

114TH CONGRESS
1ST SESSION

S. _____

To amend title XVIII of the Social Security Act to make changes to the Medicare home health face-to-face encounter requirements.

IN THE SENATE OF THE UNITED STATES

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

A BILL

To amend title XVIII of the Social Security Act to make changes to the Medicare home health face-to-face encounter requirements.

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 Docu-
5 mentation and Program Improvement Act of 2015”.

6 **SEC. 2. DEVELOPMENT OF A SINGLE FORM OR DOCUMENT**

7 **TO SATISFY THE HOME HEALTH CERTIFI-**
8 **CATION REQUIREMENT.**

9 (a) PART A.—Section 1814 of the Social Security Act
10 (42 U.S.C. 1395f) is amended—

1 (1) in subsection (a)(2)(C), by striking “has
2 had a face-to-face encounter” and inserting “has,
3 subject to subsection (m), had a face-to-face encoun-
4 ter”; and

5 (2) by adding at the end the following new sub-
6 section:

7 “(m) IMPLEMENTATION OF REQUIREMENT FOR CER-
8 TIFICATION FOR HOME HEALTH SERVICES.—

9 “(1) IN GENERAL.—The Secretary shall develop
10 a single form or document to be used by a physician
11 to satisfy the documentation requirements necessary
12 to fulfill the requirement of a face-to-face encounter
13 and other criteria for home health eligibility under
14 subsection (a)(2)(C) (otherwise known as the certifi-
15 cation for home health services).

16 “(2) STAKEHOLDER INPUT.—In developing the
17 form or document under paragraph (1), the Sec-
18 retary shall seek input from stakeholders, including
19 physicians and other non-physician providers (such
20 as nurse practitioners or clinical nurse specialists (as
21 those terms are defined in section 1861(aa)(5))),
22 home health agencies, hospitals, patients or rep-
23 resentatives of patients, and other entities (such as
24 electronic medical record vendors) the Secretary de-
25 termines appropriate. The Secretary shall provide

1 the opportunity for such stakeholders to offer input
2 on the form or document during its initial develop-
3 ment as well as the opportunity to make comments
4 on a proposed version prior to its finalization. The
5 Secretary shall also set up a process to educate phy-
6 sicians and non-physicians on how to appropriately
7 fulfill the requirements related to the form or docu-
8 ment in this section prior to implementation.

9 “(3) CONTENT OF FORM.—The Secretary shall
10 accept the following content as documentation of an
11 individual’s eligibility for home health services:

12 “(A) With respect to the face-to-face en-
13 counter requirement, the date of the encounter.

14 “(B) With respect to homebound status, a
15 statement that provides the clinical basis for
16 why the individual is determined to be confined
17 to the home.

18 “(C) With respect to the need for skilled
19 services, a selection, via checkbox, of the types
20 of skilled services required by the individual and
21 a statement with the clinical basis for each type
22 of skilled service ordered.

23 “(4) DEEMED SATISFACTION OF REQUIRE-
24 MENTS.—The Secretary shall, through guidance,
25 allow the requirement for documentation of a face-

1 to-face encounter and other criteria for home health
2 eligibility under subsection (a)(2)(C) to be deemed
3 satisfied with respect to an individual if a home
4 health agency completes the form or document under
5 paragraph (1) and the ordering physician signs or
6 attests to the contents of the form or document.

7 “(5) EXCEPTION TO FACE-TO-FACE ENCOUN-
8 TER REQUIREMENT.—The Secretary shall waive the
9 requirement for a face-to-face encounter under sub-
10 section (a)(2)(C) related to home health services
11 provided to an individual if the individual has been
12 discharged from a hospital (including from the emer-
13 gency department) or skilled nursing facility within
14 14 days prior to the initiation of such home health
15 services.

16 “(6) GUIDANCE TO CONTRACTORS.—

17 “(A) IN GENERAL.—The Secretary shall
18 provide notification, guidance, and education re-
19 garding the application of the form or docu-
20 ment under paragraph (1) as it pertains to sat-
21 isfying the documentation requirements for
22 home health services under subsection (a)(2)(C)
23 to medicare administrative contractors (as de-
24 fined in section 1874A), recovery audit contrac-
25 tors (as defined in section 1893(h)), and any

1 other entity which the Secretary determines ap-
2 propriate

3 “(B) NATIONAL APPLICABILITY.—The
4 Secretary shall ensure that all medicare admin-
5 istrative contractors, recovery audit contractors,
6 and any other entity which the Secretary deter-
7 mines appropriate apply the guidance under
8 this paragraph in a nationally consistent and
9 uniform manner and that all audit activities,
10 policies, and practices regarding documentation
11 for home health services are likewise applied in
12 a nationally consistent and uniform manner.

13 “(C) STUDY.—Not later than 18 months
14 after the date of the enactment of this para-
15 graph, the Secretary shall submit to Congress a
16 report on—

17 “(i) the adherence of medicare admin-
18 istrative contractors, recovery audit con-
19 tractors, and any other entity which the
20 Secretary determines appropriate to na-
21 tionally consistent and uniform audit ac-
22 tivities, policies, and practices as described
23 in subparagraph (B); and

24 “(ii) the rate of appeals for denial of
25 payment based solely on the face-to-face

1 encounter requirements for home health
2 services under this section and the rate of
3 such appeals that are ultimately success-
4 ful.”.

5 (b) PART B.—Section 1835 of the Social Security Act
6 (42 U.S.C. 1395n) is amended—

7 (1) in subsection (a)(2)(A), by striking “has
8 had a face-to-face encounter” and inserting “has,
9 subject to subsection (f), had a face-to-face encoun-
10 ter”; and

11 (2) by adding at the end the following new sub-
12 section:

13 “(f) APPLICATION OF DOCUMENTATION, GUIDANCE,
14 AND TREATMENT OF CERTAIN HOME HEALTH CLAIMS
15 PROVISIONS UNDER PART A.—The provisions of section
16 1814(m) shall apply with respect to the application of doc-
17 umentation requirements for home health services under
18 subsection (a)(2)(A) in the same manner as such provi-
19 sions apply with respect to the application of the docu-
20 mentation requirements for home health services under
21 section 1814(a)(2)(C).”.

1 **SEC. 3. EFFECTIVE DATE; TREATMENT OF CERTAIN HOME**
2 **HEALTH CLAIMS.**

3 (a) **EFFECTIVE DATE.**—The amendments made by
4 section 2 shall apply with respect to home health services
5 furnished on or after October 1, 2016.

6 (b) **TREATMENT OF CERTAIN HOME HEALTH**
7 **CLAIMS.**—

8 (1) **DENIED CLAIMS.**—

9 (A) **IN GENERAL.**—Not later than 12
10 months after the date of the enactment of this
11 Act, the Secretary of Health and Human Serv-
12 ices shall—

13 (i) through guidance, develop and im-
14 plement processes to open and review
15 claims that were denied on or after Janu-
16 ary 1, 2011, and before the date of the en-
17 actment of this Act, due solely to the face-
18 to-face documentation requirements under
19 section 1814(a)(2)(C) of the Social Secu-
20 rity Act (42 U.S.C. 1395f(a)(2)(C)) or sec-
21 tion 1835(a)(2)(A) of such Act (42 U.S.C.
22 1395f(a)(2)(A)); and

23 (ii) issue revised decisions of such de-
24 nials as if the narrative requirements of
25 section 424.22(v) of title 42, Code of Fed-

1 eral Regulations, did not apply at the time
2 such services were furnished.

3 (B) SETTLEMENT AGREEMENTS FOR DE-
4 NIED CLAIMS.—In addition to the processes
5 under subparagraph (A), not later than 60 days
6 after the date of the enactment of this act, the
7 Secretary shall establish a voluntary process for
8 home health agencies to enter into a settlement
9 agreement with the Secretary of Health and
10 Human Services in lieu of reprocessing claims
11 for payment which are required to be paid by
12 reason of subparagraph (A)(ii).

13 (2) OTHER CLAIMS.—In the case of a claim for
14 home health services furnished on or after January
15 1, 2011, and before October 1, 2016, that is not de-
16 scribed in paragraph (1)(A), such claim shall be de-
17 termined and processed as if the narrative require-
18 ments of section 424.22(v) of title 42, Code of Fed-
19 eral Regulations, did not apply at the time such
20 services were furnished.