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

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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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Hospital Length of Stay Act of 1998''.

SEC. 2. COVERAGE OF HOSPITAL LENGTH OF STAY.

(a) GROUP HEALTH PLANS.—

(1) PUBLIC HEALTH SERVICE ACT AMENDMENTS.—

(A) IN GENERAL.—Subpart 2 of part A of title XXVII of the Public Health Service Act (as added by section 604(a) of the Newborns' and Mothers' Health Protection Act of 1996 and amended by section 703(a) of the Mental Health Parity Act of 1996) is amended by adding at the end the following new section:

''SEC. 2706. STANDARDS RELATING TO COVERAGE OF HOSPITAL LENGTHS OF STAY.

''(a) REQUIREMENT.—A group health plan and a health insurance issuer offering group health insurance coverage in connection with a group health plan (including a self-insured issuer) that provides coverage for inpatient hospital services—

''(1) shall provide coverage for the length of an inpatient hospital stay as determined by the attending physician (or other attending health care provider to the extent permitted under State law) in

consultation with the patient to be medically appropriate; and

''(2) may not require that a provider obtain authorization from the plan or the issuer for prescribing any length of stay required under paragraph (1).

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

''(1) deny to an individual eligibility, or continued eligibility, to enroll or to renew coverage under the terms of the plan, solely for the purpose of avoiding the requirements of this section;

''(2) provide monetary payments or rebates to an individual to encourage the individual to accept less than the minimum protections available under this section;

''(3) penalize or otherwise reduce or limit the reimbursement of an attending provider because such provider provided care to an individual participant or beneficiary in accordance with this section;

''(4) provide incentives (monetary or otherwise) to an attending provider to induce such provider to provide care to an individual participant or beneficiary in a manner inconsistent with this section; or

''(5) subject to subsection (c)(4), restrict benefits for any portion of a period within a hospital length of stay required under subsection (a) in a manner which is less favorable than the benefits provided for any preceding portion of such stay.

''(c) RULES OF CONSTRUCTION.—

''(1) NO REQUIREMENT TO STAY.—Nothing in this section shall be construed to require an individual who is a participant or beneficiary to stay in the hospital for a fixed period of time for any procedure.

''(2) NO EFFECT ON REQUIREMENTS FOR MINIMUM HOSPITAL STAY FOLLOWING BIRTH.—Nothing in this section shall be construed as modifying the requirements of section 2704.

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

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

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

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

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

''(f) PREEMPTION; EXCEPTION FOR HEALTH INSURANCE COVERAGE IN CERTAIN STATES.—

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

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

''(2) CONSTRUCTION.—Section 2723(a)(1) shall not be construed as superseding a State law described in paragraph (1).''.

(B) CONFORMING AMENDMENT.—Section 2723(c) of the Public Health Service Act (42 U.S.C. 300gg–23(c)), as amended by section 604(b)(2) of Public Law 104–204, is amended by striking ''section 2704'' and inserting ''sections 2704 and 2706''.

(2) ERISA AMENDMENTS.—

(A) IN GENERAL.—Subpart B of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (as added by section 603(a) of the Newborns' and Mothers' Health Protection Act of 1996 and amended by section 702(a) of the Mental Health Parity Act of 1996) is amended by adding at the end the following new section:

"SEC. 713. STANDARDS RELATING TO COVERAGE OF HOSPITAL LENGTHS OF STAY.

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

''(1) shall provide coverage for the length of an inpatient hospital stay as determined by the attending physician (or other attending health care provider to the extent permitted under State law) in consultation with the patient to be medically appropriate; and

''(2) may not require that a provider obtain authorization from the plan or the issuer for prescribing any length of stay required under paragraph (1).

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

''(1) deny to an individual eligibility, or continued eligibility, to enroll or to renew coverage under the terms of the plan, solely for the purpose of avoiding the requirements of this section;

''(2) provide monetary payments or rebates to an individual to encourage the individual to accept

less than the minimum protections available under this section;

''(3) penalize or otherwise reduce or limit the reimbursement of an attending provider because such provider provided care to an individual participant or beneficiary in accordance with this section;

''(4) provide incentives (monetary or otherwise) to an attending provider to induce such provider to provide care to an individual participant or beneficiary in a manner inconsistent with this section; or

''(5) subject to subsection (c)(4), restrict benefits for any portion of a period within a hospital length of stay required under subsection (a) in a manner which is less favorable than the benefits provided for any preceding portion of such stay.

''(c) RULES OF CONSTRUCTION.—

''(1) NO REQUIREMENT TO STAY.—Nothing in this section shall be construed to require an individual who is a participant or beneficiary to stay in the hospital for a fixed period of time for any procedure.

''(2) NO EFFECT ON REQUIREMENTS FOR MINIMUM HOSPITAL STAY FOLLOWING BIRTH.—Nothing in this section shall be construed as modifying the requirements of section 2704.

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

''(4) COST-SHARING.—Nothing in this section shall be construed as preventing a group health plan or a health insurance issuer offering group health insurance coverage in connection with a group health plan (including a self-insured issuer), from imposing deductibles, coinsurance, or other cost-sharing in relation to benefits for hospital lengths of stay under the plan or health insurance coverage offered in connection with a group health plan, except that such coinsurance or other cost-sharing for any portion of a period within a hospital length of stay required under subsection (a) may not be greater than such coinsurance or cost-sharing for any preceding portion of such stay.

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

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

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

''(f) PREEMPTION; EXCEPTION FOR HEALTH INSURANCE COVERAGE IN CERTAIN STATES.—

''(1) IN GENERAL.—The requirements of this section shall not apply with respect to health insurance coverage if there is a State law (as defined in section 731(d)(1)) for a State that regulates such coverage and provides greater protections to patients than those provided under this section.

''(2) CONSTRUCTION.—Section 731(a)(1) shall not be construed as superseding a State law described in paragraph (1).''.

(B) CONFORMING AMENDMENTS.—

(i) Section 731(c) of such Act (29 U.S.C. 1191(c)), as amended by section 603(b)(1) of Public Law 104–204, is amended by striking ''section 711'' and inserting ''sections 711 and 713''.

(ii) Section 732(a) of such Act (29 U.S.C. 1191a(a)), as amended by section 603(b)(2) of Public Law 104–204, is amended by striking ''section 711'' and inserting ''sections 711 and 713''.

(iii) The table of contents in section 1 of such Act is amended by inserting after the item relating to section 712 the following new item:

''Sec. 713. Standards relating to coverage of hospital lengths of stay.''.

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

''SEC. 2752. STANDARDS RELATING TO COVERAGE OF HOSPITAL LENGTHS OF STAY.

''The provisions of section 2706 shall apply to health insurance coverage offered by a health insurance issuer in the individual market in the same manner as they apply to health insurance coverage offered by a health insurance

issuer in connection with a group health plan in the small or large group market.''.

(c) EFFECTIVE DATES.—

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

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

(3) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a group health plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before the date of enactment of this Act, the amendments made subsection (a) shall not apply to plan years beginning before the later of—

(A) the date on which the last collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of enactment of this Act), or

(B) January 1, 1999.

For purposes of subparagraph (A), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by subsection (a) shall not be treated as a termination of such collective bargaining agreement.

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

SEC. 3. APPLICATION TO MEDICARE AND MEDICAID BENEFICIARIES.

(a) MEDICARE.—

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

''HOSPITAL LENGTHS OF STAY FOR BENEFICIARIES ENROLLED IN PRIVATE HEALTH PLANS

''SEC. 1897. (a) APPLICATION TO MEDICARE.—Notwithstanding the limitation on benefits described in section 1812, or any other limitation on benefits imposed under this title, the provisions of section 2706 of the Pub-

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

''(b) MEDICARE+CHOICE AND ELIGIBLE ORGANIZATIONS.—The Secretary may not enter into a contract with a Medicare+Choice organization under part C, or with an eligible organization with a risk-sharing contract under section 1876, unless the organization meets the requirements of section 2706 of the Public Health Service Act with respect to individuals enrolled with the organization.''.

(2) MEDICARE SUPPLEMENTAL POLICIES.—

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

(i) in paragraph (4), by striking ''and'' at the end;

(ii) in paragraph (5), by striking the period and inserting '', and''; and

(iii) by adding at the end the following:

''(6) meets the requirements of section 2706 of the Public Health Service Act with respect to individuals enrolled under the policy.''.

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

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

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

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

''HOSPITAL LENGTHS OF STAY FOR BENEFICIARIES ENROLLED IN PRIVATE HEALTH PLANS

''SEC. 1935. (a) IN GENERAL.—A State plan may not be approved under this title unless the plan requires each health insurance issuer or other entity with a contract with such plan to provide coverage or benefits to individuals eligible for medical assistance under the plan, including a managed care entity, as defined in section 1932(a)(1)(B), to comply with the provisions of section 2706 of the Public Health Service Act with respect to such coverage or benefits.

''(b) COST SHARING.—Nothing in this section or section 2706(c) of the Public Health Service Act shall be construed as authorizing a health insurance issuer or entity to impose cost sharing with respect to the coverage or benefits required to be provided under section 2706 of the Public Health Service Act that is inconsistent with the cost sharing that is otherwise permitted under this title.

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

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

(d) MEDIGAP TRANSITION PROVISIONS.—

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

(2) NAIC STANDARDS.—If, within 9 months after the date of the enactment of this Act, the National Association of Insurance Commissioners (in this subsection referred to as the ''NAIC'') modifies its NAIC Model Regulation relating to section 1882 of the Social Security Act (referred to in such section as the 1991 NAIC Model Regulation, as modified pursuant to section 171(m)(2) of the Social Security Act Amendments of 1994 (Public Law 103–432) and as modified pursuant to section 1882(d)(3)(A)(vi)(IV) of the Social Security Act, as added by section 271(a) of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191) to conform to the amendments made by this section, such revised regulation incorporating the modifications shall be considered to be the applicable NAIC model regulation (including the revised NAIC model regulation and the 1991 NAIC Model Regulation) for the purposes of such section.

(3) SECRETARY STANDARDS.—If the NAIC does not make the modifications described in paragraph (2) within the period specified in such paragraph, the Secretary of Health and Human Services shall make the modifications described in such paragraph and such revised regulation incorporating the

modifications shall be considered to be the appropriate Regulation for the purposes of such section.

(4) DATE SPECIFIED.—

(A) IN GENERAL.—Subject to subparagraph (B), the date specified in this paragraph for a State is the earlier of—

(i) the date the State changes its statutes or regulations to conform its regulatory program to the changes made by this section, or

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

(B) ADDITIONAL LEGISLATIVE ACTION REQUIRED.—In the case of a State which the Secretary identifies as—

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

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

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

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