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Roy FFFLERBACH
I

113TH CONGRESS
1ST SESSION

H. R. 3334

To amend title XVIII of the Social Security Act to provide for coverage of certified adult day services under the Medicare program.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 23, 2013

Ms. LINDA T. SÁNCHEZ of California (for herself, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. BLUMENAUER, Ms. BORDALLO, Mr. CARSON of Indiana, Mr. CARTWRIGHT, Ms. CLARKE, Mr. CONYERS, Mr. DANNY K. DAVIS of Illinois, Ms. FRANKEL of Florida, Ms. NORTON, Ms. JACKSON LEE, Mr. LANGEVIN, Mr. LOEBSACK, Mr. LOWENTHAL, Ms. MICHELLE LUJAN GRISILAM of New Mexico, Mr. MICHAUD, Mrs. NAPOLITANO, Mr. RANGEL, Ms. ROYBAL-ALLARD, Ms. SCILAKOWSKY, Ms. SCHWARTZ, and Ms. WATERS) 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 certified adult day 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 Services Act of 2013”.

1 **SEC. 2. FINDINGS.**

2 Congress makes the following findings:

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

Delete +
← insert

10 (2) The care given at adult day services centers
 11 under an interdisciplinary team provides seniors,
 12 people with disabilities, ^{who are nursing home eligible,} and their familial caregivers
 13 with ~~more care hours and additional~~ services that
 14 are critical to keeping patients healthier and in the
 15 homes of the patients instead of in a nursing home,
 16 and reduces the risk of hospital admission or read-
 17 mission.

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18 **SEC. 3. MEDICARE COVERAGE OF CERTIFIED ADULT DAY**
 19 **SERVICES.**

20 (a) MEDICARE CERTIFIED ADULT DAY SERVICES
 21 BENEFIT.—

22 (1) DEFINITION.—Section 1861 of the Social
 23 Security Act (42 U.S.C. 1395x) is amended by add-
 24 ing at the end the following new subsection:

25 “(iii) CERTIFIED ADULT DAY SERVICES; ADULT DAY
 26 SERVICES PROVIDER; CERTIFIED ADULT DAY SERVICES

1 CENTER; POST-INSTITUTIONAL CERTIFIED ADULT DAY
 2 SERVICES; CERTIFIED ADULT DAY SERVICES SPELL OF
 3 ILLNESS.—(1)(A) The term ‘certified adult day services’
 4 means, subject to paragraph (4), the items and services
 5 described in subparagraph (B) that are furnished to an
 6 individual who is under the care of a physician—

7 “(i) by an adult day services provider (as
 8 defined in paragraph (2)) or by another entity
 9 under an arrangement with such an adult day
 10 services provider to provide such services;

11 “(ii) in accordance with a plan (for fur-
 12 nishing such items and services to such indi-
 13 vidual) approved and periodically reviewed by
 14 such physician; and

15 “(iii) in a certified adult day services cen-
 16 ter (as defined in paragraph (3)).

17 “(B) For purposes of subparagraph (A), the items
 18 and services described in this subparagraph are the fol-
 19 lowing:

20 “(i) Part-time or intermittent services (as de-
 21 fined in subparagraph (C)(i)) provided by or under
 22 the supervision of a registered professional nurse.

23 “(ii) Physical or occupational therapy or
 24 speech-language pathology services, or any combina-
 25 tion of such services.

*Clarify on site -
 for how many
 hours/day/week -
 or leave to
 regulators ?*

1 “(iii) Medical social services under the direction
2 of a physician.

3 “(iv) Nutritional meals, including special diets,
4 as ordered by a physician.

5 “(v) A program of supervised activities (that
6 meets such criteria as the Secretary determines ap-
7 propriate) designed to promote physical and mental
8 health that are furnished in a group setting for a pe-
9 riod of not fewer than 4 and not greater than 8
10 hours per day.

11 “(vi) A medication management program (as
12 defined in subparagraph (C)(ii)).

13 “(vii) Medical supplies (including catheters,
14 catheter supplies, ostomy bags, and supplies related
15 to ostomy care, and a covered osteoporosis drug (as
16 defined in subsection (kk)), but excluding other
17 drugs and biologicals) and durable medical equip-
18 ment.

19 “(viii) Transportation of the individual de-
20 scribed in subparagraph (A) to and from a certified
21 adult day services center in connection with the pro-
22 vision of an item or service described in a previous
23 provision of this subparagraph.

24 “(C)(i) For purposes of subparagraph (B)(i), the
25 term ‘part-time or intermittent services’ means certified

*How does this
impact with lines 11-12
above?*

1 adult day services furnished any number of days per week
 2 as long as such services are furnished fewer than ~~8~~¹² hours
 3 each day. For purposes of sections 1814(a)(2)(C) and
 4 1835(a)(2)(A), insofar as such respective section relates
 5 to certified adult day services, ‘intermittent’ means cer-
 6 tified adult day services that are either provided or needed
 7 on fewer than 7 days each week, or less than ~~8~~¹² hours of
 8 each day for periods of 21 days or less (with extensions
 9 in exceptional circumstances when the need for additional
 10 care is finite and predictable).

11 “(ii) For purposes of subparagraph (B)(vi), the term
 12 ‘medication management program’ means a program of
 13 education and services (that meets such criteria as the
 14 Secretary determines appropriate) to minimize—

15 “(I) unnecessary or inappropriate use of pre-
 16 scription drugs; and

17 “(II) adverse events due to unintended prescrip-
 18 tion drug-to-drug interactions.

19 “(2) The term ‘adult day services provider’ means a
 20 provider of home and community-based services that is ap-
 21 proved in the applicable State to provide long-term serv-
 22 ices and supports, which may include nursing care, phys-
 23 ical therapy, occupational therapy, social work services,
 24 transportation, and personal care services.

*Delete 8
 insert 12*

*Some present
 ADH programs
 are open for
 11 to 12 hours
 each day to
 assist working
 caregivers*

*Delete 8
 insert 12*

1 “(3) The term ‘certified adult day services center’
2 means a facility—

3 “(A) of a public agency or private organization,
4 or a subdivision of such an agency or organization,
5 that—

6 “(i) is primarily engaged in providing an
7 interdisciplinary approach that includes skilled
8 nursing services and other therapeutic services
9 directly;

10 “(ii) has policies, established by a group of
11 professional personnel (associated with the
12 agency or organization), including one or more
13 physicians and one or more registered profes-
14 sional nurses, to govern the services (referred to
15 in subparagraph (A)) which it provides, and
16 provides for supervision of such services;

17 “(iii) maintains clinical records on all pa-
18 tients;

19 “(iv) in the case of an agency or organiza-
20 tion in any State in which State or applicable
21 local law provides for the licensing or certifi-
22 cation of agencies or organizations of this na-
23 ture, (i) is licensed or certified pursuant to such
24 law, or (ii) is approved, by the agency of such
25 State or locality responsible for licensing or cer-

1 tifying agencies or organizations of this nature,
2 as meeting the standards established for such
3 licensing or certification;

4 “(v) is licensed or certified by the State in-
5 volved or accredited as meeting requirements,
6 including under section 1865, through a nation-
7 ally recognized accrediting agency that is recog-
8 nized by the Secretary;

*Verify
Such as but
not limited to
CARF.*

9 “(vi) has in effect an overall plan and
10 budget that meets the requirements of sub-
11 section (z);

12 “(vii) meets applicable conditions of par-
13 ticipation under section 1891(a) (or similar
14 conditions specified by the Secretary as applica-
15 ble to such an agency or organization) and such
16 other conditions of participation as the Sec-
17 retary may find necessary in the interest of the
18 health and safety of individuals who are fur-
19 nished services by such agency or organization;
20 and

21 “(viii) meets such additional requirements
22 (including conditions relating to bonding or es-
23 tablishing of escrow accounts as the Secretary
24 finds necessary for the financial security of the
25 program) as the Secretary finds necessary for

1 the effective and efficient operation of the pro-
2 gram;

3 “(B) at which such agency or organization pro-
4 vides for items and services described in paragraph
5 (1)(B); and

6 “(C) that complies with all applicable State and
7 local building codes, fire codes, zoning laws, and
8 State licensing building standards that apply to a
9 State licensed or certified or nationally accredited
10 adult day center, and in States where there are no
11 State licensing building standards for adult day cen-
12 ters, building standards based on the standards
13 adopted by a nationally recognized accrediting agen-
14 cy that is recognized by the Secretary and applies to
15 such a center standards that are comparable to the
16 requirements applied to a skilled nursing facility
17 pursuant to section 1819(d)(2)(B).

18 “(4) For purposes of paragraph (1)(A), an item or
19 service furnished to an individual, with respect to a period,
20 shall not be considered an adult day service if—

21 “(A) the individual is—

22 “(i) concurrently receiving similar skilled
23 services under a State plan under section
24 1905(a) or under a home and community-based
25 waiver authorized for a State under section

1 1115, under subsection (c) or (d) of section
2 1915, under a State plan amendment under
3 subsection (i) of section 1915, or under section
4 1902(a)(10)(D); and

5 “(ii) receiving such item or service during
6 such period under such State plan, waiver,
7 amendment, or respective section; or

8 “(B) the individual is receiving such item or
9 service during such period pursuant to a plan of
10 care from a home health agency under section
11 1861(m).

12 “(5) Nothing in this subsection shall be construed as
13 prohibiting a home health agency from—

14 “(A) establishing a State licensed or certified or
15 nationally accredited certified adult day services cen-
16 ter and furnishing certified adult day services; or

17 “(B) providing services under arrangements
18 with such a center.

19 “(6) The term ‘post-institutional certified adult day
20 services’ means certified adult day services furnished to
21 an individual—

22 “(A) after discharge from a hospital or critical
23 access hospital in which the individual was an inpa-
24 tient for not less than 3 consecutive days before
25 such discharge if such certified adult day services

1 were initiated within 14 days after the date of such
2 discharge; or

3 “(B) after discharge from a skilled nursing fa-
4 cility in which the individual was provided post-hos-
5 pital extended care services if such certified adult
6 day services were initiated within 14 days after the
7 date of such discharge.

8 “(7) The term ‘certified adult day services spell of
9 illness’ with respect to any individual means a period of
10 consecutive days—

11 “(A) beginning with the first day (not included
12 in a previous certified adult day services spell of ill-
13 ness)—

14 “(i) on which such individual is furnished
15 post-institutional certified adult day services;
16 and

17 “(ii) which occurs in a month for which
18 the individual is entitled to benefits under part
19 A; and

20 “(B) ending with the close of the first period of
21 60 consecutive days thereafter on each of which the
22 individual is neither an inpatient of a hospital or
23 critical access hospital nor an inpatient of a facility
24 described in section 1819(a)(1) or subsection (y)(1)

1 nor provided home health services or certified adult
2 day services.”.

3 (2) INCLUSION UNDER PART B BENEFIT.—Sec-
4 tion 1832(a)(2) of the Social Security Act (42
5 U.S.C. 1395k(a)(2)) is amended—

6 (A) in subparagraph (I), by striking at the
7 end “and”;

8 (B) in subparagraph (J), by striking at the
9 end the period and inserting “; and”; and

10 (C) by adding at the end the following new
11 subparagraph:

12 “(K) certified adult day services (as de-
13 fined in section 1861(iii)(1)(A)).”.

14 (3) INCLUSION UNDER PART A BENEFIT.—Sec-
15 tion 1812(a) of the Social Security Act is amend-
16 ed—

17 (A) in paragraph (4), by striking at the
18 end “and”;

19 (B) in paragraph (5), by striking the pe-
20 riod at the end and inserting “; and”; and

21 (C) by adding at the end the following new
22 paragraph:

23 “(6) in the case of individuals not enrolled in
24 part B, certified adult day services (as defined in
25 paragraph (1)(A) of section 1861(iii)), and in the

1 case of individuals so enrolled, post-institutional cer-
2 tified adult day services (as defined in paragraph (6)
3 of such section) furnished during a certified adult
4 day services spell of illness (as defined in paragraph
5 (7) of such section) for up to 100 visits during such
6 spell of illness.”.

7 (b) PAYMENT OF CLAIMS REQUIREMENTS FOR HOME
8 HEALTH SERVICES APPLIED TO CERTIFIED ADULT DAY
9 SERVICES.—

10 (1) PART A.—Section 1814(a)(2)(C) of the So-
11 cial Security Act (42 U.S.C. 1395f(a)(2)(C)) is
12 amended by inserting “or certified adult day serv-
13 ices” after each occurrence of “home health serv-
14 ices”.

15 (2) PART B.—Section 1835(a)(2)(A) of the So-
16 cial Security Act (42 U.S.C. 1395n(a)(2)(A)) is
17 amended—

18 (A) in the matter preceding clause (i), by
19 inserting “or certified adult day services (as de-
20 fined in section 1861(iii)(1)(A))” after “home
21 health services”; and

22 (B) in clause (i), by inserting “or certified
23 adult day services” after “home health serv-
24 ices”.

25 (c) CONFORMING AMENDMENTS.—

1 (1) INTERACTION WITH COVERAGE OF HOME
2 HEALTH SERVICES.—Section 1861(m) of the Social
3 Security Act (42 U.S.C. 1395x(m)) is amended by
4 adding at the end the following new sentence: “An
5 individual described in this subsection, with respect
6 to home health services furnished during a period,
7 shall not include an individual who is receiving com-
8 parable certified adult day services (as defined in
9 section 1861(iii)(1)) during such period.”.

10 (2) INTERMITTENT SERVICES.—Section
11 1861(m) of the Social Security Act (42 U.S.C.
12 1395x(m)) is amended in the last sentence by insert-
13 ing “insofar as such respective section relates to
14 home health services,” after “section
15 1835(a)(2)(A),”.

16 (3) INSTITUTIONAL PLANNING REQUIRE-
17 MENT.—Section 1861(z) of the Social Security Act
18 (42 U.S.C. 1395x(z)) is amended in the matter pre-
19 ceding paragraph (1), by striking “or home health
20 agency” and inserting “home health agency, or cer-
21 tified adult day services center”.

22 (4) INCLUSION AS PROVIDER OF SERVICES.—
23 Section 1861(u) of the Social Security Act (42
24 U.S.C. 1395x(u)) is amended by inserting “certified

1 adult day services center,” after “home health agen-
2 cy,”.

3 (d) PAYMENT FOR CERTIFIED ADULT DAY SERVICES
4 UNDER THE HOME HEALTH PROSPECTIVE PAYMENT
5 SYSTEM.—Section 1895 of the Social Security Act (42
6 U.S.C. 1395fff) is amended by adding at the end the fol-
7 lowing new subsection:

8 “(f) APPLICATION OF HOME HEALTH PROSPECTIVE
9 PAYMENT SYSTEM TO CERTIFIED ADULT DAY SERV-
10 ICES.—

11 “(1) IN GENERAL.—The Secretary shall, in ac-
12 cordance with this subsection, develop a methodology
13 under which the fee schedule and provisions under
14 this section shall apply to certified adult day services
15 (as defined in section 1861(iii)(1)) in a similar man-
16 ner to which such schedule and provisions apply to
17 home health services.

18 “(2) PAYMENT RATE DETERMINATION AND
19 LIMITATIONS.—Under such methodology, the fol-
20 lowing shall apply, with respect to certified adult day
21 services furnished to an individual during a period
22 specified by the Secretary under a plan of care es-
23 tablished under section 1861(iii) for which payment
24 may be made under this title:

1 “(A) DETERMINATION OF COMPONENTS.—

2 The Secretary shall determine each component
3 (as defined by the Secretary) of such certified
4 adult day services.

5 “(B) ESTIMATION OF PAYMENT

6 AMOUNT.—The Secretary shall estimate the
7 amount that would otherwise be payable under
8 this section for the components of services de-
9 termined under subparagraph (A) if such serv-
10 ices were furnished by a home health agency
11 (or, if such component or service would not oth-
12 erwise be so payable under this section if so
13 furnished, the amount that would be payable
14 under this section for a comparable home
15 health service furnished by a home health agen-
16 cy) during such period.

17 “(C) AMOUNT OF PAYMENT.—The total
18 amount payable under this section for such cer-
19 tified adult day services furnished to such indi-
20 vidual during such period shall ^{not exceed} ~~be 98 percent of~~
21 the amount estimated to be payable for such
22 services (or comparable services) under sub-
23 paragraph (B) for such period.

24 “(D) LIMITATION.—No payment may be
25 made under this section for certified adult day

← Delete
and
insert

1 services described in clauses (iv) through (vi)
2 and (ix) of section 1861(iii)(1)(A).

3 “(3) LIMITATION ON BALANCE BILLING.—A
4 certified adult day services center shall accept as
5 payment in full for certified adult day services de-
6 scribed in clauses (i) through (iii), (vii) through
7 (viii), and (x) through (xii) of section 1861(iii)(1)(A)
8 furnished by the center to an individual entitled to
9 benefits under this title the amount of payment pro-
10 vided under this section for home health services
11 consisting of items and services described in such re-
12 spective clauses.”.

13 (e) CONSOLIDATED BILLING.—Section 1862(a) of
14 the Social Security Act (42 U.S.C. 1395y(a)) is amend-
15 ed—

16 (1) by striking “or” at the end of paragraph
17 (24);

18 (2) by striking the period at the end of para-
19 graph (25) and inserting, “or”; and

20 (3) by inserting after paragraph (25) the fol-
21 lowing new paragraph:

22 “(26) which are certified adult day services for
23 which payment may be made under section 1895(f)
24 and which are furnished to an individual by a State
25 licensed or certified or nationally accredited certified

1 adult day services center pursuant to a plan of care
 2 established under section 1861(iii) with respect to
 3 such services, by an entity other than such facility,
 4 unless the services are furnished under arrange-
 5 ments (as defined in section 1861(w)(1)) with the
 6 entity made by such facility.”.

7 (f) TEMPORARY INCREASE FOR CERTIFIED ADULT
 8 DAY SERVICES FURNISHED IN A RURAL AREA.—

9 (1) IN GENERAL.—With respect to episodes and
 10 visits ending on or after January 1, 2014, and be-
 11 fore January 1, 2016, in the case of certified adult
 12 day services (as defined in section 1861(iii)(1)(A) of
 13 the Social Security Act, as added by subsection (a)),
 14 furnished in a rural area (as defined in section
 15 1886(d)(2)(D) of such Act (42 U.S.C.
 16 1395ww(d)(2)(D))), the Secretary of Health and
 17 Human Services shall increase the payment amount
 18 otherwise made under section 1895 of such Act (42
 19 U.S.C. 1395fff) for such services by 3 percent.

20 (2) WAIVING BUDGET NEUTRALITY.—The Sec-
 21 retary shall not reduce the standard prospective pay-
 22 ment amount (or amounts) under section 1895 of
 23 the Social Security Act (42 U.S.C. 1395fff) applica-
 24 ble to such certified adult day services furnished

*Delete
 this entire
 section thru
 thru line 10
 on page 18.*

*As we agreed,
 this is a poison
 pill that will
 kill the bill from
 the start.*

1 during a period to offset the increase in payments
2 resulting from the application of paragraph (1).

3 (3) NO EFFECT ON SUBSEQUENT PERIODS.—

4 The payment increase provided under paragraph (1)
5 for a period under such paragraph—

6 (A) shall not apply to episodes and visits
7 ending after such period; and

8 (B) shall not be taken into account in cal-
9 culating the payment amounts applicable for
10 episodes and visits occurring after such period.

11 (g) ADULT DAY SERVICES PROVIDER TECHNICAL
12 ASSISTANCE.—In order to facilitate the development of
13 certified adult day services under title XVIII of the Social
14 Security Act, the Secretary of Health and Human Services
15 shall, as deemed necessary by the Secretary, provide adult
16 day services providers (as defined in section 1861(iii)(2)
17 of such Act) with technical assistance, consultation, tools,
18 and other resources to assist them with the application
19 process and implementation of certified adult day services
20 (as defined in such section).

21 (h) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to items and services furnished on
23 or after January 1, 201~~4~~⁶.

○

*Delete
beginning
with line 7
on page 17*

*Delete
This section
also adds a new
cost which is
likely to kill the
bill from the
start.
Let's find out
if other similar
language exists
for another
program and
explore inserting
it there as we
do for billing
vis-a-vis home
health.*

← let's be optimistic!