

111TH CONGRESS
1ST SESSION

S. 366

To amend the Social Security Act to eliminate the 5-month waiting period for Social Security disability and the 24-month waiting period for Medicare benefits in the cases of individuals with disabling burn injuries.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 3, 2009

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

A BILL

To amend the Social Security Act to eliminate the 5-month waiting period for Social Security disability and the 24-month waiting period for Medicare benefits in the cases of individuals with disabling burn injuries.

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 “Social Security and
5 Medicare Improved Burn Injury Treatment Access Act of
6 2009”.

7 **SEC. 2. FINDINGS.**

8 Congress makes the following findings:

1 (1) Terrorist acts, such as the September 11,
2 2001 attacks in New York and Washington, DC and
3 attacks in countries throughout the world, major ac-
4 cidental events, chemical plant explosions, airplane
5 crashes, and major industrial accidents, result in a
6 substantial number of burn-injured patients.

7 (2) In most major traumatic events, 25 percent
8 to 30 percent of the injured will require burn care
9 treatment. About one-third of those hospitalized in
10 New York on September 11th had severe burn inju-
11 ries.

12 (3) According to the American Burn Associa-
13 tion (ABA), which is the national professional soci-
14 ety representing hospitals with burn centers, as well
15 as burn surgeons, nurses, therapists, and other
16 members of the burn care team, there are only 128
17 burn centers in the United States. The total burn-
18 bed capacity at all burn centers in the United States
19 is 1,835 beds. Burn centers in four States have
20 closed, with a loss of several beds, which further di-
21 minishes the nation's ability to handle the mass
22 burn casualties that could result from a major ter-
23 rorist attack.

24 (4) Burn centers are a national resource that
25 must be preserved and strengthened as part of the

1 Nation's preparedness activities to deal with ter-
2 rorist attacks or other disasters that would likely
3 lead to mass burn casualties.

4 (5) Based on a study of over 54,000 burn cases
5 over a 20-year period of time, the ABA in its 2002
6 National Burn Repository Report indicates that 38
7 percent of burn-injured patients treated in burn cen-
8 ters were uninsured. This high level of uncompen-
9 sated care threatens the survival of burn centers, the
10 continued existence of which is essential to the emer-
11 gency preparedness efforts of the United States.

12 (6) Burn injuries are among the most costly to
13 treat and require immediate medical attention.

14 (7) Because of the necessity of providing imme-
15 diate care in the case of burn injuries, the waiting
16 periods established for Medicare coverage for dis-
17 abled burn patients should be waived and it is essen-
18 tial for Medicare to reimburse the costs of such burn
19 treatment to ensure the financial survival of burn
20 centers.

21 **SEC. 3. ELIMINATION OF 5-MONTH SOCIAL SECURITY DIS-**
22 **ABILITY WAITING PERIOD IN CASES OF INDI-**
23 **VIDUALS WITH DISABLING BURN INJURIES.**

24 (a) **DISABILITY INSURANCE BENEFITS.**—Section
25 223(a) of the Social Security Act (42 U.S.C. 423(a)) is

1 amended by adding at the end the following new para-
2 graph:

3 “(3)(A) In the case of any individual who has a dis-
4 abling burn injury and is not entitled to disability insur-
5 ance benefits under this section for any month solely by
6 reason of the waiting period under clause (i) in the first
7 sentence of paragraph (1), the Commissioner of Social Se-
8 curity shall waive the application of the waiting period,
9 and, notwithstanding clauses (i) and (ii) of the first sen-
10 tence of paragraph (1), such individual shall be entitled
11 to disability insurance benefits for each month, beginning
12 with the first month during all of which such individual
13 is under a disability and in which such individual would
14 become so entitled to such insurance benefits under such
15 sentence but for such waiting period, and ending as pro-
16 vided in paragraph (1).

17 “(B) For purposes of subparagraph (A), the process
18 for determining under paragraph (1) the month in which
19 the disability ceases shall require that the status of the
20 individual’s disability be determined at least once every 3
21 years.

22 “(C) For purposes of subparagraph (A) and sections
23 202(e)(5)(C), 202(f)(6)(C), and 216(i)(2)(A)(ii), an indi-
24 vidual is considered to have a ‘disabling burn injury’ if
25 the individual has a burn injury that satisfies a finding

1 of disability in accordance with the Social Security Admin-
2 istration’s publication, ‘Disability Evaluation under Social
3 Security’ (Blue Book, January 2005) for purposes of es-
4 tablishing eligibility for benefits under this title.”.

5 (b) WIDOW’S INSURANCE BENEFITS BASED ON DIS-
6 ABILITY.—Section 202(e)(5) of such Act (42 U.S.C.
7 402(e)(5)) is amended by adding at the end the following
8 new subparagraph:

9 “(C) In the case of any individual who has a disabling
10 burn injury (as described in section 223(a)(3)(B)) and is
11 not entitled to widow’s insurance benefits under this sec-
12 tion for any month solely by reason of the waiting period
13 under paragraph (1)(F)(i), the Commissioner of Social Se-
14 curity shall waive the application of the waiting period,
15 and, notwithstanding clauses (i) and (ii) of paragraph
16 (1)(F), such individual shall be entitled to widow’s insur-
17 ance benefits for each month, beginning with the first
18 month during all of which she is under a disability and
19 in which she would become so entitled to such insurance
20 benefits under paragraph (1) but for such waiting period,
21 and ending as provided in paragraph (1). For purposes
22 of the previous sentence, in determining under paragraph
23 (1) the month in which the disability ceases the status of
24 the individual’s disability shall be reviewed at least once
25 every 3 years.”.

1 (c) WIDOWER'S INSURANCE BENEFITS BASED ON
2 DISABILITY.—Section 202(f)(5) of such Act (42 U.S.C.
3 402(f)(5)) is amended by adding at the end the following
4 new subparagraph:

5 “(C) In the case of any individual who has a disabling
6 burn injury (as described in section 223(a)(3)(B)) and is
7 not entitled to widower's insurance benefits under this sec-
8 tion for any month solely by reason of the waiting period
9 under paragraph (1)(F)(i), the Commissioner of Social Se-
10 curity shall waive the application of the waiting period,
11 and, notwithstanding clauses (i) and (ii) of paragraph
12 (1)(F), such individual shall be entitled to widower's in-
13 surance benefits for each month, beginning with the first
14 month during all of which he is under a disability and
15 in which he would become so entitled to such insurance
16 benefits under paragraph (1) but for such waiting period,
17 and ending as provided in paragraph (1). For purposes
18 of the previous sentence, in determining under paragraph
19 (1) the month in which the disability ceases the status of
20 the individual's disability shall be reviewed at least once
21 every 3 years.”.

22 (d) COMMENCEMENT OF PERIOD OF DISABILITY.—
23 Section 216(i)(2)(A) of such Act (42 U.S.C. 416(i)(2)(A))
24 is amended—

25 (1) by inserting “(i)” after “(2)(A)”;

1 (2) by inserting “(I)” after “but only if”;

2 (3) by inserting “(II)” after “duration or”; and

3 (4) by adding at the end the following new
4 clause:

5 “(ii) In any case in which an individual has a dis-
6 abling burn injury (as described in section 223(a)(3)(B))
7 and a month is not included within a period of disability
8 of such individual solely by reason of the 5-month duration
9 requirement under clause (i)(I), the Commissioner of So-
10 cial Security shall waive the application of such require-
11 ment, and, notwithstanding clause (i)(I), such month shall
12 be included in a period of disability.”.

13 (e) EFFECTIVE DATES.—The amendments made by
14 subsection (a) shall apply only with respect to benefits
15 under section 223 of the Social Security Act, or under sec-
16 tion 202 of such Act on the basis of the wages and self-
17 employment income of an individual entitled to benefits
18 under such section 223, for months beginning after the
19 date of the enactment of this Act. The amendments made
20 by subsections (b) and (c) shall apply only with respect
21 to benefits based on disability under subsection (e) or (f)
22 of section 202 of the Social Security Act for months after
23 the date of the enactment of this Act. The amendments
24 made by subsection (d) shall apply only with respect to
25 applications for disability determinations filed under title

1 II of the Social Security Act after the date of the enact-
2 ment of this Act.

3 **SEC. 4. ELIMINATION OF 24-MONTH MEDICARE DISABILITY**
4 **WAITING PERIOD IN CASES OF INDIVIDUALS**
5 **WITH DISABLING BURN INJURIES.**

6 (a) IN GENERAL.—Section 226(h) of the Social Secu-
7 rity Act (42 U.S.C. 426(h)) is amended—

8 (1) in the matter preceding paragraph (1), by
9 inserting “or a disabling burn injury (as described
10 in section 223(a)(3)(B))” after “amyotrophic lateral
11 sclerosis (ALS)”;

12 (2) by redesignating paragraphs (1), (2), and
13 (3) as subparagraphs (A), (B), and (C), respectively,
14 with appropriate indentation and striking “For pur-
15 poses of” and inserting “(1) For purposes of”; and

16 (3) by adding at the end the following new
17 paragraphs:

18 “(2) Paragraph (1) shall not apply to an individual
19 medically determined to have a disabling burn injury (as
20 so described) if—

21 “(A) on the date such injury occurred such in-
22 dividual was covered under a group health plan (as
23 defined in section 2791 of the Public Health Service
24 Act) or had health insurance coverage (as defined in
25 such section), regardless of the extent to which such

1 plan or coverage provides benefits with respect to
2 such injury; or

3 “(B) after the date of the enactment of the So-
4 cial Security and Medicare Improved Burn Injury
5 Treatment Access Act of 2009, the terms and condi-
6 tions of coverage, with respect to such injury, under
7 the State plan under title XIX of the State in which
8 the individual resides are more restrictive than such
9 terms and conditions as of the day before such date
10 of enactment.

11 “(3) For purposes of applying paragraph (1) in the
12 case of an individual medically determined to have a dis-
13 abling burn injury (as so described), in determining when
14 an individual’s entitlement or status terminates, the status
15 of the individual’s disability shall be reviewed at least once
16 every 3 years.”.

17 (b) EFFECTIVE DATE.—The amendment made by
18 subsection (a) shall apply to benefits under title XVIII of
19 the Social Security Act with respect to items and services
20 furnished in months beginning after the date of the enact-
21 ment of this Act.

○