

112TH CONGRESS  
1ST SESSION

# H. R. 3516

To amend title XVIII of the Social Security Act with respect to Medicare payment for long-term care hospital services.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 29, 2011

Mr. MURPHY of Connecticut (for himself and Mr. LARSON of Connecticut) introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To amend title XVIII of the Social Security Act with respect to Medicare payment for long-term care hospital services.

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. PAYMENT FOR LONG-TERM CARE HOSPITAL**  
4 **SERVICES.**

5 (a) LONG-TERM CARE HOSPITAL PAYMENT ADJUST-  
6 MENTS.—

7 (1) IN GENERAL.—Section 1886(m) of the So-  
8 cial Security Act (42 U.S.C. 1395ww(m)) is amend-  
9 ed by adding at the end the following new para-  
10 graph:

1           “(6) HIGH EPISODE EFFICIENT CASE AND EPI-  
2       SODE OUTLIER CASE PAYMENT ADJUSTMENTS.—

3           “(A) ESTABLISHMENT OF EPISODE EFFI-  
4       CIENT CASE PAYMENT ADJUSTMENTS.—In  
5       making payment under the system described in  
6       paragraph (1) to a long-term care hospital de-  
7       scribed in subsection (d)(1)(B)(iv)(I), for dis-  
8       charges occurring in rate years beginning on  
9       and after October 1, 2011, the Secretary shall  
10      make payment adjustments—

11           “(i) under clause (ii) of subparagraph  
12      (C) for cases identified as meeting or ex-  
13      ceeding the fixed high episode efficient  
14      case threshold under clause (i) of such  
15      subparagraph; and

16           “(ii) under clause (ii) of subparagraph  
17      (D) for cases identified as meeting or  
18      below the episode outlier case threshold  
19      under clause (i) of such subparagraph.

20           “(B) DETERMINATION OF EPISODE EFFI-  
21      CIENT CASES.—For the rate year beginning on  
22      and after October 1, 2011, the Secretary shall  
23      adopt rules which identify the predicted prob-  
24      ability of those Medicare beneficiaries admitted  
25      as inpatients to long-term care hospitals from a

1 subsection (d) hospital for whom the payment  
2 for services received during an episode of hos-  
3 pital care (as defined in subparagraph (G)) is  
4 predicted to be less than if they had remained  
5 in the subsection (d) hospital (in this paragraph  
6 referred to as ‘episode efficient cases’). The  
7 rules for determining episode efficient cases  
8 shall identify the characteristics of individuals  
9 while they were an inpatient in a subsection (d)  
10 hospital, including their length of stay, number  
11 of diagnoses, number of medical procedures,  
12 and the number of days of care provided in an  
13 intensive care or cardiac care unit. Such char-  
14 acteristics shall be determined by the Secretary  
15 to be characteristics for which information is  
16 usually available to long-term care hospitals be-  
17 fore the admission of an individual to a long-  
18 term care hospital.

19 “(C) HIGH EPISODE EFFICIENT CASES.—

20 “(i) THRESHOLD.—Subject to sub-  
21 paragraph (F), the Secretary shall estab-  
22 lish from year to year fixed high episode  
23 efficient case thresholds which identify  
24 Medicare beneficiaries discharged from  
25 long-term care hospitals with the highest

1 10 percent probability of being episode ef-  
2 ficient cases.

3 “(ii) HIGH EPISODE EFFICIENT CASE  
4 PAYMENT ADJUSTMENT.—The Secretary  
5 shall annually establish, consistent with  
6 subparagraph (E), the payment adjust-  
7 ment under this clause for cases which  
8 meet or exceed the applicable fixed high  
9 episode efficient case threshold established  
10 under clause (i). Such payment adjustment  
11 shall be a per discharge incentive payment,  
12 expressed as a percentage of the amount  
13 payable under the system under paragraph  
14 (1), which shall be made in addition to the  
15 amount payable for the long-term care hos-  
16 pital under such system.

17 “(D) EPISODE OUTLIER CASE.—

18 “(i) THRESHOLD.—Subject to sub-  
19 paragraph (F), the Secretary shall estab-  
20 lish from year to year episode outlier case  
21 thresholds at the percentage of predictive  
22 probability which identify Medicare bene-  
23 ficiary discharges the Secretary determines  
24 to have the lowest 10 percent probability of  
25 being episode efficient cases. In every year

1 (after the first year in which this para-  
2 graph applies), the Secretary shall main-  
3 tain such episode outlier case threshold,  
4 except that in any year the Secretary shall,  
5 if necessary, reduce the episode outlier  
6 case threshold so that no more than 10  
7 percent of Medicare beneficiaries dis-  
8 charged from long-term care hospitals are  
9 subject to the episode outlier case payment  
10 adjustment under clause (ii).

11 “(ii) EPISODE OUTLIER CASE PAY-  
12 MENT ADJUSTMENT.—The payment ad-  
13 justment under this clause for cases which  
14 are classified at or below the applicable  
15 episode outlier case threshold under clause  
16 (i) shall be the lesser of the amount pay-  
17 able under the system under paragraph (1)  
18 or 80 percent of the long-term care hos-  
19 pital’s reasonable cost for each such Medi-  
20 care patient discharge determined under  
21 section 1861(v)(1)(A). A long-term care  
22 hospital shall not be subject to the episode  
23 outlier case payment adjustment under  
24 this clause for more than 15 percent of

1 Medicare beneficiaries who were discharged  
2 from the hospital in a rate year.

3 “(E) BUDGET NEUTRALITY.—The Sec-  
4 retary shall prospectively adjust the aggregate  
5 prospective payment adjustments for high epi-  
6 sode efficient cases under subparagraph (C)(ii)  
7 for a year so that it is equal to the projected  
8 aggregate prospective payment adjustments for  
9 episode outlier cases under subparagraph  
10 (D)(ii) for that year.

11 “(F) ESTABLISHMENT OF SEPARATE  
12 THRESHOLDS FOR CERTAIN GEOGRAPHIC  
13 AREAS.—The Secretary—

14 “(i) shall establish separate high epi-  
15 sode efficient case and episode outlier case  
16 thresholds under subparagraphs (C)(i) and  
17 (D)(i) for long-term care hospitals located  
18 in a rural area;

19 “(ii) shall establish separate high epi-  
20 sode efficient case and episode outlier case  
21 thresholds under such subparagraphs for  
22 long-term care hospitals located in urban  
23 areas for beneficiaries discharged from a  
24 subsection (d) hospital which accounts for  
25 more than 25 percent of the Medicare

1 beneficiaries discharged from subsection  
2 (d) hospitals in a Metropolitan Statistical  
3 Area;

4 “(iii) the episode outlier thresholds set  
5 under subparagraphs (C)(i) and (D)(i)  
6 shall be established at a level no higher  
7 than the lowest 5 percent probability of  
8 being episode efficient cases; and

9 “(iv) may consider such other geo-  
10 graphic factors as the Secretary deter-  
11 mines to be appropriate in establishing  
12 such thresholds.

13 “(G) EPISODE OF HOSPITAL CARE DE-  
14 FINED.—In this paragraph, the term ‘episode of  
15 hospital care’ means the combined inpatient  
16 stay of a Medicare beneficiary discharged from  
17 a subsection (d) hospital and subsequently ad-  
18 mitted to a long-term care hospital within a  
19 time period specified by the Secretary.

20 “(H) REVIEW OF DATA.—The Secretary  
21 shall provide long-term care hospitals with an  
22 opportunity to review data used to determine  
23 the classification of Medicare beneficiaries with-  
24 in the fixed high episode efficient case threshold

1 and the episode outlier case threshold under  
2 this paragraph.

3 “(I) MEDICARE BENEFICIARY DEFINED.—  
4 In this paragraph, the term ‘Medicare bene-  
5 ficiary’ means an individual entitled to benefits  
6 under part A.”.

7 (b) NO APPLICATION OF 25 PERCENT PATIENT  
8 THRESHOLD PAYMENT ADJUSTMENT TO ANY LONG-  
9 TERM CARE HOSPITAL.—The Secretary of Health and  
10 Human Services shall not apply sections 412.534 or  
11 412.536 of title 42, Code of Federal Regulations or any  
12 similar provision, with respect to discharges in rate years  
13 beginning on or after July 1, 2012.

14 (c) NO APPLICATION OF ONE-TIME PAYMENT AD-  
15 JUSTMENT TO ANY LONG-TERM CARE HOSPITAL.—The  
16 Secretary of Health and Human Services shall not make  
17 the one-time prospective payment adjustment to long-term  
18 care hospital prospective payment rates provided for in  
19 section 412.523(d)(3) of title 42, Code of Federal Regula-  
20 tions, or any similar provision.

21 (d) NO APPLICATION OF VERY SHORT-STAY  
22 OUTLIER POLICY.—The Secretary of Health and Human  
23 Services shall not apply the amendments to the short-stay  
24 outlier payment provision for long-term care hospitals con-  
25 tained in section 412.529(c)(3)(i) of title 42, Code of Fed-



1 eral Regulations as finalized on May 11, 2007 (72 Federal  
2 Register 26904, 26992), or any similar provision.

3 (e) TWO-YEAR MORATORIUM ON THE ESTABLISH-  
4 MENT OF LONG-TERM CARE HOSPITALS, LONG-TERM  
5 CARE SATELLITE FACILITIES AND ON THE INCREASE OF  
6 LONG-TERM CARE HOSPITAL BEDS IN EXISTING LONG-  
7 TERM CARE HOSPITALS OR SATELLITE FACILITIES.—

8 (1) IN GENERAL.—In the case of a long-term  
9 care hospital described in subsection (d)(1)(B)(iv)(I)  
10 of section 1886(m) of the Social Security Act (42  
11 U.S.C. 1395ww(m)), there shall be a 2-year morato-  
12 rium (beginning on December 29, 2012) on the es-  
13 tablishment of new long-term care hospitals or sat-  
14 ellite facilities and, subject to paragraph (2), on the  
15 increase in beds in existing long-term care hospitals  
16 or satellite facilities. For the purposes of this sub-  
17 section, the term “existing” means, a hospital or  
18 satellite facility that received payment under the  
19 provisions of subpart O of part 412 of title 42, Code  
20 of Federal Regulations, as of the date of the enact-  
21 ment of this Act.

22 (2) EXCEPTION.—A long-term care hospital  
23 which submitted plans to a State on or before Janu-  
24 ary 1, 2009, to rebuild a hospital to comply with the  
25 seismic code requirements of a State, may expand

- 1 its bed complement by no more than 10 beds upon
- 2 approval by the State.

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