

106<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 2523

To amend title XVIII of the Social Security Act to provide for reimbursement of certified midwife services, to provide for more equitable reimbursement rates for certified nurse-midwife services, and for other purposes.

---

## IN THE SENATE OF THE UNITED STATES

MAY 9, 2000

Mr. CONRAD (for himself and Mr. MURKOWSKI) 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 reimbursement of certified midwife services, to provide for more equitable reimbursement rates for certified nurse-midwife 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       “Promoting Access to Medicare Midwifery Services Act of  
6       2000”.

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

- Sec. 1. Short title; table of contents.  
 Sec. 2. Medicare payment for certified midwife services.  
 Sec. 3. Increased medicare payments for certified nurse-midwife services and certified midwife services.  
 Sec. 4. Clarification of hospital conditions of participation with respect to certified nurse-midwives and certified midwives.  
 Sec. 5. Medicare payment for freestanding birth center services.  
 Sec. 6. Clarification of billing rights of certified nurse-midwives and certified midwives.  
 Sec. 7. Clarification regarding payments for certified nurse-midwife services and certified midwife services furnished in teaching hospitals.  
 Sec. 8. Interim and final regulations.

1 **SEC. 2. MEDICARE PAYMENT FOR CERTIFIED MIDWIFE**  
 2 **SERVICES.**

3 (a) CERTIFIED MIDWIFE AND CERTIFIED MIDWIFE  
 4 SERVICES DEFINED.—Section 1861(gg) of the Social Se-  
 5 curity Act (42 U.S.C. 1395x(gg)) is amended—

6 (1) in paragraph (1)—

7 (A) by striking “(as defined in paragraph  
 8 (2))” and inserting “(as defined in subpara-  
 9 graph (B))”; and

10 (B) by inserting “(A)” after “(1)”;

11 (2) by redesignating paragraph (2) as subpara-  
 12 graph (B); and

13 (3) by adding at the end the following new  
 14 paragraph:

15 “(2)(A) The term ‘certified midwife services’ means  
 16 such services furnished by a certified midwife (as defined  
 17 in subparagraph (B)) and such services and supplies fur-  
 18 nished as an incident to the certified midwife’s service  
 19 which the certified midwife is legally authorized to perform  
 20 under State law (or the State regulatory mechanism pro-

1 vided by State law) as would otherwise be payable under  
 2 this title if furnished by a physician or as an incident to  
 3 a physician's service.

4 “(B) The term ‘certified midwife’ means an  
 5 individual—

6 “(i) with a bachelor's degree from an accredited  
 7 educational institution who has completed a program  
 8 of study and clinical experience meeting guidelines  
 9 established by the Secretary of Education; or

10 “(ii) who has been certified in nurse-midwifery  
 11 or midwifery by an organization recognized by the  
 12 Secretary of Education.”.

13 (b) CERTIFIED MIDWIFE BENEFIT.—

14 (1) SCOPE OF BENEFITS.—Section  
 15 1832(a)(2)(B)(iii) of the Social Security Act (42  
 16 U.S.C. 1395k(a)(2)(B)(iii)) is amended by inserting  
 17 “, certified midwife services” after “certified nurse-  
 18 midwife services”.

19 (2) PAYMENT OF BENEFITS.—Section  
 20 1833(a)(1)(K) of the Social Security Act (42 U.S.C.  
 21 1395l(a)(1)(K)) is amended by inserting “and cer-  
 22 tified midwife services” after “certified nurse-mid-  
 23 wife services”.

24 (c) CONFORMING AMENDMENTS.—

1           (1) USE OF CARRIERS FOR ADMINISTRATION OF  
2 BENEFITS.—Section 1842(b)(18)(C)(iii) of the So-  
3 cial Security Act (42 U.S.C. 1395u(b)(18)(C)(iii)) is  
4 amended by striking “(as defined in section  
5 1861(gg)(2))” and inserting “or a certified midwife  
6 (as defined in paragraph (1)(B) and (2)(B), respec-  
7 tively, of section 1861(gg))”.

8           (2) HEALTH CARE PROFESSIONAL DEFINED.—  
9 Section 1852(j)(3)(D) of the Social Security Act (42  
10 U.S.C. 1395w-22(j)(3)(D)) is amended by striking  
11 “and certified nurse-midwife” and inserting “cer-  
12 tified nurse-midwife, and certified midwife”.

13           (3) INPATIENT HOSPITAL SERVICES.—Section  
14 1861(b)(4) of the Social Security Act (42 U.S.C.  
15 1395x(b)(4)) is amended by inserting “, certified  
16 midwife services,” after “certified nurse-midwife  
17 services”.

18           (4) MEDICAL AND OTHER HEALTH SERVICES.—  
19 Section 1861(s)(2)(L) of the Social Security Act (42  
20 U.S.C. 1395x(s)(2)(L)) is amended by inserting  
21 “and certified midwife services” before the semicolon  
22 at the end.

23           (5) RURAL HEALTH CLINIC SERVICES AND FED-  
24 ERALLY QUALIFIED HEALTH CLINIC SERVICES.—

1 Section 1861(aa) of the Social Security Act (42  
2 U.S.C. 1395x(aa)) is amended—

3 (A) in paragraph (2)(J), by striking “, or  
4 a certified nurse-midwife (as defined in sub-  
5 section (gg))” and inserting “, a certified nurse-  
6 midwife (as defined in subsection (gg)(1)(B)),  
7 or a certified midwife (as defined in subsection  
8 (gg)(2)(B))”; and

9 (B) in paragraph (7)(A), by striking “or  
10 certified nurse midwife” and inserting “, cer-  
11 tified nurse-midwife, or certified midwife”.

12 (6) CERTIFIED NURSE-MIDWIFE SERVICES.—  
13 The heading of section 1861(gg) of the Social Secu-  
14 rity Act (42 U.S.C. 1395x(gg)) is amended by add-  
15 ing at the end the following:

16 “; Certified Midwife Services”.

17 (7) EXCLUSIONS FROM COVERAGE AND MEDI-  
18 CARE AS SECONDARY PAYER.—Section 1862(a)(14)  
19 of the Social Security Act (42 U.S.C. 1395y(a)(14))  
20 is amended by inserting “, certified midwife serv-  
21 ices” after “certified nurse-midwife services”.

22 (8) AGREEMENTS WITH PROVIDERS OF SERV-  
23 ICES.—Section 1866(a)(1)(H)(i) (42 U.S.C.  
24 1395cc(a)(1)(H)(i)) is amended by inserting “, cer-

1       tified midwife services” after “certified nurse-mid-  
2       wife services”.

3               (9) EXCLUSION FROM PAYMENT TO SKILLED  
4       NURSING FACILITIES FOR ROUTINE SERVICE  
5       COSTS.—Section 1888(e)(2)(A)(ii) of the Social Se-  
6       curity Act (42 U.S.C. 1395yy(e)(2)(A)(ii)) is amend-  
7       ed by inserting “, certified midwife services” after  
8       “certified nurse-midwife services”.

9               (10) MEDICAID DEFINITIONS.—Section 1905 of  
10       the Social Security Act (42 U.S.C. 1396d) is  
11       amended—

12               (A) in subsection (a)(17)—

13                       (i) by striking “a nurse-midwife (as  
14                       defined in section 1861(gg)) which the  
15                       nurse-midwife is” and inserting “a cer-  
16                       tified nurse-midwife or a certified midwife  
17                       (as defined in paragraphs (1)(B) and  
18                       (2)(B), respectively, of section 1861(gg))  
19                       which the certified nurse-midwife or cer-  
20                       tified midwife, as the case may be, is”; and

21                       (ii) by striking “whether or not the  
22                       nurse-midwife” and inserting “whether or  
23                       not the certified nurse-midwife or certified  
24                       midwife, as the case may be,”; and

1 (B) in subsection (t)(2)(B)(ii), by striking  
 2 “(as defined in section 1861(gg))” and insert-  
 3 ing “or a certified midwife (as defined in para-  
 4 graphs (1)(B) and (2)(B), respectively, of sec-  
 5 tion 1861(gg)(2)(B))”.

6 (11) **MEDICAID MANAGED CARE.**—Section  
 7 1932(b)(3)(C) of the Social Security Act (42 U.S.C.  
 8 1396u–2(b)(3)(C)) is amended by striking “and cer-  
 9 tified nurse-midwife” and inserting “certified nurse-  
 10 midwife, and certified midwife”.

11 (d) **EFFECTIVE DATE.**—The amendments made by  
 12 this section shall apply to payment for certified nurse-mid-  
 13 wife services and certified midwife services furnished on  
 14 or after the date of enactment of this Act.

15 **SEC. 3. INCREASED MEDICARE PAYMENTS FOR CERTIFIED**  
 16 **NURSE-MIDWIFE SERVICES AND CERTIFIED**  
 17 **MIDWIFE SERVICES.**

18 (a) **AMOUNT OF PAYMENT.**—Section 1833(a)(1)(K)  
 19 of the Social Security Act (42 U.S.C. 1395l(a)(1)(K)) is  
 20 amended by striking “65 percent of the prevailing charge  
 21 that would be allowed for the same service performed by  
 22 a physician, or, for services furnished on or after January  
 23 1, 1992, 65 percent” and inserting “95 percent”.

24 (b) **EFFECTIVE DATE.**—The amendments made by  
 25 subsection (a) shall apply to certified nurse-midwife serv-

1 ices and certified midwife services furnished on or after  
 2 the date of enactment of this Act.

3 **SEC. 4. CLARIFICATION OF HOSPITAL CONDITIONS OF PAR-**  
 4 **TICIPATION WITH RESPECT TO CERTIFIED**  
 5 **NURSE-MIDWIVES AND CERTIFIED MIDWIVES.**

6 (a) PAYMENT TO HOSPITAL FOR PATIENTS UNDER  
 7 CARE OF CERTIFIED NURSE-MIDWIFE OR CERTIFIED  
 8 MIDWIFE.—Section 1861(e)(4) of the Social Security Act  
 9 (42 U.S.C. 1395x(e)(4)) is amended to read as follows:

10 “(4) has a requirement that every patient with  
 11 respect to whom payment may be made under this  
 12 title must be under the care of a physician, except  
 13 that—

14 “(A) a patient receiving qualified psycholo-  
 15 gist services (as defined in subsection (B)) may  
 16 be under the care of a clinical psychologist with  
 17 respect to such services to the extent permitted  
 18 under State law; and

19 “(B) a patient receiving certified nurse-  
 20 midwife services or certified midwife services  
 21 (as defined in paragraphs (1)(B) and (2)(B),  
 22 respectively, of subsection (gg)) may be under  
 23 the care of a certified nurse-midwife or certified  
 24 midwife, as the case may be, with respect to

1           such services to the extent permitted under  
2           State law;”.

3           (b) **EFFECTIVE DATE.**—The amendment made by  
4 subsection (a) shall take effect on the date of enactment  
5 of this Act.

6 **SEC. 5. MEDICARE PAYMENT FOR FREESTANDING BIRTH**  
7 **CENTER SERVICES.**

8           (a) **FREESTANDING BIRTH CENTER SERVICES AND**  
9 **FREESTANDING BIRTH CENTER DEFINED.**—Section  
10 1861(gg) of the Social Security Act (42 U.S.C. 1395x(gg))  
11 (as amended by section 2(a)) is amended by adding at the  
12 end the following new paragraph:

13           “(3)(A) The term ‘freestanding birth center services’  
14 means items and services furnished by a freestanding  
15 birth center (as defined in subparagraph (B)) as would  
16 otherwise be covered if furnished by a hospital.

17           “(B)(i) The term ‘freestanding birth center’ means  
18 a facility or institution—

19           “(I) in which births are planned to occur (out-  
20 side the mother’s place of residence);

21           “(II) in which comprehensive health care serv-  
22 ices are furnished; and

23           “(III) which has been approved by the Sec-  
24 retary or accredited by an organization recognized

1 by the Secretary for purposes of accrediting free-  
2 standing birth centers.

3 “(ii) Such term does not include—

4 “(I) a rural health clinic, critical access hos-  
5 pital, or a sole community hospital; or

6 “(II) a facility or institution that is a hospital  
7 or an ambulatory surgical center, unless with respect  
8 to ambulatory surgical centers, the State law or reg-  
9 ulation that regulates such centers also regulates  
10 freestanding birth centers in the State.”.

11 (b) FREESTANDING BIRTH CENTER BENEFIT.—

12 (1) SCOPE OF BENEFITS.—Section 1832(a)(2)  
13 of the Social Security Act (42 U.S.C. 1395l(a)(2))  
14 is amended—

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

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

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

21 “(K) freestanding birth center services per-  
22 formed in a freestanding birth center if the cen-  
23 ter has an agreement in effect with the Sec-  
24 retary by which the center agrees to accept the  
25 amount of payment determined under section

1           1833(u) as full payment for such services, and  
2           to accept assignment described in section  
3           1842(b)(3)(B)(ii) with respect to payment for  
4           all such services furnished by the center to indi-  
5           viduals enrolled under this part.”.

6           (2) PAYMENT OF BENEFITS.—Section 1833 of  
7           the Social Security Act (42 U.S.C. 1395l) is amend-  
8           ed by adding at the end the following new sub-  
9           section:

10          “(u) PAYMENT FOR FREESTANDING BIRTH CENTER  
11          SERVICES.—The Secretary shall establish by regulation  
12          the amount of payment to be made for facility services  
13          furnished in connection with freestanding birth center  
14          services and furnished to an individual in a freestanding  
15          birth center under this title.”.

16          (c) CONFORMING AMENDMENTS.—

17                (1) MEDICAL AND OTHER HEALTH SERVICES.—  
18                Section 1861(s)(2)(L) of the Social Security Act (42  
19                U.S.C. 1395x(s)(2)(L)) is amended—

20                        (A) by adding “and” at the end;

21                        (B) by inserting “(i)” after “(L)”; and

22                        (C) by adding at the end the following new  
23                clause:

24                        “(ii) freestanding birth center services;”.

1           (2) CERTIFIED NURSE-MIDWIFE SERVICES;  
 2           CERTIFIED MIDWIFE SERVICES.—The heading of  
 3           section 1861(gg) of the Social Security Act (42  
 4           U.S.C. 1395x(gg)) (as amended by section 2(c)(6))  
 5           is amended by adding at the end the following:

6           “; Freestanding Birth Center Services”.

7           (d) EFFECTIVE DATE.—The amendments made by  
 8           this section shall apply to freestanding birth center serv-  
 9           ices furnished on or after the date of enactment of this  
 10          Act.

11   **SEC. 6. CLARIFICATION OF BILLING RIGHTS OF CERTIFIED**  
 12                           **NURSE-MIDWIVES AND CERTIFIED MIDWIVES.**

13          (a) USE OF CARRIERS FOR ADMINISTRATION OF  
 14          BENEFITS.—The first sentence of section 1842(b)(6) of  
 15          the Social Security Act (42 U.S.C. 1395u(b)(6)) is  
 16          amended—

17                 (1) by striking “and” before “(F)”;

18                 (2) by inserting before the period at the end the  
 19                 following: “, and (G) in the case of certified nurse-  
 20                 midwife services or certified midwife services de-  
 21                 scribed in section 1861(s)(2)(L), payment may be  
 22                 made in accordance with subparagraph (A), except  
 23                 that payment may also be made to such individual  
 24                 or entity (or to the agent of such individual or enti-  
 25                 ty) as the certified nurse-midwife or certified mid-

1 wife, as the case may be, may designate under an  
 2 agreement between the certified nurse-midwife or  
 3 certified midwife, as the case may be, and such indi-  
 4 vidual or entity (or the agent of such individual or  
 5 entity)”.

6 (b) EFFECTIVE DATE.—The amendment made by  
 7 subsection (a) shall apply to payment for certified nurse-  
 8 midwife services and certified midwife services furnished  
 9 on or after the date of enactment of this Act.

10 **SEC. 7. CLARIFICATION REGARDING PAYMENTS FOR CER-**  
 11 **TIFIED NURSE-MIDWIFE SERVICES AND CER-**  
 12 **TIFIED MIDWIFE SERVICES FURNISHED IN**  
 13 **TEACHING HOSPITALS.**

14 (a) SCOPE OF BENEFITS.—Section  
 15 1832(a)(2)(B)(iii) of the Social Security Act (42 U.S.C.  
 16 1395k(a)(2)(B)(iii)) is amended—

17 (1) by inserting “(I)” after “(iii)”; and

18 (2) by adding at the end the following new sub-  
 19 clause:

20 “(II) in the case of certified nurse-  
 21 midwife services or certified midwife serv-  
 22 ices furnished in a hospital which has a  
 23 teaching program described in clause  
 24 (i)(II), such services may be furnished as

1 provided under sections 1842(b)(7)(E) and  
2 1861(b)(8);”.

3 (b) CLARIFICATION REGARDING PAYMENTS UNDER  
4 PART B FOR SUCH SERVICES FURNISHED IN TEACHING  
5 HOSPITALS.—

6 (1) IN GENERAL.—Section 1842(b)(7) of the  
7 Social Security Act (42 U.S.C. 1395u(b)(7)) is  
8 amended—

9 (A) in subparagraph (A), in the matter  
10 preceding clause (i), by inserting “or, for pur-  
11 poses of subparagraph (E), the conditions de-  
12 scribed in section 1861(b)(8),” after “section  
13 1861(b)(7),”;

14 (B) in subparagraph (C), by inserting “or,  
15 for purposes of subparagraph (E), the condi-  
16 tions described in section 1861(b)(8),” after  
17 “section 1861(b)(7),”; and

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

20 “(E) In the case of certified nurse-midwife services  
21 or certified midwife services furnished to a patient in a  
22 hospital with a teaching program approved as specified in  
23 section 1861(b)(6) but which does not meet the conditions  
24 described in section 1861(b)(8), the provisions of subpara-  
25 graphs (A) through (C) shall apply with respect to a cer-

1 tified nurse-midwife or a certified midwife, as the case  
 2 may be, under this subparagraph as such provisions apply  
 3 to a physician under such subparagraphs.”.

4 (2) REGULATIONS.—Not later than 6 months  
 5 after the date of enactment of this Act, the Sec-  
 6 retary shall promulgate regulations to carry out the  
 7 amendments made by paragraph (1).

8 (c) INPATIENT HOSPITAL SERVICES.—Section  
 9 1861(b) of the Social Security Act (42 U.S.C. 1395x(b))  
 10 is amended—

11 (1) in paragraph (6)—

12 (A) by inserting “(A)” after “(6)”; and

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

15 “(B) in the case of services in a hospital or os-  
 16 teopathic hospital, an intern or resident-in-training  
 17 in the field of obstetrics and gynecology taught or  
 18 supervised by a certified nurse-midwife or certified  
 19 midwife (as defined in paragraphs (1)(B) and  
 20 (2)(B), respectively, of subsection (gg)) to the extent  
 21 permitted under State law and as may be authorized  
 22 by the hospital;”;

23 (2) in paragraph (7), by striking the period at  
 24 the end and inserting “; or”; and

1           (3) by adding at the end the following new  
2 paragraph:

3           “(8) a certified nurse-midwife or a certified  
4 midwife where the hospital has a teaching program  
5 approved as specified in paragraph (6), if—

6                   “(A) the hospital elects to receive any pay-  
7 ment due under this title for reasonable costs of  
8 such services; and

9                   “(B) all certified nurse-midwives and cer-  
10 tified midwives in such hospital agree not to bill  
11 charges for professional services rendered in  
12 such hospital to individuals covered under the  
13 insurance program established by this title.”.

14 **SEC. 8. INTERIM AND FINAL REGULATIONS.**

15           Except with respect to the amendments made by sec-  
16 tion 7(b), in order to carry out the amendments made by  
17 this Act in a timely manner, the Secretary of Health and  
18 Human Services may first promulgate regulations that  
19 take effect on an interim basis after notice and pending  
20 opportunity for public comment by not later than 1 year  
21 after the date of enactment of this Act.

○