

117TH CONGRESS
1ST SESSION

S. 2576

To amend title XVIII of the Social Security Act to establish a program to allow qualified group practices to furnish certain items and services at qualified skilled nursing facilities to individuals entitled to benefits under part A and enrolled under part B of the Medicare program to reduce unnecessary hospitalizations, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 30, 2021

Mr. THUNE (for himself and Mr. CARDIN) 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 establish a program to allow qualified group practices to furnish certain items and services at qualified skilled nursing facilities to individuals entitled to benefits under part A and enrolled under part B of the Medicare program to reduce unnecessary hospitalizations, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Reducing Unnecessary
3 Senior Hospitalizations Act of 2021” or the “RUSH Act
4 of 2021”.

5 **SEC. 2. SNF-BASED PROVISION OF PREVENTIVE ACUTE**
6 **CARE AND HOSPITALIZATION REDUCTION**
7 **PROGRAM.**

8 Title XVIII of the Social Security Act is amended by
9 adding at the end the following new section:

10 **“SEC. 1899C. SNF-BASED PROVISION OF PREVENTIVE**
11 **ACUTE CARE AND HOSPITALIZATION REDUC-**
12 **TION PROGRAM.**

13 “(a) ESTABLISHMENT.—There is established a pro-
14 gram to be known as the ‘SNF-based Provision of Preven-
15 tive Acute Care and Hospitalization Reduction Program’
16 (in this section referred to as the ‘Program’), to be admin-
17 istered by the Secretary, for purposes of reducing unneces-
18 sary hospitalizations and emergency department visits by
19 allowing qualified group practices (as defined in section
20 1877(h)(4)) on or after January 1, 2022, to furnish items
21 and services identified under subsection (b)(3) to individ-
22 uals entitled to benefits under part A and enrolled under
23 part B residing in qualified skilled nursing facilities.

24 “(b) OPERATION OF PROGRAM.—Under the Pro-
25 gram, the Secretary shall provide for the following:

1 “(1) Certification of skilled nursing facilities as
2 qualified skilled nursing facilities under subsection
3 (c)(1).

4 “(2) Certification of group practices as quali-
5 fied group practices under subsection (c)(2).

6 “(3) Identification on an annual basis of min-
7 imum required, clinically appropriate nonsurgical
8 items and services furnished at a hospital emergency
9 department that may be safely furnished by a quali-
10 fied group practice at a qualified skilled nursing fa-
11 cility under the Program and that such qualified
12 group practice shall offer to furnish under the Pro-
13 gram. Such items and services may include provider
14 review of lab and imaging reports for medical deci-
15 sion making, medication management, blood glucose
16 management, behavioral health services, and other
17 services offered to diagnose or treat low acuity con-
18 ditions.

19 “(4) Establishment of qualifications for non-
20 physician employees who may furnish such items
21 and services at a qualified skilled nursing facility.
22 Such qualifications shall include the requirement
23 that such an employee—

24 “(A) be certified in basic life support by a
25 nationally recognized specialty board of certifi-

1 cation or equivalent certification board, in ac-
 2 cordance with requirements under section
 3 483.24(a)(3) of title 42, Code of Federal Regu-
 4 lations (or any successor regulation); and

5 “(B) have—

6 “(i) clinical experience furnishing
 7 medical care—

8 “(I) in a skilled nursing facility;

9 “(II) in a hospital emergency de-
 10 partment setting; or

11 “(III) as an employee of a pro-
 12 vider or supplier of ambulance serv-
 13 ices; or

14 “(ii) a certification in paramedicine.

15 “(5) Payment under this title for items and
 16 services identified under paragraph (3) furnished by
 17 such qualified group practices at such a facility in
 18 amounts determined under subsection (d).

19 “(c) CERTIFICATIONS.—

20 “(1) QUALIFIED SKILLED NURSING FACILI-
 21 TIES.—

22 “(A) IN GENERAL.—For purposes of this
 23 section, the Secretary shall certify a skilled
 24 nursing facility as a qualified skilled nursing fa-
 25 cility if the facility submits an application in a

1 time and manner specified by the Secretary and
2 meets the following requirements:

3 “(i) The facility has on-site diagnostic
4 equipment necessary for a qualified group
5 practice to furnish items and services
6 under the Program and real-time audio
7 and visual capabilities as provided by the
8 agreement between the facility and the
9 qualified group practice.

10 “(ii) The facility has at least one indi-
11 vidual who meets the qualifications de-
12 scribed in subsection (b)(4) or a physician
13 present 24 hours a day and 7 days a week
14 to work with the qualified group practice,
15 in accordance with section 483.35(a) of
16 title 42, Code of Federal Regulations (or
17 any successor regulation). Such individual
18 may be a member of the staff of the quali-
19 fied skilled nursing facility or of the quali-
20 fied group practice.

21 “(iii) The facility ensures that resi-
22 dents of such facility, upon entering such
23 facility, are allowed to specify in an ad-
24 vanced care directive or otherwise docu-
25 mented in the individual’s records whether

1 the resident wishes to receive items and
2 services furnished at the facility under the
3 Program in a case where communication
4 with the resident is not possible.

5 “(iv) The facility ensures that individ-
6 uals to be furnished such items and serv-
7 ices under the Program at such facility
8 have the opportunity, at their request, to
9 instead be transported to a hospital emer-
10 gency department.

11 “(v) The facility is not part of the
12 Special Focus Facility program of the Cen-
13 ters for Medicare & Medicaid Services (al-
14 though the facility may, at the discretion
15 of the Secretary, be a candidate for selec-
16 tion under such program).

17 “(B) REQUIRED PROVISION OF SERVICES
18 AND ACTIVITIES.—Nothing in this paragraph
19 shall affect the application of requirements
20 under section 1819(b)(4), relating to provision
21 of services and activities, to a facility.

22 “(2) QUALIFIED GROUP PRACTICES.—For pur-
23 poses of this section, the Secretary shall certify a
24 group practice as a qualified group practice for a pe-
25 riod of 3 years if the group practice submits an ap-

1 plication in a time and manner specified by the Sec-
2 retary and meets the following requirements:

3 “(A) The group practice offers to furnish
4 all minimum required items and services identi-
5 fied under subsection (b)(3) under the Pro-
6 gram.

7 “(B) The group practice submits a notifi-
8 cation to the Secretary annually specifying
9 which (if any) additional items and services
10 identified under subsection (b)(3) for a year the
11 group practice will offer to furnish for such
12 year under the Program.

13 “(C) The group practice ensures that only
14 individuals who meet the qualifications estab-
15 lished under subsection (b)(4) or a physician
16 who is part of such group practice may furnish
17 such minimum required items and services and
18 such additional items and services.

19 “(D) The group practice, as provided by
20 the agreement between the facility and the
21 group practice or under the supervision of the
22 medical director of the facility, ensures that, in
23 the case where such minimum required items
24 and services or such additional items and serv-
25 ices are furnished by such an individual, such

1 individual furnishes such minimum required
2 items and services or additional items and serv-
3 ices under the supervision, either in-person or
4 through the use of telehealth (not including
5 store-and-forward technologies), of—

6 “(i) a physician—

7 “(I) who is board certified or
8 board eligible in emergency medicine,
9 family medicine, geriatrics, or internal
10 medicine; or

11 “(II) who has been certified by a
12 nationally recognized specialty board
13 of certification or equivalent certifi-
14 cation board in basic life support;

15 “(ii) a nurse practitioner who has
16 been certified by a nationally recognized
17 specialty board of certification or equiva-
18 lent certification board in basic life sup-
19 port; or

20 “(iii) a physician assistant who has
21 been certified by a nationally recognized
22 specialty board of certification or equiva-
23 lent certification board in basic life sup-
24 port.

“(E) With respect to any year in which the qualified group practice would participate in the Program, the Chief Actuary for the Centers for Medicare & Medicaid Services determines that such participation during such year will not result in total estimated expenditures under this title for such year being greater than total estimated expenditures under such title for such year without such participation.

“(d) PAYMENTS AND TREATMENT OF SAVINGS.—

“(1) PAYMENTS.—

“(A) IN GENERAL.—For 2022 and each subsequent year, payments shall continue to be made to qualified group practices and qualified skilled nursing facilities participating in the Program under the original Medicare fee-for-service program under parts A and B in the same manner as they would otherwise be made except that such group practices and skilled nursing facilities are eligible to receive payment for shared savings under paragraph (2) if they meet the requirement under subparagraph (B)(i).

“(B) SAVINGS REQUIREMENT AND BENCHMARK.—

1 “(i) DETERMINING SAVINGS.—In each
2 year of the Program, a qualified group
3 practice (and any qualified skilled nursing
4 facility participating in the Program that
5 has an agreement with the group practice
6 for the furnishing of items and services
7 identified under subsection (b)(3) to resi-
8 dents of the facility) shall be eligible to re-
9 ceive payment for shared savings under
10 paragraph (2) only if the estimated aver-
11 age per capita Medicare expenditures for
12 Medicare fee-for-service beneficiaries for
13 parts A and B services furnished under the
14 Program by the group practice (and any
15 such facility), adjusted for beneficiary
16 characteristics, is at least the percent spec-
17 ified by the Secretary below the applicable
18 benchmark under clause (ii). The Sec-
19 retary shall determine the appropriate per-
20 cent described in the preceding sentence to
21 account for normal variation in expendi-
22 tures under this title, based upon the num-
23 ber of Medicare fee-for-service beneficiaries
24 participating in the Program.

1 “(ii) ESTABLISH AND UPDATE
2 BENCHMARK.—For each qualified group
3 practice (and any qualified skilled nursing
4 facility participating in the Program that
5 has an agreement with the group practice
6 for the furnishing of items and services
7 identified under subsection (b)(3) to resi-
8 dents of the facility) the Secretary shall es-
9 timate a single benchmark for each year
10 that is applicable to both the group prac-
11 tice (and any such facility) using the most
12 recent available 3 years of per-beneficiary
13 expenditures for parts A and B services for
14 Medicare fee-for-service beneficiaries for
15 items and services furnished by such group
16 practice or skilled nursing facility under
17 the Program. Such benchmark shall be ad-
18 justed for beneficiary characteristics and
19 such other factors as the Secretary deter-
20 mines appropriate. Such benchmark shall
21 be reset at the start of each year.

22 “(2) PAYMENTS FOR SHARED SAVINGS.—If a
23 qualified group practice (and any qualified skilled
24 nursing facility participating in the Program that
25 has an agreement with the group practice for the

1 furnishing of items and services identified under
2 subsection (b)(3) to residents of the facility) meets
3 the requirements under paragraph (1), the Secretary
4 shall—

5 “(A) pay to such qualified group practice
6 an amount equal to 37.5 percent of the dif-
7 ference between such estimated average per
8 capita Medicare expenditures in a year, ad-
9 justed for beneficiary characteristics, for items
10 and services furnished under the Program by
11 the group practice (and any such facility) and
12 such benchmark for the qualified group practice
13 (and any such facility); and

14 “(B) in the case of each such facility—

15 “(i) if the qualified skilled nursing fa-
16 cility has at least a three-star rating under
17 the Five Star Quality Rating System (or a
18 successor system), pay to the facility an
19 amount that bears the same ratio to 12.5
20 percent of the estimated amount of such
21 difference as the amount of expenditures
22 under the Program for such items and
23 services furnished with respect to individ-
24 uals at such facility by such qualified
25 group practice during such year bears to

1 the total amount of expenditures under the
2 Program for such items and services fur-
3 nished with respect to all individuals by
4 such qualified group practice during such
5 year; and

6 “(ii) in the case of a qualified skilled
7 nursing facility that is not described in
8 clause (i), retain in the Federal Hospital
9 Insurance Trust Fund under section 1817
10 the amount that the facility would have
11 been paid pursuant to clause (i) if the fa-
12 cility were described in such clause until
13 such time as the facility has at least a
14 three-star rating under the Five Star Qual-
15 ity Rating System (or a successor system),
16 at which point the Secretary shall pay such
17 amount to the facility.

18 “(3) ADVANCED ALTERNATIVE PAYMENT MOD-
19 ELS.—Paragraph (2) shall not apply to items and
20 services furnished to an individual entitled to bene-
21 fits under part A and enrolled under Part B for
22 whom shared savings would otherwise be attributed
23 through an advanced alternative payment model as
24 authorized under section 1115A or section 1899.

25 “(e) EVALUATION.—

1 “(1) IN GENERAL.—With respect to a qualified
2 group practice and a qualified skilled nursing facil-
3 ity, not later than 6 months after such group prac-
4 tice begins furnishing items and services under the
5 Program (or, in the case of a qualified skilled nurs-
6 ing facility, not less than 6 months after a qualified
7 group practice first furnishes such items and serv-
8 ices at such facility), and not less than once every
9 2 years thereafter, the Secretary shall evaluate such
10 qualified group practice and such qualified facility
11 using information received under paragraph (2) on
12 such criteria as determined appropriate by the Sec-
13 retary.

14 “(2) REPORTING OF PERFORMANCE AND QUAL-
15 ITY IMPROVEMENTS.—In a time and manner speci-
16 fied by the Secretary, a qualified group practice and
17 a qualified skilled nursing facility shall submit to the
18 Secretary a report containing the following informa-
19 tion with respect to items and services furnished
20 under the Program during a reporting period (as
21 specified by the Secretary):

22 “(A) The items and services most fre-
23 quently furnished under the Program in such
24 period.

1 “(B) The number of individuals with re-
 2 spect to whom such group practice furnished
 3 such items and services in such period (or, in
 4 the case of a qualified skilled nursing facility,
 5 the number of individuals with respect to whom
 6 such a group practice furnished such items and
 7 services at such facility in such period).

8 “(C) The number of hospitalizations pre-
 9 vented under the Program in such period.

10 “(D) The number of such individuals who
 11 were admitted to a hospital or treated in the
 12 emergency department of a hospital within 24
 13 hours of being furnished such items and serv-
 14 ices.

15 “(E) Other information determined appro-
 16 priate by the Secretary.

17 “(3) LOSS OF QUALIFIED CERTIFICATION.—

18 “(A) IN GENERAL.—Not later than 3
 19 months after a determination described in this
 20 sentence is made, the Secretary may revoke the
 21 certification of a qualified skilled nursing facil-
 22 ity or a qualified group practice made under
 23 subsection (c) if—

24 “(i) the Chief Actuary of the Centers
 25 for Medicare & Medicaid Services deter-

1 mines that the participation of such skilled
2 nursing facility or such group practice in
3 the Program during a year resulted in
4 total expenditures under this title for such
5 period being greater than total expendi-
6 tures under such title would have been
7 during such period without such participa-
8 tion; or

9 “(ii) a facility is selected for the Spe-
10 cial Focus Facility program or, if the facil-
11 ity is a candidate for the Special Focus
12 Facility program, the Secretary determines
13 that the participation of such facility in the
14 Program should be terminated.

15 “(B) EXCLUSION FROM CERTIFICATION.—

16 “(i) IN GENERAL.—In the case that
17 the Secretary revokes the certification of a
18 qualified skilled nursing facility or a quali-
19 fied group practice under subparagraph
20 (A), such skilled nursing facility or such
21 group practice shall be ineligible for certifi-
22 cation as a qualified skilled nursing facility
23 or a qualified group practice (as applica-
24 ble) under subsection (c) for the applicable
25 period (as defined under clause (ii)).

“(ii) APPLICABLE PERIOD DEFINED.—In this subparagraph, the term ‘applicable period’ means—

“(I) if the revocation of a facility or group practice under subparagraph (A) is due to the application of clause (i) of such subparagraph, a 1-year period beginning on the date of such revocation; and

“(II) in the revocation of a facility under subparagraph (A) is due to the application of clause (ii) of such subparagraph, the period beginning on the date of such revocation and ending on the date on which the facility graduates from the Special Focus Facility program (or, in the case of a facility that is a candidate for such program, the date on which the facility is no longer such a candidate, as determined by the Secretary).

“(f) DETERMINATION OF BUDGET NEUTRALITY; TERMINATION OF PROGRAM.—

“(1) DETERMINATION.—Not later than July 1, 2027, the Chief Actuary of the Centers for Medicare

1 & Medicaid Services shall determine whether the
2 Program has resulted in an increase in total expend-
3 itures under this title with respect to the period be-
4 ginning on January 1, 2022, and ending on Decem-
5 ber 31, 2026, compared to what such expenditures
6 would have been during such period had the Pro-
7 gram not been in operation.

8 “(2) TERMINATION.—If the Chief Actuary
9 makes a determination under paragraph (1) that the
10 Program has resulted in an increase in total expend-
11 itures under this title, the Secretary shall terminate
12 the Program as of January 1 of the first year begin-
13 ning after such determination.”.

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