

109TH CONGRESS
1ST SESSION

S. 1405

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.

IN THE SENATE OF THE UNITED STATES

JULY 14, 2005

Mr. NELSON of Nebraska (for himself, Mr. SANTORUM, and Mr. CORZINE) introduced the following bill; which was read twice and referred to the Committee on Finance

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-

1 ing the period beginning on July 1, 2005, and ending on
2 the date that is 2 years after the date of enactment of
3 this Act, the Secretary of Health and Human Services (re-
4 ferred to in this Act as the “Secretary”) shall not—

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

16 (2) change the designation of an inpatient reha-
17 bilitation facility in compliance with the 50 percent
18 threshold; or

19 (3) conduct medical necessity review of inpa-
20 tient rehabilitation facilities using any guidelines,
21 such as fiscal intermediary Local Coverage Deter-
22 minations, other than the national criteria estab-
23 lished in chapter 1, section 110 of the Medicare
24 Benefits Policy Manual.

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

4 (1) making any necessary retroactive adjust-
 5 ment to restore the status of a facility as an inpa-
 6 tient rehabilitation facility as a result of subsection
 7 (a);

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

12 (3) developing and implementing an appeals
 13 process that provides for expedited review of any ad-
 14 justment to the status of a facility as an inpatient
 15 rehabilitation facility made during the period begin-
 16 ning on July 1, 2005, and ending on the date that
 17 is 2 years after the date of enactment of this Act.

18 **SEC. 3. NATIONAL ADVISORY COUNCIL ON MEDICAL REHA-**

19 **BILITATION.**

20 (a) DEFINITIONS.—In this section:

21 (1) ADVISORY COUNCIL.—The term “Advisory
 22 Council” means the National Advisory Council on
 23 Medical Rehabilitation established under subsection
 24 (b).

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

3 (A) the Agency for Healthcare Research
4 and Quality;

5 (B) the Centers for Medicare & Medicaid
6 Services;

7 (C) the National Institute on Disability
8 and Rehabilitation Research; and

9 (D) the National Center for Medical Reha-
10 bilitation Research.

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

16 (c) MEMBERSHIP.—

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

19 (A) 9 members shall be appointed by the
20 Secretary, in consultation with the medical re-
21 habilitation community, from a diversity of
22 backgrounds, including—

23 (i) physicians;

24 (ii) medicare beneficiaries;

1 (iii) representatives of inpatient reha-
2 bilitation facilities; and

3 (iv) other practitioners experienced in
4 rehabilitative care; and

5 (B) 8 members, not more than 4 of whom
6 are members of the same political party, shall
7 be appointed jointly by—

8 (i) the majority leader of the Senate;

9 (ii) the minority leader of the Senate;

10 (iii) the Speaker of the House of Rep-
11 resentatives;

12 (iv) the minority leader of the House
13 of Representatives;

14 (v) the Chairman and the Ranking
15 Member of the Committee on Finance of
16 the Senate; and

17 (vi) the Chairman and the Ranking
18 Member of the Committee on Ways and
19 Means of the House of Representatives.

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

23 (3) PERIOD OF APPOINTMENT; VACANCIES.—
24 Members shall be appointed for the life of the Coun-
25 cil. A vacancy on the Advisory Council shall be filled

1 not later than 30 days after the date on which the
2 Advisory Council is given notice of the vacancy, in
3 the same manner as the original appointment.

4 (4) MEETINGS.—

5 (A) INITIAL MEETING.—The Advisory
6 Council shall conduct an initial meeting not
7 later than 120 days after the date of enactment
8 of this Act.

9 (B) MEETINGS.—The Advisory Council
10 shall conduct such meetings as the Council de-
11 termines to be necessary to carry out its duties
12 but shall meet not less frequently than 2 times
13 during each calendar year.

14 (d) DUTIES.—The duties of the Advisory Council
15 shall include the following:

16 (1) ADVICE AND RECOMMENDATIONS.—Pro-
17 viding advice and recommendations to—

18 (A) Congress and the Secretary concerning
19 the coverage of rehabilitation services under the
20 medicare program, including—

21 (i) policy issues related to rehabilita-
22 tive treatment and reimbursement for re-
23 habilitative care, such as issues relating to
24 any rulemaking relating to, or impacting,
25 rehabilitation hospitals and units;

1 (ii) the appropriate criteria for—

2 (I) determining clinical appro-
3 priateness of inpatient rehabilitation
4 facility admissions; and

5 (II) distinguishing an inpatient
6 rehabilitation facility from an acute
7 care hospital and other providers of
8 intensive medical rehabilitation;

9 (iii) the efficacy of inpatient rehabili-
10 tation services, as opposed to other post-
11 acute inpatient settings, through a com-
12 parison of quality and cost, controlling for
13 patient characteristics (such as medical se-
14 verity and motor and cognitive function)
15 and discharge destination;

16 (iv) the effect of any medicare regula-
17 tions on access to inpatient rehabilitation
18 care by medicare beneficiaries and the clin-
19 ical effectiveness of care available to such
20 beneficiaries in other health care settings;
21 and

22 (v) any other topic or issue that the
23 Secretary or Congress requests the Advi-
24 sory Council to provide advice and rec-
25 ommendations on; and

1 (B) appropriate Federal agencies (as de-
2 fined in subsection (a)(3)) on how to best uti-
3 lize available research funds and authorities fo-
4 cused on medical rehabilitation research, includ-
5 ing post-acute care site of service and outcomes
6 research.

7 (e) PERIODIC REPORTS.—The Advisory Council shall
8 provide the Secretary with periodic reports that summa-
9 rize—

10 (1) the Council’s activities; and

11 (2) any recommendations for legislation or ad-
12 ministrative action the Council considers to be ap-
13 propriate.

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

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

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

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