

112TH CONGRESS
1ST SESSION

S. 722

To strengthen and protect Medicare hospice programs.

IN THE SENATE OF THE UNITED STATES

APRIL 4, 2011

Mr. WYDEN (for himself and Mr. ROBERTS) introduced the following bill;
which was read twice and referred to the Committee on Finance

A BILL

To strengthen and protect Medicare hospice programs.

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 Evaluation
5 and Legitimate Payment Act”.

6 **SEC. 2. ENSURING TIMELY ACCESS TO HOSPICE CARE.**

7 (a) IN GENERAL.—Section 1814(a)(7)(D)(i) of the
8 Social Security Act (42 U.S.C. 1395f(a)(7)(D)(i)) is
9 amended to read as follows:

10 “(i) a hospice physician, a nurse prac-
11 titioner, a clinical nurse specialist, or a
12 physician assistant (as those terms are de-

1 fined in section 1861(aa)(5)), or other
2 health professional (as designated by the
3 Secretary), has a face-to-face encounter
4 with the individual to determine continued
5 eligibility of the individual for hospice care
6 prior to the first 60-day period and each
7 subsequent recertification under subpara-
8 graph (A)(ii) (or, in the case where a hos-
9 pice program newly admits an individual
10 who would be entering their first 60-day
11 period or a subsequent hospice benefit pe-
12 riod or where exceptional circumstances, as
13 defined by the Secretary, may prevent a
14 face-to-face encounter prior to the begin-
15 ning of the hospice benefit period, not later
16 than 7 calendar days after the individual's
17 election under section 1812(d)(1) with re-
18 spect to the hospice program) and attests
19 that such visit took place (in accordance
20 with procedures established by the Sec-
21 retary); and”.

22 (b) EFFECTIVE DATE.—The amendment made by
23 subsection (a) takes effect on the date of enactment of
24 this Act and applies to hospice care furnished on or after
25 such date.

1 **SEC. 3. RESTORING AND PROTECTING THE MEDICARE HOS-**
2 **PICE BENEFIT.**

3 (a) IN GENERAL.—Section 1814(i) of the Social Se-
4 curity Act (42 U.S.C. 1395f(i)) is amended—

5 (1) in subparagraph (1)(C)—

6 (A) in clause (ii)—

7 (i) in the matter preceding subclause

8 (I), by striking “(6)(D)” and inserting

9 “(6)(E)”; and

10 (ii) in subclause (VII), by striking

11 “(6)(D)” and inserting “(6)(E)”; and

12 (B) in clause (iii), by moving such clause

13 6 ems to the left and striking “(6)(D)” and in-

14 serting “(6)(E)”; and

15 (2) in paragraph (6)—

16 (A) in subparagraph (A), by striking “sub-

17 paragraph (D)” and inserting “subparagraph

18 (E)”;

19 (B) by redesignating subparagraphs (D)

20 and (E) as subparagraphs (E) and (F), respec-

21 tively, and inserting after subparagraph (C) the

22 following new subparagraph:

23 “(D) HOSPICE PAYMENT REFORM DEM-

24 ONSTRATION PROGRAM.—

25 “(i) ESTABLISHMENT OF DEM-

26 ONSTRATION PROGRAM.—

1 “(I) IN GENERAL.—Prior to im-
2 plementing any revisions to the meth-
3 odology for determining the payment
4 rates for routine home care and other
5 services included in hospice care
6 under subparagraph (E), the Sec-
7 retary shall establish a Medicare Hos-
8 pice Payment Reform demonstration
9 program to test such proposed revi-
10 sions.

11 “(II) DURATION.—The dem-
12 onstration program shall be conducted
13 for a 2-year period beginning on or
14 after October 1, 2013.

15 “(III) SCOPE.—The Secretary
16 shall select not more than 15 hospice
17 programs at which the demonstration
18 program under this subparagraph
19 shall be conducted.

20 “(IV) REPRESENTATIVE PARTICI-
21 PATION.—Hospice programs selected
22 under subclause (III) to participate in
23 the demonstration program shall in-
24 clude a representative cross-section of
25 such programs throughout the United

1 States, including programs located in
2 urban and rural areas.

3 “(V) VOLUNTARY PARTICIPA-
4 TION.—Hospice program participation
5 in the demonstration program shall be
6 on a voluntary basis.

7 “(ii) EVALUATION AND REPORT.—

8 “(I) EVALUATION.—The Sec-
9 retary shall conduct an evaluation of
10 the demonstration program under this
11 subparagraph. Such evaluation shall
12 include an analysis of whether the use
13 of the revised payment methodology
14 under the demonstration program has
15 improved the quality of patient care
16 and access to hospice services for
17 beneficiaries under this title and the
18 impact of such payment revisions on
19 hospice care providers, including the
20 impact, if any, on the ability of hos-
21 pice programs to furnish quality care
22 to beneficiaries under this title.

23 “(II) REPORT.—Not later than 1
24 year after the completion of the dem-
25 onstration program, the Secretary

1 shall submit to Congress a report con-
2 taining the results of the evaluation
3 conducted under subclause (I), to-
4 gether with recommendations for such
5 legislation and administrative action
6 as the Secretary determines appro-
7 priate.

8 “(iii) BUDGET NEUTRALITY.—With
9 respect to the 2-year period of the dem-
10 onstration program under this subpara-
11 graph, the Secretary shall ensure that the
12 estimated amount of aggregate payments
13 under this title to each hospice program
14 participating in the demonstration pro-
15 gram for such period shall not be more
16 than 5 percent higher or 5 percent lower
17 than the estimated amount of aggregate
18 payments that would have been made
19 under this title to each such hospice pro-
20 gram during such period had they not par-
21 ticipated in the demonstration program
22 under this subparagraph.”.

23 (C) in subparagraph (E), as redesignated
24 by subparagraph (B)—

25 (i) in clause (i)—

1 (I) in the first sentence, by strik-
2 ing “October 1, 2013, the Secretary
3 shall, by regulation” and inserting
4 “subject to clause (iii), the later of 2
5 years after the demonstration pro-
6 gram under subparagraph (D) is com-
7 pleted or October 1, 2017, the Sec-
8 retary shall, by regulation, preceded
9 by notice of the proposed regulation in
10 the Federal Register and a period for
11 public comment in accordance with
12 section 1871(b)(1),”; and

13 (II) in the second sentence, by
14 inserting “, and shall take into ac-
15 count the results of the evaluation
16 conducted under subparagraph
17 (D)(ii)” before the period; and

18 (ii) by adding at the end the following
19 new clause:

20 “(iii) In no case may the Secretary imple-
21 ment any revisions in payment pursuant to
22 clause (i) unless the Secretary determines that
23 the demonstration program under subparagraph
24 (D) demonstrated that such revisions would not

1 adversely affect access to quality hospice care
2 by beneficiaries under this title.”.

3 (D) in subparagraph (F), as redesignated
4 by subparagraph (B), by striking “subpara-
5 graph (D)” and inserting “subparagraph (E)”.

6 **SEC. 4. HOSPICE SURVEY REQUIREMENT.**

7 (a) **IN GENERAL.**—Section 1861(dd)(4) of the Social
8 Security Act (42 U.S.C. 1395x(dd)(4)) is amended by
9 adding at the end the following new subparagraph:

10 “(C) Any entity seeking certification as a hospice pro-
11 gram shall be subject to an initial survey by an appro-
12 priate State or local survey agency, or an approved accred-
13 itation agency, as determined by the Secretary, not later
14 than 6 months after beginning operations, and any entity
15 which is certified as a hospice program shall be subject
16 to a standard survey not less frequently than every 36
17 months.”.

18 (b) **EFFECTIVE DATE.**—The amendment made by
19 subsection (a) takes effect on the date that is 180 days
20 after the date of enactment of this Act and applies to hos-
21 pice programs on or after such date.

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