

110TH CONGRESS  
1ST SESSION

# H. R. 3057

To amend title XVIII of the Social Security Act to ensure and foster continued patient quality of care by establishing facility and patient criteria for long-term care hospitals and related improvements under the Medicare Program.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 17, 2007

Mr. POMEROY (for himself, Mr. LARSON of Connecticut, and Mr. ENGLISH of Pennsylvania) introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To amend title XVIII of the Social Security Act to ensure and foster continued patient quality of care by establishing facility and patient criteria for long-term care hospitals and related improvements under the Medicare Program.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Medicare Long-Term Care Patient Safety and Improve-  
6 ment Act of 2007”.

1 (b) TABLE OF CONTENTS.—The table of contents of  
 2 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Definition of long-term care hospital.
- Sec. 3. Implementation of facility and patient criteria.
- Sec. 4. Establishment of rehabilitation units within certain long-term care hospitals.
- Sec. 5. Expanded review of medical necessity.
- Sec. 6. Limited, qualified moratorium of long-term care hospitals.
- Sec. 7. No application of 25 percent patient threshold payment adjustment to freestanding and grandfathered LTCHS.
- Sec. 8. Payment for hospitals-within-hospitals.
- Sec. 9. No application of very short-stay outlier policy.
- Sec. 10. No application of one time adjustment to standard amount.
- Sec. 11. Long-term care hospital quality improvement initiative.

3 **SEC. 2. DEFINITION OF LONG-TERM CARE HOSPITAL.**

4 (a) DEFINITION.—Section 1861 of the Social Secu-  
 5 rity Act (42 U.S.C. 1395x) is amended by adding at the  
 6 end the following new subsection:

7 “Long-Term Care Hospital

8 “(ccc) The term ‘long-term care hospital’ means an  
 9 institution which—

10 “(1) is primarily engaged in providing inpatient  
 11 services, by or under the supervision of a physician,  
 12 to Medicare beneficiaries whose medically complex  
 13 conditions require a long hospital stay and programs  
 14 of care provided by a long-term care hospital;

15 “(2) has an average inpatient length of stay (as  
 16 determined by the Secretary) for Medicare bene-  
 17 ficiaries of greater than 25 days, or as otherwise de-  
 18 fined in section 1886(d)(1)(B)(iv);

1           “(3) satisfies the requirements of subsection  
2           (e);

3           “(4) meets the following facility criteria:

4                   “(A) the institution has a patient review  
5                   process, documented in the patient medical  
6                   record, that screens patients prior to admission,  
7                   validates within 48 hours of admission that pa-  
8                   tients meet admission criteria, regularly evalu-  
9                   ates patients throughout their stay, and as-  
10                  sesses the available discharge options when pa-  
11                  tients no longer meet the continued stay cri-  
12                  teria;

13                   “(B) the institution has active physician  
14                   involvement with patients during their treat-  
15                   ment through an organized medical staff, physi-  
16                   cian-directed treatment with physician on-site  
17                   availability on a daily basis to review patient  
18                   progress, and consulting physicians on call and  
19                   capable of being at the patient’s side within a  
20                   moderate period of time, as determined by the  
21                   Secretary;

22                   “(C) the institution has interdisciplinary  
23                   team treatment for patients, requiring inter-  
24                   disciplinary teams of health care professionals,  
25                   including physicians, to prepare and carry out

1 an individualized treatment plan for each pa-  
2 tient; and

3 “(5) meets patient criteria relating to patient  
4 mix and severity appropriate to the medically com-  
5 plex cases that long-term care hospitals are designed  
6 to treat, as measured under section 1886(m).”.

7 (b) NEW PATIENT CRITERIA FOR LONG-TERM CARE  
8 HOSPITAL PROSPECTIVE PAYMENT.—Section 1886 of  
9 such Act (42 U.S.C. 1395ww) is amended by adding at  
10 the end the following new subsection:

11 “(m) PATIENT CRITERIA FOR PROSPECTIVE PAY-  
12 MENT TO LONG-TERM CARE HOSPITALS.—

13 “(1) IN GENERAL.—To be eligible for prospec-  
14 tive payment under this section as a long-term care  
15 hospital, a long-term care hospital must admit not  
16 less than a majority of patients who have a high  
17 level of severity and who are assigned to one or more  
18 of the following major diagnostic categories:

19 “(A) Circulatory diagnoses.

20 “(B) Digestive, endocrine, and metabolic  
21 diagnoses.

22 “(C) Infection disease diagnoses.

23 “(D) Neurological diagnoses.

24 “(E) Renal diagnoses.

25 “(F) Respiratory diagnoses.

1                   “(G) Skin diagnoses.

2                   “(H) Other major diagnostic categories as  
3                   selected by the Secretary.

4                   “(2) MAJOR DIAGNOSTIC CATEGORY DE-  
5                   FINED.—In paragraph (1), the term ‘major diag-  
6                   nostic category’ means the medical categories formed  
7                   by dividing all possible principle diagnosis into mu-  
8                   tually exclusive diagnosis areas which are referred to  
9                   in 67 Federal Register 49,985 (August 1, 2002).”.

10                  (c) ESTABLISHMENT OF REHABILITATION UNITS  
11                  WITHIN CERTAIN LONG-TERM CARE HOSPITALS.—If the  
12                  Secretary of Health and Human Services does not include  
13                  rehabilitation services within a major diagnostic category  
14                  under section 1886(m)(2) of the Social Security Act, as  
15                  added by subsection (b), the Secretary shall approve for  
16                  purposes of title XVIII of such Act distinct part inpatient  
17                  rehabilitation hospital units in long-term care hospitals  
18                  consistent with the following:

19                   (1) A hospital that, on or before October 1,  
20                   2004, was classified by the Secretary as a long-term  
21                   care hospital, as described in section  
22                   1886(d)(1)(B)(iv)(I) of such Act (42 U.S.C.  
23                   1395ww(d)(1)(V)(iv)(I)), and was accredited by the  
24                   Commission on Accreditation of Rehabilitation Fa-  
25                   cilities, may establish a hospital rehabilitation unit

1 that is a distinct part of the long-term care hospital,  
2 if the distinct part meets the requirements (includ-  
3 ing conditions of participation) that would otherwise  
4 apply to a distinct-part rehabilitation unit if the dis-  
5 tinct part were established by a subsection (d) hos-  
6 pital in accordance with the matter following clause  
7 (v) of section 1886(d)(1)(B) of such Act, including  
8 any regulations adopted by the Secretary in accord-  
9 ance with this section, except that the one-year wait-  
10 ing period described in section 412.30(c) of title 42,  
11 Code of Federal Regulations, applicable to the con-  
12 version of hospital beds into a distinct-part rehabili-  
13 tation unit shall not apply to such units.

14 (2) Services provided in inpatient rehabilitation  
15 units established under paragraph (1) shall not be  
16 reimbursed as long-term care hospital services under  
17 section 1886 of such Act and shall be subject to pay-  
18 ment policies established by the Secretary to reim-  
19 burse services provided by inpatient hospital reha-  
20 bilitation units.

21 (d) EFFECTIVE DATE.—The amendments made by  
22 subsections (a) and (b), and subsection (c), shall apply to  
23 discharges occurring on or after January 1, 2008.

1 **SEC. 3. IMPLEMENTATION OF FACILITY AND PATIENT CRI-**  
2 **TERIA.**

3 (a) REPORT.—No later than 1 year after the date  
4 of the enactment of this Act, the Secretary of Health and  
5 Human Services (in this Act referred to as the “Sec-  
6 retary”) shall submit to the appropriate committees of  
7 Congress a report containing recommendations regarding  
8 the promulgation of the national long-term care hospital  
9 facility and patient criteria for application under para-  
10 graphs (4) and (5) of section 1861(ccc) and section  
11 1886(m) of the Social Security Act, as added by section  
12 2. In the report, the Secretary shall consider recommenda-  
13 tions contained in a report to Congress by the Medicare  
14 Payment Advisory Commission in June 2004 for long-  
15 term care hospital-specific facility and patient criteria to  
16 ensure that patients admitted to long-term care hospitals  
17 are medically complex and appropriate to receive long-  
18 term care hospital services.

19 (b) IMPLEMENTATION.—No later than 1 year after  
20 the date of submittal of the report under subsection (a),  
21 the Secretary shall, after rulemaking, implement the na-  
22 tional long-term care hospital facility and patient criteria  
23 referred to in such subsection. Such long-term care hos-  
24 pital facility and patient criteria shall be used to screen  
25 patients in determining the medical necessity and appro-  
26 priateness of a Medicare beneficiary’s admission to, con-

1 tinued stay at, and discharge from, long-term care hos-  
2 pitals under the Medicare program and shall take into ac-  
3 count the medical judgment of the patient’s physician, as  
4 provided for under sections 1814(a)(3) and 1835(a)(2)(B)  
5 of the Social Security Act (42 U.S.C. 1395f(a)(3),  
6 1395n(a)(2)(B)).

7 **SEC. 4. EXPANDED REVIEW OF MEDICAL NECESSITY.**

8 (a) EXPANDED DUTIES OF QIOS.—Section 1154(a)  
9 of the Social Security Act (42 U.S.C. 1320c–3(a)) is  
10 amended by adding at the end the following new para-  
11 graph:

12 “(18)(A) The organization shall review the  
13 medical necessity of admissions to long-term care  
14 hospitals (described in section 1886(d)(1)(B)(iv)(I))  
15 and continued stay at such hospitals, of individuals  
16 entitled to, or enrolled for, benefits under part A of  
17 title XVIII, on a hospital-specific basis.

18 “(B) The medical necessity reviews under sub-  
19 paragraph (A) shall be conducted for each such  
20 long-term care hospital on an annual basis in ac-  
21 cordance with rules (including a sample method-  
22 ology) specified by the Secretary. Such sample meth-  
23 odology shall—

24 “(i) provide for a statistically valid and  
25 representative sample of admissions of such in-



1           dividuals sufficient to provide results at a 95  
2           percent confidence interval; and

3           “(ii) guarantee that no less than 65 per-  
4           cent of overpayments received by long-term care  
5           hospitals for medically unnecessary admissions  
6           and continued stays of individuals in long-term  
7           care hospitals will be identified and recovered  
8           and that related days of care will not be count-  
9           ed toward the length of stay requirement con-  
10          tained in section 1886(d)(i)(B)(iv)(I).

11          “(C) The Secretary shall establish a denial rate  
12          with respect to such reviews that, if exceeded, could  
13          require further review of the medical necessity of ad-  
14          missions and continued stay in the hospital involved.

15          “(D)(i) Subject to clause (iii), the previous pro-  
16          visions of this paragraph shall cease to apply as of  
17          the date specified in clause (ii).

18          “(ii) The date specified in this clause is the  
19          later of January 1, 2013, or the date of implementa-  
20          tion of national long-term care hospital facility and  
21          patient criteria under section 3 of the Medicare  
22          Long-Term Care Patient Safety and Improvement  
23          Act of 2007.

24          “(iii) As of the date specified in clause (ii), the  
25          Secretary shall determine whether to continue to

1       guarantee, through continued medical review and  
2       sampling under this paragraph, recovery of no less  
3       than 65 percent of overpayments received by long-  
4       term care hospitals due to medically unnecessary ad-  
5       missions and continued stays.”.

6       (b) **EFFECTIVE DATE.**—The amendment made by  
7       subsection (a) shall apply to discharges occurring on or  
8       after October 1, 2007.

9       **SEC. 5. LIMITED, QUALIFIED MORATORIUM OF LONG-TERM**  
10       **CARE HOSPITALS.**

11       (a) **IN GENERAL.**—Subject to subsection (b), the Sec-  
12       retary shall impose a temporary moratorium on the certifi-  
13       cation of new long-term care hospitals (and satellite facili-  
14       ties) for purposes of the Medicare program under title  
15       XVIII of the Social Security Act. The moratorium shall  
16       terminate at the end of the 3-year period beginning on  
17       the date of the enactment of this Act.

18       (b) **EXCEPTIONS.**—

19               (1) **IN GENERAL.**—The moratorium under sub-  
20       section (a) shall not apply—

21                       (A) to a long-term care hospital or satellite  
22                       facility that is under development as of the date  
23                       of the enactment of this Act; or

24                       (B) to a long-term care hospital in an area  
25                       in which there is not a long-term care hospital,

1           if the Secretary determines it to be in the best  
2           interest to provide access to long-term care hos-  
3           pital services to Medicare beneficiaries residing  
4           in such area.

5           There shall be no administrative or judicial review  
6           from a decision of the Secretary under this para-  
7           graph. Where there is no long-term care hospital in  
8           a rural area or metropolitan statistical area, the Sec-  
9           retary shall provide a presumption that the estab-  
10          lishment of a new long-term care hospital is in the  
11          best interest of Medicare program beneficiaries.

12           (2) “UNDER DEVELOPMENT” DEFINED.—For  
13          purposes of paragraph (1)(A), a long-term care hos-  
14          pital or satellite facility is considered to be “under  
15          development” as of a date if any of the following  
16          have occurred on or before such date:

17                   (A) All or substantially all funding has  
18                   been committed or received for development of  
19                   the hospital or facility.

20                   (B) Zoning requirements have been met  
21                   for the construction of the hospital or facility.

22                   (C) Necessary approvals from appropriate  
23                   State agencies have been received for the oper-  
24                   ation of the hospital or facility.

1 (D) The hospital documents that it is with-  
2 in a 6-month long-term care hospital dem-  
3 onstration period required by section  
4 412.23(e)(1)–(3) of title 42, Code of Federal  
5 Regulations, to demonstrate that it has a great-  
6 er than 25 day average length of stay.

7 (E) There is other evidence presented that  
8 the Secretary determines would indicate that  
9 the hospital or satellite is under development.

10 **SEC. 6. NO APPLICATION OF 25 PERCENT PATIENT**  
11 **THRESHOLD PAYMENT ADJUSTMENT TO**  
12 **FREESTANDING AND GRANDFATHERED**  
13 **LTCHS.**

14 The Secretary shall not apply section 412.536 of title  
15 42, Code of Federal Regulations, or any similar provision,  
16 to freestanding long-term care hospitals and the Secretary  
17 shall not apply such section or section 412.534 of title 42,  
18 Code of Federal Regulations, or any similar provisions, to  
19 a long-term care hospital identified by section 4417(a) of  
20 the Balanced Budget Act of 1997 (Public Law 105–33).  
21 A long-term care hospital identified by such section  
22 4417(a) shall be deemed to be a freestanding long-term  
23 care hospital for the purpose of this section. Section  
24 412.536 of title 42, Code of Federal Regulations, shall be  
25 void and of no effect.

1 **SEC. 7. PAYMENT FOR HOSPITALS-WITHIN-HOSPITALS.**

2 (a) IN GENERAL.—Payments to an applicable long-  
3 term care hospital or satellite facility which is located in  
4 a rural area or which is co-located with an urban single  
5 or MSA dominant hospital under paragraphs (d)(1),  
6 (e)(1), and (e)(4) of section 412.534 of title 42, Code of  
7 Federal Regulations, shall not be subject to any payment  
8 adjustment under such section if no more than 75 percent  
9 of the hospital’s Medicare discharges (other than dis-  
10 charges described in paragraphs (d)(2) or (e)(3) of such  
11 section) are admitted from a co-located hospital.

12 (b) CO-LOCATED LONG-TERM CARE HOSPITALS AND  
13 SATELLITE FACILITIES.—

14 (1) IN GENERAL.—Payment to an applicable  
15 long-term care hospital or satellite facility which is  
16 co-located with another hospital shall not be subject  
17 to any payment adjustment under section 412.534  
18 of title 42, Code of Federal Regulations, if no more  
19 than 50 percent of the hospital’s Medicare dis-  
20 charges (other than discharges described in section  
21 412.534(e)(3) of such title) are admitted from a col-  
22 located hospital.

23 (2) APPLICABLE LONG-TERM CARE HOSPITAL  
24 OR SATELLITE FACILITY DEFINED.—In this section,  
25 the term “applicable long-term care hospital or sat-  
26 ellite facility” means a hospital or satellite facility

1 that is subject to the transition rules under section  
2 412.534(g) of title 42, Code of Federal Regulations.

3 (c) EFFECTIVE DATE.—Subsections (a) and (b) shall  
4 apply to discharges occurring on or after October 1, 2007.

5 **SEC. 8. NO APPLICATION OF VERY SHORT-STAY OUTLIER**  
6 **POLICY.**

7 The Secretary shall not apply amendments proposed  
8 on May 11, 2007 (72 Federal Register 26870) to be made  
9 to the short-stay outlier payment provision for long-term  
10 care hospitals contained in section 412.529(c)(3)(i) of title  
11 42, Code of Federal Regulations, or any similar provision.

12 **SEC. 9. NO APPLICATION OF ONE TIME ADJUSTMENT TO**  
13 **STANDARD AMOUNT.**

14 The Secretary shall not make the one-time prospec-  
15 tive adjustment to long-term care hospital prospective pay-  
16 ment rates provided for in section 412.523(d)(3) of title  
17 42, Code of Federal Regulations, or any similar provision.

18 **SEC. 10. LONG-TERM CARE HOSPITAL QUALITY IMPROVE-**  
19 **MENT INITIATIVE.**

20 (a) STUDY TO ESTABLISH QUALITY MEASURES.—

21 (1) IN GENERAL.—The Secretary shall conduct  
22 a study (in this section referred to as the “study”)  
23 to determine appropriate quality measures for Medi-  
24 care patients receiving care in long-term care hos-  
25 pitals.

1           (2) REPORT.—By not later than July 1, 2008,  
2           the Secretary shall submit to Congress a report on  
3           the results of the study under paragraph (1).

4           (b) SELECTION OF QUALITY MEASURES.—

5           (1) IN GENERAL.—After completion of the  
6           study under subsection (a), subject to paragraph  
7           (2), the Secretary shall choose 3 quality measures  
8           recommended in the study to be reported by long-  
9           term care hospitals.

10          (2) EXPANSION OF QUALITY MEASURES.—The  
11          Secretary may expand the number of quality meas-  
12          ures required to be reported by long-term care hos-  
13          pitals beyond those chosen under paragraph (1). If  
14          the Secretary adds additional measures, the meas-  
15          ures shall reflect a consensus among the affected  
16          parties. The Secretary may replace any measures in  
17          appropriate cases, such as where all hospitals are ef-  
18          fectively in compliance or where measures have been  
19          shown not to represent the best clinical practice.

20          (c) REQUIREMENT FOR SUBMISSION OF DATA.—

21          (1) IN GENERAL.—Long-term care hospitals  
22          must collect data on the three quality measures cho-  
23          sen under subsection (b) and submit all required  
24          quality data to the Secretary.

1           (2) FAILURE TO SUBMIT DATA.—Any long-term  
2           care hospital which does not submit the required  
3           quality data to the Secretary in any fiscal year shall  
4           have the applicable percentage increase applicable to  
5           such long-term care hospital under section  
6           1886(b)(3)(B)(ii) of the Social Security Act (42  
7           U.S.C. 1395ww(b)(3)(B)(ii)) reduced by not more  
8           than 0.4 percentage points.

9           (d) AVAILABILITY OF DATA TO PUBLIC.—The Sec-  
10          retary shall establish procedures for making the quality  
11          data submitted under this section available to the public.

○