secretary under subparagraph (A) may not  
14 be made because of the application of section  
15 1862(a)(1).”.

16 (b) CONFORMING AMENDMENT.—Section 1834(h)(3)  
17 of such Act (42 U.S.C. 1395m(h)(3)), as amended by sec-  
18 tion 4(a)(2), is amended by striking “(12) and (17)” and  
19 inserting “(12), (15), (17), and (18)”.

20 (c) EFFECTIVE DATE.—The amendments made by  
21 this section shall apply to items and services furnished on  
22 or after January 1, 1994.

1 **SEC. 6. STUDY OF IMPACT OF REFORMS ON ACCESS TO**  
2 **AND COSTS OF DURABLE MEDICAL EQUIP-**  
3 **MENT FOR MEDICARE BENEFICIARIES.**

4 (a) STUDY.—

5 (1) IN GENERAL.—The Comptroller General  
6 shall conduct a study of the impact of the amend-  
7 ments made by this Act on the access of individuals  
8 enrolled under part B of the medicare program to  
9 items of durable medical equipment under the pro-  
10 gram and the costs imposed on such individuals  
11 under the program for such items, and shall include  
12 in the study an analysis of the impact of the amend-  
13 ments on individuals enrolled under part B of the  
14 program who reside in rural areas.

15 (2) DURABLE MEDICAL EQUIPMENT DE-  
16 FINED.—For purposes of paragraph (1), the term  
17 “durable medical equipment” means covered items  
18 under section 1834(a) of the Social Security Act and  
19 items described in section 1834(h) of such Act.

20 (b) REPORT.—Not later than January 1, 1995, the  
21 Comptroller General shall submit a report to Congress on  
22 the study conducted under subsection (a), and shall in-  
23 clude in the report any recommendations considered ap-  
24 propriate for legislative or regulatory changes to improve  
25 the access of medicare beneficiaries to items of durable  
26 medical equipment and to control the costs imposed on

1 beneficiaries for such items under the medicare program,  
2 including recommendations to impose maximum allowable  
3 limits on the amounts suppliers of such items may charge  
4 beneficiaries in the same manner as the limits imposed  
5 under the program on the amounts physicians may charge  
6 beneficiaries for physicians' services.

7 **SEC. 7. STUDY OF ITEMS FURNISHED TO RESIDENTS OF**  
8 **NURSING FACILITIES.**

9 (a) STUDY.—

10 (1) IN GENERAL.—The Comptroller General  
11 shall conduct a study of the types, volume, and utili-  
12 zation of items of durable medical equipment fur-  
13 nished under part B of the medicare program to in-  
14 dividuals residing in skilled nursing facilities and in-  
15 termediate care facilities, and shall include in the  
16 study an analysis of the need to apply additional  
17 controls on the utilization of such items by such in-  
18 dividuals.

19 (2) DURABLE MEDICAL EQUIPMENT DE-  
20 FINED.—For purposes of paragraph (1), the term  
21 “durable medical equipment” means covered items  
22 under section 1834(a) of the Social Security Act and  
23 items described in section 1834(h) of such Act.

1       (b) REPORT.—Not later than January 1, 1995, the  
2 Comptroller General shall submit a report to Congress on  
3 the study conducted under subsection (a).

○