

[DISCUSSION DRAFT]

114TH CONGRESS
1ST SESSION

H. R. _____

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

IN THE HOUSE OF REPRESENTATIVES

Mr. WALDEN introduced the following bill; which was 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”.

1 **SEC. 2. DEVELOPMENT OF A SINGLE FORM OR DOCUMENT**
2 **TO SATISFY THE HOME HEALTH CERTIFI-**
3 **CATION REQUIREMENT.**

4 (a) PART A.—Section 1814 of the Social Security Act
5 (42 U.S.C. 1395f) is amended—

6 (1) in subsection (a)(2)—

7 (A) by inserting “(in the case of home
8 health services, in the manner described in sub-
9 section (m)(4))” before “(and recertifies”;

10 (B) in subparagraph (C), by striking “has
11 had a face-to-face encounter” and inserting
12 “has, subject to subsection (m)(5), had a face-
13 to-face encounter”;

14 (2) by adding at the end the following new sub-
15 section:

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

18 “(1) IN GENERAL.—The Secretary shall develop
19 a single form or document to be used by a physician
20 to satisfy the documentation requirements necessary
21 to fulfill the requirement of a face-to-face encounter
22 and other criteria for home health eligibility under
23 subsection (a)(2)(C) (otherwise known as the certifi-
24 cation for home health services).

25 “(2) STAKEHOLDER INPUT.—In developing the
26 form or document under paragraph (1), the Sec-

1 retary shall seek input from stakeholders, including
2 physicians and other non-physician providers (such
3 as nurse practitioners or clinical nurse specialists (as
4 those terms are defined in section 1861(aa)(5))),
5 home health agencies, hospitals, patients or rep-
6 resentatives of patients, and other entities (such as
7 electronic medical record vendors) the Secretary de-
8 termines appropriate. The Secretary shall provide
9 the opportunity for such stakeholders to offer input
10 on the form or document during its initial develop-
11 ment as well as the opportunity to make comments
12 on a proposed version prior to its finalization. The
13 Secretary shall also set up a process to educate phy-
14 sicians and non-physicians on how to appropriately
15 fulfill the requirements related to the form or docu-
16 ment in this section prior to implementation.

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

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

22 “(B) With respect to the need for skilled
23 services, a selection, via checkbox, of the types
24 of skilled services required by the individual and

1 a statement with the clinical basis for each type
2 of skilled service ordered.

3 “(4) DEEMED SATISFACTION OF REQUIRE-
4 MENTS.—The requirements for documentation of a
5 face-to-face encounter and other criteria for certifi-
6 cation of home health eligibility under subsection
7 (a)(2)(C), [section 1815, and section 1833] [*re-*
8 *view: sections 1815 and 1833 are broad payment pro-*
9 *visions that don't go into specifics of certifications,*
10 *etc. Is the Secretary is using that broad authority to*
11 *implement certifications? Or are other references per-*
12 *haps intended here?*] shall be deemed satisfied with
13 respect to an individual if a home health agency
14 completes the form or document under paragraph
15 (1) and the ordering physician signs or attests to the
16 contents of the form or document.

17 “(5) EXCEPTION TO FACE-TO-FACE ENCOUN-
18 TER REQUIREMENT.—The Secretary shall waive the
19 requirement for a face-to-face encounter under sub-
20 section (a)(2)(C) related to home health services
21 provided to an individual if the individual has been
22 discharged from a hospital (including from the emer-
23 gency department) or skilled nursing facility on a
24 date that is not greater than 14 days prior to the

1 date on which such home health services are initi-
2 ated.

3 “(6) GUIDANCE.—

4 “(A) IN GENERAL.—The Secretary shall
5 provide notification, guidance, and education re-
6 garding the application of the form or docu-
7 ment under paragraph (1) as it pertains to sat-
8 isfying the documentation requirements for
9 home health services under subsection (a)(2)(C)
10 to the following:

11 “(i) CONTRACTORS.—Medicare admin-
12 istrative contractors (as defined in section
13 1874A) and recovery audit contractors (as
14 defined in section 1893(h)).

15 “(ii) HEALTH CARE PRACTI-
16 TIONERS.—Physicians, [practitioners (as
17 described in section 1842(b)(18)(C)], and
18 home health agencies.

19 “(iii) OTHER ENTITIES.—Any other
20 entity which the Secretary determines ap-
21 propriate.

22 “(B) NATIONAL APPLICABILITY.—The
23 Secretary shall ensure that all medicare admin-
24 istrative contractors, recovery audit contractors,
25 and any other entity which the Secretary deter-

1 mines appropriate apply the guidance under
2 this paragraph in a nationally consistent and
3 uniform manner and that all audit activities,
4 policies, and practices regarding documentation
5 for home health services are likewise applied in
6 a nationally consistent and uniform manner.

7 “(C) STUDY.—Not later than 18 months
8 after the date of the enactment of this para-
9 graph, the Secretary shall submit to Congress a
10 report on—

11 “(i) the adherence of medicare admin-
12 istrative contractors, recovery audit con-
13 tractors, and any other entity which the
14 Secretary determines appropriate to na-
15 tionally consistent and uniform audit ac-
16 tivities, policies, and practices as described
17 in subparagraph (B); and

18 “(ii) the rate of appeals for denial of
19 payment based solely on the face-to-face
20 encounter requirements for home health
21 services under this section and the rate of
22 such appeals that are ultimately success-
23 ful.”.

24 (b) PART B.—Section 1835 of the Social Security Act
25 (42 U.S.C.1395n) is amended—

1 (1) in subsection (a)(2)—

2 (A) by inserting “(in the case of home
3 health services, in a manner consistent with the
4 requirements of subsection (f))” before “(and
5 recertifies”;

6 (B) in subparagraph (A), by striking “has
7 had a face-to-face encounter” and inserting
8 “has, subject to subsection (f), had a face-to-
9 face encounter”;

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

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

21 **SEC. 3. EFFECTIVE DATE; TREATMENT OF CERTAIN HOME**
22 **HEALTH CLAIMS.**

23 (a) EFFECTIVE DATE.—

24 (1) IN GENERAL.—Subject to paragraph (2),
25 the amendments made by section 2 shall apply with

1 respect to home health services furnished on or after
2 October 1, 2016.

3 (2) **[EXCEPTION TO FACE-TO-FACE ENCOUN-**
4 **TER REQUIREMENT]**.—Subsection (m)(5) of section
5 1814 of the Social Security Act (42 U.S.C. 1395f),
6 as added by section 2, shall apply with respect to
7 home health services furnished **[or or after the date**
8 **of the enactment of this Act.]** Notwithstanding any
9 other provision of law, the Secretary may implement
10 such subsection (m)(5) by program instruction or
11 otherwise.

12 (b) **TREATMENT OF CERTAIN HOME HEALTH**
13 **CLAIMS.**—

14 (1) **DENIED CLAIMS.**—

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

19 (i) through guidance, develop and im-
20 plement processes to reopen and review
21 claims that were denied on or after Janu-
22 ary 1, 2011, and before the date of the en-
23 actment of this Act, due solely to the face-
24 to-face documentation requirements under
25 section 1814(a)(2)(C) of the Social Secu-

1 rity Act (42 U.S.C. 1395f(a)(2)(C)) or sec-
2 tion 1835(a)(2)(A) of such Act (42 U.S.C.
3 1395f(a)(2)(A)); and

4 (ii) issue revised decisions of such de-
5 nials as if the narrative requirements of
6 section 424.22(v) of title 42, Code of Fed-
7 eral Regulations, did not apply at the time
8 such services were furnished.

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

19 (2) OTHER CLAIMS.—In the case of a claim for
20 home health services furnished on or after January
21 1, 2011, and before October 1, 2016, that is not de-
22 scribed in paragraph (1)(A), such claim shall be de-
23 termined and processed as if the explanation or nar-
24 rative requirements of section 424.22(a)(1)(v) and
25 the documentation requirements of 424.22(c) of title

1 42, Code of Federal Regulations, did not apply at
2 the time such services were furnished.