

112TH CONGRESS  
1ST SESSION

# S. 659

To amend title XVIII of the Social Security Act to protect Medicare beneficiaries' access to home health services under the Medicare program.

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IN THE SENATE OF THE UNITED STATES

MARCH 29, 2011

Ms. COLLINS (for herself and Ms. CANTWELL) introduced the following bill;  
which was read twice and referred to the Committee on Finance

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## A BILL

To amend title XVIII of the Social Security Act to protect Medicare beneficiaries' access to home health services under the Medicare program.

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 “Home Health Care  
5 Access Protection Act of 2011”.

6 **SEC. 2. PROTECTING ACCESS TO MEDICARE HOME HEALTH**  
7 **SERVICES.**

8 Section 1895(b)(3)(B) of the Social Security Act (42  
9 U.S.C. 1395fff(b)(3)(B)) is amended—

1 (1) in clause (iv), by striking “Insofar as” and  
2 inserting “Subject to clause (vii), insofar as”; and

3 (2) by adding at the end the following new  
4 clause:

5 “(vii) SPECIAL RULES FOR ADJUST-  
6 MENT FOR CASE MIX CHANGES FOR 2012  
7 AND SUBSEQUENT YEARS.—

8 “(I) IN GENERAL.—For 2012  
9 and each subsequent year, subject to  
10 subclause (IV), any adjustment under  
11 clause (iv) shall only be made using  
12 standards established by the Secretary  
13 consistent with the processes de-  
14 scribed in subclause (II) and taking  
15 into account the considerations de-  
16 scribed in subclause (III).

17 “(II) PROCESSES AND CRITERIA  
18 FOR EVALUATING CHANGES IN CASE  
19 MIX.—For purposes of subclause (I),  
20 the processes described in this sub-  
21 clause are the following:

22 “(aa) The Secretary shall  
23 convene a Technical Advisory  
24 Group to advise the Secretary  
25 concerning the establishment of

1 standards under subclause (I) in  
2 order to distinguish between real  
3 changes in case mix and changes  
4 in coding or classification of dif-  
5 ferent units of services that do  
6 not reflect real changes in case  
7 mix. The Technical Advisory  
8 Group shall be composed of  
9 stakeholders, including an equal  
10 number of individuals and orga-  
11 nizations representing the inter-  
12 ests of Medicare beneficiaries, the  
13 National Association for Home  
14 Care and Hospice, the Visiting  
15 Nurse Associations of America,  
16 health care academia, and health  
17 care professionals. Members shall  
18 not have an existing contractual  
19 relationship with the Secretary at  
20 the time of their appointment to  
21 the Technical Advisory Group.  
22 The Secretary shall provide the  
23 Technical Advisory Group an op-  
24 portunity to review and comment  
25 on any proposed rulemaking or

1 final determination of the Sec-  
2 retary with respect to such stand-  
3 ards prior to the issuance of the  
4 proposed rulemaking or making  
5 of the final determination.

6 “(bb) If the Secretary en-  
7 gages an outside contractor to  
8 participate in the evaluation of  
9 case mix changes described in  
10 item (aa), the Secretary shall  
11 only utilize an outside contractor  
12 that has not previously partici-  
13 pated in the design and establish-  
14 ment of the case mix adjustment  
15 factors under paragraph (4)(B).

16 “(cc) If the Secretary deter-  
17 mines that any increase in case  
18 mix relates to changes in the vol-  
19 ume or nature of home health  
20 services provided, the Secretary  
21 shall evaluate that increase  
22 through the actual review of  
23 claims and services and shall not  
24 use any proxy or surrogate for  
25 determining whether the change

1 in volume or nature of services is  
2 reasonable and necessary.

3 “(dd) The Secretary shall  
4 establish such standards by regu-  
5 lation.

6 “(ee) The Secretary shall  
7 make available to the public all  
8 data, reports, and supporting  
9 materials, including any com-  
10 ments by the Technical Advisory  
11 Group under item (aa), regarding  
12 the establishment of such stand-  
13 ards at the time of the publica-  
14 tion of the notice of the proposed  
15 regulation.

16 “(III) CONSIDERATIONS.—For  
17 purposes of subclause (I), the consid-  
18 erations described in this subclause  
19 are the following:

20 “(aa) The impact of changes  
21 in the program under this title  
22 that may affect the characteris-  
23 tics of individuals receiving home  
24 health services.

1           “(bb) The impact of changes  
2 in the provision of home health  
3 services by providers of services  
4 and suppliers other than home  
5 health agencies.

6           “(cc) Distinctions in the  
7 characteristics of individuals ini-  
8 tiating home health services from  
9 community and institutional care  
10 settings.

11           “(dd) Whether any changes  
12 in coding resulted in a change in  
13 aggregate payments under this  
14 subsection during the fiscal year  
15 or year and disregarding changes  
16 in coding that did not result in  
17 such a change in aggregate pay-  
18 ments.

19           “(ee) Any other factors de-  
20 termined appropriate by the Sec-  
21 retary, in consultation with the  
22 Technical Advisory Group under  
23 subclause (II)(aa).

24           “(IV) EXCEPTION FOR CERTAIN  
25 ADJUSTMENTS FOR 2012.—This clause

1 shall not apply to any adjustment  
2 under clause (iv) that is scheduled in  
3 a final rule for 2012 as of January 1,  
4 2011.”.

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