

110TH CONGRESS  
1ST SESSION

# H. R. 562

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

JANUARY 18, 2007

Mr. ENGLISH of Pennsylvania (for himself and Mr. POMEROY) 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.**

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 screening tools and continued stay and dis-  
13          charge assessment tools can guide appropriate pa-  
14          tient placement.

15          (3) Certain long-term care diagnosis related  
16          groups (in this Act referred to as “LTC-DRGs”)   
17          are associated with higher severity of illness levels,  
18          as measured by the APR-DRG system, and patients  
19          grouped into those LTC-DRGs are predicted to be  
20          appropriate for LTCH services.

21          (4) Measuring and reporting on quality of care  
22          is an important function of any Medicare provider  
23          and a national quality initiative for LTCHs should  
24          be similar to short-term general acute care hospitals  
25          in the Medicare program.

1           (5) To conform the prospective payment system  
2 for LTCHs with certain aspects of the prospective  
3 payment system for short-term general acute care  
4 hospitals and promote payment stability, the Sec-  
5 retary of Health and Human Services (in this Act  
6 referred to as the “Secretary”) should—

7           (A) perform an annual market basket up-  
8 date;

9           (B) conduct the LTC–DRG reweighting  
10 and wage level adjustments in a budget neutral  
11 manner each year;

12           (C) not perform a proposed one-time budg-  
13 et neutrality adjustment, and

14           (D) not extend the 25 percent limitation  
15 on reimbursement of co-located hospital patient  
16 admissions to freestanding LTCHs.

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

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

22                   “Long-Term Care Hospital

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

1           “(1) is primarily engaged in providing inpatient  
2           care, by or under the supervision of a physician, to  
3           medically complex patients needing long hospital  
4           stays;

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

9           “(3) satisfies the requirements of subsection  
10          (e), except paragraphs (1) and (9) of such sub-  
11          section;

12          “(4) meets the following facility criteria:

13                 “(A) the institution has a patient review  
14                 process, documented in the patient medical  
15                 record, that screens patients prior to admission,  
16                 validates within 48 hours of admission that pa-  
17                 tients meet admission criteria, regularly evalu-  
18                 ates patients throughout their stay, and as-  
19                 sesses the available discharge options when pa-  
20                 tients no longer meet the continued stay cri-  
21                 teria;

22                 “(B) the institution applies a standard pa-  
23                 tient assessment tool, as determined by the Sec-  
24                 retary, that is a valid clinical tool appropriate  
25                 for this level of care, uniformly used by all long-

1 term care hospitals, to measure the severity of  
2 illness and intensity of service requirements for  
3 patients for the purposes of making admission,  
4 continuing stay and discharge medical necessity  
5 determinations taking into account the medical  
6 judgment of the patient’s physician, as provided  
7 for under sections 1814(a)(3) and  
8 1835(a)(2)(B);

9 “(C) the institution has active physician  
10 involvement with patients during their treat-  
11 ment through an organized medical staff, on-  
12 site physician presence and physician review of  
13 patient progress on a daily basis, and con-  
14 sulting physicians on call and capable of being  
15 at the patient’s side within a moderate period  
16 of time, as determined by the Secretary;

17 “(D) the institution has interdisciplinary  
18 team treatment for patients, requiring inter-  
19 disciplinary teams of health care professionals,  
20 including physicians, to prepare and carry out  
21 an individualized treatment plan for each pa-  
22 tient; and

23 “(E) the institution maintains a minimum  
24 staffing level of licensed health care profes-  
25 sionals, as determined by the Secretary, to en-

1           sure that long-term care hospitals provide an  
2           intensive level of care that is sufficient to meet  
3           the needs of medically complex patients needing  
4           long hospital stays; and

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

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

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

16                 “(1) IN GENERAL.—To be eligible for prospec-  
17                 tive payment as a long-term care hospital, a long-  
18                 term care hospital must discharge the percentage es-  
19                 tablished in paragraph (4) of each hospital’s total  
20                 patients who are entitled to benefits under part A  
21                 and who were admitted with one or more of the  
22                 medical conditions specified in paragraph (2).

23                 “(2) SELECTION OF LTC–DRGS.—The Secretary  
24                 shall determine the long-term care diagnosis related  
25                 groups (LTC–DRGs) under section 307(b) of the

1 Medicare, Medicaid, and SCHIP Benefits Improve-  
2 ment and Protection Act of 2000, that are associ-  
3 ated with a high severity of illness for the following  
4 specified medical conditions:

5 “(A) Circulatory conditions.

6 “(B) Digestive, endocrine, and metabolic  
7 conditions.

8 “(C) Infectious disease.

9 “(D) Neurological conditions.

10 “(E) Renal conditions.

11 “(F) Respiratory conditions.

12 “(G) Skin conditions.

13 “(H) Other medically complex conditions  
14 as defined by the Secretary.

15 “(3) CHANGE TO DIFFERENT PATIENT CLASSI-  
16 FICATION SYSTEM.—If the Secretary changes the  
17 patient classification system for the long-term care  
18 hospital prospective payment system (LTCH PPS)  
19 to a classification system other than the long-term  
20 care diagnosis related group (LTC–DRG) system,  
21 the Secretary shall determine the new patient classi-  
22 fication categories that are associated with a high  
23 severity of illness for the medical conditions specified  
24 in paragraph (2) in a manner that maintains the  
25 same proportion of Medicare discharges as the long-

1 term care diagnosis related groups (LTC–DRGs) in  
2 effect at the time.

3 “(4) PERCENTAGE OF MEDICARE PATIENT DIS-  
4 CHARGES.—

5 “(A) IN GENERAL.—Subject to subpara-  
6 graph (B), for each long-term care hospital, the  
7 proportion of discharges from the long-term  
8 care diagnosis related groups (LTC–DRGs) de-  
9 termined under paragraph (2), or other patient  
10 classification categories designated pursuant to  
11 paragraph (3) if applicable, in a cost reporting  
12 year must be a percentage, as determined by  
13 the Secretary, that is not less than 50 percent  
14 and not greater than 75 percent.

15 “(B) TRANSITION PERIOD.—The Secretary  
16 shall provide for a three-year transition period  
17 beginning on October 1, 2007, for hospitals  
18 that were certified as long-term care hospitals  
19 before such date. The applicable proportion of  
20 cases in the first year of the transition period  
21 shall be not less than 50 percent.

22 “(5) NONCOMPLIANCE.—If a long-term care  
23 hospital in a cost reporting year does not discharge  
24 more than the applicable proportion of cases speci-  
25 fied in paragraph (4), then the hospital must dem-

1       onstrate in a period of five out of six consecutive  
2       months at the end of the hospital’s next cost report-  
3       ing year that it meets the applicable proportion of  
4       cases in paragraph (4). If the hospital cannot make  
5       such a demonstration, then the hospital shall be paid  
6       for all cases after the hospital’s next cost reporting  
7       year as a subsection (d) hospital under subsection  
8       (d).”.

9       (c) **NEGOTIATED RULEMAKING TO DEVELOP LTCH**  
10 **FACILITY AND PATIENT CRITERIA.**—The Secretary shall  
11 promulgate regulations to carry out the amendments made  
12 by this section on an expedited basis and using a nego-  
13 tiated rulemaking process under subchapter III of chapter  
14 5 of title 5, United States Code.

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

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

19       (a) **STUDY TO ESTABLISH QUALITY MEASURES.**—  
20 The Secretary shall conduct a study (in this section re-  
21 ferred to as the “study”) to determine appropriate quality  
22 measures for Medicare patients receiving care in LTCHs.

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

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

4 (d) REQUIREMENT FOR SUBMISSION OF DATA.—

5 (1) IN GENERAL.—LTCHs must collect data on  
6 the three quality measures chosen under subsection  
7 (c) and submit all required quality data to the Sec-  
8 retary.

9 (2) FAILURE TO SUBMIT DATA.—Any LTCH  
10 which does not submit the required quality data  
11 under paragraph (1) to the Secretary in any fiscal  
12 year shall have the applicable LTCH market basket  
13 under section 1886 reduced by not more than 0.4  
14 percent for such year.

15 (e) EXPANSION OF QUALITY MEASURES.—The Sec-  
16 retary may expand the number of quality indicators re-  
17 quired to be reported by LTCHs under the study. If the  
18 Secretary adds other measures, the measures shall reflect  
19 consensus among the affected parties. The Secretary may  
20 replace any measures in appropriate cases, such as where  
21 all hospitals are effectively in compliance or where meas-  
22 ures have been shown not to represent the best clinical  
23 practice.

1 (f) AVAILABILITY OF DATA TO PUBLIC.—The Sec-  
2 retary shall establish procedures for making the quality  
3 data submitted under this section available to the public.

4 **SEC. 5. CONFORMING LTCH PPS UPDATES TO THE INPA-**  
5 **TIENT PPS.**

6 (a) REQUIRING ANNUAL UPDATES OF BASE RATES  
7 AND WAGE INDICES AND ANNUAL UPDATES AND  
8 REWEIGHTING OF LTC–DRGs.—The second sentence of  
9 section 307(b) of the Medicare, Medicaid, and SCHIP  
10 Benefits Improvement and Protection Act of 2000 is  
11 amended by inserting before the period at the end the fol-  
12 lowing: “, and shall provide (consistent with updating and  
13 reweighting provided for subsection (d) hospitals under  
14 paragraphs (2)(B)(ii), (3)(D)(iii), and (3)(E) of section  
15 1886(d) of the Social Security Act) for an annual update  
16 under such system in payment rates, in the wage indices  
17 (in a budget neutral manner), in the classification and  
18 reweighting (in a budget neutral manner) of the diagnosis-  
19 related groups applied under such system”. Pursuant to  
20 the amendment made by the preceding sentence, the Sec-  
21 retary shall provide annual updates to the LTCH base  
22 rate, as is specified for the IPPS at section  
23 1886(d)(2)(B)(ii) of the Social Security Act (42 U.S.C.  
24 1395ww(d)(2)(B)(ii)). The Secretary shall annually up-  
25 date and reweight the LTC–DRGs under section 307(b)

1 of the Medicare, Medicaid, and SCHIP Benefits Improve-  
2 ment and Protection Act of 2000 or an alternative patient  
3 classification system in a budget neutral manner, con-  
4 sistent with such updating and reweighting applied under  
5 section 1886(d)(3)(D)(iii) of the Social Security Act (42  
6 U.S.C. 1395ww(d)(3)(D)(iii)). The Secretary shall annu-  
7 ally update wage levels for LTCHs in a budget neutral  
8 manner, consistent with such annual updating applied  
9 under section 1886(d)(3)(E) of the Social Security Act  
10 (42 U.S.C. 1395ww(d)(3)(E)).

11 (b) ELIMINATION OF ONE-TIME BUDGET NEU-  
12 TRALITY ADJUSTMENT.—The Secretary shall not make a  
13 one-time prospective adjustment to the LTCH PPS rates  
14 under section 412.523(d)(3) of title 42, Code of Federal  
15 Regulations, or otherwise conduct any budget neutrality  
16 adjustment to address such rates during the transition pe-  
17 riod specified in section 412.533 of such title from cost-  
18 based payment to the prospective payment system for  
19 LTCHs.

20 (c) NO APPLICATION OF 25 PERCENT PATIENT  
21 THRESHOLD PAYMENT ADJUSTMENT TO FREESTANDING  
22 LTCHS.—The Secretary shall not extend the 25 percent  
23 (or applicable percentage) patient threshold payment ad-  
24 justment under section 412.534 of title 42, Code of Fed-

- 1 eral Regulations, or any similar provision, to freestanding
- 2 LTCHs.

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