

109TH CONGRESS  
1ST SESSION

# H. R. 3373

To extend the 50 percent compliance threshold used to determine whether a hospital or unit of a hospital is an inpatient rehabilitation facility and to establish the National Advisory Council on Medical Rehabilitation.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 21, 2005

Mr. LOBIONDO (for himself, Mrs. LOWEY, Mr. TANNER, Mr. WAMP, Mr. SIMMONS, Mr. REYES, Mr. HOLT, Mr. HOLDEN, Mr. SAXTON, Mr. PASCRELL, Mr. LYNCH, Mr. ACKERMAN, Mr. ROTHMAN, Mr. BRADY of Pennsylvania, Mr. EHLERS, Mr. HINCHEY, Mr. MENENDEZ, Mr. DAVIS of Alabama, Mr. SHUSTER, Mr. McNULTY, Mr. BONNER, Mr. CHANDLER, Mr. HIGGINS, Mr. BERRY, Ms. SCHWARTZ of Pennsylvania, Mr. WALSH, Mr. PLATTS, Mr. ENGEL, Mr. KANJORSKI, Mr. DELAHUNT, Mr. MORAN of Virginia, Mr. MCHUGH, Mr. MCINTYRE, Mr. GRAVES, Mr. PORTER, Mr. GERLACH, Mr. LARSON of Connecticut, Mr. PAUL, Mr. PALLONE, Mr. BOEHLERT, Mr. KILDEE, Mr. CAPUANO, Mr. DENT, Mr. FITZPATRICK of Pennsylvania, and Mr. SMITH of New Jersey) 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

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## A BILL

To extend the 50 percent compliance threshold used to determine whether a hospital or unit of a hospital is an inpatient rehabilitation facility and to establish the National Advisory Council on Medical Rehabilitation.

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 “Preserving Patient Ac-  
5 cess to Inpatient Rehabilitation Hospitals Act of 2005”.

6 **SEC. 2. EFFECT ON ENFORCEMENT OF REGULATIONS.**

7 (a) IN GENERAL.—Notwithstanding section  
8 412.23(b)(2) of title 42, Code of Federal Regulations, dur-  
9 ing the period beginning on July 1, 2005, and ending on  
10 the date that is 2 years after the date of enactment of  
11 this Act, the Secretary of Health and Human Services (re-  
12 ferred to in this Act as the “Secretary”) shall not—

13 (1) require a compliance rate, pursuant to the  
14 criterion (commonly known as the “75 percent  
15 rule”) that is used to determine whether a hospital  
16 or unit of a hospital is an inpatient rehabilitation fa-  
17 cility (as defined in the rule published in the Federal  
18 Register on May 7, 2004, entitled “Medicare Pro-  
19 gram; Final Rule; Changes to the Criteria for Being  
20 Classified as an Inpatient Rehabilitation Facility”  
21 (69 Fed. Reg. 25752)), that is greater than the 50  
22 percent compliance threshold that became effective  
23 on July 1, 2004;

1           (2) change the designation of an inpatient reha-  
2           bilitation facility that is in compliance with the 50  
3           percent threshold; or

4           (3) conduct medical necessity review of inpa-  
5           tient rehabilitation facilities using any guidelines,  
6           such as fiscal intermediary Local Coverage Deter-  
7           minations, other than the national criteria estab-  
8           lished in chapter 1, section 110 of the Medicare  
9           Benefits Policy Manual.

10          (b) RETROACTIVE STATUS AS AN INPATIENT REHA-  
11          BILITATION FACILITY; PAYMENTS; EXPEDITED RE-  
12          VIEW.—The Secretary shall establish procedures for—

13               (1) making any necessary retroactive adjust-  
14               ment to restore the status of a facility as an inpa-  
15               tient rehabilitation facility as a result of subsection  
16               (a);

17               (2) making any necessary payments to inpatient  
18               rehabilitation facilities based on such adjustment for  
19               discharges occurring on or after July 1, 2005 and  
20               before the date of enactment of this Act; and

21               (3) developing and implementing an appeals  
22               process that provides for expedited review of any ad-  
23               justment to the status of a facility as an inpatient  
24               rehabilitation facility made during the period begin-

1       ning on July 1, 2005 and ending on the date that  
2       is 2 years after the date of enactment of this Act.

3   **SEC. 3. NATIONAL ADVISORY COUNCIL ON MEDICAL REHA-**  
4                   **BILITATION.**

5       (a) DEFINITIONS.—In this section:

6           (1) ADVISORY COUNCIL.—The term “Advisory  
7       Council” means the National Advisory Council on  
8       Medical Rehabilitation established under subsection  
9       (b).

10       (2) APPROPRIATE FEDERAL AGENCIES.—The  
11       term “appropriate Federal agencies” means—

12           (A) the Agency for Healthcare Research  
13       and Quality;

14           (B) the Centers for Medicare & Medicaid  
15       Services;

16           (C) the National Institute on Disability  
17       and Rehabilitation Research; and

18           (D) the National Center for Medical Reha-  
19       bilitation Research.

20       (b) ESTABLISHMENT.—Pursuant to section 222 of  
21       the Public Health Service Act (42 U.S.C. 217a), the Sec-  
22       retary shall establish an advisory panel to be known as  
23       the “National Advisory Council on Medical Rehabilita-  
24       tion”.

25       (c) MEMBERSHIP.—

1           (1) APPOINTMENT.—The Advisory Council shall  
2 be composed of 17 members, of whom—

3           (A) 9 members shall be appointed by the  
4 Secretary, in consultation with the medical re-  
5 habilitation community, from a diversity of  
6 backgrounds, including—

7                   (i) physicians;

8                   (ii) medicare beneficiaries;

9                   (iii) representatives of inpatient reha-  
10 bilitation facilities; and

11                   (iv) other practitioners experienced in  
12 rehabilitative care; and

13           (B) 8 members, not more than 4 of whom  
14 are members of the same political party, shall  
15 be appointed jointly by—

16                   (i) the Majority Leader of the Senate;

17                   (ii) the Minority Leader of the Senate;

18                   (iii) the Speaker of the House of Rep-  
19 resentatives;

20                   (iv) the Minority Leader of the House  
21 of Representatives;

22                   (v) the Chairman and the Ranking  
23 Member of the Committee on Finance of  
24 the Senate; and

1 (vi) the Chairman and the Ranking  
2 Member of the Committee on Ways and  
3 Means of the House of Representatives.

4 (2) DATE.—Members of the Advisory Council  
5 shall be appointed not later than 30 days after the  
6 date of enactment of this Act.

7 (3) PERIOD OF APPOINTMENT; VACANCIES.—  
8 Members shall be appointed for the life of the Coun-  
9 cil. A vacancy on the Advisory Council shall be filled  
10 not later than 30 days after the date on which the  
11 Advisory Council is given notice of the vacancy, in  
12 the same manner as the original appointment.

13 (4) MEETINGS.—

14 (A) INITIAL MEETING.—The Advisory  
15 Council shall conduct an initial meeting not  
16 later than 120 days after the date of enactment  
17 of this Act.

18 (B) MEETINGS.—The Advisory Council  
19 shall conduct such meetings as the Council de-  
20 termines to be necessary to carry out its duties  
21 but shall meet not less frequently than 2 times  
22 during each calendar year.

23 (d) DUTIES.—The duties of the Advisory Council  
24 shall include providing advice and recommendations to—

1           (1) Congress and the Secretary concerning the  
2 coverage of rehabilitation services under the medi-  
3 care program, including—

4           (A) policy issues related to rehabilitative  
5 treatment and reimbursement for rehabilitative  
6 care, such as issues relating to any rulemaking  
7 relating to, or impacting, rehabilitation hos-  
8 pitals and units;

9           (B) the appropriate criteria for—

10           (i) determining clinical appropriate-  
11 ness of inpatient rehabilitation facility ad-  
12 missions; and

13           (ii) distinguishing an inpatient reha-  
14 bilitation facility from an acute care hos-  
15 pital and other providers of intensive med-  
16 ical rehabilitation;

17           (C) the efficacy of inpatient rehabilitation  
18 services, as opposed to other post-acute inpa-  
19 tient settings, through a comparison of quality  
20 and cost, controlling for patient characteristics  
21 (such as medical severity and motor and cog-  
22 nitive function) and discharge destination;

23           (D) the effect of any medicare regulations  
24 on access to inpatient rehabilitation care by  
25 medicare beneficiaries and the clinical effective-

1           ness of care available to such beneficiaries in  
2           other health care settings; and

3                   (E) any other topic or issue that the Sec-  
4           retary or Congress requests the Advisory Coun-  
5           cil to provide advice and recommendations on;  
6           and

7           (2) appropriate Federal agencies (as defined in  
8           subsection (a)) on how to best utilize available re-  
9           search funds and authorities focused on medical re-  
10          habilitation research, including post-acute care site  
11          of service and outcomes research.

12          (e) PERIODIC REPORTS.—The Advisory Council shall  
13          provide the Secretary with periodic reports that summa-  
14          rize—

15                   (1) the Council’s activities; and

16                   (2) any recommendations for legislation or ad-  
17          ministrative action the Council considers to be ap-  
18          propriate.

19          (f) TERMINATION.—The Advisory Council shall ter-  
20          minate on September 30, 2010.

21          (g) AUTHORIZATION OF APPROPRIATIONS.—There  
22          are authorized to be appropriated such sums as may be  
23          necessary to carry out the purposes of this section.

1           (h) EFFECTIVE DATE.—This section shall take effect  
2 on the date of enactment of this Act.

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