

106TH CONGRESS
1ST SESSION

S. 794

Entitled the “Hospital Length of Stay Act of 1999”.

IN THE SENATE OF THE UNITED STATES

APRIL 14, 1999

Mrs. FEINSTEIN (for herself and Ms. SNOWE) introduced the following bill;
which was read twice and referred to the Committee on Health, Edu-
cation, Labor, and Pensions

A BILL

Entitled the “Hospital Length of Stay Act of 1999”.

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 1999”.

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

1 (42 U.S.C. 300gg–4 et seq.) is amended by
2 adding at the end the following new section:

3 **“SEC. 2707. STANDARDS RELATING TO COVERAGE OF HOS-**
4 **PITAL LENGTHS OF STAY.**

5 “(a) REQUIREMENT.—A group health plan and a
6 health insurance issuer offering group health insurance
7 coverage in connection with a group health plan (including
8 a self-insured issuer) that provides coverage for inpatient
9 hospital services—

10 “(1) shall provide coverage for the length of an
11 inpatient hospital stay as determined by the attend-
12 ing physician (or other attending health care pro-
13 vider to the extent permitted under State law) in
14 consultation with the patient to be medically appro-
15 priate; and

16 “(2) may not require that a provider obtain au-
17 thorization from the plan or the issuer for pre-
18 scribing any length of stay required under para-
19 graph (1).

20 “(b) PROHIBITIONS.—A group health plan and a
21 health insurance issuer offering group health insurance
22 coverage in connection with a group health plan (including
23 a self-insured issuer) may not—

24 “(1) deny to an individual eligibility, or contin-
25 ued eligibility, to enroll or to renew coverage under

1 the terms of the plan, solely for the purpose of
 2 avoiding the requirements of this section;

3 “(2) provide monetary payments or rebates to
 4 an individual to encourage the individual to accept
 5 less than the minimum protections available under
 6 this section;

7 “(3) penalize or otherwise reduce or limit the
 8 reimbursement of an attending provider because
 9 such provider provided care to an individual partici-
 10 pant or beneficiary in accordance with this section;

11 “(4) provide incentives (monetary or otherwise)
 12 to an attending provider to induce such provider to
 13 provide care to an individual participant or bene-
 14 ficiary in a manner inconsistent with this section; or

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

20 “(c) RULES OF CONSTRUCTION.—

21 “(1) NO REQUIREMENT TO STAY.—Nothing in
 22 this section shall be construed to require an indi-
 23 vidual who is a participant or beneficiary to stay in
 24 the hospital for a fixed period of time for any proce-
 25 dure.

1 “(2) NO EFFECT ON REQUIREMENTS FOR MIN-
2 IMUM HOSPITAL STAY FOLLOWING BIRTH.—Nothing
3 in this section shall be construed as modifying the
4 requirements of section 2704.

5 “(3) NONAPPLICABILITY.—This section shall
6 not apply with respect to any group health plan, or
7 any group health insurance coverage offered by a
8 health insurance issuer (including a self-insured
9 issuer), which does not provide benefits for hospital
10 lengths of stay.

11 “(4) COST-SHARING.—Nothing in this section
12 shall be construed as preventing a group health
13 plan, or a health insurance issuer offering group
14 health insurance coverage in connection with a group
15 health plan (including a self-insured issuer), from
16 imposing deductibles, coinsurance, or other cost-
17 sharing in relation to benefits for hospital lengths of
18 stay under the plan, health insurance coverage of-
19 fered in connection with a group health plan, or the
20 supplemental policy, except that such coinsurance or
21 other cost-sharing for any portion of a period within
22 a hospital length of stay required under subsection
23 (a) may not be greater than such coinsurance or
24 cost-sharing for any preceding portion of such stay.

1 “(d) NOTICE.—A group health plan under this part
 2 shall comply with the notice requirement under section
 3 714(d) of the Employee Retirement Income Security Act
 4 of 1974 with respect to the requirements of this section
 5 as if such section applied to such plan.

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

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

15 “(1) IN GENERAL.—The requirements of this
 16 section shall not apply with respect to health insur-
 17 ance coverage if there is a State law (as defined in
 18 section 2723(d)(1)) for a State that regulates such
 19 coverage and provides greater protections to patients
 20 than those provided under this section.

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

24 (B) CONFORMING AMENDMENT.—Section
 25 2723(c) of the Public Health Service Act (42

1 U.S.C. 300gg–23(c)) is amended by striking
 2 “section 2704” and inserting “sections 2704
 3 and 2707”.

4 (2) ERISA AMENDMENTS.—

5 (A) IN GENERAL.—Subpart B of part 7 of
 6 subtitle B of title I of the Employee Retirement
 7 Income Security Act of 1974 (29 U.S.C. 1185
 8 et seq.) is amended by adding at the end the
 9 following new section:

10 **“SEC. 714. STANDARDS RELATING TO COVERAGE OF HOS-**
 11 **PITAL LENGTHS OF STAY.**

12 “(a) REQUIREMENT.—A group health plan and a
 13 health insurance issuer offering group health insurance
 14 coverage in connection with a group health plan (including
 15 a self-insured issuer), that provides coverage for inpatient
 16 hospital services—

17 “(1) shall provide coverage for the length of an
 18 inpatient hospital stay as determined by the attend-
 19 ing physician (or other attending health care pro-
 20 vider to the extent permitted under State law) in
 21 consultation with the patient to be medically appro-
 22 priate; and

23 “(2) may not require that a provider obtain au-
 24 thorization from the plan or the issuer for pre-

1 scribing any length of stay required under para-
2 graph (1).

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 indi-
 6 vidual who is a participant or beneficiary to stay in
 7 the hospital for a fixed period of time for any proce-
 8 dure.

9 “(2) NO EFFECT ON REQUIREMENTS FOR MIN-
 10 IMUM HOSPITAL STAY FOLLOWING BIRTH.—Nothing
 11 in this section shall be construed as modifying the
 12 requirements of section 711.

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

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

1 the plan or health insurance coverage offered in con-
2 nection with a group health plan, except that such
3 coinsurance or other cost-sharing for any portion of
4 a period within a hospital length of stay required
5 under subsection (a) may not be greater than such
6 coinsurance or cost-sharing for any preceding por-
7 tion of such stay.

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

18 “(e) LEVEL AND TYPE OF REIMBURSEMENTS.—
19 Nothing in this section shall be construed to prevent a
20 group health plan or a health insurance issuer offering
21 group health insurance coverage in connection with a
22 group health plan (including a self-insured issuer), from
23 negotiating the level and type of reimbursement with a
24 provider for care provided in accordance with this section.

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

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

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

12 (B) CONFORMING AMENDMENTS.—

13 (i) Section 731(c) of the Employee
 14 Retirement Income Security Act of 1974
 15 (29 U.S.C. 1191(c)) is amended by strik-
 16 ing “section 711” and inserting “sections
 17 711 and 714”.

18 (ii) Section 732(a) of the Employee
 19 Retirement Income Security Act of 1974
 20 (29 U.S.C. 1191a(a)), as amended by sec-
 21 tion 603(b)(2) of Public Law 104–204, is
 22 amended by striking “section 711” and in-
 23 serting “sections 711 and 714”.

24 (iii) The table of contents in section 1
 25 of the Employee Retirement Income Secu-

1 rity Act of 1974 is amended by inserting
 2 after the item relating to section 713 the
 3 following new item:

“Sec. 714. Standards relating to coverage of hospital lengths of stay.”.

4 (b) INDIVIDUAL MARKET.—Subpart 3 of part B of
 5 title XXVII of the Public Health Service Act (42 U.S.C.
 6 300gg–51 et seq.) is amended by adding at the end the
 7 following new section:

8 **“SEC. 2753. STANDARDS RELATING TO COVERAGE OF HOS-**
 9 **PITAL LENGTHS OF STAY.**

10 “The provisions of section 2707 shall apply to health
 11 insurance coverage offered by a health insurance issuer
 12 in the individual market in the same manner as they apply
 13 to health insurance coverage offered by a health insurance
 14 issuer in connection with a group health plan in the small
 15 or large group market.”.

16 (c) EFFECTIVE DATES.—

17 (1) GROUP HEALTH PLANS.—Subject to para-
 18 graph (3), the amendments made by subsection (a)
 19 shall apply with respect to group health plans for
 20 plan years beginning on or after January 1, 2000.

21 (2) HEALTH INSURANCE COVERAGE.—The
 22 amendment made by subsection (b) shall apply with
 23 respect to health insurance coverage offered, sold,
 24 issued, renewed, in effect, or operated in the indi-
 25 vidual market on or after such date.

1 (3) COLLECTIVE BARGAINING AGREEMENTS.—

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

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

13 (B) January 1, 2000.

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

20 **SEC. 3. APPLICATION TO MEDICARE AND MEDICAID BENE-**
 21 **FICIARIES.**

22 (a) MEDICARE.—

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

1 “STANDARDS RELATING TO COVERAGE OF HOSPITAL
2 LENGTHS OF STAY

3 “SEC. 1897. (a) APPLICATION TO MEDICARE.—Not-
4 withstanding the limitation on benefits described in sec-
5 tion 1812, or any other limitation on benefits imposed
6 under this title, the provisions of section 2707 of the Pub-
7 lic Health Service Act shall apply to the provision of items
8 and services under this title.

9 “(b) MEDICARE+CHOICE AND ELIGIBLE ORGANIZA-
10 TIONS.—The Secretary may not enter into a contract with
11 a Medicare+Choice organization under part C, or with an
12 eligible organization with a risk-sharing contract under
13 section 1876, unless the organization meets the require-
14 ments of section 2707 of the Public Health Service Act
15 with respect to individuals enrolled with the organiza-
16 tion.”.

17 (2) MEDICARE SUPPLEMENTAL POLICIES.—

18 (A) IN GENERAL.—Section 1882(c) of the
19 Social Security Act (42 U.S.C. 1395ss(c)) is
20 amended—

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

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

1 (iii) by adding at the end the fol-
 2 lowing:

3 “(6) meets the requirements of section 2707 of
 4 the Public Health Service Act with respect to indi-
 5 viduals enrolled under the policy.”.

6 (B) CONFORMING AMENDMENT.—Section
 7 1882(b)(1)(B) of the Social Security Act (42
 8 U.S.C. 1395ss(b)(1)(B)) is amended by striking
 9 “(5)” and inserting “(6)”.

10 (3) COST SHARING.—Nothing in this subsection
 11 or section 2707(c) of the Public Health Service Act
 12 shall be construed as authorizing the imposition of
 13 cost sharing with respect to the coverage or benefits
 14 required to be provided under the amendments to
 15 the Social Security Act made by paragraphs (1) and
 16 (2) that is inconsistent with the cost sharing that is
 17 otherwise permitted under title XVIII of the Social
 18 Security Act.

19 (b) MEDICAID.—Title XIX of the Social Security Act
 20 (42 U.S.C. 1396 et seq.) is amended by redesignating sec-
 21 tion 1935 as section 1936 and by inserting after section
 22 1934 the following:

23 “STANDARDS RELATING TO COVERAGE OF HOSPITAL
 24 LENGTHS OF STAY

25 “SEC. 1935. (a) IN GENERAL.—A State plan may
 26 not be approved under this title unless the plan requires

1 each health insurance issuer or other entity with a con-
 2 tract with such plan to provide coverage or benefits to in-
 3 dividuals eligible for medical assistance under the plan, in-
 4 cluding a managed care entity, as defined in section
 5 1932(a)(1)(B), to comply with the provisions of section
 6 2707 of the Public Health Service Act with respect to such
 7 coverage or benefits.

8 “(b) COST SHARING.—Nothing in this section or sec-
 9 tion 2707(c) of the Public Health Service Act shall be con-
 10 strued as authorizing a health insurance issuer or entity
 11 to impose cost sharing with respect to the coverage or ben-
 12 efits required to be provided under section 2707 of the
 13 Public Health Service Act that is inconsistent with the
 14 cost sharing that is otherwise permitted under this title.

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

18 (c) EFFECTIVE DATE.—The amendments made by
 19 this section apply to contract years under titles XVIII and
 20 XIX of the Social Security Act beginning on or after Jan-
 21 uary 1, 2000.

22 (d) MEDIGAP TRANSITION PROVISIONS.—

23 (1) IN GENERAL.—If the Secretary of Health
 24 and Human Services identifies a State as requiring
 25 a change to its statutes or regulations to conform its

1 regulatory program to the changes made by sub-
2 section (a)(2), the State regulatory program shall
3 not be considered to be out of compliance with the
4 requirements of section 1882 of the Social Security
5 Act due solely to failure to make such change until
6 the date specified in paragraph (4).

7 (2) NAIC STANDARDS.—If, within 9 months
8 after the date of the enactment of this Act, the Na-
9 tional Association of Insurance Commissioners (in
10 this subsection referred to as the “NAIC”) modifies
11 its NAIC Model Regulation relating to section 1882
12 of the Social Security Act (referred to in such sec-
13 tion as the 1991 NAIC Model Regulation, as modi-
14 fied pursuant to section 171(m)(2) of the Social Se-
15 curity Act Amendments of 1994 (Public Law 103–
16 432) and as modified pursuant to section
17 1882(d)(3)(A)(vi)(IV) of the Social Security Act, as
18 added by section 271(a) of the Health Insurance
19 Portability and Accountability Act of 1996 (Public
20 Law 104–191) to conform to the amendments made
21 by this section, such revised regulation incorporating
22 the modifications shall be considered to be the appli-
23 cable NAIC model regulation (including the revised
24 NAIC model regulation and the 1991 NAIC Model
25 Regulation) for the purposes of such section.

1 (3) SECRETARY STANDARDS.—If the NAIC
 2 does not make the modifications described in para-
 3 graph (2) within the period specified in such para-
 4 graph, the Secretary of Health and Human Services
 5 shall make the modifications described in such para-
 6 graph and such revised regulation incorporating the
 7 modifications shall be considered to be the appro-
 8 priate Regulation for the purposes of such section.

9 (4) DATE SPECIFIED.—

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

13 (i) the date the State changes its stat-
 14 utes or regulations to conform its regu-
 15 latory program to the changes made by
 16 this section, or

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

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

23 (i) requiring State legislation (other
 24 than legislation appropriating funds) to

1 conform its regulatory program to the
2 changes made in this section, but

3 (ii) having a legislature which is not
4 scheduled to meet in 2000 in a legislative
5 session in which such legislation may be
6 considered,

7 the date specified in this paragraph is the first
8 day of the first calendar quarter beginning after
9 the close of the first legislative session of the
10 State legislature that begins on or after July 1,
11 2000. For purposes of the previous sentence, in
12 the case of a State that has a 2-year legislative
13 session, each year of such session shall be
14 deemed to be a separate regular session of the
15 State legislature.

16 **SEC. 4. APPLICATION TO OTHER HEALTH CARE COVERAGE.**

17 (a) FEHBP.—Chapter 89 of title 5, United States
18 Code, is amended by adding at the end the following:

19 **“§ 8915. Standards relating to coverage of hospital**
20 **lengths of stay**

21 “(a) The provisions of section 2707 of the Public
22 Health Service Act shall apply to the provision of items
23 and services under this chapter.

24 “(b) Nothing in this section or section 2707(c) of the
25 Public Health Service Act shall be construed as author-

1 izing a health insurance issuer or entity to impose cost
 2 sharing with respect to the coverage or benefits required
 3 to be provided under section 2707 of the Public Health
 4 Service Act that is inconsistent with the cost sharing that
 5 is otherwise permitted under this chapter.”.

6 (b) MEDICAL CARE FOR MEMBERS AND CERTAIN
 7 FORMER MEMBERS OF THE UNIFORMED SERVICES AND
 8 THEIR DEPENDENTS.—Chapter 55 of title 10, United
 9 States Code, is amended by adding at the end the fol-
 10 lowing:

11 **“§ 1110. Standards relating to coverage of hospital**
 12 **lengths of stay**

13 “(a) APPLICATION OF STANDARDS.—The provisions
 14 of section 2707 of the Public Health Service Act shall
 15 apply to the provision of items and services under this
 16 chapter.

17 “(b) COST-SHARING.—Nothing in this section or sec-
 18 tion 2707(c) of the Public Health Service Act shall be con-
 19 strued as authorizing the imposition of cost sharing with
 20 respect to the coverage or benefits required to be provided
 21 under section 2707 of the Public Health Service Act that
 22 is inconsistent with the cost sharing that is otherwise per-
 23 mitted under this chapter.”.

1 (c) VETERANS.—Subchapter II of chapter 17 of title
 2 38, United States Code, is amended by adding at the end
 3 the following:

4 **“§ 1720E. Standards relating to coverage of hospital**
 5 **lengths of stay**

6 “(a) The provisions of section 2707 of the Public
 7 Health Service Act shall apply to the provision of items
 8 and services under this chapter.

9 “(b) Nothing in this section or section 2707(c) of the
 10 Public Health Service Act shall be construed as author-
 11 izing the imposition of cost sharing with respect to the
 12 coverage or benefits required to be provided under section
 13 2706 of the Public Health Service Act that is inconsistent
 14 with the cost sharing that is otherwise permitted under
 15 this chapter.”.

16 (d) STATE CHILDREN’S HEALTH INSURANCE PRO-
 17 GRAM.—Section 2109 of the Social Security Act (42
 18 U.S.C. 1397ii) is amended by adding at the end the fol-
 19 lowing:

20 “(b) APPLICATION OF STANDARDS RELATING TO
 21 COVERAGE OF HOSPITAL LENGTHS OF STAY.—

22 “(1) IN GENERAL.—The provisions of section
 23 2707 of the Public Health Service Act shall apply to
 24 the provision of items and services under this title.

13 “STANDARDS RELATING TO COVERAGE OF HOSPITAL
14 LENGTHS OF STAY

19 “(b) Nothing in this section or section 2707(c) of the
20 Public Health Service Act shall be construed as author-
21 izing the imposition of cost sharing with respect to the
22 coverage or benefits required to be provided under section
23 2707 of the Public Health Service Act that is inconsistent
24 with the cost sharing that is otherwise permitted under
25 this Act.”.

1 (f) HEALTH CARE PROVIDED TO PEACE CORPS VOL-
2 UNTEERS.—Section 5(e) of the Peace Corps Act (22
3 U.S.C. 2504(e)) is amended by adding at the end the fol-
4 lowing: “The provisions of section 2707 of the Public
5 Health Service Act shall apply to the provision of items
6 and services under this section. Nothing in this section
7 or section 2707(c) of the Public Health Service Act shall
8 be construed as authorizing the imposition of cost sharing
9 with respect to the coverage or benefits required to be pro-
10 vided under section 2707 of the Public Health Service Act
11 that is inconsistent with the cost sharing that is otherwise
12 permitted under this section.”.

○