

111TH CONGRESS  
1ST SESSION

# H. R. 3184

To amend title XVIII of the Social Security Act to eliminate the in the home restriction for Medicare coverage of mobility devices for individuals with expected long-term needs.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 13, 2009

Mr. LANGEVIN (for himself, Mr. YOUNG of Alaska, Mr. KUCINICH, Mr. MCGOVERN, Mr. BISHOP of Georgia, Mr. SMITH of New Jersey, Mr. FARR, Mr. KENNEDY, Mr. MARKEY of Massachusetts, Mr. HOLT, Mr. CARSON of Indiana, Mr. OLVER, and Mr. CARNAHAN) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, 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

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## A BILL

To amend title XVIII of the Social Security Act to eliminate the in the home restriction for Medicare coverage of mobility devices for individuals with expected long-term needs.

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 Independent  
5 Living Act of 2009”.

1 **SEC. 2. FINDINGS AND PURPOSES.**

2 (a) FINDINGS.—The Congress finds the following:

3 (1) There are approximately 2,200,000 wheel-  
4 chair users in the United States according to the  
5 United States Census Bureau of 2001.

6 (2) A significant portion of these wheelchair  
7 users qualify for coverage under the Medicare pro-  
8 gram, either based on disability status or age.

9 (3) Many of these Medicare beneficiaries live  
10 independently in their own homes, alone or with  
11 other family members.

12 (4) The ability of an individual with a mobility  
13 impairment to move about one's physical environ-  
14 ment through the use of a wheelchair or other mobil-  
15 ity device permits the performance of activities of  
16 daily living, including caring for oneself, living inde-  
17 pendently, performing household duties, caring for  
18 family members, engaging in employment, attending  
19 school, visiting medical facilities, participating in  
20 recreational and community activities, attending reli-  
21 gious services, and performing civic duties.

22 (5) For an individual with an expected long-  
23 term mobility impairment (such as a disabling condi-  
24 tion that is expected to significantly limit mobility  
25 for twelve months or more), the need to have access  
26 to one's physical environment through the use of an

1 appropriate wheelchair or other mobility device, both  
2 inside and outside of the home, is critical to living  
3 independently, functioning in society, and attaining  
4 a meaningful quality of life.

5 (6) In 1965, when the Medicare program was  
6 first enacted, Congress recognized the importance of  
7 providing assistance to individuals with mobility dis-  
8 abilities by expressly identifying wheelchairs as a  
9 covered durable medical equipment benefit under  
10 part B of the program when provided for use in the  
11 patient’s home. This language is widely believed to  
12 have been drafted to establish a separate payment  
13 under part B for wheelchairs provided outside of an  
14 institution (such as a hospital) which would other-  
15 wise be paid under part A of the program.

16 (7) The Centers for Medicare & Medicaid Serv-  
17 ices (CMS), the agency that administers the Medi-  
18 care program, currently interprets a provision in the  
19 Medicare statute—known as the “in the home re-  
20 quirement”—to prohibit coverage of wheelchairs and  
21 other mobility devices if these devices are not medi-  
22 cally necessary for use in the beneficiary’s home, de-  
23 nying access to appropriate mobility devices for a  
24 significant number of Medicare beneficiaries.

1           (8) The current CMS interpretation of the in  
2 the home requirement is inconsistent with Federal  
3 law in the following respects:

4           (A) In enacting the Americans with Dis-  
5 abilities Act of 1990 (Public Law 101–336),  
6 Congress found that “The Nation’s proper  
7 goals regarding individuals with disabilities are  
8 to assure equality of opportunity, full participa-  
9 tion, independent living, and economic self-  
10 sufficiency for such individuals.”.

11           (B) The Rehabilitation Act of 1973 (Public  
12 Law 93–112) requires that Federal programs  
13 not discriminate against individuals with dis-  
14 abilities, including individuals with mobility im-  
15 pairments. However, under the current CMS in-  
16 terpretation of the in the home requirement,  
17 Medicare beneficiaries with long-term mobility  
18 impairments cannot gain access to mobility de-  
19 vices that facilitate their movement throughout  
20 the community even when a particular device  
21 has been determined to be medically necessary  
22 for this purpose. The result of denying such ac-  
23 cess to appropriate mobility devices is the un-  
24 necessary isolation of the Medicare beneficiary,  
25 which is inconsistent with the letter and spirit

1 of the Rehabilitation Act of 1973 and its regu-  
2 lations.

3 (C) The United States Supreme Court  
4 ruled in the Olmstead decision (Olmstead v.  
5 L.C. ex. rel. Zimring, 527 U.S. 581 (1999))  
6 that an individual with a disability has the right  
7 to live in the most integrated setting appro-  
8 priate to meet the individual's needs. If Medi-  
9 care coverage policy does not take into consider-  
10 ation the needs of individuals with mobility im-  
11 pairments to function outside the four walls of  
12 their homes, the right to live in the most inte-  
13 grated setting is denied.

14 (9) In 1965, and throughout the history of the  
15 Medicare program, Congress has expected covered  
16 services to be provided in accordance with current  
17 standards of medical practice and professional clin-  
18 ical judgment as well as in accordance with Federal  
19 law.

20 (b) PURPOSES.—The purposes of this Act are as fol-  
21 lows:

22 (1) To bring CMS's coverage criteria for wheel-  
23 chairs and other mobility devices in line with con-  
24 temporary standards of medical practice and Federal  
25 law by correcting CMS's restrictive interpretation of

1 the in the home requirement language in the Medi-  
2 care statute.

3 (2) To ensure that beneficiaries with expected  
4 long-term mobility needs are not confined to the four  
5 walls of their homes by wheelchairs and other mobil-  
6 ity devices that are inadequate to meet their needs  
7 both inside and outside of the home.

8 (3) To clarify that wheelchairs and other mobil-  
9 ity devices for beneficiaries with expected long-term  
10 mobility impairments are covered under the Medi-  
11 care program if they are used in customary settings  
12 for the purpose of normal domestic, vocational, or  
13 community activities.

14 **SEC. 3. ELIMINATION OF IN THE HOME RESTRICTION FOR**  
15 **MEDICARE COVERAGE OF MOBILITY DEVICES**  
16 **FOR INDIVIDUALS WITH EXPECTED LONG-**  
17 **TERM NEEDS.**

18 (a) IN GENERAL.—Section 1861(n) of the Social Se-  
19 curity Act (42 U.S.C. 1395x(n)) is amended by inserting  
20 “or, in the case of a mobility device required by an indi-  
21 vidual with expected long-term need, used in customary  
22 settings for the purpose of normal domestic, vocational,  
23 or community activities” after “1819(a)(1)”.

1           (b) EFFECTIVE DATE.—The amendment made by  
2 subsection (a) shall apply to items furnished on or after  
3 the date of enactment of this Act.

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