

105TH CONGRESS
1ST SESSION

S. 914

To establish a prospective payment system under the medicare program for skilled nursing facility services.

IN THE SENATE OF THE UNITED STATES

JUNE 16, 1997

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

A BILL

To establish a prospective payment system under the medicare program for skilled nursing facility services.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SEC. 10401. PROSPECTIVE PAYMENT FOR SKILLED NURS-**
4 **ING FACILITY SERVICES.**

5 (a) IN GENERAL.—Section 1888 (42 U.S.C. 1395yy)
6 is amended by adding at the end the following new sub-
7 section:

8 “(e) PROSPECTIVE PAYMENT.—

9 “(1) PAYMENT PROVISION.—Notwithstanding
10 any other provision of this title, subject to para-

1 graph (7), the amount of the payment for all costs
 2 (as defined in paragraph (2)(B)) of covered skilled
 3 nursing facility services (as defined in paragraph
 4 (2)(A)) for each day of such services furnished—

5 “(A) in a cost reporting period during the
 6 transition period (as defined in paragraph
 7 (2)(E)), is equal to the sum of—

8 “(i) the facility-specific percentage of
 9 the facility-specific per diem rate (com-
 10 puted under paragraph (3)), and

11 “(ii) the Federal per diem percentage
 12 of the Federal per diem rate (determined
 13 under paragraph (4)) applicable to the fa-
 14 cility; and

15 “(B) after the transition period is equal to
 16 the Federal per diem rate applicable to the fa-
 17 cility.

18 “(2) DEFINITIONS.—For purposes of this sub-
 19 section:

20 “(A) COVERED SKILLED NURSING FACIL-
 21 ITY SERVICES.—

22 “(i) IN GENERAL.—The term ‘covered
 23 skilled nursing facility services’—

24 “(I) means post-hospital ex-
 25 tended care services as defined in sec-

1 tion 1861(i) for which benefits are
2 provided under part A; and

3 “(II) includes all items and serv-
4 ices (other than services described in
5 clause (ii)) for which payment may be
6 made under part B and which are fur-
7 nished to an individual who is a resi-
8 dent of a skilled nursing facility dur-
9 ing the period in which the individual
10 is provided covered post-hospital ex-
11 tended care services.

12 “(ii) SERVICES EXCLUDED.—Services
13 described in this clause are physicians’
14 services, services described by clauses (i)
15 through (iii) of section 1861(s)(2)(K), di-
16 agnostic services described by section
17 1861(s)(3), certified nurse-midwife serv-
18 ices, qualified psychologist services, serv-
19 ices of a certified registered nurse anes-
20 thetist, and items and services described in
21 subparagraphs in (F) and (O) of section
22 1861(s)(2). Services described in this
23 clause do not include any physical, occupa-
24 tional, or speech-language therapy services
25 regardless of whether or not the services

1 are furnished by, or under the supervision
2 of, a physician or other health care profes-
3 sional.

4 “(B) ALL COSTS.—The term ‘all costs’
5 means routine service costs, ancillary costs, and
6 capital-related costs of covered skilled nursing
7 facility services, but does not include costs asso-
8 ciated with approved educational activities.

9 “(C) FACILITY SPECIFIC PERCENTAGE;
10 FEDERAL PER DIEM PERCENTAGE.—For—

11 “(i) the first cost reporting period (as
12 defined in subparagraph (D) of a facility,
13 the ‘facility specific percentage’ is 100 per-
14 cent and the ‘Federal per diem percentage’
15 is 0 percent;

16 “(ii) the next cost reporting period (as
17 defined in subparagraph (D)) of a facility,
18 the ‘facility specific percentage’ is 75 per-
19 cent and the ‘Federal per diem percentage’
20 is 25 percent;

21 “(iii) the next cost reporting period of
22 such facility, the ‘facility specific percent-
23 age’ is 50 percent and the ‘Federal per
24 diem percentage’ is 50 percent; and

1 “(iv) the subsequent cost reporting
2 period of such facility, the ‘facility specific
3 percentage’ is 25 percent and the ‘Federal
4 per diem percentage’ is 75 percent.

5 “(D) FIRST COST REPORTING PERIOD.—
6 The term ‘first cost reporting period’ means,
7 with respect to a skilled nursing facility, the
8 first cost reporting period of the facility begin-
9 ning on or after July 1, 1998.

10 “(E) TRANSITION PERIOD.—

11 “(i) IN GENERAL.—The term ‘transi-
12 tion period’ means, with respect to a
13 skilled nursing facility, the 4 cost reporting
14 periods of the facility beginning with the
15 first cost reporting period.

16 “(ii) TREATMENT OF NEW SKILLED
17 NURSING FACILITIES.—In the case of a
18 skilled nursing facility that does not have
19 a settled cost report for a cost reporting
20 period before July 1, 1998, payment for
21 such services shall be made under this sub-
22 section as if all services were furnished
23 after the transition period.

24 “(3) DETERMINATION OF FACILITY SPECIFIC
25 PER DIEM RATES.—The Secretary shall determine a

1 facility-specific per diem rate for each skilled nurs-
2 ing facility for a cost reporting period as follows:

3 “(A) DETERMINING BASE PAYMENTS.—

4 The Secretary shall determine, on a per diem
5 basis, the total of—

6 “(i) the allowable costs of extended
7 care services for the facility for the latest
8 settled cost reporting period (ending before
9 the date of the enactment of this sub-
10 section) for which data are available, and

11 “(ii) an estimate of the amounts that
12 would be payable under part B (disregard-
13 ing any applicable deductibles, coinsurance
14 and copayments) for covered skilled nurs-
15 ing facility services described in paragraph
16 (2)(A)(i)(II) furnished during such period
17 to an individual who is a resident of the fa-
18 cility, regardless of whether or not the pay-
19 ment was made to the facility or to an-
20 other entity.

21 “(B) UPDATE TO COST REPORTING PE-
22 RIOD BEFORE FIRST COST REPORTING PE-
23 RIOD.—The Secretary shall update the amount
24 determined under subparagraph (A), for each
25 cost reporting period after the cost reporting

1 period described in subparagraph (A)(i) and up
2 to the cost reporting period immediately preced-
3 ing the first cost reporting period, by the skilled
4 nursing facility historical trend factor.

5 “(C) UPDATING TO APPLICABLE COST RE-
6 PORTING PERIOD.—The Secretary shall further
7 update such amount for each cost reporting pe-
8 riod beginning with the first cost reporting pe-
9 riod and up to and including the cost reporting
10 period involved by a factor equal to the skilled
11 nursing facility market basket percentage in-
12 crease.

13 “(4) FEDERAL PER DIEM RATE.—

14 “(A) DETERMINATION OF HISTORICAL PER
15 DIEM FOR FACILITIES.—For each skilled nurs-
16 ing facility that received payments for post-hos-
17 pital extended care services during a cost re-
18 porting period beginning in fiscal year 1995
19 and that was subject to (and not exempted
20 from) the per diem limits referred to in para-
21 graph (1) or (2) of subsection (a), the Secretary
22 shall estimate, on a per diem basis for such cost
23 reporting period, the total of—

24 “(i) the allowable costs of extended
25 care services for the facility for the latest

1 settled cost reporting period (ending before
2 the date of the enactment of this sub-
3 section) for which data are available, and

4 “(ii) an estimate of the amounts that
5 would be payable under part B (disregard-
6 ing any applicable deductibles, coinsurance
7 and copayments) for covered skilled nurs-
8 ing facility services described in paragraph
9 (2)(A)(i)(II) furnished during such period
10 to an individual who is a resident of the fa-
11 cility, regardless of whether or not the pay-
12 ment was made to the facility or to an-
13 other entity.

14 “(B) UPDATE TO FISCAL YEAR 1998.—The
15 Secretary shall update the amount determined
16 under subparagraph (A), for each cost report-
17 ing period after the cost reporting period de-
18 scribed in subparagraph (A)(i) and up to the
19 cost reporting period immediately preceding the
20 first cost reporting period, by the skilled nurs-
21 ing facility historical trend factor for such pe-
22 riod.

23 “(C) COMPUTATION OF STANDARDIZED
24 PER DIEM RATE.—The Secretary shall stand-

1 ardize the amount updated under subparagraph
2 (B) for each facility by—

3 “(i) adjusting for variations among
4 facility by area in the average facility wage
5 level per diem, and

6 “(ii) adjusting for variations in case
7 mix per diem among facilities.

8 “(D) COMPUTATION OF WEIGHTED AVER-
9 AGE PER DIEM RATE.—The Secretary shall
10 compute a weighted average per diem rate by
11 computing an average of the standardized
12 amounts computed under subparagraph (C),
13 weighted for each facility by number of days of
14 extended care services furnished during the cost
15 reporting period referred to in subparagraph
16 (A). The Secretary may compute and apply
17 such average separately for facilities located in
18 urban and rural areas (as defined in section
19 1886(d)(2)(D)) according to national or re-
20 gional classification as determined by the Sec-
21 retary.

22 “(E) UPDATING.—

23 “(i) FISCAL YEAR 1998.—For fiscal
24 year 1998, the Secretary shall compute for
25 each skilled nursing facility an unadjusted

1 Federal per diem rate equal to the weight-
2 ed average per diem rate computed under
3 subparagraph (D) and applicable to the fa-
4 cility increased by skilled nursing facility
5 market basket percentage change for the
6 fiscal year involved.

7 “(ii) SUBSEQUENT FISCAL YEARS.—
8 For each subsequent fiscal year the Sec-
9 retary shall compute for each skilled nurs-
10 ing facility an unadjusted Federal per diem
11 rate equal to the Federal per diem rate
12 computed under this subparagraph for the
13 previous fiscal year and applicable to the
14 facility increased by the skilled nursing fa-
15 cility market basket percentage change for
16 the fiscal year involved.

17 “(F) APPLICATION TO SPECIFIC FACILI-
18 TIES.—The Secretary shall compute for each
19 skilled nursing facility for each fiscal year (be-
20 ginning with fiscal year 1998) an adjusted Fed-
21 eral per diem rate equal to the unadjusted Fed-
22 eral per diem rate determined under subpara-
23 graph (E)) adjusted as follows:

24 “(i) ADJUSTMENT FOR CASE MIX.—

1 “(I) IN GENERAL.—The Sec-
2 retary shall promulgate regulations,
3 with public notice and an opportunity
4 for comment, to provide for an appro-
5 priate adjustment to account for case
6 mix. Such adjustment shall be based
7 on a resident classification system, es-
8 tablished by the Secretary, that ac-
9 counts for the relative resource utili-
10 zation of different patient types. The
11 case mix adjustment shall be based on
12 resident assessment data and other
13 data that the Secretary considers ap-
14 propriate and shall reflect higher-acu-
15 ity patient classification systems that
16 include all medical services provided
17 within the skilled nursing facility.

18 “(II) ADJUSTMENT.—Insofar as
19 the Secretary determines that such
20 adjustments for a previous fiscal year
21 (or estimates that such adjustments
22 for a future fiscal year) did (or are
23 likely to) result in a change in aggre-
24 gate payments under this subsection
25 during the fiscal year that are a result

1 of changes in the coding or classifica-
2 tion of residents that do not reflect
3 real changes in case mix, the Sec-
4 retary may adjust the per payment
5 unit payment rate for subsequent
6 years so as to discount the effect of
7 such coding or classification changes.

8 “(ii) ADJUSTMENT FOR GEOGRAPHIC
9 VARIATIONS IN LABOR COSTS.—The Sec-
10 retary shall adjust the portion of such per
11 diem rate attributable to wages and wage-
12 related costs for the area in which the fa-
13 cility is located compared to the national
14 average of such costs using an appropriate
15 wage index as determined by the Sec-
16 retary. Such adjustment shall be done in a
17 manner that does not result in aggregate
18 payments under this subsection that are
19 greater or less than those that would oth-
20 erwise be made if such adjustment had not
21 been made.

22 “(G) PUBLICATION OF INFORMATION ON
23 PER DIEM RATES.—The Secretary shall provide
24 for publication in the Federal Register, before

1 the July 1 preceding each fiscal year (beginning
2 with fiscal year 1999), of—

3 “(i) the unadjusted Federal per diem
4 rates to be applied to days of covered
5 skilled nursing facility services furnished
6 during the fiscal year,

7 “(ii) the case mix classification system
8 to be applied under subparagraph (F)(i)
9 with respect to such services during the
10 fiscal year, and

11 “(iii) the factors to be applied in mak-
12 ing the area wage adjustment under sub-
13 paragraph (F)(ii) with respect to such
14 services.

15 “(5) SKILLED NURSING FACILITY MARKET BAS-
16 KET INDEX, PERCENTAGE, AND HISTORICAL TREND
17 FACTOR.—For purposes of this subsection:

18 “(A) SKILLED NURSING FACILITY MARKET
19 BASKET INDEX.—The Secretary shall establish
20 a skilled nursing facility market basket index
21 that reflects changes over time in the prices of
22 an appropriate mix of goods and services in-
23 cluded in covered skilled nursing facility serv-
24 ices.

1 “(B) SKILLED NURSING FACILITY MARKET
2 BASKET PERCENTAGE.—The term ‘skilled nurs-
3 ing facility market basket percentage’ means,
4 for a fiscal year or other annual period and as
5 calculated by the Secretary, the percentage
6 change in the skilled nursing facility market
7 basket index (established under subparagraph
8 (A)) from the midpoint of the prior fiscal year
9 (or period) to the midpoint of the fiscal year (or
10 other period) involved.

11 “(C) SKILLED NURSING FACILITY HISTORI-
12 CAL TREND FACTOR.—The term ‘skilled nurs-
13 ing facility historical trend factor’ means, for a
14 fiscal year or other annual period and as cal-
15 culated by the Secretary, the percentage change
16 in the skilled nursing facility routine cost index
17 (used in applying per diem routine cost limits
18 under subsection (a)) from the midpoint of the
19 prior fiscal year (or period) to the midpoint of
20 the fiscal year (or other period) involved, re-
21 duced (on an annualized basis) by 1 percentage
22 point.

23 “(6) SUBMISSION OF RESIDENT ASSESSMENT
24 DATA.—A skilled nursing facility shall provide the
25 Secretary, in a manner and within the timeframes

1 prescribed by the Secretary, the resident assessment
2 data necessary to develop and implement the rates
3 under this subsection. For purposes of meeting such
4 requirement, a skilled nursing facility may submit
5 the resident assessment data required under section
6 1819(b)(3), using the standard instrument des-
7 ignated by the State under section 1819(e)(5).

8 “(7) TRANSITION FOR MEDICARE LOW VOLUME
9 SKILLED NURSING FACILITIES AND SWING BED HOS-
10 PITALS.—

11 “(A) IN GENERAL.—The Secretary shall
12 determine an appropriate manner in which to
13 apply this subsection to the facilities described
14 in subparagraph (B), taking into account the
15 purposes of this subsection, and shall provide
16 that at the end of the transition period (as de-
17 fined in paragraph (2)(E)) such facilities shall
18 be paid only under this subsection. Payment
19 shall not be made under this subsection to such
20 facilities for cost reporting periods beginning
21 before such date (not earlier than July 1, 1999)
22 as the Secretary specifies.

23 “(B) FACILITIES DESCRIBED.—The facili-
24 ties described in this subparagraph are—

1 “(i) skilled nursing facilities for which
 2 payment is made for routine service costs
 3 during a cost reporting period on the basis
 4 of prospective payments under section
 5 1888(d), or

6 “(ii) facilities that have in effect an
 7 agreement described in section 1883, for
 8 which payment is made for the furnishing
 9 of extended care services on a reasonable
 10 cost basis under section 1814(l) (as in ef-
 11 fect on and after such date).”.

12 (b) CONSOLIDATED BILLING.—

13 (1) FOR SNF SERVICES.—Section 1862(a) (42
 14 U.S.C. 1395y(a)) is amended—

15 (A) by striking “or” at the end of para-
 16 graph (15),

17 (B) by striking the period at the end of
 18 paragraph (16) and inserting “; or”, and

19 (C) by inserting after paragraph (16) the
 20 following new paragraph:

21 “(17) which are covered skilled nursing facility
 22 services described in section 1888(e)(2)(A)(i)(II) and
 23 which are furnished to an individual who is a resi-
 24 dent of a skilled nursing facility by an entity other
 25 than the skilled nursing facility, unless the services

1 are furnished under arrangements (as defined in sec-
2 tion 1861(w)(1)) with the entity made by the skilled
3 nursing facility.”.

4 (2) REQUIRING PAYMENT FOR ALL PART B
5 ITEMS AND SERVICES TO BE MADE TO FACILITY.—

6 The first sentence of section 1842(b)(6) (42 U.S.C.
7 1395u(b)(6)) is amended—

8 (A) by striking “and (D)” and inserting
9 “(D)”; and

10 (B) by striking the period at the end and
11 inserting the following: “, and (E) in the case
12 of an item or service (other than a portable x-
13 ray or electrocardiogram treated as a physi-
14 cian’s service for purposes of section 1848(j)(3)
15 and services described in section
16 1888(e)(2)(A)(ii)) furnished to an individual
17 who (at the time the item or service is fur-
18 nished) is a resident of a skilled nursing facil-
19 ity, payment shall be made to the facility (with-
20 out regard to whether or not the item or service
21 was furnished by the facility, by others under
22 arrangement with them made by the facility,
23 under any other contracting or consulting ar-
24 rangement, or otherwise).”.

1 (3) PAYMENT RULES.—Section 1888(e) (42
2 U.S.C. 1395yy(e)), as added by subsection (a), is
3 amended by adding at the end the following:

4 “(9) PAYMENT FOR CERTAIN SERVICES.—

5 “(A) IN GENERAL.—In the case of an item
6 or service furnished by a skilled nursing facility
7 (or by others under arrangement with them
8 made by a skilled nursing facility or under any
9 other contracting or consulting arrangement or
10 otherwise) for which payment would otherwise
11 (but for this paragraph) be made under part B
12 in an amount determined in accordance with
13 section 1833(a)(2)(B), the amount of the pay-
14 ment under such part shall be based on the
15 part B payment methodology applicable to the
16 item or service, except that for items and serv-
17 ices that would be included in a facility’s cost
18 report if not for the enactment of this para-
19 graph, the facility may continue to use a cost
20 report for reimbursement purposes until the
21 prospective payment system established by this
22 subsection is implemented.

23 “(B) THERAPY SERVICES.—Payment for
24 physical therapy, occupational therapy, res-
25 piratory therapy, and speech language pathol-

1 ogy services shall reflect new salary equivalency
2 guidelines calculated pursuant to section
3 1861(v)(5) after such guidelines are finalized
4 through the regulatory process.

5 “(C) REASSIGNMENT OF PAYMENTS.—A
6 skilled nursing facility may reassign payments
7 for items and services that are subject to this
8 paragraph directly to the entity which furnished
9 such item or service.

10 “(10) REQUIRED CODING.—No payment may
11 be made under part B for items and services (other
12 than services described in paragraph (2)(A)(ii)) fur-
13 nished to an individual who is a resident of a skilled
14 nursing facility unless the claim for such payment
15 includes a code (or codes) under a uniform coding
16 system specified by the Secretary that identifies the
17 items or services delivered.”.

18 (4) CONFORMING AMENDMENTS.—

19 (A) Section 1819(b)(3)(C)(i) (42 U.S.C.
20 1395i-3(b)(3)(C)(i)) is amended by striking
21 “Such” and inserting “Subject to the time-
22 frames prescribed by the Secretary under sec-
23 tion 1888(t)(6), such”.

1 (B) Section 1832(a)(1) (42 U.S.C.
2 1395k(a)(1)) is amended by striking “(2);” and
3 inserting “(2) and section 1842(b)(6)(E);”.

4 (C) Section 1833(a)(2)(B) (42 U.S.C.
5 1395l(a)(2)(B)) is amended by inserting “or
6 section 1888(e)(9)” after “section 1886”.

7 (D) Section 1861(h) (42 U.S.C 1395x(h))
8 is amended—

9 (i) in the matter preceding paragraph
10 (1), by striking “paragraphs (3) and (6)”
11 and inserting “paragraphs (3), (6), and
12 (7)”, and

13 (ii) in paragraph (6), by striking “,
14 and other diagnostic” and all that follows
15 through “agreement in effect”;

16 (iii) by striking paragraph (7) and in-
17 serting the following:

18 “(7) such other services (including diagnostic
19 and therapeutic services) necessary to the health of
20 the patients as are generally provided by skilled
21 nursing facilities and by others under arrangements
22 with the facility;”;

23 (E) Section 1866(a)(1)(H) (42 U.S.C.
24 1395cc(a)(1)(H)) is amended—

1 (i) by redesignating clauses (i) and
2 (ii) as subclauses (I) and (II) respectively,
3 (ii) by inserting “(i)” after “(H)”,
4 and
5 (iii) by adding after clause (i), as so
6 redesignated, the following new clause:

7 “(ii) in the case of skilled nursing facilities
8 which provide covered skilled nursing facility serv-
9 ices—

10 “(I) that are furnished to an individual
11 who is a resident of the skilled nursing facility,
12 and

13 “(II) for which the individual is entitled to
14 have payment made under this title,
15 furnished by the skilled nursing facility or otherwise
16 under arrangements (as defined in section
17 1861(w)(1)) made by the skilled nursing facility,”.

18 (c) MEDICAL REVIEW PROCESS.—In order to ensure
19 that medicare beneficiaries are furnished appropriate serv-
20 ices in skilled nursing facilities, the Secretary of Health
21 and Human Services shall establish and implement a thor-
22 ough medical review process to examine the effects of the
23 amendments made by this section on the quality of covered
24 skilled nursing facility services furnished to medicare
25 beneficiaries. In developing such a medical review process,

1 the Secretary shall place a particular emphasis on the
2 quality of non-routine covered services and physicians'
3 services for which payment is made under title XVIII of
4 the Social Security Act for which payment is made under
5 section 1848 of such Act.

6 (d) EFFECTIVE DATE.—The amendments made by
7 this section are effective for cost reporting periods begin-
8 ning on or after July 1, 1998; except that the amendments
9 made by subsection (b) shall apply to items and services
10 furnished on or after July 1, 1998.

○