

111TH CONGRESS
1ST SESSION

S. 254

To amend title XVIII of the Social Security Act to provide for the coverage of home infusion therapy under the Medicare Program.

IN THE SENATE OF THE UNITED STATES

JANUARY 15, 2009

Mrs. LINCOLN (for herself, Ms. SNOWE, and Mr. ISAKSON) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend title XVIII of the Social Security Act to provide for the coverage of home infusion therapy 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 Home Infu-
5 sion Therapy Coverage Act of 2009”.

6 **SEC. 2. MEDICARE COVERAGE OF HOME INFUSION THER-**

7 **APY.**

8 (a) IN GENERAL.—Section 1861 of the Social Secu-
9 rity Act (42 U.S.C. 1395x), as amended by section 152(b)

1 of the Medicare Improvements for Patients and Providers
2 Act of 2008 (Public Law 110–275), is amended—

3 (1) in subsection (s)(2)—

4 (A) by striking “and” at the end of sub-
5 paragraph (DD);

6 (B) by adding “and” at the end of sub-
7 paragraph (EE); and

8 (C) by adding at the end the following new
9 subparagraph:

10 “(FF) home infusion therapy (as defined in
11 subsection (hhh)(1));” and

12 (2) by adding at the end the following new sub-
13 section:

14 “Home Infusion Therapy

15 “(hhh)(1) The term ‘home infusion therapy’ means
16 the following items and services furnished to an individual,
17 who is under the care of a physician, which are provided
18 by a qualified home infusion therapy provider under a plan
19 (for furnishing such items and services to such individual)
20 established and periodically reviewed by a physician, which
21 items and services are provided in an integrated manner
22 in the individual’s home in conformance with uniform
23 standards of care established by the Secretary (after tak-
24 ing into account the standards commonly used for home
25 infusion therapy by Medicare Advantage plans and in the

1 private sector and after consultation with all interested
2 stakeholders) and in coordination with the provision of
3 covered infusion drugs under part D:

4 “(A) Professional services other than nursing
5 services provided in accordance with the plan (in-
6 cluding administrative, compounding, dispensing,
7 distribution, clinical monitoring and care coordina-
8 tion services) and all necessary supplies and equip-
9 ment (including medical supplies such as sterile tub-
10 ing and infusion pumps, and other items and serv-
11 ices the Secretary determines appropriate) to admin-
12 ister infusion drug therapies to an individual safely
13 and effectively in the home.

14 “(B) Nursing services provided in accordance
15 with the plan, directly by a qualified home infusion
16 therapy provider or under arrangements with an ac-
17 credited homecare organization, in connection with
18 such infusion, except that such term does not in-
19 clude nursing services to the extent they are covered
20 as home health services.

21 “(2) For purposes of paragraph (1):

22 “(A) The term ‘home’ means a place of resi-
23 dence used as an individual’s home and includes
24 such other alternate settings as the Secretary deter-
25 mines.

1 “(B) The term ‘qualified home infusion therapy
2 provider’ means any pharmacy, physician, or other
3 provider licensed by the State in which the phar-
4 macy, physician, or provider resides or provides serv-
5 ices, whose State authorized scope of practice in-
6 cludes dispensing authority and that—

7 “(i) has expertise in the preparation of
8 parenteral medications in compliance with en-
9 forceable standards of the U.S. Pharmacopoeia
10 and other nationally recognized standards that
11 regulate preparation of parenteral medications
12 as determined by the Secretary and meets such
13 standards;

14 “(ii) provides infusion therapy to patients
15 with acute or chronic conditions requiring par-
16 enteral administration of drugs and biologicals
17 administered through catheters or needles, or
18 both, in a home; and

19 “(iii) meets such other uniform require-
20 ments as the Secretary determines are nec-
21 essary to ensure the safe and effective provision
22 and administration of home infusion therapy on
23 a 7-day-a-week, 24-hour basis (taking into ac-
24 count the standards of care for home infusion
25 therapy established by Medicare Advantage

1 plans and in the private sector), and the effi-
2 cient administration of the home infusion ther-
3 apy benefit.

4 A qualified home infusion therapy provider may sub-
5 contract with a pharmacy, physician, provider, or
6 supplier to meet the requirements of this sub-
7 section.”.

8 (b) PAYMENT FOR HOME INFUSION THERAPY.—Sec-
9 tion 1834 of the Social Security Act (42 U.S.C. 1395m)
10 is amended by adding at the end the following new sub-
11 section:

12 “(n) PAYMENT FOR HOME INFUSION THERAPY.—
13 The payment amount under this part for home infusion
14 therapy is determined as follows:

15 “(1) IN GENERAL.—The Secretary shall deter-
16 mine a per diem schedule for payment for the pro-
17 fessional services, supplies, and equipment described
18 in section 1861(hhh)(1)(A) that reflects the reason-
19 able costs which must be incurred by efficiently and
20 economically operated qualified home infusion ther-
21 apy providers to provide such services, supplies, and
22 equipment in conformity with applicable State and
23 Federal laws, regulations, and the uniform quality
24 and safety standards developed under section
25 1861(hhh)(1) and to assure that Medicare bene-

1 ficiaries have reasonable access to such therapy. The
2 Secretary shall update such schedule from year to
3 year by the percentage increase in the consumer
4 price index for all urban consumers (United States
5 city average) for the 12-month period ending with
6 June of the preceding year.

7 “(2) NURSING SERVICES.—The Secretary shall
8 develop a methodology for the separate payment for
9 nursing services described in section
10 1861(hhh)(1)(B) provided in accordance with the
11 plan under such section which reflects the reason-
12 able costs incurred in the provision of nursing serv-
13 ices in connection with infusion therapy in con-
14 formity with State and Federal laws, regulations,
15 and the uniform quality and safety standards devel-
16 oped pursuant to this Act and to assure that Medi-
17 care beneficiaries have reasonable access to nursing
18 services for infusion therapy. The Secretary shall up-
19 date such schedule from year to year by the percent-
20 age increase in the consumer price index for all
21 urban consumers (United States city average) for
22 the 12-month period ending with June of the pre-
23 ceding year.”.

24 (c) CONFORMING AMENDMENTS.—

1 (1) PAYMENT REFERENCE.—Section
2 1833(a)(1) of the Social Security Act (42 U.S.C.
3 13951(a)(1)), as amended by section 101(a)(2) of
4 the Medicare Improvements for Patients and Pro-
5 viders Act of 2008 (Public Law 110–275), is amend-
6 ed—

7 (A) by striking “and” before “(W)”; and

8 (B) by inserting before the semicolon at
9 the end the following: “, and (X) with respect
10 to home infusion therapy, the amounts paid
11 shall be determined under section 1834(n)”.

12 (2) DIRECT PAYMENT.—The first sentence of
13 section 1842(b)(6) of such Act (42 U.S.C.
14 1395u(b)(6)) is amended—

15 (A) by striking “and” before “(H)”; and

16 (B) by inserting before the period at the
17 end the following: “, and (I) in the case of
18 home infusion therapy, payment shall be made
19 to the qualified home infusion therapy pro-
20 vider”.

21 (3) EXCLUSION FROM DURABLE MEDICAL
22 EQUIPMENT AND HOME HEALTH SERVICES.—Section
23 1861 of such Act (42 U.S.C. 1395x) is amended—

24 (A) in subsection (m)(5), by inserting “and
25 supplies used in the provision of home infusion

1 therapy” after “excluding other drugs and
2 biologicals”; and

3 (B) in subsection (n), by adding at the end
4 the following: “Such term does not include
5 home infusion therapy, other than equipment
6 and supplies used in the provision of insulin.”.

7 (4) APPLICATION OF ACCREDITATION PROVI-
8 SIONS.—The provisions of section 1865(b) of the So-
9 cial Security Act (42 U.S.C. 1395bb(b)) apply to the
10 accreditation of qualified home infusion therapy pro-
11 viders in the manner they apply to other suppliers.

12 **SEC. 3. MEDICARE COVERAGE OF HOME INFUSION DRUGS.**

13 (a) IN GENERAL.—Section 1860D–2(e)(1) of the So-
14 cial Security Act (42 U.S.C. 1395w–102(e)(1)), as amend-
15 ed by section 182 of the Medicare Improvements for Pa-
16 tients and Providers Act of 2008 (Public Law 110–275),
17 is amended—

18 (1) in paragraph (1)—

19 (A) by striking “or” at the end of subpara-
20 graph (A);

21 (B) by striking the comma at the end of
22 subparagraph (B) and inserting “; or”; and

23 (C) by inserting before the flush matter
24 following subparagraph (B) the following new
25 subparagraph:

1 “(C) an infusion drug (as defined in para-
2 graph (5)),”; and

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

5 “(5) INFUSION DRUG DEFINED.—For purposes
6 of this part, the term ‘infusion drug’ means a paren-
7 teral drug or biological administered via an intra-
8 venous, intraspinal, intra-arterial, intrathecal, epidu-
9 ral, subcutaneous, or intramuscular access device in-
10 serted into the body, and includes a drug used for
11 catheter maintenance and clotting, a drug con-
12 tained in a device, vitamins, intravenous solutions,
13 diluent and minerals, and other components used in
14 the provision of home infusion therapy.”.

15 (b) INFUSION DRUG FORMULARIES.—For the first 2
16 years after the effective date of this Act, notwithstanding
17 any other provision of law, prescription drug plans and
18 MA–PD plans under title XVIII of the Social Security Act
19 shall maintain open formularies for infusion drugs (as de-
20 fined in section 1860D–2(e)(5) of such Act, as added by
21 subsection (a)). The Secretary of Health and Human
22 Services shall request the United States Pharmacopeia to
23 develop, in consultation with representatives of qualified
24 home infusion therapy providers and other interested

1 stakeholders, a model formulary approach for home infu-
 2 sion drugs for use by such plans after such 2-year period.

3 (c) PART D DISPENSING FEES.—Section 1860D–
 4 2(d)(1)(B) of the Social Security Act (42 U.S.C. 1395w–
 5 102(d)(1)(B)) is amended by inserting after “any dis-
 6 pensing fees for such drugs” the following: “, other than
 7 for an infusion drug”.

8 **SEC. 4. ENSURING BENEFICIARY ACCESS TO HOME INFU-**
 9 **SION THERAPY.**

10 (a) OBJECTIVES IN IMPLEMENTATION.—The Sec-
 11 retary of Health and Human Services shall implement the
 12 Medicare home infusion therapy benefit under the amend-
 13 ments made by this Act in a manner that ensures that
 14 Medicare beneficiaries have timely and appropriate access
 15 to infusion therapy in their homes and that there is rapid
 16 and seamless coordination between drug coverage under
 17 part D of title XVIII of the Social Security Act and cov-
 18 erage for home infusion therapy services under part B of
 19 such title. Specifically, the Secretary shall ensure that—

20 (1) the benefit is practical and workable with
 21 minimal administrative burden for beneficiaries,
 22 qualified home infusion therapy providers, physi-
 23 cians, prescription drug plans, MA–PD plans, and
 24 Medicare Advantage plans, and the Secretary shall
 25 consider the use of consolidated claims encompassing

1 covered part D drugs and part B services, supplies,
2 and equipment under such part B to ensure the effi-
3 cient operation of this benefit;

4 (2) any prior authorization or utilization review
5 process is expeditious, allowing Medicare bene-
6 ficiaries meaningful access to home infusion therapy;

7 (3) medical necessity determinations for home
8 infusion therapy will be made—

9 (A) except as provided in subparagraph
10 (B), by medicare administrative contractors
11 under such part B and communicated to the
12 appropriate prescription drug plans; or

13 (B) in the case of an individual enrolled in
14 a Medicare Advantage plan, by the Medicare
15 Advantage organization offering the plan;

16 and an individual may be initially qualified for cov-
17 erage for such benefit for a 90-day period and sub-
18 sequent 90-day periods thereafter;

19 (4) the benefit is modeled on current private
20 sector coverage and coding for home infusion ther-
21 apy; and

22 (5) prescription drug plans and MA–PD plans
23 structure their formularies, utilization review proto-
24 cols, and policies in a manner that ensures that

1 Medicare beneficiaries have timely and appropriate
2 access to infusion therapy in their homes.

3 (b) HOME INFUSION THERAPY ADVISORY PANEL.—

4 In implementing such home infusion therapy benefit and
5 meeting the objectives specified in subsection (a), the Sec-
6 retary shall establish an advisory panel to provide advice
7 and recommendations. Such panel shall—

8 (1) be comprised primarily of qualified home in-
9 fusion therapy providers and their representative or-
10 ganizations;

11 (2) also include representatives of the following:

12 (A) Patient organizations.

13 (B) Hospital discharge planners, care coor-
14 dinators, or social workers.

15 (C) Prescription drug plan sponsors and
16 Medicare Advantage organizations.

17 (c) REPORT.—Not later than January 1, 2012, and
18 every 2 years thereafter, the Comptroller General of the
19 United States shall submit a report to Congress on Medi-
20 care beneficiary access to home infusion therapy. Each
21 such report shall specifically address whether the objec-
22 tives specified in subsection (a) have been met and shall
23 make recommendations to Congress and the Secretary on
24 how to improve the benefit and better ensure that Medi-

1 care beneficiaries have timely and appropriate access to
2 infusion therapy in their homes.

3 **SEC. 5. EFFECTIVE DATE.**

4 The amendments made by this Act shall apply to
5 home infusion therapy furnished on or after January 1,
6 2010.

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