

108TH CONGRESS
2D SESSION

H. R. 4095

To amend title XVIII of the Social Security Act to provide for the use of qualified family caregivers in the provision of home health aide services under the Medicare Program, to amend the Family and Medical Leave Act of 1993, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 31, 2004

Ms. MILLENDER-McDONALD (for herself, Mrs. CHRISTENSEN, and Mr. CUMMINGS) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Energy and Commerce, Education and the Workforce, Government Reform, and House Administration, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title XVIII of the Social Security Act to provide for the use of qualified family caregivers in the provision of home health aide services under the Medicare Program, to amend the Family and Medical Leave Act of 1993, 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 “Family Caregiver Security
5 Act of 2004”.

1 **SEC. 2. PROVISION OF QUALIFIED FAMILY CAREGIVER**
2 **SERVICES UNDER THE MEDICARE PROGRAM.**

3 (a) IN GENERAL.—Section 1891(a) of the Social Se-
4 curity Act (42 U.S.C. 1395bbb(a)) is amended by adding
5 at the end the following new paragraph:

6 “(7)(A) The agency permits an individual who
7 is under its care to have home health aide services
8 or personal care assistant services provided by a
9 qualified family caregiver (as defined in subpara-
10 graph (B)) under an approved plan of care and pro-
11 vides for payment for the services of the caregiver,
12 regardless of whether the caregiver is an employee of
13 the agency, at a rate comparable to the rate other-
14 wise paid for such services provided by other quali-
15 fied personnel. In addition, in the case of such a
16 caregiver the agency shall provide for appropriate
17 training and oversight of such services by a reg-
18 istered nurse in the same or similar manner to that
19 provided in the case of such services furnished by
20 another qualified individual and shall provide the
21 caregiver, as part of the plan of care, with edu-
22 cational information and resources related to family
23 caregiver health and wellness.

24 “(B) For purposes of this paragraph, the term
25 ‘qualified family caregiver’ means, with respect to
26 the provision of home health aide services or per-

1 sonal care assistant services to an individual, an in-
2 dividual who is a family caregiver (as defined in sec-
3 tion 372(2) of the National Family Caregiver Sup-
4 port Act) of the individual and who demonstrates
5 proficiency in the provision of the home health aide
6 services or personal care assistant services involved
7 to the satisfaction of the supervising registered pro-
8 fessional nurse.

9 “(C) This paragraph shall supersede any other
10 restriction of this title (including section
11 1862(a)(11)) on the provision of home health aide
12 services or personal care assistant services by a
13 qualified family caregiver described in subparagraph
14 (B) on the basis of the caregiver’s relationship to the
15 recipient of such services. This subparagraph shall
16 not affect any disqualification of an individual from
17 providing services on the basis of the individual’s
18 lack of qualification to provide the services or on the
19 basis of an exclusion of participation of the indi-
20 vidual under part B of title XI.

21 “(D) The Secretary, in consultation with the
22 Secretary of Labor, shall provide guidance to home
23 health agencies on payment administration and man-
24 agement methodologies to facilitate the provision of
25 home health aide services and personal assistant

1 care services by qualified family caregivers under
2 this paragraph.”.

3 (b) EFFECTIVE DATE.—The amendment made by
4 subsection (a) shall take effect on January 1, 2005, and
5 shall apply to services furnished on or after such date.

6 (c) CONSTRUCTION.—Nothing in this section shall be
7 construed as preventing the application of fraud and abuse
8 sanctions (including those under sections 1128, 1128A,
9 and 1128B of the Social Security Act) with respect to
10 family caregivers under section 1891(a)(7) of the Social
11 Security Act, as added by subsection (a), in the same man-
12 ner as such sanctions may be applied to other individuals
13 who provide home health aide services or personal assist-
14 ant care services.

15 (d) PROHIBITION OF DENIAL OF SERVICES BECAUSE
16 OF REFUSAL OF PHYSICAL THERAPY SERVICES DURING
17 REHABILITATION.—Nothing in title XVIII of the Social
18 Security Act shall be construed as authorizing the exclu-
19 sion of coverage of skilled nursing services for an indi-
20 vidual who is 75 years of age or older as part of home
21 health services solely on the basis of the individual’s re-
22 fusals of physical therapy services during rehabilitation, re-
23 gardless of whether such physical therapy services are part
24 of the plan of care for the individual.

1 **SEC. 3. AMENDMENTS TO FAMILY AND MEDICAL LEAVE**

2 **ACT OF 1993.**

3 (a) INCLUSION OF NURSE PRACTITIONERS AS
4 HEALTH CARE.—Section 101(6)(C) of the Family and
5 Medical Leave Act of 1993 (29 U.S.C. 2611(6)(C)) is
6 amended—

7 (1) by striking “or” at the end of subparagraph
8 (A);

9 (2) by redesignating subparagraph (B) as sub-
10 paragraph (C); and

11 (3) by inserting after subparagraph (A) the fol-
12 lowing new subparagraph:

13 “(B) a nurse practitioner; or”.

14 (b) EXTENSION TO DOMESTIC PARTNERS.—Section
15 101(13) of such Act (29 U.S.C. 2611(13)) is amended by
16 inserting before the period at the end the following: “, and
17 includes a domestic or civil partner registered or recog-
18 nized under the applicable domestic or civil partnership
19 of State or local law”.

20 (c) EXTENSION OF PERIOD OF FAMILY OR MEDICAL
21 LEAVE FOR SPOUSES EMPLOYED BY SAME EMPLOYER.—
22 Section 102(f) of such Act (29 U.S.C. 2612(f)) is amend-
23 ed “12 workweeks” and inserting “24 workweeks”.

24 (d) CLARIFICATION OF COVERAGE OF OUTPATIENT
25 HOSPICE CARE.—Section 101(11) of such Act (29 U.S.C.
26 2611(11)) is amended—

1 (1) by striking “or” at the end of subparagraph
2 (A);

3 (2) by redesignating subparagraph (B) as sub-
4 paragraph (C); and

5 (3) by inserting after subparagraph (A) the fol-
6 lowing new subparagraph:

7 “(B) hospice care; or”.

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