

112TH CONGRESS  
1ST SESSION

# S. 1486

To amend title XVIII of the Social Security Act to clarify and expand on criteria applicable to patient admission to and care furnished in long-term care hospitals participating in the Medicare program, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

AUGUST 2, 2011

Mr. ROBERTS (for himself, Mr. NELSON of Florida, Mr. CRAPO, Mr. WYDEN, Mr. TOOMEY, and Mr. HELLER) 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 clarify and expand on criteria applicable to patient admission to and care furnished in long-term care hospitals participating in 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; TABLE OF CONTENTS.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Long-Term Care Hospital Improvement Act of 2011”.

6       (b) TABLE OF CONTENTS.—The table of contents of  
7       this Act is as follows:

- Sec. 1. Short title; table of contents.  
 Sec. 2. Specification of criteria for patient preadmission, admission, and continuing stay assessments.  
 Sec. 3. Specification of core services and patient care requirements.  
 Sec. 4. Additional long-term care hospital payment classification criteria.  
 Sec. 5. Application of criteria for certain hospitals.

1 **SEC. 2. SPECIFICATION OF CRITERIA FOR PATIENT**  
 2 **PREADMISSION, ADMISSION, AND CON-**  
 3 **TINUING STAY ASSESSMENTS.**

4 (a) IN GENERAL.—Section 1861(ccc) of the Social  
 5 Security Act (42 U.S.C. 1395x(ccc)) is amended—

6 (1) in paragraph (4)(A)—

7 (A) by inserting “in accordance with para-  
 8 graph (2)” after “screens patients prior to ad-  
 9 mission for appropriateness of admission to a  
 10 long-term care hospital”;

11 (B) by striking “validates within 48 hours  
 12 of admission” and inserting “validates, in ac-  
 13 cordance with paragraph (3), within 24 hours  
 14 of admission”;

15 (C) by inserting “in accordance with para-  
 16 graph (4)” after “regularly evaluates”; and

17 (D) by inserting “in accordance with para-  
 18 graph (5)” after “assesses the available dis-  
 19 charge options”;

20 (2) in paragraph (4), by redesignating subpara-  
 21 graphs (A), (B), and (C) as clauses (i), (ii), and  
 22 (iii), respectively;

1           (3) by redesignating paragraphs (1), (2), (3),  
2           and (4) as subparagraphs (A), (B), (C), and (D), re-  
3           spectively;

4           (4) by inserting “(1)” after “(ccc)”; and

5           (5) by adding at the end the following new  
6           paragraphs:

7           “(2) An institution provides for screening of patients  
8           prior to admission in accordance with this paragraph by  
9           using a standardized preadmission patient screening proc-  
10          ess that meets the following criteria:

11           “(A)(i) Preadmission patient screening shall be  
12          conducted by a clinical health care professional (as  
13          defined in clause (ii)) who is licensed or certified by  
14          the State in which the institution is located and per-  
15          mitted to conduct preadmission patient screening (as  
16          defined in subparagraph (C)) within the scope of  
17          practice of the professional under such State law.

18           “(ii) For purposes of clause (i), the term ‘clin-  
19          ical health care professional’ means a physician, a  
20          registered professional nurse, a licensed practical or  
21          licensed vocational nurse, a physician assistant, a  
22          respiratory therapist, and such other clinical health  
23          care professionals as the Secretary may specify.

24           “(B)(i) Except as provided in clause (ii),  
25          preadmission patient screening shall be conducted

1 during the 36-hour period preceding admission of  
2 the patient to the institution.

3 “(ii) In the case of preadmission patient screen-  
4 ing that takes place before the 36-hour period de-  
5 scribed in clause (i), such screening shall be updated  
6 by telephone or otherwise during such 36-hour pe-  
7 riod.

8 “(C) In this paragraph, the term ‘preadmission  
9 patient screening’ means a process, with respect to  
10 a patient, for the determination whether admission  
11 to a long-term care hospital for care is medically  
12 reasonable and necessary for the patient based on  
13 the following:

14 “(i) The medical status of the patient.

15 “(ii) The planned level of improvement in  
16 the condition of the patient if admitted to the  
17 institution.

18 “(iii) Estimation of the expected length of  
19 stay of the patient in the institution to achieve  
20 health care goals with respect to the patient.

21 “(iv) Evaluation of risk for clinical com-  
22 plications of the patient.

23 “(v) The primary and secondary diagnoses  
24 of the patient for which treatment in the insti-  
25 tution is appropriate.

1           “(vi) Identification of the primary treat-  
2           ments the patient will need in the institution.

3           “(vii) Evaluation of whether there is a  
4           more appropriate treatment setting for the pa-  
5           tient at a lower level of care instead of in the  
6           institution.

7           “(viii) The anticipated post-institutional  
8           discharge settings and available treatments.

9           “(ix) Such other clinical rationale for the  
10          admission of the patient that the clinical health  
11          care professional determines to be appropriate.

12          “(D) A patient may not be admitted to the in-  
13          stitution unless a physician (as defined in subsection  
14          (r)(1)) reviews and concurs with the most current  
15          results of the preadmission patient screening with  
16          respect to the patient and approves, in advance, the  
17          admission of the patient to the institution.

18          “(3) An institution validates patients meeting admis-  
19          sion criteria in accordance with this paragraph if, not later  
20          than 24 hours from the time of admission of a patient  
21          to the institution, the institution provides for a face-to-  
22          face evaluation of the patient by a physician (as defined  
23          in subsection (r)(1)) and, with respect to patients who are  
24          identified as medically appropriate for admission to the  
25          institution based on such evaluation, the physician attests

1 that the patient meets the following patient admission cri-  
2 teria and provides in the medical record of the patient for  
3 the documentation of such attestation as well as any addi-  
4 tional clinical rationale that the physician determines to  
5 be appropriate that establishes the medical reasonableness  
6 and necessity of furnishing care to the patient in the insti-  
7 tution based on such admission criteria:

8           “(A) The patient has two or more active sec-  
9           ondary diagnoses.

10           “(B) It is reasonable to expect that the patient  
11           will—

12                   “(i) require the level of care furnished to  
13                   an inpatient of a hospital;

14                   “(ii) benefit from a medically necessary  
15                   program of care furnished by the institution;  
16                   and

17                   “(iii) require an extended stay for care in  
18                   a hospital that is typical of the extended stays  
19                   for care provided by long-term care hospitals.

20           “(C)(i) The furnishing of intensive therapy (as  
21           defined in clause (ii)) to the patient is not the pri-  
22           mary medical justification for the admission of the  
23           patient to the institution.

24                   “(ii) For purposes of clause (i), the term ‘inten-  
25                   sive therapy’ means a program of physical or occu-

1       pational therapy or speech-language pathology serv-  
2       ices furnished three hours per day, five days per  
3       week in such an institution or similar institution  
4       such as a rehabilitation facility (as described in sec-  
5       tion 1886(j)).

6       “(4) An institution regularly evaluates patients in ac-  
7       cordance with this paragraph if—

8               “(A) not later than 7 days after the date of ad-  
9       mission of the patient to the institution, and weekly  
10       thereafter until discharge, the institution provides  
11       for a face-to-face evaluation of the patient by a phy-  
12       sician (as defined in subsection (r)(1)) to assess  
13       whether the continuation of the furnishing of inpa-  
14       tient hospital services to the patient is medically rea-  
15       sonable and necessary;

16               “(B) such an assessment is based on the med-  
17       ical reasonableness and necessity of the continuation  
18       of the furnishing of inpatient hospital services to the  
19       patient and is not based on the admission criteria  
20       described in paragraph (3) applicable to the patient;  
21       and

22               “(C) the physician performing the evaluation  
23       provides in the medical record of the patient for the  
24       documentation of the evaluation as well as any addi-  
25       tional clinical rationale that the physician deter-

1 mines to be appropriate that establishes the medical  
2 reasonableness and necessity of the continuation of  
3 inpatient hospital services for the patient in the in-  
4 stitution based on the outcome of each such evalua-  
5 tion.

6 “(5)(A) Subject to subparagraph (B), an institution  
7 assesses available discharge options in accordance with  
8 this paragraph if, upon a determination by a physician (as  
9 defined in subsection (r)(1)) that a patient admitted to  
10 the institution no longer requires the furnishing of hos-  
11 pital inpatient care, the patient is discharged from the in-  
12 stitution when a safe and appropriate discharge option is  
13 available to the patient.

14 “(B)(i) In the case of a patient for whom a deter-  
15 mination described in subparagraph (A) has been made  
16 but for whom a safe and appropriate discharge option is  
17 unavailable, such patient may continue as an inpatient of  
18 the institution for such period of days until a safe and  
19 appropriate discharge option is available to the patient.

20 “(ii) Clause (i) shall only apply if the institution—

21 “(I) notifies the patient that a determination  
22 described in subparagraph (A) has been made with  
23 respect to that patient; and

24 “(II) actively seeks to identify a safe and ap-  
25 propriate discharge option that is available to the

1 patient for the furnishing of post long-term care  
2 hospital care.

3 “(iii) Subject to clause (ii), the period of days de-  
4 scribed in clause (i) shall be included for purposes of para-  
5 graph (1)(B) (relating to determination of average inpa-  
6 tient length of stay) but, for purposes of section 1886(m)  
7 (relating to prospective payment for inpatient hospital  
8 services furnished by long-term care hospitals), such days  
9 shall be paid at the lesser of such prospective payment  
10 amount or cost.”.

11 (b) EFFECTIVE DATE.—The amendments made by  
12 subsection (a) shall—

13 (1) take effect on the day that is six months  
14 after the date of the enactment of this Act; and

15 (2) apply with respect to cost reporting periods  
16 beginning on or after the effective date described in  
17 paragraph (1).

18 **SEC. 3. SPECIFICATION OF CORE SERVICES AND PATIENT**  
19 **CARE REQUIREMENTS.**

20 (a) IN GENERAL.—Section 1861(ccc) of the Social  
21 Security Act (42 U.S.C. 1395x(ccc)), as amended by sec-  
22 tion 2, is amended—

23 (1) in paragraph (1)(D)(ii), by inserting “, and  
24 meets the requirements of paragraph (6)” before the  
25 semicolon; and

1           (2) by adding at the end the following new  
2 paragraph:

3           “(6) The following are the requirements of this para-  
4 graph applicable to an institution:

5           “(A) The types of items and services furnished  
6 to inpatients of the institution include at least the  
7 following items and services furnished by clinicians  
8 who are licensed or certified by the State in which  
9 the services are furnished to furnish such services:

10                   “(i) Complex respiratory services, including  
11 the availability on site of respiratory therapists  
12 24 hours a day, 7 days a week and access to  
13 consultation by pulmonologists 24 hours a day,  
14 7 days a week.

15                   “(ii) Complex wound services, including  
16 provision of wound care by registered nurses  
17 and access to consultations by physicians (as  
18 defined in subsection (r)(1)) for infectious dis-  
19 ease.

20                   “(iii) Care for patients with medically com-  
21 plex conditions.

22                   “(iv) The availability on site 24 hours a  
23 day, 7 days a week of advanced cardiac life sup-  
24 port furnished by health care personnel trained  
25 in advanced cardiac life support.

1           “(B) The institution develops a plan of care for  
2 each patient admitted to the institution which in-  
3 cludes the following:

4                   “(i) Not later than 24 hours after the time  
5 of admission of a patient to the institution, a  
6 physician (as defined in subsection (r)(1)) con-  
7 ducts an in-person evaluation of the patient; be-  
8 gins to develop a plan of care for the patient;  
9 and documents the clinical status of the pa-  
10 tient.

11                   “(ii) Not later than 7 days after the date  
12 of admission of the patient to the institution,  
13 and weekly thereafter until discharge, a physi-  
14 cian-directed interdisciplinary team establishes  
15 and updates, as appropriate, an individualized  
16 plan of care for the patient.

17           “(C) The institution provides that, 24 hours per  
18 day, 7 days per week, a physician (as defined in sub-  
19 section (r)(1)) is on-site or is on call and imme-  
20 diately available by telephone or radio contact and  
21 available on site within 30 minutes (or 60 minutes  
22 in the case of an institution located in a rural area  
23 (as defined for purposes of section 1886(d))). If a  
24 physician (as so defined) is not on-site 24 hours per  
25 day, 7 days per week, the institution shall furnish

1 each patient (or their representative), at the begin-  
 2 ning of their stay at the institution, notice of such  
 3 fact. Such notice shall contain such information as  
 4 the Secretary determines appropriate.

5 “(D) The institution provides for on-site reg-  
 6 istered nurses 24 hours per day, 7 days per week.”.

7 (b) EFFECTIVE DATE.—The amendments made by  
 8 subsection (a) shall—

9 (1) take effect on the day that is six months  
 10 after the date of the enactment of this Act; and

11 (2) apply with respect to cost reporting periods  
 12 beginning on or after the effective date described in  
 13 paragraph (1).

14 **SEC. 4. ADDITIONAL LONG-TERM CARE HOSPITAL PAY-**  
 15 **MENT CLASSIFICATION CRITERIA.**

16 (a) IN GENERAL.—Section 1861(ccc) of the Social  
 17 Security Act (42 U.S.C. 1395x(ccc)), as amended by sec-  
 18 tions 2 and 3, is amended—

19 (1) in paragraph (1)—

20 (A) by striking “and” at the end of sub-  
 21 paragraph (C);

22 (B) by striking the period at the end of  
 23 subparagraph (D) and inserting “; and”; and

24 (C) by adding at the end the following new  
 25 subparagraph:

1                   “(E) meets the requirements of paragraph  
2                   (7)(A).”; and

3                   (2) by adding at the end the following new  
4                   paragraph:

5                   “(7)(A) With respect to a 12-month period specified  
6 by the Secretary (which may be a cost reporting period)  
7 of a long-term care hospital for a fiscal year, the hospital  
8 meets the requirements of this subparagraph if each of  
9 the discharges comprising not less than the applicable per-  
10 cent (as defined in subparagraph (B)) of the total dis-  
11 charges of Medicare fee-for-service beneficiaries (as de-  
12 fined in subparagraph (C)) of such hospital for such pe-  
13 riod meets one or more of the following criteria:

14                   “(i) The discharge has a length of stay of 25  
15                   days or greater.

16                   “(ii)(I) The discharge applies to an inpatient  
17                   who was a short-term acute care hospital outlier (as  
18                   defined in subclause (II)) immediately prior to ad-  
19                   mission to the long-term care hospital.

20                   “(II) For purposes of subclause (I), the term  
21                   ‘short-term acute care hospital outlier’ means an in-  
22                   patient discharge of a subsection (d) hospital in  
23                   which inpatient hospital services were furnished for  
24                   a diagnosis-related group or groups for which a pay-  
25                   ment adjustment under section 1886(d)(5)(A) (relat-

1       ing to outlier payments for subsection (d) hospitals)  
2       was made to such subsection (d) hospital for such  
3       services furnished to such inpatient.

4           “(iii) The discharge applies to an inpatient who  
5       received ventilator services in the long-term care  
6       hospital.

7           “(iv) The discharge has three or more of any  
8       Medicare-Severity-Long-Term-Care-Diagnosis-Relat-  
9       ed-Group complications and comorbidities or major  
10      complications and comorbidities.

11      “(B) For purposes of subparagraph (A), the term  
12      ‘applicable percentage’ means—

13           “(i) with respect to the first 12-month period  
14      specified by the Secretary of a long-term care hos-  
15      pital, 50 percent;

16           “(ii) with respect to the 12-month period speci-  
17      fied by the Secretary that begins after the 12-month  
18      period described in clause (i), 60 percent;

19           “(iii) with respect to the 12-month period speci-  
20      fied by the Secretary that begins after the 12-month  
21      period described in clause (ii)—

22           “(I) in the case of a long-term care hos-  
23      pital that is government-owned and operated,  
24      65 percent; and

1           “(II) in the case of a long-term care hos-  
2           pital other than such a hospital described in  
3           subclause (I), 70 percent; and

4           “(iv) with respect to the 12-month period speci-  
5           fied by the Secretary that begins after the 12-month  
6           period described in clause (iii) and each succeeding  
7           12-month period so specified, 70 percent.

8           “(C) For purposes of subparagraph (A), the term  
9           ‘Medicare fee-for-service beneficiary’ means an individual  
10          who is entitled to benefits under part A and enrolled under  
11          part B who is not enrolled in an Medicare Advantage plan  
12          under part C.

13          “(D)(i) In the case of a determination by the Sec-  
14          retary that a long-term care hospital does not meet the  
15          criteria under subparagraph (A) with respect to a 12-  
16          month period or the criteria under paragraph (1)(B) (re-  
17          lating to average inpatient length of stay (as determined  
18          by the Secretary) of greater than 25 days) with respect  
19          to a cost reporting period—

20                 “(I) the Secretary shall provide notice to such  
21                 long-term care hospital of such determination; and

22                 “(II) the Secretary shall provide such long-term  
23                 care hospital a cure period (as defined in clause (ii))  
24                 to comply with such criteria for purposes of such 12-

1 month period or cost reporting period, as the case  
2 may be.

3 “(ii) For purposes of clause (i)(II), the term ‘cure  
4 period’ means a 6-month period, beginning on the first  
5 day of the first month that begins after the date of a no-  
6 tice under clause (i)(I) during which the hospital meets  
7 the criteria under subparagraph (A) or paragraph (1)(B),  
8 as the case may be, for not less than 5 months.

9 “(iii) In the case of a hospital for which a determina-  
10 tion is made under clause (i) and with respect to which  
11 the Secretary finds, during the cure period, fails to meet  
12 the criteria under subparagraph (A) or paragraph (1)(B),  
13 as the case may be, for not less than 5 months, the Sec-  
14 retary shall provide notice to such hospital of such finding.  
15 Any change in the payment classification of such hospital  
16 under this title from a long-term care hospital to a sub-  
17 section (d) hospital (as defined in section 1886(d)(1)(B))  
18 as a result of a finding under this clause or a determina-  
19 tion under clause (i), shall apply with respect to the next  
20 cost reporting beginning after the date of such finding.

21 “(iv) The provisions of section 1878 (relating to  
22 rights to a hearing before the Provider Reimbursement  
23 Review Board and judicial review) shall apply in the case  
24 of a long-term care hospital with respect to which the Sec-  
25 retary has made a determination under clause (i).”

1 (b) EFFECTIVE DATE.—The amendments made by  
2 subsection (a) shall—

3 (1) take effect on the day that is six months  
4 after the date of the enactment of this Act; and

5 (2) apply with respect to 12-month periods (as  
6 specified by the Secretary of Health and Human  
7 Services under section 1861(ccc)(7)(A) of the Social  
8 Security Act) beginning on or after the effective date  
9 described in paragraph (1).

10 (c) REGULATIONS.—

11 (1) SUBSTITUTION.—

12 (A) IN GENERAL.—The Secretary of  
13 Health and Human Services (in this section re-  
14 ferred to as the “Secretary”) shall promulgate  
15 regulations to carry out the amendments made  
16 by this section by substituting the criteria made  
17 applicable to long-term care hospitals and facili-  
18 ties by reason of paragraph (7) of section  
19 1861(ccc) of the Social Security Act (42 U.S.C.  
20 1395x(ccc)), as added by subsection (a)(2) (in  
21 this subsection referred to as the “section  
22 1861(ccc)(7) criteria”), for the payment adjust-  
23 ments applicable to such hospitals under sec-  
24 tions 412.534 and 412.536 of title 42, Code of  
25 Federal Regulations (relating to 25 percent pa-

1           tient threshold payment adjustments), and  
2           under any related section of such title. The Sec-  
3           retary shall implement the substitution referred  
4           to in the preceding sentence in a seamless man-  
5           ner such that payment adjustments applicable  
6           to long-term care hospitals and facilities under  
7           such sections 412.534 and 412.536, and other  
8           related sections, shall have no force or effect in  
9           law with respect to periods applicable to a long-  
10          term care hospital or facility that begin after  
11          the substitution by the Secretary of the section  
12          1861(ccc)(7) criteria with respect to that hos-  
13          pital or facility.

14                 (B) APPLICATION PRIOR TO SUBSTI-  
15          TUTION.—Until such time as the Secretary im-  
16          plements the substitution described in this sub-  
17          paragraph (A), the modifications to the pay-  
18          ment adjustments under such sections 412.534  
19          and 412.536, and other related sections, pursu-  
20          ant to Public Law 110–173 (42 U.S.C. 1395ww  
21          note), as amended, shall continue to apply.

22                 (2) REPEAL.—Payment adjustments applicable  
23          to long-term care hospitals and facilities under sec-  
24          tion 412.529(c)(3)(i) of title 42, Code of Federal

1 Regulations, shall have no force or effect in law on  
2 or after the date of the enactment of this Act.

3 (3) PROHIBITION.—The Secretary shall not  
4 promulgate any payment adjustment that is similar  
5 to the payment adjustments referred to in paragraph  
6 (1) or (2).

7 (d) NO APPLICATION OF ADJUSTMENT TO STAND-  
8 ARD AMOUNT.—

9 (1) IN GENERAL.—Notwithstanding any other  
10 provision of law, the Secretary shall not make a one-  
11 time prospective adjustment to long-term care hos-  
12 pital prospective payment rates under section  
13 412.523(d)(3) of title 42, Code of Federal Regula-  
14 tions, or any similar provision.

15 (2) CONFORMING AMENDMENT.—Section  
16 114(c)(4) of the Medicare, Medicaid, and SCHIP  
17 Extension Act of 2007 (42 U.S.C. 1395ww note), as  
18 amended by sections 3106(a) and 10312(a) of the  
19 Patient Protection and Affordable Care Act (Public  
20 Law 111–148), is amended by striking “, for the 5-  
21 year period beginning on the date of the enactment  
22 of this Act,”.

23 **SEC. 5. APPLICATION OF CRITERIA FOR CERTAIN HOS-**  
24 **PITALS.**

25 (a) SECTION 1814(b)(3) HOSPITALS.—

1           (1) IN GENERAL.—Section 1861(ccc) of the So-  
2           cial Security Act (42 U.S.C. 1395x(ccc)), as amend-  
3           ed by sections 2, 3 and 4, is amended by adding at  
4           the end the following new paragraph:

5           “(8) This subsection (other than paragraph (7)) shall  
6           apply to a long-term care hospital that is paid under sec-  
7           tion 1814(b)(3).”.

8           (2) EFFECTIVE DATE.—The amendments made  
9           by paragraph (1) shall—

10           (A) take effect on the day that is six  
11           months after the date of the enactment of this  
12           Act; and

13           (B) apply with respect to cost reporting  
14           periods beginning on or after the effective date  
15           described in subparagraph (A).

16           (b) EXEMPTION OF SECTION 1886(d)(1)(B)(iv)(II)  
17           HOSPITALS.—Section 1861(ccc) of the Social Security Act  
18           (42 U.S.C. 1395x(ccc)), as amended by sections 2, 3 and  
19           4, and subsection (a) of this section, is amended by adding  
20           at the end the following new paragraph:

21           “(9) Paragraphs (2) through (8) of this subsection  
22           shall not apply to a long-term care hospital described in  
23           section 1886(d)(1)(B)(iv)(II).”.

○