

110TH CONGRESS  
2D SESSION

# S. 3116

To amend title XVIII of the Social Security Act to stabilize and modernize the provision of partial hospitalization services under the Medicare program, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JUNE 11, 2008

Mr. VITTER introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend title XVIII of the Social Security Act to stabilize and modernize the provision of partial hospitalization services under the Medicare program, 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Outpatient Mental  
5 Health Modernization Act of 2008”.

1 **SEC. 2. TRANSITIONAL FREEZE ON CERTAIN MEDICARE**  
 2 **HOSPITAL OUTPATIENT FEE SCHEDULE**  
 3 **AMOUNTS.**

4 Notwithstanding any other provision of law, effective  
 5 for episodes and visits beginning on or after January 1,  
 6 2009, and before January 1, 2010, in the case of partial  
 7 hospital services (as defined in section 1861(ff)(1) of the  
 8 Social Security Act (42 U.S.C. 1395x(ff)(1)), the OPD fee  
 9 schedule increase factor under section 1833(t)(3)(C)(iv) of  
 10 the Social Security Act (42 U.S.C. 1395l(t)(3)(C)(iv)) for  
 11 the medicare OPD fee schedule amount established for  
 12 such services (as published in the Federal Register on No-  
 13 vember 27, 2007 (72 Fed. Reg. 66670)) shall be zero.

14 **SEC. 3. ACCREDITATION PROGRAM FOR COMMUNITY MEN-**  
 15 **TAL HEALTH CENTERS PROVIDING PARTIAL**  
 16 **HOSPITALIZATION SERVICES.**

17 Section 1833(t) of the Social Security Act (42 U.S.C.  
 18 1395l(t)) is amended by adding at the end the following  
 19 new paragraph:

20 “(18) ACCREDITATION PROGRAM FOR COMMU-  
 21 NITY MENTAL HEALTH CENTERS PROVIDING PAR-  
 22 TIAL HOSPITALIZATION SERVICES.—

23 “(A) DEFINITIONS.—In this section:

24 “(i) ACCREDITATION ORGANIZA-  
 25 TION.—The term ‘accreditation organiza-  
 26 tion’ means an organization designated by

1 the Secretary under subparagraph  
2 (C)(i)(II) to accredit community mental  
3 health centers providing partial hospitaliza-  
4 tion services.

5 “(ii) PARTIAL HOSPITALIZATION  
6 SERVICES.—The term ‘partial hospitaliza-  
7 tion services’ has the meaning given such  
8 term in section 1861(ff)(1).

9 “(iii) PHYSICIAN.—Except as other-  
10 wise provided by the Secretary, the term  
11 ‘physician’ means any individual who fur-  
12 nishes services for which payment may be  
13 made under the physician fee schedule  
14 under section 1848.

15 “(iv) PHYSICIAN SPECIALTY ORGANI-  
16 ZATION.—The term ‘physician specialty or-  
17 ganization’ means a United States medical  
18 specialty society that represents diplomats  
19 certified by a board recognized by the  
20 American Board of Medical Specialties.

21 “(B) ESTABLISHMENT.—Not later than  
22 January 1, 2010, subject to the succeeding pro-  
23 visions of this paragraph, the Secretary shall,  
24 by regulation, establish an accreditation pro-  
25 gram which requires the accreditation of com-

1 community mental health centers providing partial  
2 hospitalization services.

3 “(C) DESIGN OF ACCREDITATION PRO-  
4 GRAM.—

5 “(i) IN GENERAL.—Each community  
6 mental health center providing partial hos-  
7 pitalization services for which payment is  
8 made under the prospective payment sys-  
9 tem established under this subsection must  
10 be accredited for each program under  
11 which such services are furnished by the  
12 community mental health center by an ac-  
13 crediting organization designated by the  
14 Secretary under clause (ii).

15 “(ii) ACCREDITATION ORGANIZA-  
16 TIONS.—

17 “(I) IN GENERAL.—The Sec-  
18 retary shall, by regulation, designate  
19 entities to accredit community mental  
20 health centers providing partial hos-  
21 pitalization services. The entities des-  
22 ignated under the preceding sentence  
23 shall include the Joint Commission on  
24 Accreditation of Hospitals and the

1 Commission on Accreditation of Reha-  
2 bilitation Facilities.

3 “(II) CONSULTATION.—In desig-  
4 nating entities under subclause (I),  
5 the Secretary shall consult with aca-  
6 demic medical centers, community  
7 mental health centers, hospitals, and  
8 other appropriate medical personnel  
9 (such as psychologists, social workers,  
10 and nurse specialists).

11 “(iii) CONSIDERATIONS.—In desig-  
12 nating entities under clause (ii), the Sec-  
13 retary shall consider the following:

14 “(I) The ability of the entity to  
15 conduct timely reviews of accredita-  
16 tion applications.

17 “(II) Whether the entity has es-  
18 tablished a process for the timely inte-  
19 gration of new services and clinical  
20 interventions for individuals who are  
21 furnished partial hospitalization serv-  
22 ices.

23 “(III) Any other factors the Sec-  
24 retary determines appropriate.

1           “(iv) USE OF CRITERIA FOR ACCREDI-  
2           TATION.—Accreditation organizations shall  
3           use appropriate criteria for evaluating  
4           community mental health centers providing  
5           partial hospitalization services for purposes  
6           of the accreditation of such community  
7           mental health centers, including criteria  
8           with respect to—

9                   “(I) the qualifications of non-  
10                  physician medical personnel;

11                  “(II) the qualifications and re-  
12                  sponsibilities of physicians, including  
13                  supervising physicians;

14                  “(III) the establishment of proce-  
15                  dures for ensuring patient safety; and

16                  “(IV) quality assurance report-  
17                  ing.

18           “(v) INCORPORATION OF QUALITY  
19           MEASURES.—Not later than January 1,  
20           2012, the Secretary shall provide for the  
21           incorporation of measures selected for pur-  
22           poses of quality reporting under paragraph  
23           (19) into the accreditation program estab-  
24           lished under this paragraph, including the

1 use of such measures in the criteria for ac-  
2 creditation under clause (iv).

3 “(vi) REVIEW OF ACCREDITATION OR-  
4 GANIZATIONS.—The Secretary, in consulta-  
5 tion with the entities and individuals de-  
6 scribed in clause (ii)(II)—

7 “(I) shall conduct an annual re-  
8 view of accreditation organizations  
9 designated under clause (ii); and

10 “(II) may, by regulation, expand  
11 the original list of accreditation orga-  
12 nizations so designated.

13 “(D) EVALUATION AND REPORT.—

14 “(i) EVALUATION.—The Secretary  
15 shall contract with an independent, private  
16 organization or entity to evaluate the effect  
17 of the accreditation program established  
18 under this paragraph and other relevant  
19 questions involving access to and value of  
20 partial hospitalization services furnished to  
21 individuals under this part. Such evalua-  
22 tion shall examine the following:

23 “(I) The impact of accreditation  
24 requirements on the number, type,  
25 and quality of partial hospitalization

1 services furnished to individuals under  
2 this part.

3 “(II) The cost of meeting such  
4 accreditation requirements, including  
5 an examination of compliance costs to  
6 community mental health centers pro-  
7 viding partial hospitalization services  
8 and administrative costs to the Sec-  
9 retary.

10 “(III) The access of individuals  
11 under this part to partial hospitaliza-  
12 tion services, especially in rural areas,  
13 before and after implementation of  
14 the accreditation program.

15 “(IV) Any other matters the Sec-  
16 retary determines appropriate.

17 “(ii) REPORT.—Not later than De-  
18 cember 31, 2012, the Secretary shall sub-  
19 mit a report to Congress on the evaluation  
20 conducted under clause (i).

21 “(E) WAIVER AUTHORITY.—The Secretary  
22 shall waive compliance with the requirements of  
23 this title to such extent and for such period as  
24 the Secretary determines is necessary to carry  
25 out this paragraph.”.



1 **SEC. 4. QUALITY IMPROVEMENT FOR PARTIAL HOS-**  
 2 **PITALIZATION SERVICES PROVIDED BY COM-**  
 3 **MUNITY MENTAL HEALTH CENTERS.**

4 Section 1833(t) of the Social Security Act (42 U.S.C.  
 5 1395l(t)), as amended by section 3, is amended by adding  
 6 at the end the following new paragraph:

7 “(19) QUALITY REPORTING FOR PARTIAL HOS-  
 8 PITALIZATION SERVICES PROVIDED BY COMMUNITY  
 9 MENTAL HEALTH CENTERS.—

10 “(A) REDUCTION IN UPDATE FOR FAILURE  
 11 TO REPORT.—For purposes of paragraph  
 12 (3)(C)(iv) for 2009 and each subsequent year,  
 13 in the case of a community mental health cen-  
 14 ter providing partial hospitalization services (as  
 15 defined in section 1861(ff)(1)) that does not  
 16 submit, to the Secretary in accordance with this  
 17 paragraph, data required to be submitted on  
 18 measures selected under this paragraph with re-  
 19 spect to such a calendar year, the OPD fee  
 20 schedule increase factor under paragraph  
 21 (3)(C)(iv) for such year shall be reduced by 1.0  
 22 percentage point. A reduction under the pre-  
 23 ceding sentence shall apply only with respect to  
 24 the year involved and the Secretary shall not  
 25 take into account such reduction in computing

1 the OPD fee schedule increase factor for a sub-  
2 sequent calendar year.

3 “(B) FORM AND MANNER OF SUBMIS-  
4 SION.—

5 “(i) IN GENERAL.—Subject to clause  
6 (ii), each community mental health center  
7 providing partial hospitalization services  
8 shall submit to the Secretary data on  
9 measures selected under this paragraph in  
10 a form and manner, and at a time, speci-  
11 fied by the Secretary for purposes of this  
12 paragraph.

13 “(ii) GRACE PERIOD FOR SUBMISSION  
14 IN 2011.—In the case of such data sub-  
15 mitted with respect to 2011, the Secretary  
16 shall provide for a 30-day grace period for  
17 the submission of such data by a commu-  
18 nity mental health center providing partial  
19 hospitalization services.

20 “(C) DEVELOPMENT OF MEASURES.—

21 “(i) IN GENERAL.—The Secretary  
22 shall select measures that the Secretary  
23 determines appropriate for the measure-  
24 ment of the quality of care provided by  
25 community mental health centers providing

1 partial hospitalization services, including,  
2 beginning with 2011, measures for a set of  
3 5 indicators established by the Secretary.

4 “(ii) ADDITIONAL MEASURES.—The  
5 Secretary shall expand, beyond the meas-  
6 ures selected under clause (i) and con-  
7 sistent with the succeeding provisions of  
8 this paragraph, the set of measures that  
9 the Secretary determines appropriate for  
10 the measurement of the quality of care  
11 provided by community mental health cen-  
12 ters providing partial hospitalization serv-  
13 ices.

14 “(iii) CONSENSUS MEASURES.—Begin-  
15 ning with 2009, the Secretary shall add  
16 additional measures that reflect consensus  
17 among affected parties and, to the extent  
18 feasible and practicable, shall include  
19 measures set forth by 1 or more national  
20 consensus building entities.

21 “(D) REPLACEMENT OF MEASURES.—For  
22 purposes of this paragraph, the Secretary may  
23 replace any measures or indicators in appro-  
24 priate cases, such as where all community men-  
25 tal health centers providing partial hospitaliza-

tion services are effectively in compliance or the measures or indicators have been subsequently shown not to represent the best clinical practice.

“(E) AVAILABILITY OF DATA.—The Secretary shall establish procedures for making data submitted under this paragraph available to the public. Such procedures shall ensure that a community mental health center providing partial hospitalization services has the opportunity to review the data that are to be made public with respect to the community mental health center prior to such data being made public. The Secretary shall report quality measures of process, structure, outcome, patients’ perspectives on care, efficiency, and costs of care that relate to partial hospitalization services on the Internet website of the Centers for Medicare & Medicaid Services.”.

**SEC. 5. ESTABLISHING MINIMUM NUMBER OF SERVICE UNITS.**

(a) IN GENERAL.—Section 1861(ff)(3)(A) of the Social Security Act (42 U.S.C. 1395x(ff)(3)(A)) is amended—

1           (1) by striking “, and” and inserting a comma;  
 2           and

3           (2) by inserting before the period at the end “,  
 4           and which provides a minimum of 4 units of items  
 5           and services described in paragraph (2)”.

6           (b) EFFECTIVE DATE.—The amendments made by  
 7           this section shall take effect on January 1, 2011.

8   **SEC. 6. COST-REPORTS OF PROVIDERS OF PARTIAL HOS-**  
 9                           **PITALIZATION SERVICES.**

10          (a) IN GENERAL.—The Secretary shall require fiscal  
 11           intermediaries under the Medicare program under title  
 12           XVIII of the Social Security Act to file the cost reports  
 13           of providers of partial hospitalization services (as defined  
 14           in section 1861(ff)(1) of the Social Security Act (42  
 15           U.S.C. 1395x(ff)(1)) into the Healthcare Provider Cost  
 16           Reporting Information System (HCRIS) maintained by  
 17           the Centers for Medicare & Medicaid Services.

18          (b) FUNDING.—Out of any funds in the Treasury not  
 19           otherwise appropriated, there are appropriated  
 20           \$1,000,000 to the Secretary of Health and Human Serv-  
 21           ices for calendar year 2009 to carry out this section.

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