

111TH CONGRESS  
1ST SESSION

# S. 1640

To amend title XVIII of the Social Security Act to provide coverage of intensive lifestyle treatment.

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IN THE SENATE OF THE UNITED STATES

AUGUST 6, 2009

Mr. WYDEN (for himself, Mr. CORNYN, and Mr. HARKIN) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend title XVIII of the Social Security Act to provide coverage of intensive lifestyle treatment.

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 “Take Back Your  
5       Health Act of 2009”.

6       **SEC. 2. COVERAGE OF INTENSIVE LIFESTYLE TREATMENT.**

7       (a) INTENSIVE LIFESTYLE TREATMENT PROGRAM.—

8               (1) IN GENERAL.—Section 1861 of the Social  
9       Security Act (42 U.S.C. 1395x) is amended—

10               (A) in subsection (s)(2)—

1 (i) in subparagraph (DD) by striking  
2 “and” at the end;

3 (ii) in subparagraph (EE) by inserting  
4 “and” at the end; and

5 (iii) by adding at the end the fol-  
6 lowing new subparagraph:

7 “(FF) items and services furnished under  
8 an intensive lifestyle treatment program (as de-  
9 fined in paragraph (hhh)(1)) to eligible bene-  
10 ficiaries (as defined in paragraph (hhh)(4));”;  
11 and

12 (B) by adding at the end the following new  
13 subsection:

14 “Intensive Lifestyle Treatment Program

15 “(hhh)(1) The term ‘intensive lifestyle treatment pro-  
16 gram’ means a physician-supervised program (as defined  
17 in paragraph (2)) that furnishes the items and services  
18 described in paragraph (3) intended to beneficially affect  
19 the progression of chronic diseases to eligible beneficiaries  
20 (as defined in paragraph (4)).

21 “(2) A program described in this paragraph is a pro-  
22 gram under which—

23 “(A) items and services under the program are  
24 delivered—

25 “(i) in a physician’s office or clinic;

1           “(ii) in a hospital on an outpatient basis;

2           or

3           “(iii) in other settings determined appro-  
4           priate by the Secretary;

5           “(B) a physician (as defined in section  
6           1861(r)(1)) is immediately available and accessible  
7           for medical consultation and medical emergencies at  
8           all times items and services are being furnished  
9           under the program, except that, in the case of items  
10          and services furnished under such a program in a  
11          hospital, such availability shall be presumed;

12          “(C) individualized treatment is furnished  
13          under a written plan established and designed by a  
14          physician (as so defined) in advance of the start of  
15          the program and reviewed and signed by a physician  
16          every 60 days that describes—

17                 “(i) the individual’s diagnosis;

18                 “(ii) the type, amount, frequency, and du-  
19                 ration of the items and services furnished under  
20                 the plan; and

21                 “(iii) the goals set for the individual under  
22                 the plan;

23          “(D) items and services may be provided in a  
24          series of 72 one-hour sessions (as defined in section  
25          1848(b)(6)), up to 6 sessions per day, over a period

1 of 18 weeks, and may include group sessions with up  
2 to 15 other eligible beneficiaries; and

3 “(E) items and services may be provided—

4 “(i) by an intensive lifestyle team;

5 “(ii) under the direction of a physician (as  
6 so defined); and

7 “(iii) if determined appropriate by the Sec-  
8 retary, in the case of such items and services  
9 provided in underserved areas, by a physician  
10 assistant, nurse practitioner, or clinical nurse  
11 specialist as provided under State law.

12 “(3) The items and services described in this para-  
13 graph are—

14 “(A) exercise;

15 “(B) risk factor modification, including edu-  
16 cation, counseling, and behavioral intervention (to  
17 the extent such education, counseling, and behav-  
18 ioral intervention is closely related to the individual’s  
19 care and treatment and is tailored to the individual’s  
20 needs);

21 “(C) psychosocial assessment;

22 “(D) provider consultation;

23 “(E) care coordination;

24 “(F) medication management;

25 “(G) medical nutritional therapy;

1           “(H) tobacco cessation;

2           “(I) outcomes assessment; and

3           “(J) such other items and services as the Sec-  
4       retary determines appropriate, but only if such items  
5       and services are—

6                   “(i) reasonable and necessary for the diag-  
7       nosis or active treatment of the individual’s  
8       condition;

9                   “(ii) reasonably expected to improve or  
10      maintain the individual’s condition and func-  
11      tional level; and

12                   “(iii) furnished under such guidelines re-  
13      lating to the frequency and duration of such  
14      items and services as the Secretary shall estab-  
15      lish, taking into account accepted norms of  
16      medical practice and the reasonable expectation  
17      of improvement of the individual.

18           “(4) The term ‘eligible beneficiary’ means an indi-  
19      vidual who is entitled to, or enrolled for, benefits under  
20      part A and enrolled under this part and who has been  
21      diagnosed with 1 or more of the following conditions:

22                   “(A) Coronary heart disease.

23                   “(B) Type 2 diabetes.

24                   “(C) Metabolic syndrome.

25                   “(D) Prostate cancer.

1 “(E) Breast cancer.”.

2 (2) PAYMENT FOR INTENSIVE LIFESTYLE  
3 TREATMENT PROGRAMS.—

4 (A) INCLUSION IN PHYSICIANS’ SERV-  
5 ICES.—Section 1848(j)(3) of the Social Security  
6 Act (42 U.S.C. 1395w-4(j)(3)) is amended by  
7 inserting “(2)(FF),” after “(2)(EE).”.

8 (B) CONFORMING AMENDMENT.—Section  
9 1848(b) of the Social Security Act (42 U.S.C.  
10 1395w-4(b)) is amended by adding at the end  
11 the following new paragraph:

12 “(6) TREATMENT OF INTENSIVE LIFESTYLE  
13 TREATMENT PROGRAM.—

14 “(A) IN GENERAL.—In the case of an in-  
15 tensive lifestyle treatment program described in  
16 section 1861(hhh)(2), the Secretary shall estab-  
17 lish an aggregate payment for items and serv-  
18 ices furnished under such program (as de-  
19 scribed in section 1861(hhh)(3)) not to exceed  
20 the cost to the program under this title for a  
21 hospitalization for a similarly situated eligible  
22 beneficiary, subject to the limitation under sub-  
23 paragraph (C).

24 “(B) PAYMENT SCHEDULE.—The Sec-  
25 retary shall—

1           “(i) make a payment to such a pro-  
2           gram in an amount that is equal to 50 per-  
3           cent of the amount established under sub-  
4           paragraph (A) upon completion of the ini-  
5           tial consultation under the program; and

6           “(ii) subject to the limitation de-  
7           scribed in subparagraph (C), make a sec-  
8           ond payment to a program for the balance  
9           of the amount defined in subparagraph (A)  
10          upon completion of treatment under the  
11          program.

12          “(C) LIMITATION.—

13           “(i) IN GENERAL.—Notwithstanding  
14           the provisions of subparagraph (B), an in-  
15           tensive lifestyle treatment program shall  
16           not receive the payment described in sub-  
17           paragraph (B)(ii) unless it documents,  
18           upon the completion of the program by an  
19           eligible beneficiary, that services provided  
20           to such beneficiary under the program are  
21           beneficially affecting the progression of  
22           chronic disease or diseases in the bene-  
23           ficiary, as measured under clause (ii) with  
24           respect to 2 or more of the following meas-  
25           ures:

1 “(I) Measures described in sub-  
2 clauses (I) through (V) of section  
3 1861(eee)(4)(A)(ii).

4 “(II) High density lipoprotein.

5 “(III) Hemoglobin A1C.

6 “(IV) C-reactive protein.

7 “(V) Waist size.

8 “(VI) Elimination of cotinine  
9 level as evidence that the eligible ben-  
10 eficiary no longer uses tobacco.

11 “(VII) Prostate specific antigen  
12 or other prognostic biomarkers of  
13 prostate cancer.

14 “(VIII) Prognostic biomarkers of  
15 breast cancer.

16 “(ii) MEASUREMENT.—The Secretary  
17 shall determine the beneficial progression  
18 of chronic disease or diseases under clause  
19 (i), using the level of 2 or more of the  
20 measures described in subclause (i) before  
21 receiving services under such program and  
22 such levels after completion of treatment  
23 under the program—

24 “(I) by normalization (as defined  
25 by the Secretary); and



1 “(II) in the case of—

2 “(aa) measures described in  
3 subclauses (I) through (V), (VII),  
4 and (VIII), by at least 10 percent  
5 reduction; or

6 “(bb) the measure described  
7 in subclause (VI), by elimination.

8 “(iii) REFUND OF PAYMENTS OR  
9 COSTS IN CERTAIN CIRCUMSTANCES.—In  
10 the case of an eligible beneficiary who,  
11 within 1 year of receiving an initial con-  
12 sultation under the program, receives any  
13 other treatment covered under part A or  
14 this part for any condition that relates to  
15 the initial diagnosis resulting in eligibility  
16 for the intensive lifestyle treatment pro-  
17 gram, except for a physician office visit for  
18 the purpose of making adjustments to  
19 medication prescribed to the eligible bene-  
20 ficiary, such program shall refund to the  
21 Secretary the lesser of—

22 “(I) any payments made under  
23 paragraph (B) for services provided to  
24 the eligible beneficiary under the pro-  
25 gram; or

1                   “(II) the cost of such other treat-  
 2                   ment covered under part A or this  
 3                   part such condition.

4                   “(D) COVERAGE OF SESSIONS.—

5                   “(i) IN GENERAL.—Items and services  
 6                   provided under the program in a series of  
 7                   72 one-hour sessions (as defined in clause  
 8                   (ii)), up to 6 sessions per day, over a pe-  
 9                   riod of 18 weeks shall, subject to the limi-  
 10                  tation under subparagraph (C), be eligible  
 11                  for the aggregate payment established  
 12                  under subparagraph (A).

13                  “(ii) DEFINITION OF SESSION.—Each  
 14                  of the services described in subparagraphs  
 15                  (A) through (J) of section 1861(hhh)(3),  
 16                  when furnished for 1 hour, is a separate  
 17                  session under an intensive lifestyle treat-  
 18                  ment program.”.

19                  (b) COPAYMENTS FOR INTENSIVE LIFESTYLE  
 20 TREATMENT ITEMS AND SERVICES.—Section 1833(a)(1)  
 21 of the Social Security Act (42 U.S.C. 1395l(a)(1)) is  
 22 amended—

23                   (1) by striking “and” before (W);

24                   (2) by inserting before the semicolon at the end  
 25                  the following: “, and (X) with respect to items and

1 services furnished under an intensive lifestyle treat-  
2 ment program (as defined in section 1861(hhh)(2)),  
3 the amount paid shall be 100 percent of the lesser  
4 of the actual charge for the services or the amount  
5 determined under section 1848(b)(6)(A)”.

6 (c) LIFESTYLE REWARDS PROGRAM.—Title XVIII of  
7 the Social Security Act is amended by adding at the end  
8 the following new section:

9 **“SEC. 1899. LIFESTYLE REWARDS PROGRAMS.**

10 “(a) ESTABLISHMENT.—The Secretary shall estab-  
11 lish a Lifestyle Rewards Program (in this section referred  
12 to as the ‘program’) for eligible beneficiaries (as defined  
13 in section 1861(s)(2)(hhh)(4)) who have successfully com-  
14 pleted an intensive lifestyle treatment program (as defined  
15 in section 1861(hhh)(2)) and meet the requirements de-  
16 scribed in subsection (b).

17 “(b) REQUIREMENTS.—In order to receive an award  
18 under the program, an eligible beneficiary must—

19 “(1) demonstrate that the program has bene-  
20 ficially affected the progression of chronic disease or  
21 diseases in the beneficiary upon completion of the  
22 program, as measured under clause (ii) of section  
23 1848(b)(6)(C) with respect to 2 or more of the  
24 measures described in clause (i) of such section; and

1           “(2) during the 1 year period beginning on the  
2           date of an initial consultation under the lifestyle  
3           treatment program, receive no other treatment  
4           under part A or this part for any condition that re-  
5           lates to the initial diagnosis resulting in eligibility  
6           for the intensive lifestyle treatment program, except  
7           for a physician office visit for the purpose of making  
8           adjustments to medication prescribed to the eligible  
9           beneficiary.

10          “(c) FORM OF REWARD.—The Secretary shall make  
11          such award to eligible beneficiaries described in subsection  
12          (a) in such form and manner as the Secretary, by regula-  
13          tion, shall prescribe.

14          “(d) AMOUNT OF REWARD.—The amount of such  
15          award for each such eligible beneficiary shall be \$200.”.

16          (d) EFFECTIVE DATE.—The amendments made by  
17          this section shall apply to items and services furnished on  
18          or after January 1, 2010.

19          **SEC. 3. SENSE OF THE CONGRESS.**

20          It is the sense of the Congress that the services pro-  
21          vided under a intensive lifestyle treatment program (as de-  
22          fined in section 1861(hhh)(2) of the Social Security Act,  
23          as added by section 2(a))—

1           (1) would benefit individuals with chronic dis-  
2           eases who are not enrolled in the Medicare Program  
3           under title XVIII of the Social Security Act; and

4           (2) should be covered by all public and private  
5           payers.

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