

105TH CONGRESS
2D SESSION

H. R. 4222

To amend the Public Health Service Act, Employee Retirement Income Security Act of 1974, and titles XVIII and XIX of the Social Security Act to require that group and individual health insurance coverage and group health plans and managed care plans under the Medicare and Medicaid Programs provide coverage for hospital lengths of stay as determined by the attending health care provider in consultation with the patient.

IN THE HOUSE OF REPRESENTATIVES

JULY 15, 1998

Mr. COBURN (for himself, Mr. STRICKLAND, Mr. NORWOOD, Mr. GANSKE, Mr. BROWN of Ohio, and Mr. ACKERMAN) introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committees on Education and the Workforce, and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Public Health Service Act, Employee Retirement Income Security Act of 1974, and titles XVIII and XIX of the Social Security Act to require that group and individual health insurance coverage and group health plans and managed care plans under the Medicare and Medicaid Programs provide coverage for hospital lengths of stay as determined by the attending health care provider in consultation with the patient.

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 “Hospital Length of
5 Stay Act of 1998”.

6 **SEC. 2. COVERAGE OF HOSPITAL LENGTH OF STAY.**

7 (a) GROUP HEALTH PLANS.—

8 (1) PUBLIC HEALTH SERVICE ACT AMEND-
9 MENTS.—

10 (A) IN GENERAL.—Subpart 2 of part A of
11 title XXVII of the Public Health Service Act
12 (as added by section 604(a) of the Newborns’
13 and Mothers’ Health Protection Act of 1996
14 and amended by section 703(a) of the Mental
15 Health Parity Act of 1996) is amended by add-
16 ing at the end the following new section:

17 **“SEC. 2706. STANDARDS RELATING TO COVERAGE OF HOS-**
18 **PITAL LENGTHS OF STAY.**

19 “(a) REQUIREMENT.—A group health plan and a
20 health insurance issuer offering group health insurance
21 coverage in connection with a group health plan (including
22 a self-insured issuer) that provides coverage for inpatient
23 hospital services shall provide coverage for the length of
24 an inpatient hospital stay as determined by the attending
25 physician (or other attending health care provider to the

1 extent permitted under State law) in consultation with the
2 patient to be medically appropriate.

3 “(b) PROHIBITIONS.—A group health plan and a
4 health insurance issuer offering group health insurance
5 coverage in connection with a group health plan (including
6 a self-insured issuer) may not—

7 “(1) deny to an individual eligibility, or contin-
8 ued eligibility, to enroll or to renew coverage under
9 the terms of the plan, solely for the purpose of
10 avoiding the requirements of this section;

11 “(2) provide monetary payments or rebates to
12 an individual to encourage the individual to accept
13 less than the minimum protections available under
14 this section;

15 “(3) penalize or otherwise reduce or limit the
16 reimbursement of an attending provider because
17 such provider provided care to an individual partici-
18 pant or beneficiary in accordance with this section;

19 “(4) provide incentives (monetary or otherwise)
20 to an attending provider to induce such provider to
21 provide care to an individual participant or bene-
22 ficiary in a manner inconsistent with this section; or

23 “(5) subject to subsection (c)(4), restrict bene-
24 fits for any portion of a period within a hospital
25 length of stay required under subsection (a) in a

1 manner which is less favorable than the benefits pro-
2 vided for any preceding portion of such stay.

3 “(c) RULES OF CONSTRUCTION.—

4 “(1) NO REQUIREMENT TO STAY.—Nothing in
5 this section shall be construed to require an individ-
6 ual who is a participant or beneficiary to stay in the
7 hospital for a fixed period of time for any procedure.

8 “(2) NO EFFECT ON REQUIREMENTS FOR MINI-
9 MUM HOSPITAL STAY FOLLOWING BIRTH.—Nothing
10 in this section shall be construed as modifying the
11 requirements of section 2704.

12 “(3) NONAPPLICABILITY.—This section shall
13 not apply with respect to any group health plan, or
14 any group health insurance coverage offered by a
15 health insurance issuer (including a self-insured
16 issuer), which does not provide benefits for hospital
17 lengths of stay.

18 “(4) COST-SHARING.—Nothing in this section
19 shall be construed as preventing a group health
20 plan, or a health insurance issuer offering group
21 health insurance coverage in connection with a group
22 health plan (including a self-insured issuer), from
23 imposing deductibles, coinsurance, or other cost-
24 sharing in relation to benefits for hospital lengths of
25 stay under the plan, health insurance coverage of-

1 ferred in connection with a group health plan, or the
2 supplemental policy, except that such coinsurance or
3 other cost-sharing for any portion of a period within
4 a hospital length of stay required under subsection
5 (a) may not be greater than such coinsurance or
6 cost-sharing for any preceding portion of such stay.

7 “(d) NOTICE.—A group health plan under this part
8 shall comply with the notice requirement under section
9 713(d) of the Employee Retirement Income Security Act
10 of 1974 with respect to the requirements of this section
11 as if such section applied to such plan.

12 “(e) LEVEL AND TYPE OF REIMBURSEMENTS.—
13 Nothing in this section shall be construed to prevent a
14 group health plan or a health insurance issuer offering
15 group health insurance coverage in connection with a
16 group health plan (including a self-insured issuer) from
17 negotiating the level and type of reimbursement with a
18 provider for care provided in accordance with this section.

19 “(f) PREEMPTION; EXCEPTION FOR HEALTH INSUR-
20 ANCE COVERAGE IN CERTAIN STATES.—

21 “(1) IN GENERAL.—The requirements of this
22 section shall not apply with respect to health insur-
23 ance coverage if there is a State law (as defined in
24 section 2723(d)(1)) for a State that regulates such

1 coverage and provides greater protections to patients
 2 than those provided under this section.

3 “(2) CONSTRUCTION.—Section 2723(a)(1) shall
 4 not be construed as superseding a State law de-
 5 scribed in paragraph (1).”.

6 (B) CONFORMING AMENDMENT.—Section
 7 2723(c) of the Public Health Service Act (42
 8 U.S.C. 300gg–23(c)), as amended by section
 9 604(b)(2) of Public Law 104–204, is amended
 10 by striking “section 2704” and inserting “sec-
 11 tions 2704 and 2706”.

12 (2) ERISA AMENDMENTS.—

13 (A) IN GENERAL.—Subpart B of part 7 of
 14 subtitle B of title I of the Employee Retirement
 15 Income Security Act of 1974 (as added by sec-
 16 tion 603(a) of the Newborns’ and Mothers’
 17 Health Protection Act of 1996 and amended by
 18 section 702(a) of the Mental Health Parity Act
 19 of 1996) is amended by adding at the end the
 20 following new section:

21 **“SEC. 713. STANDARDS RELATING TO COVERAGE OF HOS-**
 22 **PITAL LENGTHS OF STAY.**

23 “(a) REQUIREMENT.—A group health plan and a
 24 health insurance issuer offering group health insurance
 25 coverage in connection with a group health plan (including

1 a self-insured issuer), that provides coverage for inpatient
2 hospital services shall provide coverage for the length of
3 an inpatient hospital stay as determined by the attending
4 physician (or other attending health care provider to the
5 extent permitted under State law) in consultation with the
6 patient to be medically appropriate.

7 “(b) PROHIBITIONS.—A group health plan and a
8 health insurance issuer offering group health insurance
9 coverage in connection with a group health plan (including
10 a self-insured issuer), may not—

11 “(1) deny to an individual eligibility, or contin-
12 ued eligibility, to enroll or to renew coverage under
13 the terms of the plan, solely for the purpose of
14 avoiding the requirements of this section;

15 “(2) provide monetary payments or rebates to
16 an individual to encourage the individual to accept
17 less than the minimum protections available under
18 this section;

19 “(3) penalize or otherwise reduce or limit the
20 reimbursement of an attending provider because
21 such provider provided care to an individual partici-
22 pant or beneficiary in accordance with this section;

23 “(4) provide incentives (monetary or otherwise)
24 to an attending provider to induce such provider to

1 provide care to an individual participant or bene-
2 ficiary in a manner inconsistent with this section; or

3 “(5) subject to subsection (c)(4), restrict bene-
4 fits for any portion of a period within a hospital
5 length of stay required under subsection (a) in a
6 manner which is less favorable than the benefits pro-
7 vided for any preceding portion of such stay.

8 “(c) RULES OF CONSTRUCTION.—

9 “(1) NO REQUIREMENT TO STAY.—Nothing in
10 this section shall be construed to require an individ-
11 ual who is a participant or beneficiary to stay in the
12 hospital for a fixed period of time for any procedure.

13 “(2) NO EFFECT ON REQUIREMENTS FOR MINI-
14 MUM HOSPITAL STAY FOLLOWING BIRTH.—Nothing
15 in this section shall be construed as modifying the
16 requirements of section 2704.

17 “(3) NONAPPLICABILITY.—This section shall
18 not apply with respect to any group health plan or
19 any group health insurance coverage offered by a
20 health insurance issuer (including a self-insured
21 issuer), which does not provide benefits for hospital
22 lengths of stay.

23 “(4) COST-SHARING.—Nothing in this section
24 shall be construed as preventing a group health plan
25 or a health insurance issuer offering group health

1 insurance coverage in connection with a group health
2 plan (including a self-insured issuer), from imposing
3 deductibles, coinsurance, or other cost-sharing in re-
4 lation to benefits for hospital lengths of stay under
5 the plan or health insurance coverage offered in con-
6 nection with a group health plan, except that such
7 coinsurance or other cost-sharing for any portion of
8 a period within a hospital length of stay required
9 under subsection (a) may not be greater than such
10 coinsurance or cost-sharing for any preceding por-
11 tion of such stay.

12 “(d) NOTICE UNDER GROUP HEALTH PLAN.—The
13 imposition of the requirements of this section shall be
14 treated as a material modification in the terms of the plan
15 described in section 102(a)(1), for purposes of assuring
16 notice of such requirements under the plan; except that
17 the summary description required to be provided under the
18 last sentence of section 104(b)(1) with respect to such
19 modification shall be provided by not later than 60 days
20 after the first day of the first plan year in which such
21 requirements apply.

22 “(e) LEVEL AND TYPE OF REIMBURSEMENTS.—
23 Nothing in this section shall be construed to prevent a
24 group health plan or a health insurance issuer offering
25 group health insurance coverage in connection with a

1 group health plan (including a self-insured issuer), from
 2 negotiating the level and type of reimbursement with a
 3 provider for care provided in accordance with this section.

4 “(f) PREEMPTION; EXCEPTION FOR HEALTH INSUR-
 5 ANCE COVERAGE IN CERTAIN STATES.—

6 “(1) IN GENERAL.—The requirements of this
 7 section shall not apply with respect to health insur-
 8 ance coverage if there is a State law (as defined in
 9 section 731(d)(1)) for a State that regulates such
 10 coverage and provides greater protections to patients
 11 than those provided under this section.

12 “(2) CONSTRUCTION.—Section 731(a)(1) shall
 13 not be construed as superseding a State law de-
 14 scribed in paragraph (1).”.

15 (B) CONFORMING AMENDMENTS.—

16 (i) Section 731(c) of such Act (29
 17 U.S.C. 1191(c)), as amended by section
 18 603(b)(1) of Public Law 104–204, is
 19 amended by striking “section 711” and in-
 20 serting “sections 711 and 713”.

21 (ii) Section 732(a) of such Act (29
 22 U.S.C. 1191a(a)), as amended by section
 23 603(b)(2) of Public Law 104–204, is
 24 amended by striking “section 711” and in-
 25 serting “sections 711 and 713”.

1 (iii) The table of contents in section 1
 2 of such Act is amended by inserting after
 3 the item relating to section 712 the follow-
 4 ing new item:

“Sec. 713. Standards relating to coverage of hospital lengths of stay.”.

5 (b) INDIVIDUAL MARKET.—Subpart 3 of part B of
 6 title XXVII of the Public Health Service Act (as added
 7 by section 605(a) of the Newborn’s and Mother’s Health
 8 Protection Act of 1996) is amended by adding at the end
 9 the following new section:

10 **“SEC. 2752. STANDARDS RELATING TO COVERAGE OF HOS-**
 11 **PITAL LENGTHS OF STAY.**

12 “The provisions of section 2706 shall apply to health
 13 insurance coverage offered by a health insurance issuer
 14 in the individual market in the same manner as they apply
 15 to health insurance coverage offered by a health insurance
 16 issuer in connection with a group health plan in the small
 17 or large group market.”.

18 (c) EFFECTIVE DATES.—

19 (1) GROUP HEALTH PLANS.—Subject to para-
 20 graph (3), the amendments made by subsection (a)
 21 shall apply with respect to group health plans for
 22 plan years beginning on or after January 1, 1999.

23 (2) HEALTH INSURANCE COVERAGE.—The
 24 amendment made by subsection (b) shall apply with
 25 respect to health insurance coverage offered, sold,

1 issued, renewed, in effect, or operated in the individ-
2 ual market on or after such date.

3 (3) COLLECTIVE BARGAINING AGREEMENTS.—

4 In the case of a group health plan maintained pur-
5 suant to 1 or more collective bargaining agreements
6 between employee representatives and 1 or more em-
7 ployers ratified before the date of enactment of this
8 Act, the amendments made under subsection (a)
9 shall not apply to plan years beginning before the
10 later of—

11 (A) the date on which the last collective
12 bargaining agreements relating to the plan ter-
13 minates (determined without regard to any ex-
14 tension thereof agreed to after the date of en-
15 actment of this Act), or

16 (B) January 1, 1999.

17 For purposes of subparagraph (A), any plan amend-
18 ment made pursuant to a collective bargaining
19 agreement relating to the plan which amends the
20 plan solely to conform to any requirement added by
21 subsection (a) shall not be treated as a termination
22 of such collective bargaining agreement.

23 (d) COORDINATED REGULATIONS.—Section 104(1)
24 of Health Insurance Portability and Accountability Act of
25 1996 is amended by striking “this subtitle (and the

1 amendments made by this subtitle and section 401)” and
 2 inserting “the provisions of part 7 of subtitle B of title
 3 I of the Employee Retirement Income Security Act of
 4 1974, and the provisions of parts A and C of title XXVII
 5 of the Public Health Service Act”.

6 **SEC. 3. APPLICATION TO MEDICARE AND MEDICAID BENE-**
 7 **FICIARIES.**

8 (a) MEDICARE.—

9 (1) IN GENERAL.—Title XVIII of the Social Se-
 10 curity Act (42 U.S.C. 1395 et seq.) is amended by
 11 adding at the end the following:

12 “HOSPITAL LENGTHS OF STAY FOR BENEFICIARIES
 13 ENROLLED IN PRIVATE HEALTH PLANS

14 “SEC. 1897. (a) APPLICATION TO MEDICARE.—Not-
 15 withstanding the limitation on benefits described in sec-
 16 tion 1812, or any other limitation on benefits imposed
 17 under this title, the provisions of section 2706 of the Pub-
 18 lic Health Service Act shall apply to the provision of items
 19 and services under this title.

20 “(b) MEDICARE+CHOICE AND ELIGIBLE ORGANIZA-
 21 TIONS.—The Secretary may not enter into a contract with
 22 a Medicare+Choice organization under part C, or with an
 23 eligible organization with a risk-sharing contract under
 24 section 1876, unless the organization meets the require-
 25 ments of section 2706 of the Public Health Service Act

1 with respect to individuals enrolled with the organiza-
 2 tion.”.

3 (2) MEDICARE SUPPLEMENTAL POLICIES.—

4 (A) IN GENERAL.—Section 1882(c) of the
 5 Social Security Act (42 U.S.C. 1395ss(c)) is
 6 amended—

7 (i) in paragraph (4), by striking
 8 “and” at the end;

9 (ii) in paragraph (5), by striking the
 10 period and inserting “, and”; and

11 (iii) by adding at the end the follow-
 12 ing:

13 “(6) meets the requirements of section 2706 of
 14 the Public Health Service Act with respect to indi-
 15 viduals enrolled under the policy.”.

16 (B) CONFORMING AMENDMENT.—Section
 17 1882(b)(1)(B) of the Social Security Act (42
 18 U.S.C. 1395ss(b)(1)(B)) is amended by striking
 19 “(5)” and inserting “(6)”.

20 (3) COST SHARING.—Nothing in this subsection
 21 or section 2706(c) of the Public Health Service Act
 22 shall be construed as authorizing the imposition of
 23 cost sharing with respect to the coverage or benefits
 24 required to be provided under the amendments to
 25 the Social Security Act made by paragraphs (1) and

1 (2) that is inconsistent with the cost sharing that is
2 otherwise permitted under title XVIII of the Social
3 Security Act.

4 (b) MEDICAID.—Title XIX of the Social Security Act
5 (42 U.S.C. 1396 et seq.) is amended by redesignating sec-
6 tion 1935 as section 1936 and by inserting after section
7 1934 the following:

8 “HOSPITAL LENGTHS OF STAY FOR BENEFICIARIES
9 ENROLLED IN PRIVATE HEALTH PLANS

10 “SEC. 1935. (a) IN GENERAL.—A State plan may
11 not be approved under this title unless the plan requires
12 each health insurance issuer or other entity with a con-
13 tract with such plan to provide coverage or benefits to in-
14 dividuals eligible for medical assistance under the plan, in-
15 cluding a managed care entity, as defined in section
16 1932(a)(1)(B), to comply with the provisions of section
17 2706 of the Public Health Service Act with respect to such
18 coverage or benefits.

19 “(b) COST SHARING.—Nothing in this section or sec-
20 tion 2706(c) of the Public Health Service Act shall be con-
21 strued as authorizing a health insurance issuer or entity
22 to impose cost sharing with respect to the coverage or ben-
23 efits required to be provided under section 2706 of the
24 Public Health Service Act that is inconsistent with the
25 cost sharing that is otherwise permitted under this title.

1 “(c) WAIVERS PROHIBITED.—The requirement of
2 subsection (a) may not be waived under section 1115 or
3 section 1915(b) of the Social Security Act.”.

4 (c) EFFECTIVE DATE.—The amendments made by
5 this section apply to contract years under titles XVIII and
6 XIX of the Social Security Act beginning on or after Jan-
7 uary 1, 1999.

8 (d) MEDIGAP TRANSITION PROVISIONS.—

9 (1) IN GENERAL.—If the Secretary of Health
10 and Human Services identifies a State as requiring
11 a change to its statutes or regulations to conform its
12 regulatory program to the changes made by sub-
13 section (a)(2), the State regulatory program shall
14 not be considered to be out of compliance with the
15 requirements of section 1882 of the Social Security
16 Act due solely to failure to make such change until
17 the date specified in paragraph (4).

18 (2) NAIC STANDARDS.—If, within 9 months
19 after the date of the enactment of this Act, the Na-
20 tional Association of Insurance Commissioners (in
21 this subsection referred to as the “NAIC”) modifies
22 its NAIC Model Regulation relating to section 1882
23 of the Social Security Act (referred to in such sec-
24 tion as the 1991 NAIC Model Regulation, as modi-
25 fied pursuant to section 171(m)(2) of the Social Se-

1 security Act Amendments of 1994 (Public Law 103–
2 432) and as modified pursuant to section
3 1882(d)(3)(A)(vi)(IV) of the Social Security Act, as
4 added by section 271(a) of the Health Insurance
5 Portability and Accountability Act of 1996 (Public
6 Law 104–191) to conform to the amendments made
7 by this section, such revised regulation incorporating
8 the modifications shall be considered to be the appli-
9 cable NAIC model regulation (including the revised
10 NAIC model regulation and the 1991 NAIC Model
11 Regulation) for the purposes of such section.

12 (3) SECRETARY STANDARDS.—If the NAIC
13 does not make the modifications described in para-
14 graph (2) within the period specified in such para-
15 graph, the Secretary of Health and Human Services
16 shall make the modifications described in such para-
17 graph and such revised regulation incorporating the
18 modifications shall be considered to be the appro-
19 priate Regulation for the purposes of such section.

20 (4) DATE SPECIFIED.—

21 (A) IN GENERAL.—Subject to subpara-
22 graph (B), the date specified in this paragraph
23 for a State is the earlier of—

24 (i) the date the State changes its stat-
25 utes or regulations to conform its regu-

latory program to the changes made by
this section, or

(ii) 1 year after the date the NAIC or
the Secretary first makes the modifications
under paragraph (2) or (3), respectively.

(B) ADDITIONAL LEGISLATIVE ACTION RE-
QUIRED.—In the case of a State which the Sec-
retary identifies as—

(i) requiring State legislation (other
than legislation appropriating funds) to
conform its regulatory program to the
changes made in this section, but

(ii) having a legislature which is not
scheduled to meet in 1999 in a legislative
session in which such legislation may be
considered,

the date specified in this paragraph is the first
day of the first calendar quarter beginning after
the close of the first legislative session of the
State legislature that begins on or after July 1,
1999. For purposes of the previous sentence, in
the case of a State that has a 2-year legislative
session, each year of such session shall be

- 1 deemed to be a separate regular session of the
- 2 State legislature.

