

106TH CONGRESS
2D SESSION

S. 3026

To establish a hospice demonstration and grant program for beneficiaries under the Medicare Program under title XVIII of the Social Security Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 12, 2000

Mr. WYDEN introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To establish a hospice demonstration and grant program for beneficiaries under the Medicare Program under title XVIII of the Social Security Act, 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 “Hospice Improvement
5 Program Act of 2000”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

8 (1) Each year more than $\frac{1}{3}$ of the people who
9 die suffer from a chronic illness.

1 (2) Approximately $\frac{1}{3}$ of Americans are unsure
2 about whom to contact to get the best care during
3 life's last stages.

4 (3) Americans want a team of professionals to
5 care for the patient at the end of life.

6 (4) Americans want emotional and spiritual
7 support for the patient and family.

8 (5) Ninety percent of Americans do not realize
9 that hospice care is a benefit provided under the
10 medicare program under title XVIII of the Social
11 Security Act (42 U.S.C. 1395 et seq.).

12 (6) Health Care Financing Administration data
13 show that beneficiaries were enrolled in hospice for
14 an average of less than 7 weeks in 1998, far less
15 than the full 6-month benefit under the medicare
16 program.

17 (7) According to the most recent data available,
18 although the average hospice enrollment is longer,
19 half of the enrollees live only 30 days after admis-
20 sion and almost 20 percent die within 1 week of en-
21 rollment.

22 (8) Use of hospice among medicare beneficiaries
23 has been decreasing, from a high of 59 days in 1995
24 to less than 48 days in 1998.

1 **SEC. 3. HOSPICE DEMONSTRATION PROGRAM AND HOS-**
2 **PICE EDUCATION GRANTS.**

3 (a) DEFINITIONS.—In this section:

4 (1) DEMONSTRATION PROGRAM.—The term
5 “demonstration program” means the Hospice Dem-
6 onstration Program established by the Secretary
7 under subsection (b)(1).

8 (2) MEDICARE BENEFICIARY.—The term
9 “medicare beneficiary” means any individual who is
10 entitled to benefits under part A or enrolled under
11 part B of the medicare program, including any indi-
12 vidual enrolled in a Medicare+Choice plan offered
13 by a Medicare+Choice organization under part C of
14 such program.

15 (3) MEDICARE HOSPICE SERVICES.—The term
16 “medicare hospice services” means the items and
17 services for which payment may be made under sec-
18 tion 1814(i) of the Social Security Act (42 U.S.C.
19 1395f(i)).

20 (4) MEDICARE PROGRAM.—The term “medicare
21 program” means the health benefits program under
22 title XVIII of the Social Security Act (42 U.S.C.
23 1395 et seq.).

24 (5) SECRETARY.—The term “Secretary” means
25 the Secretary of Health and Human Services, acting

1 through the Administrator of the Health Care Fi-
2 nancing Administration.

3 (b) HOSPICE DEMONSTRATION PROGRAM.—

4 (1) ESTABLISHMENT.—The Secretary shall es-
5 tablish a Hospice Demonstration Program in accord-
6 ance with the provisions of this subsection to in-
7 crease the utility of the medicare hospice services for
8 medicare beneficiaries.

9 (2) SERVICES UNDER DEMONSTRATION PRO-
10 GRAM.—The provisions of section 1814(i) of the So-
11 cial Security Act (42 U.S.C. 1395f(i)) shall apply to
12 the payment for items and services provided under
13 the demonstration program, except that—

14 (A) notwithstanding section 1862(a)(1)(C)
15 of such Act (42 U.S.C. 1395y(a)(1)(C)), the
16 Secretary shall provide for reimbursement for
17 items and services provided under the sup-
18 portive and comfort care benefit established
19 under paragraph (3);

20 (B) any licensed nurse practitioner or phy-
21 sician assistant may certify a medicare bene-
22 ficiary as the primary care provider when nec-
23 essary and within the scope of practice of such
24 practitioner or assistant under State law;

1 (C) if a community does not have a quali-
2 fied social worker, any professional who has the
3 necessary knowledge, skills, and ability (other
4 than social workers) to provide medical social
5 services shall provide such services;

6 (D) the Secretary shall waive any require-
7 ment that nursing facilities used for respite
8 care have skilled nurses on the premises 24
9 hours per day;

10 (E) the Secretary shall permit respite care
11 to be provided to the medicare beneficiary at
12 home; and

13 (F) the Secretary shall waive reimburse-
14 ment regulations to provide—

15 (i) reimbursement for consultations
16 and preadmission informational visits, even
17 if the medicare beneficiary does not choose
18 hospice care (including the supportive and
19 comfort care benefit under paragraph (3))
20 at that time;

21 (ii) a minimum payment for medicare
22 hospice services provided under the dem-
23 onstration program based on the provision
24 of medicare hospice services to a medicare
25 beneficiary for a period of 14 days, that

1 the Secretary shall pay to any hospice pro-
2 vider participating in the demonstration
3 program and providing such services (re-
4 gardless of the length of stay of the medi-
5 care beneficiary);

6 (iii) an increase in the reimbursement
7 rates for hospice services to offset—

8 (I) changes in medicare hospice
9 services and oversight under the dem-
10 onstration program;

11 (II) the higher costs of providing
12 medicare hospice services in rural
13 areas due to lack of economies of
14 scale or large geographic areas; and

15 (III) the higher costs of pro-
16 viding medicare hospice services in
17 urban underserved areas due to
18 unique costs specifically associated
19 with people living in those areas, in-
20 cluding providing security;

21 (iv) direct payment of any nurse prac-
22 titioner or physician assistant practicing
23 within the scope of State law in relation to
24 medicare hospice services provided by such
25 practitioner or assistant; and

1 (v) a per diem rate of payment for in-
2 home care under subparagraph (E) that
3 reflects the range of care needs of the
4 medicare beneficiary and that—

5 (I) in the case of a medicare ben-
6 eficiary that needs routine care, is not
7 less than 150 percent, and not more
8 than 200 percent, of the routine home
9 care rate for medicare hospice serv-
10 ices; and

11 (II) in the case of a medicare
12 beneficiary that needs acute care, is
13 equal to the continuous home care day
14 rate for medicare hospice services.

15 (3) SUPPORTIVE AND COMFORT CARE BEN-
16 EFIT.—

17 (A) IN GENERAL.—For purposes of the
18 demonstration program, the Secretary shall es-
19 tablish a supportive and comfort care benefit
20 for any eligible medicare beneficiary (as defined
21 in subparagraph (C)).

22 (B) BENEFIT.—Under the supportive and
23 comfort care benefit established under subpara-
24 graph (A), any eligible medicare beneficiary
25 may—

1 (i) continue to receive benefits for dis-
2 ease and symptom modifying treatment
3 under the medicare program (and the Sec-
4 retary may not require or prohibit any spe-
5 cific treatment or decision);

6 (ii) receive case management and
7 medicare hospice services through a hos-
8 pice provider, which the Secretary shall re-
9 imburse on a fee-for-service basis; and

10 (iii) receive information and experi-
11 ence in order to better understand the util-
12 ity of medicare hospice services.

13 (C) ELIGIBLE MEDICARE BENEFICIARY DE-
14 FINED.—

15 (i) IN GENERAL.—In this paragraph,
16 the term “eligible medicare beneficiary”
17 means any medicare beneficiary with a se-
18 rious illness that has been documented by
19 a physician to be at a level of severity de-
20 termined by the Secretary to meet the cri-
21 teria developed under clause (ii).

22 (ii) DEVELOPMENT OF CRITERIA.—

23 (I) IN GENERAL.—The Secretary,
24 in consultation with hospice providers
25 and experts in end-of-life care, shall

1 develop criteria for determining the
2 level of severity of an established seri-
3 ous illness taking into account the
4 factors described in subclause (II).

5 (II) FACTORS.—The factors de-
6 scribed in this clause include the level
7 of function of the medicare bene-
8 ficiary, any coexisting illnesses of the
9 beneficiary, and the severity of any
10 chronic condition that will lead to the
11 death of the beneficiary.

12 (III) PROGNOSIS NOT A BASIS
13 FOR CRITERIA.—The Secretary may
14 not base the criteria developed under
15 this subparagraph on the prognosis of
16 a medicare beneficiary.

17 (4) CONDUCT OF PROGRAM.—Under the dem-
18 onstration program, the Secretary shall—

19 (A) accept proposals submitted by any
20 State hospice association;

21 (B)(i) except as provided in clause (ii),
22 conduct the program in at least 3, but not more
23 than 6, geographic areas (which may be state-
24 wide) that include both urban and rural hospice
25 providers; and

1 (ii) if a geographic area does not have any
2 rural hospice provider available to participate in
3 the demonstration program, such area may sub-
4 stitute an underserved urban area, but the Sec-
5 retary shall give priority to those proposals that
6 include a rural hospice provider;

7 (C)(i) except for the geographic area des-
8 ignated under clause (ii), select such geographic
9 areas so that such areas are geographically di-
10 verse and readily accessible to a significant
11 number of medicare beneficiaries; and

12 (ii) designate as such an area 1 State in
13 which the largest metropolitan area of such
14 State had the lowest percentage of medicare
15 beneficiary deaths in a hospital compared to the
16 largest metropolitan area of each other State
17 according to the Hospital Referral Region of
18 Residence, 1994–1995, as listed in the Dart-
19 mouth Atlas of Health Care 1998;

20 (D) provide for the participation of medi-
21 care beneficiaries in such program on a vol-
22 untary basis;

23 (E) permit research designs that use time
24 series, sequential implementation of the inter-
25 vention, randomization by wait list, and other

1 designs that allow the strongest possible imple-
2 mentation of the demonstration program, while
3 still allowing strong evaluation about the merits
4 of the demonstration program; and

5 (F) design the program to facilitate the
6 evaluation conducted under paragraph (6).

7 (5) DURATION.—The Secretary shall complete
8 the demonstration program within a period of 6½
9 years that includes a period of 18 months during
10 which the Secretary shall complete the evaluation
11 under paragraph (6).

12 (6) EVALUATION.—During the 18-month period
13 following the first 5 years of the demonstration pro-
14 gram, the Secretary shall complete an evaluation of
15 the demonstration program in order to determine—

16 (A) the short-term and long-term costs and
17 benefits of changing medicare hospice services
18 to include the items, services, and reimburse-
19 ment options provided under the demonstration
20 program;

21 (B) whether increases in payments for the
22 medicare hospice benefit are offset by savings
23 in other parts of the medicare program;

24 (C) the projected cost of implementing the
25 demonstration program on a national basis; and

1 (D) in consultation with hospice organiza-
2 tions and hospice providers (including organiza-
3 tions and providers that represent rural areas),
4 whether a payment system based on diagnosis-
5 related groups is useful for administering the
6 medicare hospice benefit.

7 (7) REPORTS TO CONGRESS.—

8 (A) PRELIMINARY REPORT.—Not later
9 than 3 years after the date of enactment of this
10 Act, the Secretary shall submit a preliminary
11 report to the Committee on Ways and Means of
12 the House of Representatives and to the Com-
13 mittee on Finance of the Senate on the
14 progress made in the demonstration program.

15 (B) INTERIM REPORT.—Not later than 30
16 months after the implementation of the dem-
17 onstration program, the Secretary, in consulta-
18 tion with participants in the program, shall sub-
19 mit an interim report on the demonstration pro-
20 gram to the committees described in subpara-
21 graph (A).

22 (C) FINAL REPORT.—Not later than the
23 date on which the demonstration program ends,
24 the Secretary shall submit a final report to the
25 committees described in subparagraph (A) on

1 the demonstration program that includes the
2 results of the evaluation conducted under para-
3 graph (6) and recommendations for appropriate
4 legislative changes.

5 (8) WAIVER OF MEDICARE REQUIREMENTS.—
6 The Secretary shall waive compliance with such re-
7 quirements of the medicare program to the extent
8 and for the period the Secretary finds necessary for
9 the conduct of the demonstration program.

10 (9) SPECIAL RULES FOR PAYMENT OF
11 MEDICARE+CHOICE ORGANIZATIONS.—The Sec-
12 retary shall establish procedures under which the
13 Secretary provides for an appropriate adjustment in
14 the monthly payments made under section 1853 of
15 the Social Security Act (42 U.S.C. 1395w-23) to
16 any Medicare+Choice organization offering a
17 Medicare+Choice plan in which a medicare bene-
18 ficiary that participates in the demonstration pro-
19 gram is enrolled to reflect such participation.

20 (c) HOSPICE EDUCATION GRANTS.—

21 (1) IN GENERAL.—The Secretary shall establish
22 a Hospice Education Grant program under which
23 the Secretary awards education grants to entities
24 participating in the demonstration program for the
25 purpose of providing information about—

1 (A) the medicare hospice benefit; and

2 (B) the benefits available to medicare
3 beneficiaries under the demonstration program.

4 (2) USE OF FUNDS.—Grants awarded pursuant
5 to paragraph (1) shall be used—

6 (A) to provide—

7 (i) individual or group education to
8 medicare beneficiaries and their families;
9 and

10 (ii) individual or group education of
11 the medical and mental health community
12 caring for medicare beneficiaries; and

13 (B) to test strategies to improve the gen-
14 eral public knowledge about the medicare hos-
15 pice benefit and the benefits available to medi-
16 care beneficiaries under the demonstration pro-
17 gram.

18 (d) FUNDING.—

19 (1) HOSPICE DEMONSTRATION PROGRAM.—

20 (A) IN GENERAL.—Except as provided in
21 subparagraph (B), expenditures made for the
22 demonstration program shall be in lieu of the
23 funds that would have been provided to partici-
24 pating hospices under section 1814(i) of the So-
25 cial Security Act (42 U.S.C. 1395f(i)).

1 (B) SUPPORTIVE AND COMFORT CARE
2 BENEFIT.—The Secretary shall pay any ex-
3 penses for the supportive and comfort care ben-
4 efit established under subsection (a)(3) from
5 the Federal Hospital Insurance Trust Fund es-
6 tablished under section 1817 of the Social Secu-
7 rity Act (42 U.S.C. 1395i) and the Federal
8 Supplementary Medical Insurance Trust Fund
9 established under section 1841 of such Act (42
10 U.S.C. 1395t), in such proportion as the Sec-
11 retary determines is appropriate.

12 (2) HOSPICE EDUCATION GRANTS.—The Sec-
13 retary is authorized to expend such sums as may be
14 necessary for the purposes of carrying out the Hos-
15 pice Education Grant program established under
16 subsection (c)(1) from the Research and Demonstra-
17 tion Budget of the Health Care Financing Adminis-
18 tration.

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