

108TH CONGRESS
2D SESSION

H. R. 5393

To amend title XVIII of the Social Security Act to provide incentives linking quality to payment for skilled nursing facilities and to establish a Long-Term Care Financing Commission.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 19, 2004

Mr. ENGLISH (for himself and Mrs. WILSON of New Mexico) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, 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

A BILL

To amend title XVIII of the Social Security Act to provide incentives linking quality to payment for skilled nursing facilities and to establish a Long-Term Care Financing Commission.

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 Nursing Fa-
5 cility Pay-for-Performance Act of 2004”.

1 **SEC. 2. ADDITIONAL MEDICARE PAYMENT FOR FACILITIES**
2 **THAT REPORT ADDITIONAL QUALITY DATA.**

3 (a) VOLUNTARY REPORTING OF QUALITY MEASURES
4 AND ADJUSTMENT IN PAYMENT.—

5 (1) IN GENERAL.—Section 1888 of the Social
6 Security Act (42 U.S.C. 1395yy) is amended by add-
7 ing at the end the following new subsection:

8 “(f) VOLUNTARY REPORTING OF QUALITY MEAS-
9 URES; CHANGE IN PAYMENT BASED ON REPORTED
10 QUALITY MEASURES.—

11 “(1) ESTABLISHMENT OF ADDITIONAL QUALITY
12 MEASURES.—

13 “(A) IN GENERAL.—Not later than 6
14 months after the date of the enactment of this
15 subsection, the Secretary, through a contract
16 with a qualified independent party (such as the
17 National Quality Forum) identified by the Sec-
18 retary, shall provide for the identification of—

19 “(i) at least 10, and not more than
20 15, quality measures for the performance
21 of skilled nursing facilities under this title;
22 and

23 “(ii) the data to be reported, including
24 their collection and formatting, on a cal-
25 endar quarter basis for each such quality

1 measure to measure the performance of a
2 skilled nursing facility.

3 Such measures may be outcome or process
4 measures. Such measures shall be in addition to
5 the 14 enhanced measures published by the
6 Secretary for such facilities for use as of Sep-
7 tember 1, 2004.

8 “(B) MEASURE OF STAFFING LEVEL.—
9 The quality measures identified under subpara-
10 graph (A) shall include a measure of the level
11 of facility staffing and the mix of licensed staff
12 at a facility.

13 “(C) RISK ADJUSTMENT.—The values ob-
14 tained for quality measures identified under
15 subparagraph (A), including the existing 14 en-
16 hanced measures, shall be appropriately risk
17 adjusted as applied to individual skilled nursing
18 facilities in order to increase the likelihood that
19 any differences in such values reflect differences
20 in the care provided by the skilled nursing fa-
21 cilities and not differences in the characteristics
22 of the residents in such facilities. Such risk ad-
23 justment shall take into account resident char-
24 acteristics that are related to triggering a value
25 for a quality measure but are not reflective of

1 facility care processes. Risk adjustment ap-
2 proaches may include, as appropriate—

3 “(i) excluding certain types of resi-
4 dents;

5 “(ii) stratifying residents into high-
6 risk and low-risk groups; or

7 “(iii) statistical adjustment (such as
8 regression analysis) that takes into consid-
9 eration multiple characteristics (covariates)
10 for each resident simultaneously and ad-
11 justs the nursing facilities’ quality measure
12 values for different resident characteristics.

13 “(D) SMALL FACILITIES.—

14 “(i) IN GENERAL.—In selecting and
15 applying quality measures, there shall be
16 taken into account the circumstances of
17 small skilled nursing facilities.

18 “(ii) DEFINITION.—For purposes of
19 clause (i), the term ‘small skilled nursing
20 facility’ means a skilled nursing facility
21 which had, in most recent preceding cost
22 reporting period, fewer than 1,500 patient
23 days with respect to which payments were
24 made under this title.

1 “(E) ANNUAL EVALUATION.—The Sec-
2 retary shall provide for an annual process
3 whereby the use of particular quality measures
4 are evaluated and, as appropriate, adjusted in
5 consultation with the National Quality Forum.

6 “(F) POSTING ON WEBSITE.—The Sec-
7 retary shall provide for the posting on its
8 website, and the publication at least annually,
9 of the quality performance of skilled nursing fa-
10 cilities as measured through values reported
11 under this subsection by such facilities.

12 “(2) ADJUSTMENT IN PAYMENT BASED ON
13 QUALITY PERFORMANCE.—

14 “(A) IN GENERAL.—For each fiscal year
15 beginning with fiscal year 2006, in the case of
16 a skilled nursing facility that reports data
17 under paragraph (1) for the data reporting pe-
18 riod with respect to that fiscal year (as defined
19 in subparagraph (C)), the aggregate amount of
20 payment under this subsection shall be adjusted
21 as follows:

22 “(i) INCREASE OF 2 PERCENT FOR FA-
23 CILITIES IN TOP 10 PERCENT IN QUAL-
24 ITY.—In the case of a facility that, based
25 on such data, has a composite score for

1 quality that is equal to or exceeds such
2 score for the baseline period (as defined in
3 subparagraph (D)) for the top 10 percent
4 of skilled nursing facilities that have re-
5 ported such data for such baseline period,
6 such aggregate payment shall be increased
7 by such amount as reflects an increase in
8 the market basket percentage increase ap-
9 plied for the fiscal year involved under sub-
10 section (e)(4)(E)(ii)(V) by 2 percentage
11 points.

12 “(ii) INCREASE OF 1 PERCENT FOR
13 FACILITIES IN NEXT 10 PERCENT IN QUAL-
14 ITY.—In the case of a facility that, based
15 on such data, has a composite score for
16 quality that exceeds such score for the
17 baseline period for the top 10 percent of
18 skilled nursing facilities that have reported
19 such data for such baseline period, but is
20 equal to or exceeds such score for the base-
21 line period for the top 20 percent of such
22 skilled nursing facilities, such aggregate
23 payment shall be increased by such amount
24 as reflects an increase in the market bas-
25 ket percentage increase applied for the fis-

1 cal year involved under subsection
2 (e)(4)(E)(ii)(V) by 1 percentage point.

3 “(iii) QUALITY THRESHOLD COVERING
4 80 PERCENT OF FACILITIES.—For a base-
5 line period, the Secretary shall establish a
6 quality threshold score that covers 80 per-
7 cent of the skilled nursing facilities that
8 have reported such data for such baseline
9 period.

10 “(iv) DECREASE OF 1 PERCENT FOR
11 FACILITIES BELOW QUALITY THRESH-
12 OLD.—In the case of a fiscal year begin-
13 ning with fiscal year 2007, in the case of
14 a facility that, based on such data, has a
15 composite score on quality measures that
16 is below the quality threshold score estab-
17 lished under clause (iii) for the baseline pe-
18 riod, the aggregate payment for the fiscal
19 year involved shall be decreased by such
20 amount as reflects a decrease in the mar-
21 ket basket percentage increase applied
22 under subsection (e)(4)(E)(ii)(V) by 1 per-
23 centage point.

24 “(v) YEAR BY YEAR DETERMINA-
25 TION.—Any increase or decrease in pay-

1 ments to a skilled nursing facility under
2 the preceding provisions of this subpara-
3 graph for a fiscal year shall not affect or
4 apply to payments to such facility in any
5 subsequent fiscal year.

6 “(B) TREATMENT OF SMALL FACILI-
7 TIES.—In the case of a skilled nursing facility
8 which because of its small size is unable to sub-
9 mit data on one or more quality measures—

10 “(i) the facility shall not be penalized
11 under this paragraph due to its non-report-
12 ing of such data; and

13 “(ii) the composite rank or score shall
14 be based on the data so reported, with ap-
15 propriate adjustments so as to be com-
16 parable to other facilities.

17 “(C) DATA REPORTING PERIOD.—For pur-
18 poses of subparagraph (A), the term ‘data re-
19 porting period’ means, with respect to—

20 “(i) fiscal year 2006, such period of
21 calendar quarters in fiscal year 2005 as
22 the Secretary shall specify, which, to the
23 extent feasible, shall be a period of at least
24 2 calendar quarters; or

1 “(ii) a subsequent fiscal year, the pe-
2 riod of 4 consecutive calendar quarters
3 ending on the June 30 preceding the fiscal
4 year.

5 “(D) BASELINE PERIOD.—For purposes of
6 subparagraph (A), the term ‘baseline period’
7 means, with respect to—

8 “(i) fiscal year 2006, the period of
9 calendar quarters specified under subpara-
10 graph (C)(i); or

11 “(ii) a subsequent fiscal year, the pe-
12 riod of 4-calendar-quarters ending on June
13 30, 2006.”.

14 (2) LIMITING MARKET BASKET INCREASES TO
15 FACILITIES THAT VOLUNTARILY REPORT INFORMA-
16 TION.—Subsection (e)(4)(E)(ii) of such section is
17 amended—

18 (A) in subclause (III), by striking “and” at
19 the end;

20 (B) in subclause (IV), by inserting “before
21 the first fiscal year in which the reporting of
22 quality measures is in effect under subsection
23 (f)(1)” after “each subsequent fiscal year” and
24 by striking the period at the end and inserting
25 “; and”; and

1 (C) by adding at the end the following new
2 subclause:by inserting before the period at the
3 end the following:

4 “(V) for each subsequent year,
5 the rate computed for the previous fis-
6 cal year increased, in the case of a
7 skilled nursing facility that reports
8 data under subsection (f)(1) for the
9 fiscal year, by the skilled nursing fa-
10 cility market basket percentage for
11 the fiscal year involved.”.

12 (b) USING FISCAL YEAR 2005 PAYMENT RATES AS
13 A FLOOR FOR SUBSEQUENT UPDATES.—

14 (1) IN GENERAL.—Subsection (e)(4)(E)(ii)(IV)
15 and subsection (e)(4)(E)(ii)(V), as added by sub-
16 section (a)(2), of such section is amended by insert-
17 ing “(taking into account, with respect to a previous
18 fiscal year that was fiscal year 2005, all add-ons to
19 such rate that were applicable in such fiscal year as
20 well as market basket adjustments made in subse-
21 quent fiscal years)” after “the rate computed for the
22 previous fiscal year”.

23 (2) EFFECTIVE DATE.—The amendment made
24 by paragraph (1) shall apply to the computation of

1 rates for fiscal years beginning with fiscal year
2 2006.

3 **SEC. 3. LONG-TERM CARE FINANCING COMMISSION.**

4 (a) ESTABLISHMENT.—There is hereby established a
5 commission to be known as the “Long-Term Care Financ-
6 ing Commission” (in this section referred to as the “Com-
7 mission”).

8 (b) COMPOSITION.—The Commission shall be com-
9 posed of 10 members appointed by the Secretary of Health
10 and Human Services.

11 (c) DUTIES.—

12 (1) ANALYSES.—The Commission shall conduct
13 analyses of the financing of long-term care, includ-
14 ing the financing of nursing facilities. Such analyses
15 shall include an analysis of each of the following:

16 (A) The adequacy of Medicaid program fi-
17 nancing of the long term care system.

18 (B) Medicare’s cross-subsidization of long-
19 term care for Medicaid patients.

20 (C) Total industry margins in long-term
21 care.

22 (D) Long-term demographic challenges.

23 (E) The impact of current trends, includ-
24 ing staffing shortages and litigation costs, on
25 long-term care spending.

1 (F) Different approaches to refinements in
2 the per diem RUG payment amounts and re-
3 lated payment methodologies under section
4 1888(e) of the Social Security Act (42 U.S.C.
5 1395yy(e)) .

6 (2) REPORT.—The Commission shall submit to
7 Congress an annual report on its analyses. Each
8 such report shall include recommendations for such
9 changes in financing of long-term care as the Com-
10 mission deems appropriate.

11 (d) TERMS, COMPENSATION, CHAIRMAN, MEETINGS,
12 STAFF, AND POWERS.—The provisions of subsections
13 (c)(3), (c)(4), (c)(5), (c)(6), (d), and (e) of section 1805
14 of the Social Security Act (42 U.S.C. 1395b–6) (relating
15 to provisions for the Medicare Payment Advisory Commis-
16 sion) shall apply to the Commission in the same manner
17 as they apply to the Medicare Payment Advisory Commis-
18 sion.

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