

115TH CONGRESS  
1ST SESSION

# H. R. 2663

To amend title XVIII of the Social Security Act to make changes to documentation of eligibility for Medicare home health services, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 25, 2017

Mr. MARCHANT (for himself and Mr. BLUMENAUER) 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

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## A BILL

To amend title XVIII of the Social Security Act to make changes to documentation of eligibility for Medicare home health services, and for other purposes.

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 2017”.

1 **SEC. 2. INFORMATION TO SATISFY DOCUMENTATION OF**  
2 **MEDICARE ELIGIBILITY FOR HOME HEALTH**  
3 **SERVICES.**

4 (a) PART A.—Section 1814(a) of the Social Security  
5 Act (42 U.S.C. 1395f(a)) is amended by inserting before  
6 “For purposes of paragraph (2)(C),” the following new  
7 sentence: “For purposes of documentation for physician  
8 certification and recertification made under paragraph (2)  
9 on or after January 1, 2018, and made with respect to  
10 home health services furnished by a home health agency,  
11 in addition to using documentation in the medical record  
12 of the physician who so certifies or the medical record of  
13 the acute or post-acute care facility (in the case that home  
14 health services were furnished to an individual who was  
15 directly admitted to the home health agency from such a  
16 facility), the Secretary shall use documentation in the  
17 medical record of the home health agency as supporting  
18 material, as appropriate to the case involved.”.

19 (b) PART B.—Section 1835(a) of the Social Security  
20 Act (42 U.S.C. 1395n(a)) is amended by inserting before  
21 “For purposes of paragraph (2)(A),” the following new  
22 sentence: “For purposes of documentation for physician  
23 certification and recertification made under paragraph (2)  
24 on or after January 1, 2018, and made with respect to  
25 home health services furnished by a home health agency,  
26 in addition to using documentation in the medical record

1 of the physician who so certifies or the medical record of  
2 the acute or post-acute care facility (in the case that home  
3 health services were furnished to an individual who was  
4 directly admitted to the home health agency from such a  
5 facility), the Secretary shall use documentation in the  
6 medical record of the home health agency as supporting  
7 material, as appropriate to the case involved.”.

8 **SEC. 3. VOLUNTARY SETTLEMENT OF HOME HEALTH**  
9 **CLAIMS.**

10 (a) **SETTLEMENT PROCESS FOR HOME HEALTH**  
11 **CLAIMS.—**

12 (1) **IN GENERAL.—**Not later than one year  
13 after the date of enactment of this Act, the Sec-  
14 retary of Health and Human Services shall establish  
15 a settlement process under which a home health  
16 agency entitled to an eligible administrative appeal  
17 has the option to enter into a settlement with the  
18 Secretary that is reached in a manner consistent  
19 with the succeeding paragraphs of this subsection.

20 (2) **PROCESS AND CONSIDERATION OF HOME**  
21 **HEALTH CLAIMS.—**A settlement under paragraph  
22 (1) with a home health agency that is with respect  
23 to an eligible administrative appeal may only be  
24 reached in accordance with the following process:

1           (A) A settlement under such paragraph  
2 with the home health agency shall be with re-  
3 spect to all claims by such agency, subject to  
4 paragraph (4), that, as of the date of such set-  
5 tlement, are under an eligible administrative  
6 appeal.

7           (B) For the duration of the settlement  
8 process with such agency, an eligible adminis-  
9 trative appeal that is with respect to any such  
10 claim by such agency shall be suspended.

11           (C) Under the settlement process, the Sec-  
12 retary shall determine an aggregate amount to  
13 be paid to the home health agency with respect  
14 to all claims by such agency that are under an  
15 eligible administrative appeal in the following  
16 manner:

17           (i) The Secretary shall, for purposes  
18 of applying clause (ii) with respect to all  
19 settlements under paragraph (1), select a  
20 percentage. In selecting such percentage,  
21 the Secretary shall consider the percentage  
22 used under the Centers for Medicare &  
23 Medicaid Services hospital appeals settle-  
24 ment that began on October 31, 2014.

1           (ii) The Secretary shall, with respect  
2           to each denied claim for such agency that  
3           is under an eligible administrative appeal,  
4           calculate an amount (referred to in this  
5           subparagraph as an “individual claim  
6           amount”) by multiplying the net payable  
7           amount for such claim by the percentage  
8           selected under clause (i).

9           (iii) Such aggregate amount with re-  
10          spect to such agency shall be determined  
11          by calculating the total sum of all the indi-  
12          vidual claim amounts calculated under  
13          clause (ii) with respect to such agency.

14          (3) EFFECT OF PROCESS.—

15               (A) EFFECT OF SETTLEMENT.—

16               (i) FURTHER APPEAL.—As part of  
17               any settlement under paragraph (1) be-  
18               tween a home health agency and the Sec-  
19               retary, such home health agency shall be  
20               required to forego the right to an adminis-  
21               trative appeal under section 1869 of the  
22               Social Security Act (42 U.S.C. 1395ff) or  
23               section 1878 of such Act (42 U.S.C.  
24               1395oo) (including any redetermination,  
25               reconsideration, hearing, or review) with

1           respect to any claims for home health serv-  
2           ices that are subject to the settlement.

3                   (ii) JUDICIAL REVIEW.—There shall  
4           be no administrative or judicial review  
5           under such section 1869 or otherwise of a  
6           settlement under paragraph (1) and the  
7           claims covered by the settlement.

8                   (B) EFFECT OF NO SETTLEMENT.—In the  
9           event that the process described in paragraph  
10          (2) does not, with respect to a home health  
11          agency, result in a settlement under paragraph  
12          (1) with such agency, any appeal under such  
13          section 1869 that is with respect to a claim by  
14          such agency that was suspended pursuant to  
15          paragraph (2)(B) shall resume under such sec-  
16          tion.

17                  (4) COORDINATION WITH LAW ENFORCE-  
18          MENT.—The Secretary of Health and Human Serv-  
19          ices shall establish a process under which individuals  
20          in the Department of Health and Human Services  
21          responsible for executing a settlement under para-  
22          graph (1) may, in order to avoid the inadvertent set-  
23          tlement of cases that involve fraud or other criminal  
24          activity, coordinate with appropriate law enforce-  
25          ment agencies.

1 (b) NO ENTITLEMENT TO SETTLEMENT PROCESS.—  
2 Nothing in this section shall be construed as creating an  
3 entitlement to enter into a settlement process established  
4 pursuant to subsection (a).

5 (c) ELIGIBLE ADMINISTRATIVE APPEAL DEFINED.—  
6 For purposes of this section, the term “eligible administra-  
7 tive appeal” means an appeal under section 1869 of the  
8 Social Security Act (42 U.S.C. 1395ff) (including any re-  
9 determination, reconsideration, hearing, or review)—

10 (1) that is with respect to one or more claims  
11 that—

12 (A) are for home health services that—

13 (i) were furnished on or after January  
14 1, 2011, and before January 1, 2015; and

15 (ii) were reasonable and necessary  
16 under section 1862(a)(1)(A) of such Act  
17 (42 U.S.C. 1395y(a)(1)(A)); and

18 (B) were timely filed consistent with sec-  
19 tion 1814(a)(1) of such Act (42 U.S.C.  
20 1395f(a)(1)) or sections 1835(a)(1) and  
21 1842(b)(3) of such Act (42 U.S.C. 1395n(a)(1),  
22 1395u(b)(3)); and

23 (2) either—

1 (A) was timely filed consistent with section  
2 1869 of such Act (42 U.S.C. 1395ff) and is  
3 pending; or

4 (B) for which the applicable time frame to  
5 file an appeal has not expired.

6 (d) CONFORMING AMENDMENT.—Section 1869 of the  
7 Social Security Act (42 U.S.C. 1395ff) is amended by add-  
8 ing at the end the following new subsection:

9 “(j) APPLICATION WITH RESPECT TO CERTAIN  
10 HOME HEALTH CLAIMS.—For the application of the pro-  
11 visions of this section with respect to certain claims for  
12 home health services that were furnished on or after Janu-  
13 ary 1, 2011, and before January 1, 2015, see section 3  
14 of the Home Health Documentation and Program Im-  
15 provement Act of 2017.”.

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