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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.

IN THE SENATE OF THE UNITED STATES

AUGUST 2, 2007

Mr. CONRAD (for himself, Mr. HATCH, Mr. KERRY, Ms. STABENOW, Mrs. LINCOLN, Mr. CORNYN, Mr. LOTT, Mr. COCHRAN, Mr. DORGAN, Mr. WYDEN, and Mr. COLEMAN) introduced the following bill; which was read twice and referred to the Committee on Finance

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.**

4 This Act may be cited as the “Medicare Long-Term
5 Care Hospital Patient Safety and Improvement Act of
6 2007”.

1 **SEC. 2. LONG-TERM CARE HOSPITALS.**

2 (a) LONG-TERM CARE HOSPITAL PAYMENT UP-
3 DATE.—

4 (1) IN GENERAL.—Section 1886 of the Social
5 Security Act (42 U.S.C. 1395ww) is amended by
6 adding at the end the following new subsection:

7 “(m) PROSPECTIVE PAYMENT FOR LONG-TERM
8 CARE HOSPITALS.—

9 “(1) REFERENCE TO ESTABLISHMENT AND IM-
10 PLEMENTATION OF SYSTEM.—For provisions related
11 to the establishment and implementation of a pro-
12 spective payment system for payments under this
13 title for inpatient hospital services furnished by a
14 long-term care hospital described in subsection
15 (d)(1)(B)(iv), see section 123 of the Medicare, Med-
16 icaid, and SCHIP Balanced Budget Refinement Act
17 of 1999 and section 307(b) of Medicare, Medicaid,
18 and SCHIP Benefits Improvement and Protection
19 Act of 2000.

20 “(2) UPDATE FOR RATE YEAR 2008.—In imple-
21 menting the system described in paragraph (1) for
22 discharges occurring during the rate year ending in
23 2008 for a hospital, the base rate for such dis-
24 charges for the hospital shall be the same as the
25 base rate for discharges for the hospital occurring
26 during the previous rate year.”.

1 (2) DELAYED EFFECTIVE DATE.—Subsection
2 (m)(2) of section 1886 of the Social Security Act, as
3 added by paragraph (1), shall not apply to dis-
4 charges occurring on or after July 1, 2007, and be-
5 fore January 1, 2008.

6 (b) PAYMENT FOR LONG-TERM CARE HOSPITAL
7 SERVICES; PATIENT AND FACILITY CRITERIA.—

8 (1) DEFINITION OF LONG-TERM CARE HOS-
9 PITAL.—

10 (A) DEFINITION.—Section 1861 of the So-
11 cial Security Act (42 U.S.C. 1395x) is amended
12 by adding at the end the following new sub-
13 section:

14 “Long-Term Care Hospital
15 “(ccc) The term ‘long-term care hospital’ means an
16 institution which—

17 “(1) is primarily engaged in providing inpatient
18 services, by or under the supervision of a physician,
19 to Medicare beneficiaries whose medically complex
20 conditions require a long hospital stay and programs
21 of care provided by a long-term care hospital;

22 “(2) has an average inpatient length of stay (as
23 determined by the Secretary) for Medicare bene-
24 ficiaries of greater than 25 days, or as otherwise de-
25 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 for appropriateness of admission to a long-term
8 care hospital, validates within 48 hours of ad-
9 mission that patients meet admission criteria
10 for long-term care hospitals, regularly evaluates
11 patients throughout their stay for continuation
12 of care in a long-term care hospital, and as-
13 sesses the available discharge options when pa-
14 tients no longer meet such continued stay cri-
15 teria;

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

1 “(C) the institution has interdisciplinary
2 team treatment for patients, requiring inter-
3 disciplinary teams of health care professionals,
4 including physicians, to prepare and carry out
5 an individualized treatment plan for each pa-
6 tient; and

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

11 (B) NEW PATIENT CRITERIA FOR LONG-
12 TERM CARE HOSPITAL PROSPECTIVE PAY-
13 MENT.—Section 1886 of such Act (42 U.S.C.
14 1395ww), as amended by subsection (a), is fur-
15 ther amended by adding at the end the fol-
16 lowing new subsection:

17 “(n) PATIENT CRITERIA FOR PROSPECTIVE PAY-
18 MENT TO LONG-TERM CARE HOSPITALS.—

19 “(1) IN GENERAL.—To be eligible for prospec-
20 tive payment under this section as a long-term care
21 hospital, a long-term care hospital must admit not
22 less than a majority of patients who have a high
23 level of severity, as defined by the Secretary, and
24 who are assigned to one or more of the following
25 major diagnostic categories:

1 “(A) Circulatory diagnoses.

2 “(B) Digestive, endocrine, and metabolic
3 diagnoses.

4 “(C) Infection disease diagnoses.

5 “(D) Neurological diagnoses.

6 “(E) Renal diagnoses.

7 “(F) Respiratory diagnoses.

8 “(G) Skin diagnoses.

9 “(H) Other major diagnostic categories as
10 selected by the Secretary.

11 “(2) MAJOR DIAGNOSTIC CATEGORY DE-
12 FINED.—In paragraph (1), the term ‘major diag-
13 nostic category’ means the medical categories formed
14 by dividing all possible principle diagnosis into mu-
15 tually exclusive diagnosis areas which are referred to
16 in 67 Federal Register 49985 (August 1, 2002).”.

17 (C) ESTABLISHMENT OF REHABILITATION
18 UNITS WITHIN CERTAIN LONG-TERM CARE HOS-
19 PITALS.—If the Secretary of Health and
20 Human Services does not include rehabilitation
21 services within a major diagnostic category
22 under section 1886(n)(2) of the Social Security
23 Act, as added by subparagraph (B), the Sec-
24 retary shall approve for purposes of title XVIII
25 of such Act distinct part inpatient rehabilitation

1 hospital units in long-term care hospitals con-
2 sistent with the following:

3 (i) A hospital that, on or before Octo-
4 ber 1, 2004, was classified by the Sec-
5 retary as a long-term care hospital, as de-
6 scribed in section 1886(d)(1)(B)(iv)(I) of
7 such Act (42 U.S.C.
8 1395ww(d)(1)(V)(iv)(I)), and was accred-
9 ited by the Commission on Accreditation of
10 Rehabilitation Facilities, may establish a
11 hospital rehabilitation unit that is a dis-
12 tinct part of the long-term care hospital, if
13 the distinct part meets the requirements
14 (including conditions of participation) that
15 would otherwise apply to a distinct-part re-
16 habilitation unit if the distinct part were
17 established by a subsection (d) hospital in
18 accordance with the matter following
19 clause (v) of section 1886(d)(1)(B) of such
20 Act, including any regulations adopted by
21 the Secretary in accordance with this sec-
22 tion, except that the one-year waiting pe-
23 riod described in section 412.30(c) of title
24 42, Code of Federal Regulations, applica-
25 ble to the conversion of hospital beds into

1 a distinct-part rehabilitation unit shall not
2 apply to such units.

3 (ii) Services provided in inpatient re-
4 habilitation units established under clause
5 (i) shall not be reimbursed as long-term
6 care hospital services under section 1886
7 of such Act and shall be subject to pay-
8 ment policies established by the Secretary
9 to reimburse services provided by inpatient
10 hospital rehabilitation units.

11 (D) EFFECTIVE DATE.—The amendments
12 made by subparagraphs (A) and (B), and the
13 provisions of subparagraph (C), shall apply to
14 discharges occurring on or after January 1,
15 2008.

16 (2) IMPLEMENTATION OF FACILITY AND PA-
17 TIENT CRITERIA.—

18 (A) REPORT.—No later than 1 year after
19 the date of the enactment of this Act, the Sec-
20 retary of Health and Human Services (in this
21 section referred to as the “Secretary”) shall
22 submit to the appropriate committees of Con-
23 gress a report containing recommendations re-
24 garding the promulgation of the national long-
25 term care hospital facility and patient criteria

1 for application under paragraphs (4) and (5) of
2 section 1861(ccc) and section 1886(n) of the
3 Social Security Act, as added by subparagraphs
4 (A) and (B), respectively, of paragraph (1). In
5 the report, the Secretary shall consider rec-
6 ommendations contained in a report to Con-
7 gress by the Medicare Payment Advisory Com-
8 mission in June 2004 for long-term care hos-
9 pital-specific facility and patient criteria to en-
10 sure that patients admitted to long-term care
11 hospitals are medically complex and appropriate
12 to receive long-term care hospital services.

13 (B) IMPLEMENTATION.—No later than 1
14 year after the date of submittal of the report
15 under subparagraph (A), the Secretary shall,
16 after rulemaking, implement the national long-
17 term care hospital facility and patient criteria
18 referred to in such subparagraph. Such long-
19 term care hospital facility and patient criteria
20 shall be used to screen patients in determining
21 the medical necessity and appropriateness of a
22 Medicare beneficiary's admission to, continued
23 stay at, and discharge from, long-term care hos-
24 pitals under the Medicare program and shall
25 take into account the medical judgment of the

1 patient's physician, as provided for under sec-
2 tions 1814(a)(3) and 1835(a)(2)(B) of the So-
3 cial Security Act (42 U.S.C. 1395f(a)(3),
4 1395n(a)(2)(B)).

5 (3) EXPANDED REVIEW OF MEDICAL NECES-
6 SITY.—

7 (A) IN GENERAL.—The Secretary of
8 Health and Human Services shall provide,
9 under contracts with one or more appropriate
10 utilization and quality control peer review orga-
11 nizations under part B of title XI of the Social
12 Security Act (42 U.S.C. 1320c et seq.), for re-
13 views of the medical necessity of admissions to
14 long-term care hospitals (described in section
15 1886(d)(1)(B)(iv) of such Act (42 U.S.C.
16 1395ww(d)(1)(B)(iv))) and continued stay at
17 such hospitals, of individuals entitled to, or en-
18 rolled for, benefits under part A of title XVIII
19 of such Act on a hospital-specific basis con-
20 sistent with this paragraph. Such reviews shall
21 be made for discharges occurring on or after
22 October 1, 2007.

23 (B) REVIEW METHODOLOGY.—The medical
24 necessity reviews under paragraph (A) shall be
25 conducted for each such long-term care hospital

1 on an annual basis in accordance with rules (in-
2 cluding a sample methodology) specified by the
3 Secretary. Such sample methodology shall—

4 (i) provide for a statistically valid and
5 representative sample of admissions of
6 such individuals sufficient to provide re-
7 sults at a 95 percent confidence interval;
8 and

9 (ii) guarantee that at least 75 percent
10 of overpayments received by long-term care
11 hospitals for medically unnecessary admis-
12 sions and continued stays of individuals in
13 long-term care hospitals will be identified
14 and recovered and that related days of care
15 will not be counted toward the length of
16 stay requirement contained in section
17 1886(d)(1)(B)(iv) of the Social Security
18 Act (42 U.S.C. 1395ww(d)(1)(B)(iv)).

19 (C) CONTINUATION OF REVIEWS.—Under
20 contracts under this paragraph, the Secretary
21 shall establish a denial rate with respect to such
22 reviews that, if exceeded, could require further
23 review of the medical necessity of admissions
24 and continued stay in the hospital involved.

1 (D) TERMINATION OF REQUIRED RE-
2 VIEWS.—

3 (i) IN GENERAL.—Subject to clause
4 (iii), the previous provisions of this sub-
5 section shall cease to apply as of the date
6 specified in clause (ii).

7 (ii) DATE SPECIFIED.—The date spec-
8 ified in this clause is the later of January
9 1, 2013, or the date of implementation of
10 national long-term care hospital facility
11 and patient criteria under section para-
12 graph (2)(B).

13 (iii) CONTINUATION.—As of the date
14 specified in clause (ii), the Secretary shall
15 determine whether to continue to guar-
16 antee, through continued medical review
17 and sampling under this paragraph, recov-
18 ery of at least 75 percent of overpayments
19 received by long-term care hospitals due to
20 medically unnecessary admissions and con-
21 tinued stays.

22 (E) FUNDING.—The costs to utilization
23 and quality control peer review organizations
24 conducting the medical necessity reviews under
25 subparagraph (A) shall be funded from the ag-

1 gregate overpayments recouped by the Sec-
2 retary of Health and Human Services from
3 long-term care hospitals due to medically un-
4 necessary admissions and continued stays. The
5 Secretary may use an amount not in excess of
6 40 percent of the overpayments recouped under
7 this paragraph to compensate the utilization
8 and quality control peer review organizations
9 for the costs of services performed.

10 (4) LIMITED, QUALIFIED MORATORIUM OF
11 LONG-TERM CARE HOSPITALS.—

12 (A) IN GENERAL.—Subject to subpara-
13 graph (B), the Secretary shall impose a tem-
14 porary moratorium on the certification of new
15 long-term care hospitals (and satellite facilities),
16 and new long-term care hospital and satellite
17 facility beds, for purposes of the Medicare pro-
18 gram under title XVIII of the Social Security
19 Act. The moratorium shall terminate at the end
20 of the 4-year period beginning on the date of
21 the enactment of this Act.

22 (B) EXCEPTIONS.—

23 (i) IN GENERAL.—The moratorium
24 under subparagraph (A) shall not apply as
25 follows:

1 (I) To a long-term care hospital,
2 satellite facility, or additional beds
3 under development as of the date of
4 the enactment of this Act.

5 (II) To a new long-term care hos-
6 pital in an area in which there is not
7 a long-term care hospital, if the Sec-
8 retary determines it to be in the best
9 interest to provide access to long-term
10 care hospital services to Medicare
11 beneficiaries residing in such area.
12 There shall be a presumption in favor
13 of the moratorium, which may be re-
14 butted by evidence the Secretary
15 deems sufficient to show the need for
16 long-term care hospital services in
17 that area.

18 (III) To an existing long-term
19 care hospital that requests to increase
20 its number of long-term care hospital
21 beds, if the Secretary determines
22 there is a need at the long-term care
23 hospital for additional beds to accom-
24 modate—

- 1 (aa) infectious disease issues
2 for isolation of patients;
3 (bb) bedside dialysis serv-
4 ices;
5 (cc) single-sex accommoda-
6 tion issues;
7 (dd) behavioral issues;
8 (ee) any requirements of
9 State or local law; or
10 (ff) other clinical issues the
11 Secretary determines warrant ad-
12 ditional beds, in the best interest
13 of Medicare beneficiaries.

14 (IV) To an existing long-term
15 care hospital that requests an increase
16 in beds because of the closure of a
17 long-term care hospital or significant
18 decrease in the number of long-term
19 care hospital beds, in a State where
20 there is only one other long-term care
21 hospital.

22 There shall be no administrative or judicial
23 review from a decision of the Secretary
24 under this subparagraph.

1 (ii) “UNDER DEVELOPMENT” DE-
2 FINED.—For purposes of clause (i)(I), a
3 long-term care hospital or satellite facility
4 is considered to be “under development” as
5 of a date if any of the following have oc-
6 curred on or before such date:

7 (I) The hospital or a related
8 party has a binding written agreement
9 with an outside, unrelated party for
10 the construction, reconstruction, lease,
11 rental, or financing of the long-term
12 care hospital.

13 (II) Actual construction, renova-
14 tion or demolition for the long-term
15 care hospital has begun.

16 (III) A certificate of need has
17 been approved in a State where one is
18 required or other necessary approvals
19 from appropriate State agencies have
20 been received for the operation of the
21 hospital.

22 (IV) The hospital documents that
23 it is within a 6-month long-term care
24 hospital demonstration period re-
25 quired by section 412.23(e)(1)–(3) of

1 title 42, Code of Federal Regulations,
2 to demonstrate that it has a greater
3 than 25 day average length of stay.

4 (V) There is other evidence pre-
5 sented that the Secretary determines
6 would indicate that the hospital or
7 satellite is under development.

8 (5) NO APPLICATION OF 25 PERCENT PATIENT
9 THRESHOLD PAYMENT ADJUSTMENT TO FREE-
10 STANDING AND GRANDFATHERED LTCHS.—The Sec-
11 retary shall not apply, during the 5-year period be-
12 ginning on the date of the enactment of this Act,
13 section 412.536 of title 42, Code of Federal Regula-
14 tions, or any similar provision, to freestanding long-
15 term care hospitals and the Secretary shall not apply
16 such section or section 412.534 of title 42, Code of
17 Federal Regulations, or any similar provisions, to a
18 long-term care hospital identified by section 4417(a)
19 of the Balanced Budget Act of 1997 (Public Law
20 105–33). A long-term care hospital identified by
21 such section 4417(a) shall be deemed to be a free-
22 standing long-term care hospital for the purpose of
23 this section. Section 412.536 of title 42, Code of
24 Federal Regulations, shall be void and of no effect.

1 (6) PAYMENT FOR HOSPITALS-WITHIN-HOS-
2 PITALS.—

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

15 (B) CO-LOCATED LONG-TERM CARE HOS-
16 PITALS AND SATELLITE FACILITIES.—

17 (i) IN GENERAL.—Payment to an ap-
18 plicable long-term care hospital or satellite
19 facility which is co-located with another
20 hospital shall not be subject to any pay-
21 ment adjustment under section 412.534 of
22 title 42, Code of Federal Regulations, if no
23 more than 50 percent of the hospital's
24 Medicare discharges (other than discharges
25 described in section 412.534(c)(3) of such

1 title) are admitted from a co-located hos-
2 pital.

3 (ii) APPLICABLE LONG-TERM CARE
4 HOSPITAL OR SATELLITE FACILITY DE-
5 FINED.—In this paragraph, the term “ap-
6 plicable long-term care hospital or satellite
7 facility” means a hospital or satellite facil-
8 ity that is subject to the transition rules
9 under section 412.534(g) of title 42, Code
10 of Federal Regulations.

11 (C) EFFECTIVE DATE.—Subparagraphs
12 (A) and (B) shall apply to discharges occurring
13 on or after October 1, 2007, and before October
14 1, 2012.

15 (7) NO APPLICATION OF VERY SHORT-STAY
16 OUTLIER POLICY.—The Secretary shall not apply,
17 during the 5-year period beginning on the date of
18 the enactment of this Act, the amendments finalized
19 on May 11, 2007 (72 Federal Register 26904) made
20 to the short-stay outlier payment provision for long-
21 term care hospitals contained in section
22 412.529(e)(3)(i) of title 42, Code of Federal Regula-
23 tions, or any similar provision.

24 (8) NO APPLICATION OF ONE TIME ADJUST-
25 MENT TO STANDARD AMOUNT.—The Secretary shall

1 not, during the 5-year period beginning on the date
 2 of the enactment of this Act, make the one-time pro-
 3 spective adjustment to long-term care hospital pro-
 4 spective payment rates provided for in section
 5 412.523(d)(3) of title 42, Code of Federal Regula-
 6 tions, or any similar provision.

7 (c) SEPARATE CLASSIFICATION FOR CERTAIN LONG-
 8 STAY CANCER HOSPITALS.—

9 (1) IN GENERAL.—Subsection (d)(1)(B) of sec-
 10 tion 1886 of the Social Security Act (42 U.S.C.
 11 1395ww) is amended—

12 (A) in clause (iv)—

13 (i) in subclause (I), by striking
 14 “(iv)(I)” and inserting “(iv)” and by strik-
 15 ing “or” at the end; and

16 (ii) in subclause (II)—

17 (I) by striking “, or” at the end
 18 and inserting a semicolon; and

19 (II) by redesignating such sub-
 20 clause as clause (vi) and by moving it
 21 to immediately follow clause (v); and

22 (B) in clause (v), by striking the semicolon
 23 at the end and inserting “, or”.

24 (2) CONFORMING PAYMENT REFERENCES.—

25 Subsection (b) of such section is amended—

1 (A) in paragraph (2)(E)(ii), by adding at
2 the end the following new subclause:

3 “(III) Hospitals described in
4 clause (vi) of such subsection.”;

5 (B) in paragraph (3)(F)(iii), by adding at
6 the end the following new subclause:

7 “(VI) Hospitals described in
8 clause (vi) of such subsection.”;

9 (C) in paragraphs (3)(G)(ii), (3)(H)(i),
10 and (3)(H)(ii)(I), by inserting “or (vi)” after
11 “clause (iv)” each place it appears;

12 (D) in paragraph (3)(H)(iv), by adding at
13 the end the following new subclause:

14 “(IV) Hospitals described in
15 clause (vi) of such subsection.”;

16 (E) in paragraph (3)(J), by striking “sub-
17 section (d)(1)(B)(iv)” and inserting “clause (iv)
18 or (vi) of subsection (d)(1)(B)”;

19 (F) in paragraph (7)(B), by adding at the
20 end the following new clause:

21 “(iv) Hospitals described in clause (vi)
22 of such subsection.”.

23 (3) ADDITIONAL CONFORMING AMENDMENTS.—
24 The second sentence of subsection (d)(1)(B) of such
25 section is amended—

1 (A) by inserting “(as in effect as of such
2 date)” after “clause (iv)”; and

3 (B) by inserting “(or, in the case of a hos-
4 pital classified under clause (iv)(II), as so in ef-
5 fect, shall be classified under clause (vi) on and
6 after the effective date of such clause)” after
7 “so classified”.

8 (4) TRANSITION RULE.—In the case of a hos-
9 pital that is classified under clause (iv)(II) of section
10 1886(d)(1)(B) of the Social Security Act imme-
11 diately before the date of the enactment of this Act
12 and which is classified under clause (vi) of such sec-
13 tion after such date of enactment, payments under
14 section 1886 of such Act for cost reporting periods
15 beginning after the date of the enactment of this Act
16 shall be based upon payment rates in effect for the
17 cost reporting period for such hospital beginning
18 during fiscal year 2001, increased for each suc-
19 ceeding cost reporting period (beginning before the
20 date of the enactment of this Act) by the applicable
21 percentage increase under section 1886(b)(3)(B)(ii)
22 of such Act.

23 (5) CLARIFICATION OF TREATMENT OF SAT-
24 ELLITE FACILITIES AND REMOTE LOCATIONS.—A
25 long-stay cancer hospital described in section

1 1886(d)(1)(B)(vi) of the Social Security Act, as des-
2 ignated under paragraph (1), shall include satellites
3 or remote site locations for such hospital established
4 before or after the date of the enactment of this Act
5 if the provider-based requirements under section
6 413.65 of title 42, Code of Federal Regulations, ap-
7 plicable certification requirements under title XVIII
8 of the Social Security Act, and such other applicable
9 State licensure and certificate of need requirements
10 are met with respect to such satellites or remote site
11 locations.

○