

111TH CONGRESS
1ST SESSION

H. R. 3043

To amend title XVIII of the Social Security Act to provide for coverage of substitute adult day care services under the Medicare Program.

IN THE HOUSE OF REPRESENTATIVES

JUNE 25, 2009

Ms. LINDA T. SÁNCHEZ of California introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, 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 coverage of substitute adult day care 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 “Medicare Adult Day
5 Care Services Act of 2009”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

1 (1) Adult day care can offer services, including
2 medical care, rehabilitation therapies, dignified as-
3 sistance with activities of daily living, nutrition ther-
4 apy, health monitoring, social interaction, stimu-
5 lating activities, and transportation, to seniors and
6 people with disabilities at no extra cost to the Medi-
7 care Program.

8 (2) The care given at adult day care facilities
9 provides seniors, people with disabilities, and their
10 familial caregivers with more care hours and addi-
11 tional services that are critical to keeping patients
12 healthier and in the home.

13 (3) More than 50,000,000 people provide care
14 for a chronically ill, disabled or aged family member
15 or friend during any given year. In 2002, almost
16 half of workers in the United States provided some
17 form of caregiving.

18 (4) Caregivers, the majority of whom are
19 women, provide an estimated \$306,000,000,000 in
20 “free” services annually. The pool of potential family
21 caregivers is dwindling, from 11 potential caregivers
22 for each person needing care today to a projected 4
23 to 1 ratio in 2050.

24 (5) Caregiving families tend to have lower in-
25 comes than non-caregiving families, and the average

1 intensive caregiver loses \$659,139 in wages, pension
2 benefits, and Social Security benefits over a lifetime.
3 At least 6 out of 10 employed caregivers reported
4 that they had made some work-related adjustments
5 as a result of their caregiving responsibilities, and
6 an estimated 9 percent of caregivers left the work-
7 place altogether as a result of their caregiving re-
8 sponsibilities.

9 (6) The total estimated cost to employers for
10 full-time employees with intense caregiving respon-
11 sibilities is \$17,100,000,000. The total estimated
12 cost to employers for all full-time, employed care-
13 givers is \$33,600,000,000 annually.

14 (7) Adult day care centers, which are located in
15 every State in the United States and the District of
16 Columbia, serve as an effective source of relief to fa-
17 milial caregivers and provide quality health options
18 to treat our Nation's elderly population, which is
19 about to dramatically increase with the aging of the
20 baby boomer generation.

21 **SEC. 3. MEDICARE COVERAGE OF SUBSTITUTE ADULT DAY**
22 **CARE SERVICES.**

23 (a) SUBSTITUTE ADULT DAY CARE SERVICES BEN-
24 EFIT.—

(A) in the matter preceding paragraph (1),
by inserting “or paragraph (8)” after “para-
graph (7)”;

7 (B) in paragraph (6), by striking “and” at
8 the end;

9 (C) in paragraph (7), by adding “and” at
10 the end; and

(D) by inserting after paragraph (7), the following new paragraph:

13 “(8) substitute adult day care services (as de-
14 fined in subsection (hhh)(1)) furnished by a State li-
15 censed or certified or nationally accredited adult day
16 care facility (as defined in subsection (hhh)(2));”.

(2) SUBSTITUTE ADULT DAY CARE SERVICES
DEFINED.—Section 1861 of the Social Security Act
(42 U.S.C. 1395x) is amended by adding at the end
the following new subsection:

21 “Substitute Adult Day Care Services; Adult Day Care
22 Facility

23 “(hhh)(1)(A) The term ‘substitute adult day care
24 services’ means the items and services described in sub-
25 paragraph (B) that are furnished to an individual by a

1 State licensed or certified or nationally accredited adult
2 day care facility as a part of a plan under subsection (m)
3 that substitutes such services for a portion of the items
4 and services described in subparagraph (B)(i) furnished
5 by a home health agency under the plan, as determined
6 by the physician establishing the plan.

7 “(B) The items and services described in this sub-
8 paragraph are the following items and services:

9 “(i) Items and services described in paragraphs
10 (1) through (7) of subsection (m).

11 “(ii) Transportation of the individual to and
12 from such adult day care facility in connection with
13 any such item or service.

14 “(iii) Meals.

15 “(iv) A program of supervised activities (that
16 meets such criteria as the Secretary determines ap-
17 propriate) designed to promote physical and mental
18 health that are furnished to the individual by such
19 a facility in a group setting for a period of not fewer
20 than 4 and not greater than 12 hours per day.

21 “(v) A medication management program (as de-
22 fined in subparagraph (C)).

23 “(C) For purposes of subparagraph (B)(v), the term
24 ‘medication management program’ means a program of

1 education and services (that meets such criteria as the
2 Secretary determines appropriate) to minimize—

3 “(i) unnecessary or inappropriate use of pre-
4 scription drugs; and

5 “(ii) adverse events due to unintended prescrip-
6 tion drug-to-drug interactions.

7 “(2)(A) Except as provided in subparagraph (B), the
8 term ‘State licensed or certified or nationally accredited
9 adult day care facility’ means a public agency or private
10 organization, or a subdivision of such an agency or organi-
11 zation, that—

12 “(i) is engaged in providing skilled nursing
13 services and other therapeutic services directly or
14 under arrangement with a home health agency;

15 “(ii) meets such standards established by the
16 Secretary to assure quality of care and such other
17 requirements as the Secretary finds necessary in the
18 interest of the health and safety of individuals who
19 are furnished services in the facility;

20 “(iii) provides the items and services described
21 in paragraph (1)(B);

22 “(iv) subject to subparagraph (B), meets the
23 requirements of paragraphs (2) through (8) of sub-
24 section (o); and

1 “(v) if the agency, organization, or subdivision
2 is in a State not described in subsection (o)(4), is
3 accredited through a nationally recognized accred-
4 iting agency.

5 “(B) The Secretary may waive the requirement of a
6 surety bond under paragraph (7) of subsection (o) in the
7 case of an agency or organization that provides a com-
8 parable surety bond under State law.

9 “(C) For purposes of payment for home health serv-
10 ices consisting of substitute adult day care services fur-
11 nished under this title, any reference to a home health
12 agency is deemed to be a reference to a State licensed or
13 certified or nationally accredited adult day care facility.

14 “(D) Nothing in this paragraph shall be construed
15 as prohibiting a home health agency from—

16 “(i) establishing a State licensed or certified or
17 nationally accredited adult day care facility; or

18 “(ii) providing services under arrangements
19 with such a facility.”.

20 (3) CONFORMING AMENDMENTS.—Sections
21 1814(a)(2)(C) and 1835(a)(2)(A)(i) of the Social
22 Security Act (42 U.S.C. 1395f(a)(2)(C) and
23 1395n(a)(2)(A)(i)) are each amended by striking
24 “section 1861(m)(7)” and inserting “paragraph (7)
25 or (8) of section 1861(m)”.

1 (b) PAYMENT FOR SUBSTITUTE ADULT DAY CARE
2 SERVICES UNDER THE HOME HEALTH PROSPECTIVE
3 PAYMENT SYSTEM.—Section 1895 of the Social Security
4 Act (42 U.S.C. 1395fff) is amended by adding at the end
5 the following new subsection:

6 “(f) PAYMENT RATE AND LIMITATION ON PAYMENT
7 FOR SUBSTITUTE ADULT DAY CARE SERVICES.—

8 “(1) PAYMENT RATE.—

9 “(A) IN GENERAL.—The Secretary shall
10 determine each component (as defined by the
11 Secretary) of substitute adult day care services
12 (under section 1861(hhh)(1)(B)(i)) furnished to
13 an individual under the plan of care established
14 under section 1861(m) with respect to such
15 services.

16 “(B) ESTIMATION OF PAYMENT
17 AMOUNT.—The Secretary shall estimate the
18 amount that would otherwise be payable under
19 this section for all home health services under
20 that plan of care other than substitute adult
21 day care services for a week or other period
22 specified by the Secretary.

23 “(C) AMOUNT OF PAYMENT.—The total
24 amount payable for home health services con-
25 sisting of substitute adult day care services

1 under such plan of care is 98 percent of the
2 amount estimated to be payable under subpara-
3 graph (B) furnished under the plan by a home
4 health agency.

5 “(2) LIMITATIONS.—

6 “(A) IN GENERAL.—With respect to home
7 health services consisting of substitute adult
8 day care services, no payment may be made
9 under this section for home health services con-
10 sisting of substitute adult day care services de-
11 scribed in clauses (ii) through (v) of section
12 1861(hhh)(1)(B).

13 “(B) LIMITATION ON BALANCE BILLING.—
14 A State licensed or certified or nationally ac-
15 credited adult day care facility shall accept as
16 payment in full for substitute adult day care
17 services (including those services described in
18 clauses (ii) through (v) of section
19 1861(hhh)(1)(B)) furnished by the facility to
20 an individual entitled to benefits under this title
21 the amount of payment provided under this sec-
22 tion for home health services consisting of sub-
23 stitute adult day care services.”.

1 (c) CONSOLIDATED BILLING.—Section 1862(a) of
2 the Social Security Act (42 U.S.C. 1395y(a)) is amend-
3 ed—

4 (1) by striking “or” at the end of paragraph
5 (23);

6 (2) by striking the period at the end of para-
7 graph (24) and inserting “; or”; and

8 (3) by inserting after paragraph (24) the fol-
9 lowing new paragraph:

10 “(25) which are substitute adult day care serv-
11 ices for which payment may be made under section
12 1895(f) and which are furnished to an individual by
13 a State licensed or certified or nationally accredited
14 adult day care facility pursuant to a plan of care es-
15 tablished under section 1861(m) with respect to
16 such services, by an entity other than such facility,
17 unless the services are furnished under arrange-
18 ments (as defined in section 1861(w)(1)) with the
19 entity made by such facility.”.

20 (d) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to items and services furnished on
22 or after January 1, 2010.

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