

105TH CONGRESS  
2D SESSION

# S. 2315

To amend the Public Health Service Act, Employee Retirement Income Security Act of 1974, and titles XVIII and XIX of the Social Security Act to require that group and individual health insurance coverage and group health plans and managed care plans under the medicare and medicaid programs provide coverage for hospital lengths of stay as determined by the attending health care provider in consultation with the patient.

---

IN THE SENATE OF THE UNITED STATES

JULY 15, 1998

Mrs. FEINSTEIN (for herself, Mr. D'AMATO, and Mr. FORD) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

---

## A BILL

To amend the Public Health Service Act, Employee Retirement Income Security Act of 1974, and titles XVIII and XIX of the Social Security Act to require that group and individual health insurance coverage and group health plans and managed care plans under the medicare and medicaid programs provide coverage for hospital lengths of stay as determined by the attending health care provider in consultation with the patient.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Hospital Length of  
3 Stay Act of 1998”.

4 **SEC. 2. COVERAGE OF HOSPITAL LENGTH OF STAY.**

5 (a) GROUP HEALTH PLANS.—

6 (1) PUBLIC HEALTH SERVICE ACT AMEND-  
7 MENTS.—

8 (A) IN GENERAL.—Subpart 2 of part A of  
9 title XXVII of the Public Health Service Act  
10 (as added by section 604(a) of the Newborns’  
11 and Mothers’ Health Protection Act of 1996  
12 and amended by section 703(a) of the Mental  
13 Health Parity Act of 1996) is amended by add-  
14 ing at the end the following new section:

15 **“SEC. 2706. STANDARDS RELATING TO COVERAGE OF HOS-  
16 PITAL LENGTHS OF STAY.**

17 **“(a) REQUIREMENT.—**A group health plan and a  
18 health insurance issuer offering group health insurance  
19 coverage in connection with a group health plan (including  
20 a self-insured issuer) that provides coverage for inpatient  
21 hospital services—

22 **“(1) shall provide coverage for the length of an  
23 inpatient hospital stay as determined by the attend-  
24 ing physician (or other attending health care pro-  
25 vider to the extent permitted under State law) in**

1 consultation with the patient to be medically appro-  
2 priate; and

3 “(2) may not require that a provider obtain au-  
4 thorization from the plan or the issuer for prescrib-  
5 ing any length of stay required under paragraph (1).

6 “(b) PROHIBITIONS.—A group health plan and a  
7 health insurance issuer offering group health insurance  
8 coverage in connection with a group health plan (including  
9 a self-insured issuer) may not—

10 “(1) deny to an individual eligibility, or contin-  
11 ued eligibility, to enroll or to renew coverage under  
12 the terms of the plan, solely for the purpose of  
13 avoiding the requirements of this section;

14 “(2) provide monetary payments or rebates to  
15 an individual to encourage the individual to accept  
16 less than the minimum protections available under  
17 this section;

18 “(3) penalize or otherwise reduce or limit the  
19 reimbursement of an attending provider because  
20 such provider provided care to an individual partici-  
21 pant or beneficiary in accordance with this section;

22 “(4) provide incentives (monetary or otherwise)  
23 to an attending provider to induce such provider to  
24 provide care to an individual participant or bene-  
25 ficiary in a manner inconsistent with this section; or

1           “(5) subject to subsection (c)(4), restrict bene-  
2           fits for any portion of a period within a hospital  
3           length of stay required under subsection (a) in a  
4           manner which is less favorable than the benefits pro-  
5           vided for any preceding portion of such stay.

6           “(c) RULES OF CONSTRUCTION.—

7           “(1) NO REQUIREMENT TO STAY.—Nothing in  
8           this section shall be construed to require an individ-  
9           ual who is a participant or beneficiary to stay in the  
10          hospital for a fixed period of time for any procedure.

11          “(2) NO EFFECT ON REQUIREMENTS FOR MINI-  
12          MUM HOSPITAL STAY FOLLOWING BIRTH.—Nothing  
13          in this section shall be construed as modifying the  
14          requirements of section 2704.

15          “(3) NONAPPLICABILITY.—This section shall  
16          not apply with respect to any group health plan, or  
17          any group health insurance coverage offered by a  
18          health insurance issuer (including a self-insured  
19          issuer), which does not provide benefits for hospital  
20          lengths of stay.

21          “(4) COST-SHARING.—Nothing in this section  
22          shall be construed as preventing a group health  
23          plan, or a health insurance issuer offering group  
24          health insurance coverage in connection with a group  
25          health plan (including a self-insured issuer), from

1 imposing deductibles, coinsurance, or other cost-  
2 sharing in relation to benefits for hospital lengths of  
3 stay under the plan, health insurance coverage of-  
4 fered in connection with a group health plan, or the  
5 supplemental policy, except that such coinsurance or  
6 other cost-sharing for any portion of a period within  
7 a hospital length of stay required under subsection  
8 (a) may not be greater than such coinsurance or  
9 cost-sharing for any preceding portion of such stay.

10 “(d) NOTICE.—A group health plan under this part  
11 shall comply with the notice requirement under section  
12 713(d) of the Employee Retirement Income Security Act  
13 of 1974 with respect to the requirements of this section  
14 as if such section applied to such plan.

15 “(e) LEVEL AND TYPE OF REIMBURSEMENTS.—  
16 Nothing in this section shall be construed to prevent a  
17 group health plan or a health insurance issuer offering  
18 group health insurance coverage in connection with a  
19 group health plan (including a self-insured issuer) from  
20 negotiating the level and type of reimbursement with a  
21 provider for care provided in accordance with this section.

22 “(f) PREEMPTION; EXCEPTION FOR HEALTH INSUR-  
23 ANCE COVERAGE IN CERTAIN STATES.—

24 “(1) IN GENERAL.—The requirements of this  
25 section shall not apply with respect to health insur-

1       ance coverage if there is a State law (as defined in  
2       section 2723(d)(1)) for a State that regulates such  
3       coverage and provides greater protections to patients  
4       than those provided under this section.

5               “(2) CONSTRUCTION.—Section 2723(a)(1) shall  
6       not be construed as superseding a State law de-  
7       scribed in paragraph (1).”.

8               (B) CONFORMING AMENDMENT.—Section  
9       2723(c) of the Public Health Service Act (42  
10       U.S.C. 300gg-23(c)), as amended by section  
11       604(b)(2) of Public Law 104-204, is amended  
12       by striking “section 2704” and inserting “sec-  
13       tions 2704 and 2706”.

14       (2) ERISA AMENDMENTS.—

15               (A) IN GENERAL.—Subpart B of part 7 of  
16       subtitle B of title I of the Employee Retirement  
17       Income Security Act of 1974 (as added by sec-  
18       tion 603(a) of the Newborns’ and Mothers’  
19       Health Protection Act of 1996 and amended by  
20       section 702(a) of the Mental Health Parity Act  
21       of 1996) is amended by adding at the end the  
22       following new section:

1 **“SEC. 713. STANDARDS RELATING TO COVERAGE OF HOS-**  
2 **PITAL LENGTHS OF STAY.**

3 “(a) REQUIREMENT.—A group health plan and a  
4 health insurance issuer offering group health insurance  
5 coverage in connection with a group health plan (including  
6 a self-insured issuer), that provides coverage for inpatient  
7 hospital services—

8 “(1) shall provide coverage for the length of an  
9 inpatient hospital stay as determined by the attend-  
10 ing physician (or other attending health care pro-  
11 vider to the extent permitted under State law) in  
12 consultation with the patient to be medically appro-  
13 priate; and

14 “(2) may not require that a provider obtain au-  
15 thorization from the plan or the issuer for prescrib-  
16 ing any length of stay required under paragraph (1).

17 “(b) PROHIBITIONS.—A group health plan and a  
18 health insurance issuer offering group health insurance  
19 coverage in connection with a group health plan (including  
20 a self-insured issuer), may not—

21 “(1) deny to an individual eligibility, or contin-  
22 ued eligibility, to enroll or to renew coverage under  
23 the terms of the plan, solely for the purpose of  
24 avoiding the requirements of this section;

25 “(2) provide monetary payments or rebates to  
26 an individual to encourage the individual to accept

1 less than the minimum protections available under  
2 this section;

3 “(3) penalize or otherwise reduce or limit the  
4 reimbursement of an attending provider because  
5 such provider provided care to an individual partici-  
6 pant or beneficiary in accordance with this section;

7 “(4) provide incentives (monetary or otherwise)  
8 to an attending provider to induce such provider to  
9 provide care to an individual participant or bene-  
10 ficiary in a manner inconsistent with this section; or

11 “(5) subject to subsection (c)(4), restrict bene-  
12 fits for any portion of a period within a hospital  
13 length of stay required under subsection (a) in a  
14 manner which is less favorable than the benefits pro-  
15 vided for any preceding portion of such stay.

16 “(c) RULES OF CONSTRUCTION.—

17 “(1) NO REQUIREMENT TO STAY.—Nothing in  
18 this section shall be construed to require an individ-  
19 ual who is a participant or beneficiary to stay in the  
20 hospital for a fixed period of time for any procedure.

21 “(2) NO EFFECT ON REQUIREMENTS FOR MINI-  
22 MUM HOSPITAL STAY FOLLOWING BIRTH.—Nothing  
23 in this section shall be construed as modifying the  
24 requirements of section 2704.



1           “(3) NONAPPLICABILITY.—This section shall  
2 not apply with respect to any group health plan or  
3 any group health insurance coverage offered by a  
4 health insurance issuer (including a self-insured  
5 issuer), which does not provide benefits for hospital  
6 lengths of stay.

7           “(4) COST-SHARING.—Nothing in this section  
8 shall be construed as preventing a group health plan  
9 or a health insurance issuer offering group health  
10 insurance coverage in connection with a group health  
11 plan (including a self-insured issuer), from imposing  
12 deductibles, coinsurance, or other cost-sharing in re-  
13 lation to benefits for hospital lengths of stay under  
14 the plan or health insurance coverage offered in con-  
15 nection with a group health plan, except that such  
16 coinsurance or other cost-sharing for any portion of  
17 a period within a hospital length of stay required  
18 under subsection (a) may not be greater than such  
19 coinsurance or cost-sharing for any preceding por-  
20 tion of such stay.

21           “(d) NOTICE UNDER GROUP HEALTH PLAN.—The  
22 imposition of the requirements of this section shall be  
23 treated as a material modification in the terms of the plan  
24 described in section 102(a)(1), for purposes of assuring  
25 notice of such requirements under the plan; except that

1 the summary description required to be provided under the  
2 last sentence of section 104(b)(1) with respect to such  
3 modification shall be provided by not later than 60 days  
4 after the first day of the first plan year in which such  
5 requirements apply.

6 “(e) LEVEL AND TYPE OF REIMBURSEMENTS.—  
7 Nothing in this section shall be construed to prevent a  
8 group health plan or a health insurance issuer offering  
9 group health insurance coverage in connection with a  
10 group health plan (including a self-insured issuer), from  
11 negotiating the level and type of reimbursement with a  
12 provider for care provided in accordance with this section.

13 “(f) PREEMPTION; EXCEPTION FOR HEALTH INSUR-  
14 ANCE COVERAGE IN CERTAIN STATES.—

15 “(1) IN GENERAL.—The requirements of this  
16 section shall not apply with respect to health insur-  
17 ance coverage if there is a State law (as defined in  
18 section 731(d)(1)) for a State that regulates such  
19 coverage and provides greater protections to patients  
20 than those provided under this section.

21 “(2) CONSTRUCTION.—Section 731(a)(1) shall  
22 not be construed as superseding a State law de-  
23 scribed in paragraph (1).”.

24 (B) CONFORMING AMENDMENTS.—

1 (i) Section 731(c) of such Act (29  
 2 U.S.C. 1191(c)), as amended by section  
 3 603(b)(1) of Public Law 104–204, is  
 4 amended by striking “section 711” and in-  
 5 serting “sections 711 and 713”.

6 (ii) Section 732(a) of such Act (29  
 7 U.S.C. 1191a(a)), as amended by section  
 8 603(b)(2) of Public Law 104–204, is  
 9 amended by striking “section 711” and in-  
 10 serting “sections 711 and 713”.

11 (iii) The table of contents in section 1  
 12 of such Act is amended by inserting after  
 13 the item relating to section 712 the follow-  
 14 ing new item:

“Sec. 713. Standards relating to coverage of hospital lengths of stay.”.

15 (b) INDIVIDUAL MARKET.—Subpart 3 of part B of  
 16 title XXVII of the Public Health Service Act (as added  
 17 by section 605(a) of the Newborn’s and Mother’s Health  
 18 Protection Act of 1996) is amended by adding at the end  
 19 the following new section:

20 **“SEC. 2752. STANDARDS RELATING TO COVERAGE OF HOS-**  
 21 **PITAL LENGTHS OF STAY.**

22 “The provisions of section 2706 shall apply to health  
 23 insurance coverage offered by a health insurance issuer  
 24 in the individual market in the same manner as they apply  
 25 to health insurance coverage offered by a health insurance

1 issuer in connection with a group health plan in the small  
2 or large group market.”.

3 (c) EFFECTIVE DATES.—

4 (1) GROUP HEALTH PLANS.—Subject to para-  
5 graph (3), the amendments made by subsection (a)  
6 shall apply with respect to group health plans for  
7 plan years beginning on or after January 1, 1999.

8 (2) HEALTH INSURANCE COVERAGE.—The  
9 amendment made by subsection (b) shall apply with  
10 respect to health insurance coverage offered, sold,  
11 issued, renewed, in effect, or operated in the individ-  
12 ual market on or after such date.

13 (3) COLLECTIVE BARGAINING AGREEMENTS.—  
14 In the case of a group health plan maintained pur-  
15 suant to 1 or more collective bargaining agreements  
16 between employee representatives and 1 or more em-  
17 ployers ratified before the date of enactment of this  
18 Act, the amendments made subsection (a) shall not  
19 apply to plan years beginning before the later of—

20 (A) the date on which the last collective  
21 bargaining agreements relating to the plan ter-  
22 minates (determined without regard to any ex-  
23 tension thereof agreed to after the date of en-  
24 actment of this Act), or

25 (B) January 1, 1999.

1 For purposes of subparagraph (A), any plan amend-  
 2 ment made pursuant to a collective bargaining  
 3 agreement relating to the plan which amends the  
 4 plan solely to conform to any requirement added by  
 5 subsection (a) shall not be treated as a termination  
 6 of such collective bargaining agreement.

7 (d) COORDINATED REGULATIONS.—Section 104(1)  
 8 of Health Insurance Portability and Accountability Act of  
 9 1996 is amended by striking “this subtitle (and the  
 10 amendments made by this subtitle and section 401)” and  
 11 inserting “the provisions of part 7 of subtitle B of title  
 12 I of the Employee Retirement Income Security Act of  
 13 1974, and the provisions of parts A and C of title XXVII  
 14 of the Public Health Service Act”.

15 **SEC. 3. APPLICATION TO MEDICARE AND MEDICAID BENE-**  
 16 **FICIARIES.**

17 (a) MEDICARE.—

18 (1) IN GENERAL.—Title XVIII of the Social Se-  
 19 curity Act (42 U.S.C. 1395 et seq.) is amended by  
 20 adding at the end the following:

21 “HOSPITAL LENGTHS OF STAY FOR BENEFICIARIES  
 22 ENROLLED IN PRIVATE HEALTH PLANS

23 “SEC. 1897. (a) APPLICATION TO MEDICARE.—Not-  
 24 withstanding the limitation on benefits described in sec-  
 25 tion 1812, or any other limitation on benefits imposed  
 26 under this title, the provisions of section 2706 of the Pub-

1 lic Health Service Act shall apply to the provision of items  
2 and services under this title.

3 “(b) MEDICARE+CHOICE AND ELIGIBLE ORGANIZA-  
4 TIONS.—The Secretary may not enter into a contract with  
5 a Medicare+Choice organization under part C, or with an  
6 eligible organization with a risk-sharing contract under  
7 section 1876, unless the organization meets the require-  
8 ments of section 2706 of the Public Health Service Act  
9 with respect to individuals enrolled with the organiza-  
10 tion.”.

11 (2) MEDICARE SUPPLEMENTAL POLICIES.—

12 (A) IN GENERAL.—Section 1882(c) of the  
13 Social Security Act (42 U.S.C. 1395ss(c)) is  
14 amended—

15 (i) in paragraph (4), by striking  
16 “and” at the end;

17 (ii) in paragraph (5), by striking the  
18 period and inserting “, and”; and

19 (iii) by adding at the end the follow-  
20 ing:

21 “(6) meets the requirements of section 2706 of  
22 the Public Health Service Act with respect to indi-  
23 viduals enrolled under the policy.”.

24 (B) CONFORMING AMENDMENT.—Section  
25 1882(b)(1)(B) of the Social Security Act (42

1 U.S.C. 1395ss(b)(1)(B)) is amended by striking  
2 “(5)” and inserting “(6)”.

3 (3) COST SHARING.—Nothing in this subsection  
4 or section 2706(c) of the Public Health Service Act  
5 shall be construed as authorizing the imposition of  
6 cost sharing with respect to the coverage or benefits  
7 required to be provided under the amendments to  
8 the Social Security Act made by paragraphs (1) and  
9 (2) that is inconsistent with the cost sharing that is  
10 otherwise permitted under title XVIII of the Social  
11 Security Act.

12 (b) MEDICAID.—Title XIX of the Social Security Act  
13 (42 U.S.C. 1396 et seq.) is amended by redesignating sec-  
14 tion 1935 as section 1936 and by inserting after section  
15 1934 the following:

16 “HOSPITAL LENGTHS OF STAY FOR BENEFICIARIES  
17 ENROLLED IN PRIVATE HEALTH PLANS

18 “SEC. 1935. (a) IN GENERAL.—A State plan may  
19 not be approved under this title unless the plan requires  
20 each health insurance issuer or other entity with a con-  
21 tract with such plan to provide coverage or benefits to in-  
22 dividuals eligible for medical assistance under the plan, in-  
23 cluding a managed care entity, as defined in section  
24 1932(a)(1)(B), to comply with the provisions of section  
25 2706 of the Public Health Service Act with respect to such  
26 coverage or benefits.

1       “(b) COST SHARING.—Nothing in this section or sec-  
2 tion 2706(c) of the Public Health Service Act shall be con-  
3 strued as authorizing a health insurance issuer or entity  
4 to impose cost sharing with respect to the coverage or ben-  
5 efits required to be provided under section 2706 of the  
6 Public Health Service Act that is inconsistent with the  
7 cost sharing that is otherwise permitted under this title.

8       “(c) WAIVERS PROHIBITED.—The requirement of  
9 subsection (a) may not be waived under section 1115 or  
10 section 1915(b) of the Social Security Act.”.

11       (c) EFFECTIVE DATE.—The amendments made by  
12 this section apply to contract years under titles XVIII and  
13 XIX of the Social Security Act beginning on or after Jan-  
14 uary 1, 1999.

15       (d) MEDIGAP TRANSITION PROVISIONS.—

16           (1) IN GENERAL.—If the Secretary of Health  
17 and Human Services identifies a State as requiring  
18 a change to its statutes or regulations to conform its  
19 regulatory program to the changes made by sub-  
20 section (a)(2), the State regulatory program shall  
21 not be considered to be out of compliance with the  
22 requirements of section 1882 of the Social Security  
23 Act due solely to failure to make such change until  
24 the date specified in paragraph (4).



1           (2) NAIC STANDARDS.—If, within 9 months  
2 after the date of the enactment of this Act, the Na-  
3 tional Association of Insurance Commissioners (in  
4 this subsection referred to as the “NAIC”) modifies  
5 its NAIC Model Regulation relating to section 1882  
6 of the Social Security Act (referred to in such sec-  
7 tion as the 1991 NAIC Model Regulation, as modi-  
8 fied pursuant to section 171(m)(2) of the Social Se-  
9 curity Act Amendments of 1994 (Public Law 103–  
10 432) and as modified pursuant to section  
11 1882(d)(3)(A)(vi)(IV) of the Social Security Act, as  
12 added by section 271(a) of the Health Insurance  
13 Portability and Accountability Act of 1996 (Public  
14 Law 104–191) to conform to the amendments made  
15 by this section, such revised regulation incorporating  
16 the modifications shall be considered to be the appli-  
17 cable NAIC model regulation (including the revised  
18 NAIC model regulation and the 1991 NAIC Model  
19 Regulation) for the purposes of such section.

20           (3) SECRETARY STANDARDS.—If the NAIC  
21 does not make the modifications described in para-  
22 graph (2) within the period specified in such para-  
23 graph, the Secretary of Health and Human Services  
24 shall make the modifications described in such para-  
25 graph and such revised regulation incorporating the

1 modifications shall be considered to be the appro-  
2 priate Regulation for the purposes of such section.

3 (4) DATE SPECIFIED.—

4 (A) IN GENERAL.—Subject to subpara-  
5 graph (B), the date specified in this paragraph  
6 for a State is the earlier of—

7 (i) the date the State changes its stat-  
8 utes or regulations to conform its regu-  
9 latory program to the changes made by  
10 this section, or

11 (ii) 1 year after the date the NAIC or  
12 the Secretary first makes the modifications  
13 under paragraph (2) or (3), respectively.

14 (B) ADDITIONAL LEGISLATIVE ACTION RE-  
15 QUIRED.—In the case of a State which the Sec-  
16 retary identifies as—

17 (i) requiring State legislation (other  
18 than legislation appropriating funds) to  
19 conform its regulatory program to the  
20 changes made in this section, but

21 (ii) having a legislature which is not  
22 scheduled to meet in 1999 in a legislative  
23 session in which such legislation may be  
24 considered,

1           the date specified in this paragraph is the first  
2           day of the first calendar quarter beginning after  
3           the close of the first legislative session of the  
4           State legislature that begins on or after July 1,  
5           1999. For purposes of the previous sentence, in  
6           the case of a State that has a 2-year legislative  
7           session, each year of such session shall be  
8           deemed to be a separate regular session of the  
9           State legislature.

○