

105TH CONGRESS
1ST SESSION

S. 913

To amend title XVIII of the Social Security Act to provide for a prospective payment system for home health services, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 16, 1997

Mr. HATCH 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 provide for a prospective payment system for home health services, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Home Health Care Prospective Payment Act”.

6 (b) TABLE OF CONTENTS.—The table of contents of
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Amendments to the Social Security Act.
- Sec. 3. Recapturing savings resulting from temporary freeze on payment increases for home health services.
- Sec. 4. Initial prospective payment for home health services.

Sec. 5. Permanent prospective payment for home health services.

Sec. 6. Payment based on location where home health service is furnished.

Sec. 7. Elimination of periodic interim payments for home health agencies.

Sec. 8. Establishment of home health benefit under Part A and transfer of other home health services to Part B.

1 **SEC. 2. AMENDMENTS TO THE SOCIAL SECURITY ACT.**

2 Whenever in this title an amendment is expressed in
3 terms of an amendment to or repeal of section or other
4 provision, the reference shall be considered to be made to
5 that section or other provision of the Social Security Act.

6 **SEC. 3. RECAPTURING SAVINGS RESULTING FROM TEM-**
7 **PORARY FREEZE ON PAYMENT INCREASES**
8 **FOR HOME HEALTH SERVICES.**

9 (a) **BASING UPDATES TO PER VISIT COST LIMITS ON**
10 **LIMITS FOR FISCAL YEAR 1993.**—Section 1861(v)(1)(L)
11 (42 U.S.C. 1395x(v)(1)(L)) is amended by adding after
12 subclause (iii) the following:

13 “(iv) In establishing limits under this
14 subparagraph for cost reporting periods
15 beginning after September 30, 1997, the
16 Secretary shall not take into account any
17 changes in the home health market basket,
18 as determined by the Secretary, with re-
19 spect to cost reporting periods which began
20 on or after July 1, 1994, and before July
21 1, 1996.”.

22 (b) **NO EXCEPTIONS PERMITTED BASED ON AMEND-**
23 **MENT.**—The Secretary of Health and Human Services

1 shall not consider the amendment made by subsection (a)
 2 in making any exemptions and exceptions pursuant to sec-
 3 tion 1861(v)(1)(L)(ii) of the Social Security Act.

4 **SEC. 4. INITIAL PROSPECTIVE PAYMENT SYSTEM FOR**
 5 **HOME HEALTH SERVICES.**

6 (a) **REDUCTIONS IN COST LIMITS.**—Section
 7 1861(v)(1)(L)(I) (42 U.S.C. 1395x(v)(1)(L)(I)) is amend-
 8 ed—

9 (1) by inserting “and before October 1, 1997,”
 10 after “July 1, 1987” in subclause (III);

11 (2) by striking the period at the end of the
 12 matter following subclause (III), and inserting “,
 13 and”; and

14 (3) by adding at the end the following new sub-
 15 clause:

16 “(IV) October 1, 1997, 105 percent of
 17 the median of the labor-related and
 18 nonlabor per visit costs for freestanding
 19 home health agencies.”.

20 (b) **DELAY IN UPDATES.**—Section 1861(v)(1)(L)(iii)
 21 (42 U.S.C. 1395x(v)(1)(L)(iii)) is amended by adding “,
 22 or on or after July 1, 1997, and before October 1, 1997”
 23 after “July 1, 1996”.

1 (c) ADDITIONS TO PREDETERMINED RATES.—Sec-
2 tion 1861(v)(1)(L) (42 U.S.C. 1395x(v)(1)(L)) is amend-
3 ed by inserting after clause (iii) the following:

4 “(iv) RATES FOR FISCAL YEARS 1998
5 THROUGH 1999.—For services furnished by
6 home health agencies for cost reporting pe-
7 riods beginning on or after October 1,
8 1997, but before October 1, 1999, the Sec-
9 retary shall provide for an interim system
10 of rates. A rate shall be a payment equal
11 to the lower of—

12 “(I) cost determined under the
13 preceding provisions of this subpara-
14 graph; or

15 “(II) an agency-specific per bene-
16 ficiary annual limitation calculated
17 from the agency’s 12-month cost re-
18 porting period ending on or after Jan-
19 uary 1, 1993, and on or before De-
20 cember 31, 1993, based on reasonable
21 costs (including nonroutine medical
22 supplies), updated by the home health
23 market basket index. The per bene-
24 ficiary limitation shall be multiplied
25 by the agency’s unduplicated census

1 count of patients (entitled to benefits
2 under this title) for the year subject
3 to the limitation or such other year
4 determined by the Secretary to be re-
5 quired for the fair and efficient imple-
6 mentation of this section to determine
7 the aggregate agency-specific per ben-
8 eficiary limitation.

9 “(v) SPECIAL RULES.—For services
10 furnished by home health agencies for cost
11 reporting periods beginning on or after Oc-
12 tober 1, 1997, the following rules apply:

13 “(I) For new providers and those
14 providers without a 12-month cost re-
15 porting period ending in calendar year
16 1994, the per beneficiary limitation
17 shall be equal to the mean of these
18 limits (or the Secretary’s best esti-
19 mates thereof) applied to home health
20 agencies as determined by the Sec-
21 retary. Home health agencies that
22 have altered their corporate structure
23 or name shall not be considered new
24 providers for payment purposes.

1 “(II) For beneficiaries who use
2 services furnished by more than 1
3 home health agency, the per bene-
4 ficiary limitations shall be prorated
5 among the agencies.”.

6 “(vi) INCENTIVE PAYMENTS.—Home
7 health agencies whose year end reasonable
8 costs are below the agency’s per bene-
9 ficiary aggregate limit (including costs and
10 utilization) shall receive 50 percent of the
11 difference between the reasonable costs
12 and the aggregate limit.”.

13 (d) DEVELOPMENT OF CASE MIX SYSTEM.—The
14 Secretary shall expand research on a prospective payment
15 system for home health agencies that ties prospective pay-
16 ments to a unit of service, including an intensive effort
17 to develop a reliable case mix adjuster that explains a sig-
18 nificant amount of the variances in costs.

19 (e) SUBMISSION OF DATA FOR CASE MIX SYSTEM.—
20 Effective for cost reporting periods beginning on or after
21 October 1, 1997, the Secretary may require all home
22 health agencies to submit additional information that the
23 Secretary considers necessary for the development of a re-
24 liable case mix system.

1 **SEC. 5. PERMANENT PROSPECTIVE PAYMENT FOR HOME**
2 **HEALTH SERVICES.**

3 Title XVIII (42 U.S.C. 1395 et seq.) is amended by
4 adding after section 1893 the following:

5 **“SEC. 1894. PERMANENT PROSPECTIVE PAYMENT FOR**
6 **HOME HEALTH SERVICES.**

7 “(a) IN GENERAL.—Notwithstanding section
8 1861(v), the Secretary, for cost reporting periods begin-
9 ning on or after October 1, 1999, shall provide for pay-
10 ments for home health services in accordance with a pro-
11 spective payment system established by the Secretary.

12 “(b) ELEMENTS OF SYSTEM.—Such a system shall
13 include the following:

14 “(1) PROSPECTIVE PAYMENT AMOUNT.—All
15 services covered and paid on a reasonable cost basis
16 under the medicare home health benefit as of the
17 date of the enactment of the Balanced Budget Act
18 of 1997, including medical supplies, shall be subject
19 to the prospective payment amount. In defining a
20 prospective payment amount, the Secretary shall
21 consider an appropriate unit of service and the num-
22 ber of visits provided within that unit, potential
23 changes in the mix of services provided within that
24 unit and their cost, and a general system design that
25 provides for continued access to quality services. The
26 prospective payment amount shall be based on the

1 most current audited cost report data available to
2 the Secretary or such other year determined by the
3 Secretary to be required for the fair and efficient
4 implementation of this section.

5 “(2) USE OF CASE MIX.—The Secretary shall
6 employ an appropriate case mix adjustment that ex-
7 plains a significant amount of the variation in cost.

8 “(3) ANNUAL ADJUSTMENTS.—The prospective
9 payment amount shall be adjusted annually by the
10 home health market basket index. The labor portion
11 of the prospective payment amount shall be adjusted
12 for geographic differences in labor-related costs
13 based on the most current hospital wage index.

14 “(4) OUTLIERS.—The Secretary may designate
15 a payment provision for outliers, recognizing the
16 need to adjust payments because of unusual vari-
17 ations in the type or amount of medically necessary
18 care.

19 “(5) PRORATION OF PROSPECTIVE PAYMENT
20 AMOUNTS.—If a beneficiary elects to transfer to, or
21 receive services from, another home health agency
22 within the period covered by the prospective payment
23 amount, the payment shall be prorated between
24 home health agencies.

1 “(c) SAVINGS.—Prior to implementing the permanent
 2 prospective system described in subsections (a) and (b) in
 3 a budget neutral fashion, the Secretary first shall reduce,
 4 up to 15 percent, the rates and per beneficiary limits de-
 5 scribed in section 1861(v)(1)(L), as those limits are in ef-
 6 fect on September 30, 1999, in order to assure the pro-
 7 jected scorable savings of this Act.”.

8 **SEC. 6. PAYMENT BASED ON LOCATION WHERE HOME**
 9 **HEALTH SERVICE IS FURNISHED.**

10 (a) CONDITIONS OF PARTICIPATION.—Section 1891
 11 (42 U.S.C. 1395bbb) is amended by adding at the end
 12 the following:

13 “(g) PAYMENT ON BASIS OF LOCATION OF SERV-
 14 ICE.—A home health agency shall submit claims for pay-
 15 ment for home health services under this title only on the
 16 basis of the geographic location at which the service is fur-
 17 nished, as determined by the Secretary.”.

18 (b) WAGE ADJUSTMENT.—Section 1861(v)(1)(L)(iii)
 19 (42 U.S.C. 1395x(v)(1)(L)(iii)) is amended by striking
 20 “agency is located” and inserting “service is furnished”.

21 (c) EFFECTIVE DATE.—The amendments made by
 22 this section apply to cost reporting periods beginning on
 23 or after October 1, 1997.

1 **SEC. 7. ELIMINATION OF PERIODIC INTERIM PAYMENTS**
2 **FOR HOME HEALTH AGENCIES.**

3 (a) IN GENERAL.—Section 1815(e)(2) (42 U.S.C.
4 1395g(e)(2)) is amended—

5 (1) by inserting “and” at the end of subpara-
6 graph (C);

7 (2) by striking subparagraph (D); and

8 (3) by redesignating subparagraph (E) as (D).

9 (b) EFFECTIVE DATE.—The amendments made by
10 subsection (a) apply to payments made on or after the
11 implementation of section 1894 (as added by section
12 11273 of this Act).

13 **SEC. 8. ESTABLISHMENT OF HOME HEALTH BENEFIT**
14 **UNDER PART A AND TRANSFER OF OTHER**
15 **HOME HEALTH SERVICES TO PART B.**

16 (a) IN GENERAL.—Section 1812(a)(3) (42 U.S.C.
17 1395d(a)(3)) is amended by inserting “for up to 100 vis-
18 its” before the semicolon.

19 (b) CONFORMING AMENDMENTS.—Section 1812(b)
20 (42 U.S.C. 1395d(b)) is amended—

21 (1) by striking “or” at the end of paragraph
22 (2);

23 (2) by striking the period at the end of para-
24 graph (3) and inserting “; or”; and

25 (3) by adding after paragraph (3) the following:

1 “(4) home health services furnished to the indi-
2 vidual beginning after such services have been fur-
3 nished to the individual for a total of 100 visits.”.

4 (c) CLARIFICATION OF PART-TIME OR INTERMIT-
5 TENT NURSING CARE.—Section 1861(m) (42 U.S.C.
6 1395x(m)) is amended by adding at the end the following:
7 “For purposes of paragraphs (1) and (4), the term ‘part-
8 time or intermittent services’ means skilled nursing and
9 home health aide services furnished any number of days
10 per week as long as they are furnished (combined) less
11 than 8 hours each day and 28 or fewer hours each week
12 (or, subject to review on a case-by-case basis as to the
13 need for care, less than 8 hours each day and 35 or fewer
14 hours per week). For purposes of sections 1814(a)(2)(C)
15 and 1835(a)(2)(A), ‘intermittent’ means skilled nursing
16 care that is either provided or needed on fewer than 7
17 days each week, or less than 8 hours of each day of skilled
18 nursing and home health aide services combined for peri-
19 ods of 21 days or less (with extensions in exceptional cir-
20 cumstances when the need for additional care is finite and
21 predictable).”.

22 (d) PAYMENTS UNDER PART B.—Subparagraph (A)
23 of section 1833(a)(2) (42 U.S.C. 1395l(a)(2)) is amended
24 to read as follows:

1 “(A) with respect to home health services
 2 (other than a covered osteoporosis drug (as de-
 3 fined in section 1861(kk)), and to items and
 4 services described in section 1861(s)(10)(A),
 5 the amounts determined under section
 6 1861(v)(1)(L) or section 1893, or, if the serv-
 7 ices are furnished by a public provider or serv-
 8 ices, or by another provider which demonstrates
 9 to the satisfaction of the Secretary that a sig-
 10 nificant portion of its patients are low-income
 11 (and requests that payment be made under this
 12 provision), free of charge, or at nominal charges
 13 to the public, the amount determined in accord-
 14 ance with section 1814(b)(2);”.

15 (e) EXCLUSION OF ADDITIONAL PART B COSTS
 16 FROM DETERMINATION OF PART B MONTHLY PRE-
 17 MIUM.—Section 1839(a) (42 U.S.C. 1395r(a)) is amend-
 18 ed—

19 (1) in the second sentence of paragraph (3) (as
 20 amended by section 11301(a) of this Act), by insert-
 21 ing “(except as provided in paragraph (5))” before
 22 the period; and

23 (2) by adding after paragraph (4) the following:

24 “(5) EXCLUSION OF HOME HEALTH COSTS.—In
 25 estimating (for purposes of determining the monthly

1 premium rate under paragraph (3)) the benefits and
2 administrative costs which will be payable from the
3 Federal Supplementary Medical Insurance Trust
4 Fund for a year, the Secretary shall exclude an esti-
5 mate of any benefits and administrative costs attrib-
6 utable to home health services for which payment
7 would have been made under part A during the year
8 but for paragraph (4) of section 1812(b).”.

9 (f) DEFINITION OF HOMEBOUND.—Section 1814(a)
10 (42 U.S.C. 1395f(a)) and section 1835(a) (42 U.S.C.
11 1395n(a)) are each amended by adding the following at
12 the end: “With respect to the previous two sentences, the
13 individual must have a condition due to an illness or injury
14 that restricts the individual’s ability to leave the home for
15 more than an average of 16 hours per calendar month for
16 purposes other than to receive medical treatment that can-
17 not be provided in the home; infrequent means an average
18 of 5 or fewer absences per calendar month, excluding ab-
19 sences to receive medical treatment that cannot be fur-
20 nished in the home; short duration means an absence from
21 the home of 3 or fewer hours, on average per absence,
22 within a calendar month excluding absences to receive
23 medical treatment that cannot be furnished in the home;
24 and medical treatment means services that are furnished
25 by the physician or furnished based on and in conformance

1 with the physician’s order, by or under the supervision of
 2 a licensed health professional, and for the purpose of diag-
 3 nosis or treatment of an illness or injury.”.

4 (g) **NORMATIVE STANDARDS FOR HOME HEALTH**
 5 **CLAIMS DENIALS.**—Section 1862(a)(1) (42 U.S.C.
 6 1395y(a)(1)) (as amended by section 11243(b)(2)(A) of
 7 this Act) is further amended—

8 (1) by striking “and” at the end of subpara-
 9 graph (F);

10 (2) by striking the semicolon at the end of sub-
 11 paragraph (G) and inserting “, and”; and

12 (3) by adding the following after subparagraph
 13 (G):

14 “(H) the frequency and duration of home
 15 health services which are in excess of normative
 16 guidelines that the Secretary shall establish by
 17 regulation;”.

18 (h) **EFFECTIVE DATE.**—

19 (1) **IN GENERAL.**—The amendments made by
 20 this section apply to services furnished on or after
 21 October 1, 1997.

22 (2) **SPECIAL RULE.**—If an individual is entitled
 23 to benefits under part A of title XVIII of the Social
 24 Security Act (42 U.S.C. 1395 et seq.), but is not en-
 25 rolled in the insurance program established by part

1 B of that title, the individual also shall be entitled
2 under part A of that title to home health services
3 that are not posthospital home health services (as
4 those terms are defined under that title) furnished
5 before the 19th month that begins after the date of
6 enactment of this Act.

○