

111TH CONGRESS  
1ST SESSION

# H. R. 3454

To amend title XVIII of the Social Security Act to reform payments and coverage for hospice care under the Medicare Program.

---

## IN THE HOUSE OF REPRESENTATIVES

JULY 31, 2009

Mr. SULLIVAN (for himself, Mr. BOREN, Mr. COLE, Mr. LUCAS, and Ms. FALLIN) 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 reform payments and coverage for hospice care 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 Hospice Re-  
5 form and Savings Act of 2009”.

1 **SEC. 2. HOSPICE CARE PAYMENT AND COVERAGE RE-**  
2 **FORMS.**

3 (a) RELIEF FROM DEMAND PAYMENTS.—Section  
4 1814(i)(2) of the Social Security Act (42 U.S.C.  
5 1395f(i)(2)) is amended—

6 (1) in subparagraph (A), by inserting “(ending  
7 before November 1, 2009)” after “for an account  
8 year;”; and

9 (2) by adding at the end the following new sub-  
10 paragraph:

11 “(E) With respect to repayment demands based upon  
12 the application of this paragraph for an accounting year  
13 ending during the 4-year period ending on October 31,  
14 2009, recovery by the Secretary of such demands from a  
15 hospice program shall be subject to the following:

16 “(i)(I) Subject to subclause (II), no such de-  
17 mand to any hospice program shall exceed 10 per-  
18 cent of the payments under this part to the program  
19 for the same time period covered by the demand.

20 “(II) The aggregate reduction in repayment de-  
21 mands under subclause (I) shall not exceed  
22 \$400,000,000 and the Secretary shall reduce, in a  
23 pro-rata manner, the application of reductions under  
24 such subclause to the extent such reductions would  
25 otherwise exceed such limit.

1           “(III) Subclause (I) shall be applied taking into  
2           account principal amounts made on or before the  
3           date of the enactment of this subparagraph.

4           “(ii) Upon request of a hospice program subject  
5           to the maximum demand under the limitation speci-  
6           fied in clause (i), the Secretary shall allow the pro-  
7           gram a period of 60 months from the date of de-  
8           mand to repay such demand in installments.

9           “(iii) The interest rate charged on any demand  
10          during the period specified in this clause may not  
11          exceed the effective rate established by the Secretary  
12          of the Treasury pursuant to section 3717(a) of title  
13          31, United States Code, as of the date of the de-  
14          mand.

15          Nothing in this subparagraph shall be construed to require  
16          the Secretary to return funds collected or repaid before  
17          the date of the enactment of this subparagraph.”.

18          (b) REALIGNMENT OF PAYMENT AMOUNTS.—Section  
19          1814(i)(1) of such Act (42 U.S.C. 1395f(i)(1)) is amend-  
20          ed—

21                 (1) in subparagraph (B), by inserting “subject  
22                 to subparagraph (D),” after “subparagraph (A)”;

23                 (2) in subparagraph (C), by inserting “subject  
24                 to subparagraph (D),” after “for a subsequent fiscal  
25                 year,”; and

1           (3) by adding at the end the following new sub-  
2           paragraph:

3           “(D)(i) In the case of hospice care (other than short-  
4 term inpatient care) furnished on or after November 1,  
5 2009, with respect to an individual in a hospice election  
6 period (other than one of the first two 90-day periods for  
7 such individual under section 1812(d)(1)), the amount of  
8 payment otherwise established for such care shall be re-  
9 duced by 12½ percent.

10          “(ii) In the case of routine home hospice care fur-  
11 nished on or after November 1, 2009, during the first 5  
12 days of hospice care in an individual’s initial 90-day hos-  
13 pice election period under section 1812(d)(1) and during  
14 the last 5 days of hospice care preceding (and including)  
15 the date of the beneficiary’s death, the amount of payment  
16 otherwise established for such care shall be increased by  
17 20 percent.”.

18          (c) LISTING OF TERMINAL ILLNESSES.—By not later  
19 than January 31, 2010, and for purposes of applying sec-  
20 tion 1861(dd)(3)(A) of the Social Security Act (42 U.S.C.  
21 1395x(dd)(3)(A)), the Secretary of Health and Human  
22 Services shall issue evidence-based national coverage de-  
23 terminations for life expectancies covering at least each  
24 of those terminal medical diagnoses currently covered by

1 Local Coverage Determinations promulgated by Medi-  
2 care's fiscal intermediaries.

3 (d) DELAY IN PHASE OUT OF MEDICARE HOSPICE  
4 BUDGET NEUTRALITY ADJUSTMENT FACTOR DURING  
5 FISCAL YEARS 2010–2013 BASED UPON SAVINGS FROM  
6 NATIONAL COVERAGE DETERMINATIONS.—

7 (1) DETERMINATION OF SAVINGS.—The Sec-  
8 retary of Health and Human Services shall annually  
9 determine, and report to Congress, the amount of  
10 the reductions in expenditures under title XVIII of  
11 the Social Security Act during fiscal years 2010  
12 through 2013 that results from the issuance of the  
13 national coverage determinations described in sub-  
14 section (c) for hospice care.

15 (2) RESTORATION OF MEDICARE HOSPICE  
16 BUDGET NEUTRALITY ADJUSTMENT FACTOR.—Not-  
17 withstanding any other provision of law, including  
18 the final rule published on August 10, 2008, 73  
19 Federal Register 46464 et seq., relating to Medicare  
20 Program; Hospice Wage Index for Fiscal Year 2009,  
21 the Secretary shall restore the application (and re-  
22 duce the phase out) of the budget neutrality adjust-  
23 ment factor in the Medicare hospice wage index for  
24 the fiscal years 2010 through 2013 in such manner  
25 as the Secretary estimates will result in an aggre-

1       gate increase in expenditures under title XVIII of  
2       the Social Security Act equivalent to the aggregate  
3       reductions in expenditures determined under para-  
4       graph (1) for such period.

○