

110TH CONGRESS  
1ST SESSION

# S. 338

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 SENATE OF THE UNITED STATES

JANUARY 18, 2007

Mr. CONRAD (for himself, Mr. HATCH, Mr. WYDEN, Mr. VITTER, Mr. DORGAN, and Mrs. LINCOLN) introduced the following bill; which was read twice and referred to the Committee on Finance

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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.**

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

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1           (1) Long-term care hospitals (in this Act re-  
2           ferred to as “LTCHs”) serve a valuable role in the  
3           post-acute care continuum by providing care to  
4           medically complex patients needing long hospital  
5           stays.

6           (2) The Medicare program should ensure that  
7           patients receive post-acute care in the most appro-  
8           priate setting. The use of additional certification cri-  
9           teria for LTCHs, including facility and patient cri-  
10          teria, will promote the appropriate placement of se-  
11          verely ill patients into LTCHs. Further, patient ad-  
12          mission, continued stay, and discharge screening  
13          tools can guide appropriate patient placement.

14          (3) Measuring and reporting on quality of care  
15          is an important function of any Medicare provider  
16          and a national quality initiative for LTCHs should  
17          be similar to short-term general acute care hospitals  
18          in the Medicare program.

19          (4) To conform the prospective payment system  
20          for LTCHs with certain aspects of the prospective  
21          payment system for short-term general acute care  
22          hospitals and promote payment stability, the Sec-  
23          retary of Health and Human Services (in this Act  
24          referred to as the “Secretary”) should—

1 (A) perform an annual market basket up-  
2 date;

3 (B) conduct the long term care diagnosis  
4 related groups (in this Act referred to as  
5 “LTCDRGs”) reweighting and wage level ad-  
6 justments in a budget neutral manner each  
7 year;

8 (C) not perform a proposed one-time budg-  
9 et neutrality adjustment; and

10 (D) not extend the 25-percent limitation  
11 on reimbursement of co-located hospital patient  
12 admissions to freestanding LTCHs.

13 (5) LTCHs co-located with another hospital in  
14 underserved areas, including rural areas and areas  
15 with an urban single or MSA dominant hospital,  
16 should be afforded greater relief from the 50 percent  
17 limitation on reimbursement of co-located hospital  
18 patient admissions.

19 **SEC. 3. NEW DEFINITION OF A LONG-TERM CARE HOSPITAL**  
20 **WITH FACILITY AND PATIENT CRITERIA.**

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

1 “Long-Term Care Hospital

2 “(ccc) The term ‘long-term care hospital’ means an  
3 institution which—”

4 “(1) is primarily engaged in providing, by or  
5 under the supervision of physicians, to medically  
6 complex inpatients needing long hospital stays—

7 “(A) diagnostic services and therapeutic  
8 services for medical diagnosis, treatment, and  
9 care of injured, disabled, or sick persons; or

10 “(B) rehabilitation services for the reha-  
11 bilitation of injured, disabled, or sick persons;

12 “(2) has an average inpatient length of stay (as  
13 determined by the Secretary) for beneficiaries under  
14 this title of greater than 25 days, or as otherwise de-  
15 fined in section 1886(d)(1)(B)(iv);

16 “(3) satisfies the requirements of paragraphs  
17 (2) through (9) of subsection (e);

18 “(4) meets the following additional facility cri-  
19 teria:

20 “(A) the institution has a patient review  
21 process, documented in the patient medical  
22 record, that screens patients prior to admission,  
23 validates within 48 hours of admission that pa-  
24 tients meet admission criteria, regularly evalu-  
25 ates patients throughout their stay, and as-

1            assesses the available discharge options when pa-  
2            tients no longer meet the continued stay cri-  
3            teria;

4                       “(B) the institution applies a standard pa-  
5                       tient screening tool, as determined by the Sec-  
6                       retary, that is a valid clinical tool appropriate  
7                       for this level of care, uniformly used by all long-  
8                       term care hospitals, to measure the severity of  
9                       illness and intensity of service requirements for  
10                     patients for the purposes of making admission,  
11                     continuing stay, and discharge medical neces-  
12                     sity determinations taking into account the  
13                     medical judgment of the patient’s physician, as  
14                     provided for under sections 1814(a)(3) and  
15                     1835(a)(2)(B);

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

23                     “(D) the institution has interdisciplinary  
24                     team treatment for patients, requiring inter-  
25                     disciplinary teams of health care professionals,

1 including physicians, to prepare and carry out  
 2 an individualized treatment plan for each pa-  
 3 tient; and

4 “(E) the institution maintains adequate  
 5 staffing levels of licensed health care profes-  
 6 sionals, as determined by the Secretary, to en-  
 7 sure that long-term care hospitals provide the  
 8 intensive level of care that is sufficient to meet  
 9 the needs of medically complex patients needing  
 10 long hospital stays; and

11 “(5) meets patient criteria relating to patient  
 12 mix and severity appropriate to the medically com-  
 13 plex cases that long-term care hospitals are uniquely  
 14 designed to treat, as measured under section  
 15 1886(m).”.

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

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

22 “(1) IN GENERAL.—To be eligible for prospec-  
 23 tive payment as a long-term care hospital, a major-  
 24 ity of the total number of patients entitled to bene-  
 25 fits under part A who are discharged from a long-

1 term care hospital must be medically complex pa-  
 2 tients admitted with a high severity of illness, as  
 3 that term is defined by the Secretary for payment  
 4 purposes, with 1 or more enumerated medical condi-  
 5 tions specified in paragraph (2).

6 “(2) MEDICALLY COMPLEX MEDICAL CONDI-  
 7 TIONS.—The Secretary shall determine a list of  
 8 medical conditions associated with a high severity of  
 9 illness of patients who are appropriate for treatment  
 10 in long-term care hospitals, as indicated by the pres-  
 11 ence of clinical comorbidities in accordance with a  
 12 methodology specified by the Secretary. Such list  
 13 shall include the following medical conditions:

14 “(A) Circulatory conditions.

15 “(B) Digestive, endocrine, and metabolic  
 16 conditions.

17 “(C) Infectious disease.

18 “(D) Neurological conditions.

19 “(E) Renal conditions.

20 “(F) Respiratory conditions.

21 “(G) Skin conditions.

22 “(H) Other medically complex conditions  
 23 as defined by the Secretary.”.

24 (c) NEGOTIATED RULEMAKING TO DEVELOP LTCH  
 25 FACILITY AND PATIENT CRITERIA.—The Secretary shall

1 promulgate regulations to carry out the amendments made  
2 by this section on an expedited basis and using a nego-  
3 tiated rulemaking process under subchapter III of chapter  
4 5 of title 5, United States Code.

5 (d) **EFFECTIVE DATE.**—The amendments made by  
6 this section shall apply to discharges occurring on or after  
7 October 1, 2007.

8 **SEC. 4. LTCH QUALITY IMPROVEMENT INITIATIVE.**

9 (a) **STUDY TO ESTABLISH QUALITY MEASURES.**—  
10 The Secretary shall conduct a study (in this section re-  
11 ferred to as the “study”) to determine appropriate quality  
12 measures for Medicare beneficiaries receiving care in  
13 LTCHs.

14 (b) **REPORT.**—Not later than October 1, 2007, the  
15 Secretary shall submit to Congress a report on the results  
16 of the study.

17 (c) **SELECTION OF QUALITY MEASURES.**—Subject to  
18 subsection (e), the Secretary shall choose 3 quality meas-  
19 ures from the study to be reported by LTCHs.

20 (d) **REQUIREMENT FOR SUBMISSION OF DATA.**—

21 (1) **IN GENERAL.**—LTCHs shall—

22 (A) collect data on the 3 quality measures  
23 chosen under subsection (c); and

24 (B) submit all required quality data to the  
25 Secretary.



1 2000 (114 Stat. 2763A–496), as enacted into law by  
2 section 1(a)(6) of Public Law 106–554, is amended  
3 by inserting before the period at the end the fol-  
4 lowing: “, and shall provide (consistent with updat-  
5 ing and reweighting provided for subsection (d) hos-  
6 pitals under paragraphs (2)(B)(ii), (3)(D)(iii), and  
7 (3)(E) of section 1886 of the Social Security Act)  
8 for an annual update under such system in payment  
9 rates, in the wage indices (in a budget neutral man-  
10 ner), and in the classification and reweighting (in a  
11 budget neutral manner) of the diagnosis-related  
12 groups applied under such system”.

13 (2) APPLICATION.—Pursuant to the amend-  
14 ment made by paragraph (1), the Secretary shall  
15 provide annual updates to the LTCH base rate, as  
16 is specified for the inpatient hospital prospective  
17 payment system under section 1886(d)(2)(B)(ii) of  
18 the Social Security Act (42 U.S.C.  
19 1395ww(d)(2)(B)(ii)). The Secretary shall annually  
20 update and reweight the LTCDRGs under section  
21 307(b) of the Medicare, Medicaid, and SCHIP Bene-  
22 fits Improvement and Protection Act of 2000 or an  
23 alternative patient classification system in a budget  
24 neutral manner, consistent with such updating and  
25 reweighting applied under section 1886(d)(3)(D)(iii)

1 of the Social Security Act (42 U.S.C.  
2 1395ww(d)(3)(D)(iii)). The Secretary shall annually  
3 update wage levels for LTCHs in a budget neutral  
4 manner, consistent with such annual updating ap-  
5 plied under section 1886(d)(3)(E) of the Social Se-  
6 curity Act (42 U.S.C. 1395ww(d)(3)(E)).

7 (b) ELIMINATION OF ONE-TIME BUDGET NEU-  
8 TRALITY ADJUSTMENT.—The Secretary shall not make a  
9 one-time prospective adjustment to the LTCH prospective  
10 payment system rates under section 412.523(d)(3) of title  
11 42, Code of Federal Regulations, or otherwise conduct any  
12 budget neutrality adjustment to address such rates, dur-  
13 ing the transition period specified in section 412.533 of  
14 such title from cost-based payment to the prospective pay-  
15 ment system for LTCHs.

16 (c) NO APPLICATION OF 25 PERCENT PATIENT  
17 THRESHOLD PAYMENT ADJUSTMENT TO FREESTANDING  
18 LTCHS.—The Secretary shall not extend the 25 percent  
19 (or applicable percentage) patient threshold payment ad-  
20 justment under section 412.534 of title 42, Code of Fed-  
21 eral Regulations, or any similar provision, to freestanding  
22 LTCHs.

1 **SEC. 6. RELIEF FOR CERTAIN LONG-TERM CARE HOS-**  
2 **PITALS AND SATELLITE FACILITIES THAT**  
3 **ARE CO-LOCATED WITH OTHER HOSPITALS.**

4 (a) **URBAN SINGLE AND MSA DOMINANT HOS-**  
5 **PITALS.**—The Secretary shall permit up to 75 percent of  
6 the discharged Medicare inpatient population of an appli-  
7 cable hospital to be admitted from a co-located urban sin-  
8 gle or co-located MSA dominant hospital (as defined in  
9 section 412.534(e)(4) of title 42, Code of Federal Regula-  
10 tions) without adjustment to the hospital’s LTCH pro-  
11 spective payment system payment in the manner described  
12 in section 412.534(e) of such title.

13 (b) **RURAL HOSPITALS.**—The Secretary shall permit  
14 up to 75 percent of the discharged Medicare inpatient  
15 population of an applicable hospital which is located in a  
16 rural area (as defined in section 412.64(b)(1)(ii)(C) of  
17 title 42, Code of Federal Regulations) to be admitted from  
18 a co-located hospital without adjustment to the hospital’s  
19 LTCH prospective payment system payment in the man-  
20 ner described in section 412.534(d) of such title.

21 (c) **APPLICABLE LONG-TERM CARE HOSPITAL DE-**  
22 **FINED.**—In this section, the term “applicable long-term  
23 care hospital” means—

24 (1) a long-term care hospital that meets the cri-  
25 teria in section 412.22(e) of title 42, Code of Fed-  
26 eral Regulations; and

1           (2) a satellite facility of a long-term care hos-  
2           pital that meet the criteria in section 412.22(h) of  
3           such title.

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