

110TH CONGRESS
1ST SESSION

H. R. 1459

To improve Medicare beneficiary access by extending the 60 percent compliance threshold used to determine whether a hospital or unit of a hospital is an inpatient rehabilitation facility.

IN THE HOUSE OF REPRESENTATIVES

MARCH 9, 2007

Mr. TANNER (for himself, Mrs. LOWEY, Mr. HULSHOF, Mr. LoBIONDO, Mrs. CAPPS, Mrs. MALONEY of New York, Mr. ENGEL, Mr. McNULTY, Mr. CUMMINGS, Mr. ALTMIRE, Mr. FOSSELLA, Mr. EHLERS, Ms. MCCOLLUM of Minnesota, Mr. McHUGH, Mr. HINCHEY, Mr. ACKERMAN, Ms. WOOLSEY, Mr. ENGLISH of Pennsylvania, Ms. HIRONO, Mr. HIGGINS, Mr. LINCOLN DAVIS of Tennessee, Mr. MURTHA, Mr. PLATTS, Mr. SAXTON, Mr. JEFFERSON, Ms. SCHWARTZ, Mr. HALL of Texas, Mr. NEAL of Massachusetts, Mr. GERLACH, Mr. GENE GREEN of Texas, Mr. GORDON of Tennessee, Mr. HOLDEN, Ms. BERKLEY, Mr. ORTIZ, Mr. ISRAEL, Mr. WAMP, Mr. FERGUSON, Mr. PETERSON of Pennsylvania, Mr. SMITH of New Jersey, Mr. BERRY, Mr. MOORE of Kansas, Mr. SESSIONS, Mr. UDALL of Colorado, Mr. HOLT, Mr. WALSH of New York, Mr. REYNOLDS, Mr. MCGOVERN, Mr. PORTER, Mr. LAHOOD, Mr. PAYNE, Mr. GOODE, Mr. BISHOP of New York, Mr. SHUSTER, Ms. SLAUGHTER, Mr. DAVIS of Alabama, Mr. GOHMERT, Mr. DENT, Mr. ROSKAM, Mr. FRANK of Massachusetts, Mr. MEEHAN, Mr. CAPUANO, Mr. ROGERS of Alabama, Mr. LEWIS of Kentucky, Mr. THOMPSON of California, Mr. CRAMER, Mr. ABERCROMBIE, Mr. TIM MURPHY of Pennsylvania, Mr. HODES, Mr. COHEN, Mr. RAHALL, Mr. ALEXANDER, Mr. GARRETT of New Jersey, Mr. BRADY of Pennsylvania, Mr. BOYD of Florida, Mr. REYES, Mr. KING of New York, Mr. PASCRELL, Ms. GRANGER, Mr. EVERETT, Mr. ADERHOLT, Mrs. BLACKBURN, Mr. BACHUS, Mr. CLAY, and Mr. SAM JOHNSON of Texas) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To improve Medicare beneficiary access by extending the

60 percent compliance threshold used to determine whether a hospital or unit of a hospital is an inpatient rehabilitation facility.

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. EXTENDED PHASE-IN OF THE INPATIENT REHA-**
 4 **BILITATION FACILITY CLASSIFICATION CRI-**
 5 **TERIA.**

6 (a) IN GENERAL.—Section 5005 of the Deficit Re-
 7 duction Act of 2005 is amended—

8 (1) in subsection (a), by striking “apply the ap-
 9 plicable percent specified in subsection (b)” and in-
 10 serting “require a compliance rate that is no greater
 11 than the 60 percent compliance rate that became ef-
 12 fective for cost reporting periods beginning on or
 13 after July 1, 2006”; and

14 (2) by amending subsection (b) to read as fol-
 15 lows:

16 “(b) CONTINUED USE OF COMORBIDITIES.—For cost
 17 reporting periods beginning on or after July 1, 2008, the
 18 Secretary shall include patients with comorbidities as de-
 19 scribed in section 412.23(b)(2)(i) of title 42, Code of Fed-
 20 eral Regulations (as in effect as of January 1, 2007), in
 21 the inpatient population that counts towards the percent
 22 specified in subsection (a).”.

1 (b) MEDICAL NECESSITY CRITERIA FOR BENE-
 2 FICIARIES SERVED IN REHABILITATION HOSPITALS AND
 3 UNITS.—The Centers for Medicare & Medicaid Services
 4 and Medicare fiscal intermediaries, Medicare administra-
 5 tive contractors, recovery audit contractors, and other gov-
 6 ernment agents shall use and apply the criteria established
 7 in HCFA Ruling 85–2, as issued on July 31, 1985 (50
 8 Fed. Reg. 31040), as the sole standard for determining
 9 the medical necessity of services provided by inpatient re-
 10 habilitation hospitals and units to Medicare beneficiaries
 11 under title XVIII of the Social Security Act.

12 **SEC. 2. RECOMMENDATIONS FOR CLASSIFYING INPATIENT**
 13 **REHABILITATION HOSPITALS AND UNITS.**

14 (a) REPORT TO CONGRESS.—Not later than 12
 15 months after the date of the enactment of this Act, the
 16 Secretary of Health and Human Services, in consultation
 17 with physicians, administrators of inpatient rehabilitation
 18 and acute care hospitals, Medicare beneficiaries, and trade
 19 organizations representing inpatient rehabilitation hos-
 20 pitals and units, shall submit to the Committee on Ways
 21 and Means of the House of Representatives and the Com-
 22 mittee on Finance of the Senate a report that includes—
 23 (1) an examination of the impact of the 75 per-
 24 cent rule on the Medicare program and the specific
 25 impact of the rule on Medicare beneficiaries; and

1 (2) alternatives to the 75 percent rule policy for
2 determining exclusion criteria for inpatient rehabili-
3 tation hospital and unit designation under the Medi-
4 care program, including determining clinical appro-
5 priateness of inpatient rehabilitation hospital and
6 unit admissions, and including alternative criteria
7 based solely on a measure of a patient’s functional
8 status which is independent of diagnosis.

9 For the purposes of this section, the term “75 percent
10 rule” means the requirement of section 412.23(b)(2) of
11 title 42, Code of Federal Regulations, that 75 percent of
12 the patients of a rehabilitation hospital or converted reha-
13 bilitation unit are in 1 or more of 13 listed treatment cat-
14 egories.

15 (b) CONSIDERATIONS.—In developing the report de-
16 scribed in subsection (a), the Secretary shall include the
17 following:

18 (1) The effect of the 75 percent rule on access
19 to inpatient hospital rehabilitation care by Medicare
20 beneficiaries and the effectiveness of care available
21 to such beneficiaries in other health care settings.

22 (2) A comparative analysis of the overall Medi-
23 care system costs, including Medicare expenditures
24 to acute care hospitals, home health agencies, skilled

1 nursing facilities, and long-term care hospitals, re-
 2 sulting from implementation of the 75 percent rule.

3 (3) A analysis that compares the quality, cost,
 4 and patient outcomes of inpatient rehabilitation
 5 services among different post-acute care settings, in-
 6 cluding whether the Medicare program and Medicare
 7 beneficiaries may incur higher costs of care for the
 8 entire episode of illness because of factors such as—

9 (A) readmissions to acute care hospitals
 10 that could have been avoided absent the 75 per-
 11 cent rule; or

12 (B) extended lengths of stay in post-acute
 13 settings other than a rehabilitation hospital or
 14 unit because beneficiaries were denied access to
 15 care in such a hospital or unit due to the 75
 16 percent rule.

17 **SEC. 3. TECHNICAL CORRECTION FOR INPATIENT REHA-**
 18 **BILITATION HOSPITALS AND UNITS NOMEN-**
 19 **CLATURE.**

20 (a) IN GENERAL.—Section 1886(j) of the Social Se-
 21 curity Act (42 U.S.C. 1395ww(j)) is amended—

22 (1) in paragraph (1)(A), by striking “(in this
 23 subsection referred to as a ‘rehabilitation facility’),
 24 other than a facility” and inserting “other than a
 25 hospital or unit”;

1 (2) by striking “rehabilitation facility” and “fa-
 2 cility” and inserting “inpatient rehabilitation hos-
 3 pital or a rehabilitation unit” and “hospital or unit”,
 4 respectively, each place it appears;

5 (3) by striking “rehabilitation facilities” and in-
 6 serting “inpatient rehabilitation hospitals or rehabili-
 7 tation units” each place it appears; and

8 (4) in paragraph (6), by striking “rehabilitation
 9 facilities’ costs” and inserting “costs of inpatient re-
 10 habilitation hospitals or rehabilitation units”.

11 (b) USE OF THE TERM “IRH/U”.—The Secretary of
 12 Health and Human Services shall, under regulation and
 13 Medicare program guidance, use the term “inpatient reha-
 14 bilitation hospital/unit” or “IRH/U” to refer to entities
 15 receiving payment for inpatient rehabilitation services
 16 under section 1886(j) of the Social Security Act (42
 17 U.S.C. 1395ww(j)).

18 **SEC. 4. EFFECTIVE DATE.**

19 Sections 1 and 3 of this Act shall take effect on July
 20 1, 2007, and section 2 shall take effect on the date of
 21 the enactment of this Act.

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