

108TH CONGRESS
2D SESSION

S. 2988

To amend title XVIII of the Social Security Act to provide medicare beneficiaries with access to information concerning the quality of care provided by skilled nursing facilities and to provide incentives to skilled nursing facilities to improve the quality of care provided by those facilities by linking the amount of payment under the medicare program to quality reporting and performance requirements, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 17, 2004

Mr. WYDEN 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 provide medicare beneficiaries with access to information concerning the quality of care provided by skilled nursing facilities and to provide incentives to skilled nursing facilities to improve the quality of care provided by those facilities by linking the amount of payment under the medicare program to quality reporting and performance requirements, 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 “Long Term Care Qual-
3 ity and Consumer Information Improvement Act of
4 2004”.

5 **SEC. 2. MEDICARE PAYMENT ADJUSTMENTS FOR SKILLED**
6 **NURSING FACILITIES BASED ON QUALITY**
7 **DATA.**

8 (a) IN GENERAL.—Section 1888(e) of the Social Se-
9 curity Act (42 U.S.C. 1395yy(e)) is amended by adding
10 at the end the following new paragraph:

11 “(13) PAYMENT ADJUSTMENTS BASED ON
12 QUALITY DATA.—

13 “(A) ESTABLISHMENT OF QUALITY MEAS-
14 URES.—

15 “(i) IN GENERAL.—Subject to the
16 succeeding provisions of this subparagraph,
17 not later than July 1, 2005, the Secretary
18 shall establish between 10 and 15 quality
19 measures applicable with respect to skilled
20 nursing facilities in addition to any quality
21 measures applicable with respect to such
22 facilities established prior to January 1,
23 2005.

24 “(ii) CONSULTATION.—In establishing
25 the quality measures under clause (i), the
26 Secretary shall consult with—

1 “(I) residents of skilled nursing
2 facilities;

3 “(II) representatives of patient
4 advocacy organizations;

5 “(III) State regulatory represent-
6 atives;

7 “(IV) representatives from the
8 skilled nursing facility industry; and

9 “(V) experts on quality measures.

10 “(iii) STAFFING AND MIX OF LI-
11 CENSED STAFF.—At least one of the qual-
12 ity measures established under clause (i)
13 shall relate to the level of skilled nursing
14 facility staffing and the mix of licensed
15 staff.

16 “(iv) ESTABLISHMENT AND APPLICA-
17 TION OF RISK ADJUSTMENT METHOD-
18 OLOGY.—The quality measures established
19 under clause (i) shall take into account the
20 relative risks associated with the popu-
21 lation of each skilled nursing facility to en-
22 sure that the differences in the quality
23 measures reflect differences in the care
24 provided by the facilities and not dif-
25 ferences in resident population characteris-

1 ties by using a risk adjustment method-
2 ology established for purposes of this sub-
3 section. The risk adjustment methodology
4 established and applied under this clause
5 may exclude certain types of residents,
6 stratify residents into high-risk and low-
7 risk groups, or use a statistical adjust-
8 ment, such as a regression analysis, that
9 takes into consideration multiple character-
10 istics for each resident.

11 “(v) SPECIAL PROVISION FOR SMALL
12 SKILLED NURSING FACILITIES.—The Sec-
13 retary, in consultation with the individuals
14 and groups described in clause (ii), shall
15 establish criteria for determining which
16 quality measures established under clause
17 (i) do not apply with respect to skilled
18 nursing facilities that are not large enough
19 to yield meaningful data with respect to
20 such measure.

21 “(vi) ANNUAL REVIEW AND REVI-
22 SION.—The Secretary, in consultation with
23 the individuals and groups described in
24 clause (ii), shall annually review and revise
25 the quality measures established under

1 clause (i), as the Secretary, in consultation
2 with such individuals and groups, deter-
3 mines appropriate.

4 “(B) REPORTING ON QUALITY MEAS-
5 URES.—

6 “(i) SUBMISSION OF DATA.—Each
7 skilled nursing facility that desires to re-
8 ceive a payment adjustment under sub-
9 paragraph (C) shall submit such data at
10 such time and in such form and manner as
11 the Secretary, in consultation with the in-
12 dividuals and groups described in subpara-
13 graph (A)(ii), requires for purposes of ap-
14 plying the quality measures established
15 under subparagraph (A)(i).

16 “(ii) PUBLICATION OF QUALITY RAT-
17 INGS.—Not less frequently than annually,
18 the Secretary shall cause to be posted on
19 the Internet website of the Centers for
20 Medicare & Medicaid Services and to be
21 published in newspapers with a national
22 circulation a quality rating for each skilled
23 nursing facility submitting data under
24 clause (i) by using such data to apply the

1 quality measures established under sub-
2 paragraph (A)(i) to each facility.

3 “(C) ADDITIONAL PAYMENT AMOUNT.—

4 “(i) IN GENERAL.—Subject to clause
5 (iv), each skilled nursing facility that sub-
6 mits data under subparagraph (B)(i) shall
7 receive the update described in clause (ii)
8 and the payment adjustment described in
9 clause (iii).

10 “(ii) FULL MARKET BASKET UP-
11 DATE.—Notwithstanding paragraph
12 (4)(E)(ii) or any other provision of law,
13 each skilled nursing facility described in
14 clause (i) shall receive the full market bas-
15 ket update for the year following the year
16 in which such data is submitted.

17 “(iii) PAYMENTS BASED ON QUAL-
18 ITY.—The Secretary shall adjust the total
19 payment amount under this subsection for
20 skilled nursing facilities described in clause
21 (i) as follows:

22 “(I) Beginning with fiscal year
23 2006, for each of the skilled nursing
24 facilities that the Secretary deter-
25 mines, based on the quality measures

1 established under subparagraph (A)(i)
2 for the preceding fiscal year, to be—

3 “(aa) in the top 10 percent
4 of all nursing facilities that sub-
5 mitted data under subparagraph
6 (B)(i) during the preceding fiscal
7 year, each payment amount de-
8 termined under the other provi-
9 sions of this subsection shall be
10 increased by 2 percent of that
11 amount; and

12 “(bb) below the top 10 per-
13 cent of such nursing facilities,
14 but within the top 20 percent of
15 such facilities, each payment
16 amount determined under the
17 other provisions of this sub-
18 section shall be increased by 1
19 percent of that amount.

20 “(II) Beginning with fiscal year
21 2007, for each of the skilled nursing
22 facilities that the Secretary deter-
23 mines, based on the quality measures
24 established under subparagraph
25 (A)(i), to be in the bottom 20 percent

1 of all nursing facilities that submitted
2 data under subparagraph (B)(i), each
3 payment amount determined under
4 the other provisions of this subsection
5 shall be decreased by 1 percent of
6 that amount.

7 “(iv) SPECIAL PROVISION FOR SMALL
8 SKILLED NURSING FACILITIES.—The Sec-
9 retary may not refuse to provide a full
10 market basket update under clause (ii) or
11 to provide an increase or reduction under
12 clause (iii) with respect to a skilled nursing
13 facility because such facility does not sub-
14 mit data with respect to a quality measure
15 that does not apply to the nursing facility
16 as a result of the application of the criteria
17 established under subparagraph (A)(v).

18 “(D) BUDGET NEUTRALITY.—In imple-
19 menting this paragraph, the Secretary shall en-
20 sure that the aggregate amount of expenditures
21 made by the Secretary under this title in a fis-
22 cal year does not exceed the aggregate amount
23 which the Secretary would have expended under
24 this title in the year if this paragraph had not
25 been enacted. In determining the aggregate

1 amount which the Secretary would have ex-
 2 pended under this title in the year if this para-
 3 graph had not been enacted, the Secretary shall
 4 assume a current services budget baseline that
 5 includes in the assumption of current services a
 6 level of expenditures for covered skilled nursing
 7 facility services that reflects a continuation of
 8 the Resource Utilization Groups (RUGS) that
 9 were used for making payments under this sec-
 10 tion during fiscal year 2004.”.

11 (b) EVALUATION AND REPORT.—

12 (1) EVALUATION.—The Secretary of Health
 13 and Human Services shall conduct an evaluation of
 14 the implementation of the amendment made by sub-
 15 section (a), including an evaluation of the number of
 16 skilled nursing facilities that submit the data pursu-
 17 ant to paragraph (13)(B) of section 1888(e) of the
 18 Social Security Act (42 U.S.C. 1395yy(e)), as added
 19 by subsection (a).

20 (2) REPORT.—Not later than December 31,
 21 2007, the Secretary of Health and Human Services
 22 shall submit a report to Congress on the evaluation
 23 conducted under paragraph (1) together with rec-

- 1 ommendations for such legislation and administra-
- 2 tive actions as the Secretary considers appropriate.

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