

INTRODUCTION OF THE PRESERVING PATIENT ACCESS TO INPATIENT REHABILITATION HOSPITALS ACT OF 2007

Senator Ben Nelson

**In the Senate
February 12, 2007**

Mr. President, today I am introducing the “Preserving Patient Access to Inpatient Rehabilitation Hospitals Act of 2007” to make changes to a rule issued by the Centers for Medicare and Medicaid Services (CMS) that has restricted the ability of rehabilitation hospitals to provide critical care.

In my home State of Nebraska, Madonna Rehabilitation Hospital in Lincoln is a nationally-recognized premier rehabilitation facility that offers specialized programs and services for those who have suffered brain injuries, strokes, spinal cord injuries, and the latest care for cardiac, pulmonary, cancer, pain, and joint replacement patients. If CMS’ rule is not updated, Madonna and other facilities would not be able to continue to offer critical care to patients eager to restore their past health and physical function.

When CMS first looked at whether facilities would qualify as an inpatient rehabilitation facility (IRF), a list of criteria were created to determine eligibility. The narrow criteria, generally referred to as the “75 Percent Rule,” were first established in 1984, but were *never* strictly enforced and ultimately suspended in 2002 due to inconsistencies in accurately determining medical necessity.

Since establishing strict enforcement of the 75% Rule in 2004, field data estimates that as many as 88,000 Medicare patients have been denied critical IRF services. The rule will, by CMS’ own estimate, shift thousands of patients – both Medicare and non-Medicare – into alternative care settings that may be inappropriate and inadequate. Bipartisan Congressional efforts have repeatedly petitioned both the U.S Department of Health and Human Services and CMS for cooperation in averting an escalation of the 75% threshold, which currently stands at 60%.

For cost reporting periods beginning July 1, 2007, the compliance threshold is scheduled to jump to 65 percent, with full 75%-implementation scheduled for July 2008. If legislative action is not taken, IRFs will be forced to turn away more and more patients in order to operate as a rehabilitation hospital or unit. By freezing the compliance threshold at 60% and ending the inconsistent and unpredictable use of fiscal intermediaries’ local coverage determinations, our efforts will ensure that patients across America will continue to have access to the rehabilitative care they need.

I am pleased a bipartisan group of Senate Finance Committee; Health, Education, Labor, and Pension Committee; and Special Committee on Aging members have joined me in supporting this legislation. In addition, the American Association Of People With Disabilities, the American Academy of Physical Medicine and Rehabilitation, the American Hospital Association, the American Medical Rehabilitation Providers Association, the Federation of

American Hospitals and numerous other associations and advocacy groups have endorsed our bill. Just as I have heard from patients and medical providers who have experienced problems with the 75% Rule, my colleagues and the members of these associations have witnessed the devastating effect the Rule is having on those who need this critical care.

I urge my colleagues to join Senators Jim Bunning, Debbie Stabenow, Olympia Snowe, John Kerry, Susan Collins, Jack Reed, Hillary Clinton, Robert Menendez and I in supporting this important bill. My colleagues and I are determined to resolve this lingering problem and return medical necessity decisions back into the hands of medical providers, while ensuring access to improved inpatient rehabilitation care. The Preserving Patient Access to Inpatient Rehabilitation Hospitals Act of 2007 is a top priority and I look forward to its passage this year.