110TH CONGRESS
1ST SESSION

S. 338

To amend title XVIII of the Social Security Act to ensure and foster continued patient quality of care by establishing facility and patient criteria for long-term care hospitals and related improvements under the Medicare program.

IN THE SENATE OF THE UNITED STATES

JANUARY 18, 2007

Mr. CONRAD (for himself, Mr. HATCH, Mr. WYDEN, Mr. VITTER, Mr. DORGAN, and Mrs. LINCOLN) 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 ensure and foster continued patient quality of care by establishing facility and patient criteria for long-term care hospitals and related improvements under the Medicare program.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Medicare Long-Term Care Hospital Improvement Act of 2007''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) Long-term care hospitals (in this Act referred to as ''LTCHs'') serve a valuable role in the post-acute care continuum by providing care to medically complex patients needing long hospital stays.

(2) The Medicare program should ensure that patients receive post-acute care in the most appropriate setting. The use of additional certification criteria for LTCHs, including facility and patient criteria, will promote the appropriate placement of severely ill patients into LTCHs. Further, patient admission, continued stay, and discharge screening tools can guide appropriate patient placement.

(3) Measuring and reporting on quality of care is an important function of any Medicare provider and a national quality initiative for LTCHs should be similar to short-term general acute care hospitals in the Medicare program.

(4) To conform the prospective payment system for LTCHs with certain aspects of the prospective payment system for short-term general acute care hospitals and promote payment stability, the Secretary of Health and Human Services (in this Act referred to as the ''Secretary'') should—

(A) perform an annual market basket update;

(B) conduct the long term care diagnosis related groups (in this Act referred to as ''LTCDRGs'') reweighting and wage level adjustments in a budget neutral manner each year;

(C) not perform a proposed one-time budget neutrality adjustment; and

(D) not extend the 25-percent limitation on reimbursement of co-located hospital patient admissions to freestanding LTCHs.

(5) LTCHs co-located with another hospital in underserved areas, including rural areas and areas with an urban single or MSA dominant hospital, should be afforded greater relief from the 50 percent limitation on reimbursement of co-located hospital patient admissions.

SEC. 3. NEW DEFINITION OF A LONG-TERM CARE HOSPITAL WITH FACILITY AND PATIENT CRITERIA.

(a) DEFINITION.—Section 1861 of the Social Security Act (42 U.S.C. 1395x) is amended by adding at the end the following new subsection:

''Long-Term Care Hospital

''(ccc) The term 'long-term care hospital' means an institution which—''

''(1) is primarily engaged in providing, by or under the supervision of physicians, to medically complex inpatients needing long hospital stays—

''(A) diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons; or

''(B) rehabilitation services for the rehabilitation of injured, disabled, or sick persons;

''(2) has an average inpatient length of stay (as determined by the Secretary) for beneficiaries under this title of greater than 25 days, or as otherwise defined in section 1886(d)(1)(B)(iv);

''(3) satisfies the requirements of paragraphs (2) through (9) of subsection (e);

''(4) meets the following additional facility criteria:

''(A) the institution has a patient review process, documented in the patient medical record, that screens patients prior to admission, validates within 48 hours of admission that patients meet admission criteria, regularly evaluates patients throughout their stay, and as-

sesses the available discharge options when patients no longer meet the continued stay criteria;

''(B) the institution applies a standard patient screening tool, as determined by the Secretary, that is a valid clinical tool appropriate for this level of care, uniformly used by all long-term care hospitals, to measure the severity of illness and intensity of service requirements for patients for the purposes of making admission, continuing stay, and discharge medical necessity determinations taking into account the medical judgment of the patient's physician, as provided for under sections 1814(a)(3) and 1835(a)(2)(B);

''(C) the institution has active physician involvement with patients during their treatment through an organized medical staff, physician review of patient progress on a daily basis, and consulting physicians on call and capable of being at the patient's side within a moderate period of time, as determined by the Secretary;

''(D) the institution has interdisciplinary team treatment for patients, requiring interdisciplinary teams of health care professionals,

including physicians, to prepare and carry out an individualized treatment plan for each patient; and

''(E) the institution maintains adequate staffing levels of licensed health care professionals, as determined by the Secretary, to ensure that long-term care hospitals provide the intensive level of care that is sufficient to meet the needs of medically complex patients needing long hospital stays; and

''(5) meets patient criteria relating to patient mix and severity appropriate to the medically complex cases that long-term care hospitals are uniquely designed to treat, as measured under section 1886(m).''.

(b) NEW PATIENT CRITERIA FOR LONG-TERM CARE HOSPITAL PROSPECTIVE PAYMENT.—Section 1886 of such Act (42 U.S.C. 1395ww) is amended by adding at the end the following new subsection:

''(m) PATIENT CRITERIA FOR PROSPECTIVE PAYMENT TO LONG-TERM CARE HOSPITALS.—

''(1) IN GENERAL.—To be eligible for prospective payment as a long-term care hospital, a majority of the total number of patients entitled to benefits under part A who are discharged from a long-

term care hospital must be medically complex patients admitted with a high severity of illness, as that term is defined by the Secretary for payment purposes, with 1 or more enumerated medical conditions specified in paragraph (2).

''(2) MEDICALLY COMPLEX MEDICAL CONDITIONS.—The Secretary shall determine a list of medical conditions associated with a high severity of illness of patients who are appropriate for treatment in long-term care hospitals, as indicated by the presence of clinical comorbidities in accordance with a methodology specified by the Secretary. Such list shall include the following medical conditions:

''(A) Circulatory conditions.

''(B) Digestive, endocrine, and metabolic conditions.

''(C) Infectious disease.

''(D) Neurological conditions.

''(E) Renal conditions.

''(F) Respiratory conditions.

''(G) Skin conditions.

''(H) Other medically complex conditions as defined by the Secretary.''.

(c) NEGOTIATED RULEMAKING TO DEVELOP LTCH FACILITY AND PATIENT CRITERIA.—The Secretary shall

promulgate regulations to carry out the amendments made by this section on an expedited basis and using a negotiated rulemaking process under subchapter III of chapter 5 of title 5, United States Code.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to discharges occurring on or after October 1, 2007.

SEC. 4. LTCH QUALITY IMPROVEMENT INITIATIVE.

(a) STUDY TO ESTABLISH QUALITY MEASURES.—The Secretary shall conduct a study (in this section referred to as the ''study'') to determine appropriate quality measures for Medicare beneficiaries receiving care in LTCHs.

(b) REPORT.—Not later than October 1, 2007, the Secretary shall submit to Congress a report on the results of the study.

(c) SELECTION OF QUALITY MEASURES.—Subject to subsection (e), the Secretary shall choose 3 quality measures from the study to be reported by LTCHs.

(d) REQUIREMENT FOR SUBMISSION OF DATA.—

(1) IN GENERAL.—LTCHs shall—

(A) collect data on the 3 quality measures chosen under subsection (c); and

(B) submit all required quality data to the Secretary.

(2) FAILURE TO SUBMIT DATA.—Any LTCH which does not submit the required quality data to the Secretary in any fiscal year shall have the applicable LTCH market basket under section 1886 reduced by not more than 0.4 percent for such year.

(e) EXPANSION OF QUALITY MEASURES.—The Secretary may expand the number of quality indicators required to be reported by LTCHs under the study. If the Secretary adds other measures, the measures shall reflect consensus among the affected parties. The Secretary may replace any measures in appropriate cases, such as where all hospitals are effectively in compliance or where measures have been shown not to represent the best clinical practice.

(f) AVAILABILITY OF DATA TO PUBLIC.—The Secretary shall establish procedures for making the quality data submitted under this section available to the public.

SEC. 5. CONFORMING LTCH PPS UPDATES TO THE INPATIENT PPS.

(a) REQUIRING ANNUAL UPDATES OF BASE RATES AND WAGE INDICES AND ANNUAL UPDATES AND REWEIGHTING OF LTCDRGS.—

(1) IN GENERAL.—The second sentence of section 307(b)(1) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of

2000 (114 Stat. 2763A–496), as enacted into law by section 1(a)(6) of Public Law 106–554, is amended by inserting before the period at the end the following: ‘‘, and shall provide (consistent with updating and reweighting provided for subsection (d) hospitals under paragraphs (2)(B)(ii), (3)(D)(iii), and (3)(E) of section 1886 of the Social Security Act) for an annual update under such system in payment rates, in the wage indices (in a budget neutral manner), and in the classification and reweighting (in a budget neutral manner) of the diagnosis-related groups applied under such system’’.

(2) APPLICATION.—Pursuant to the amendment made by paragraph (1), the Secretary shall provide annual updates to the LTCH base rate, as is specified for the inpatient hospital prospective payment system under section 1886(d)(2)(B)(ii) of the Social Security Act (42 U.S.C. 1395ww(d)(2)(B)(ii)). The Secretary shall annually update and reweight the LTCDRGs under section 307(b) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 or an alternative patient classification system in a budget neutral manner, consistent with such updating and reweighting applied under section 1886(d)(3)(D)(iii)

of the Social Security Act (42 U.S.C. 1395ww(d)(3)(D)(iii)). The Secretary shall annually update wage levels for LTCHs in a budget neutral manner, consistent with such annual updating applied under section 1886(d)(3)(E) of the Social Security Act (42 U.S.C. 1395ww(d)(3)(E)).

(b) ELIMINATION OF ONE-TIME BUDGET NEUTRALITY ADJUSTMENT.—The Secretary shall not make a one-time prospective adjustment to the LTCH prospective payment system rates under section 412.523(d)(3) of title 42, Code of Federal Regulations, or otherwise conduct any budget neutrality adjustment to address such rates, during the transition period specified in section 412.533 of such title from cost-based payment to the prospective payment system for LTCHs.

(c) NO APPLICATION OF 25 PERCENT PATIENT THRESHOLD PAYMENT ADJUSTMENT TO FREESTANDING LTCHS.—The Secretary shall not extend the 25 percent (or applicable percentage) patient threshold payment adjustment under section 412.534 of title 42, Code of Federal Regulations, or any similar provision, to freestanding LTCHs.

SEC. 6. RELIEF FOR CERTAIN LONG-TERM CARE HOSPITALS AND SATELLITE FACILITIES THAT ARE CO-LOCATED WITH OTHER HOSPITALS.

(a) URBAN SINGLE AND MSA DOMINANT HOSPITALS.—The Secretary shall permit up to 75 percent of the discharged Medicare impatient population of an applicable hospital to be admitted from a co-located urban single or co-located MSA dominant hospital (as defined in section 412.534(e)(4) of title 42, Code of Federal Regulations) without adjustment to the hospital's LTCH prospective payment system payment in the manner described in section 412.534(e) of such title.

(b) RURAL HOSPITALS.—The Secretary shall permit up to 75 percent of the discharged Medicare impatient population of an applicable hospital which is located in a rural area (as defined in section 412.64(b)(1)(ii)(C) of title 42, Code of Federal Regulations) to be admitted from a co-located hospital without adjustment to the hospital's LTCH prospective payment system payment in the manner described in section 412.534(d) of such title.

(c) APPLICABLE LONG-TERM CARE HOSPITAL DEFINED.—In this section, the term ''applicable long-term care hospital'' means—

(1) a long-term care hospital that meets the criteria in section 412.22(e) of title 42, Code of Federal Regulations; and

(2) a satellite facility of a long-term care hospital that meet the criteria in section 412.22(h) of such title.

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