

109TH CONGRESS
1ST SESSION

S. 927

To amend title XVIII of the Social Security Act to expand and improve coverage of mental health services under the medicare program.

IN THE SENATE OF THE UNITED STATES

APRIL 27, 2005

Mr. CORZINE (for himself, Mr. LAUTENBERG, Mr. SARBANES, Mr. JOHNSON, Ms. LANDRIEU, and Mr. KENNEDY) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend title XVIII of the Social Security Act to expand and improve coverage of mental health services under the medicare program.

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) IN GENERAL.—This Act may be cited as the
5 “Medicare Mental Health Modernization Act of 2005”.

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. Findings.

TITLE I—ESTABLISHING PARITY FOR MENTAL HEALTH SERVICES

- Sec. 101. Elimination of lifetime limit on inpatient mental health services.
 Sec. 102. Parity in treatment for outpatient mental health services.

TITLE II—EXPANDING COVERAGE OF COMMUNITY-BASED MENTAL HEALTH SERVICES

- Sec. 201. Coverage of intensive residential services.
 Sec. 202. Coverage of intensive outpatient services.

TITLE III—IMPROVING BENEFICIARY ACCESS TO MEDICARE-COVERED SERVICES

- Sec. 301. Excluding clinical social worker services from coverage under the medicare skilled nursing facility prospective payment system and consolidated payment.
 Sec. 302. Coverage of marriage and family therapist services.
 Sec. 303. Coverage of mental health counselor services.
 Sec. 304. Study of coverage criteria for alzheimer's disease and related mental illnesses.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) Older people have the highest rate of suicide
 4 of any population in the United States, and the sui-
 5 cide rate of that population increases with age, with
 6 individuals 65 and older accounting for 20 percent
 7 of all suicide deaths in the United States, while com-
 8 prising only 13 percent of the population of the
 9 United States.

10 (2) Disability due to mental illness in individ-
 11 uals over 65 years old will become a major public
 12 health problem in the near future because of demo-
 13 graphic changes. In particular, anxiety, dementia,
 14 depression, schizophrenia, among other conditions,
 15 will all present special problems for this age group.

1 (3) Major depression is strikingly prevalent
2 among older people, with between 8 and 20 percent
3 of older people in community studies and up to 37
4 percent of those seen in primary care settings expe-
5 riencing symptoms of depression.

6 (4) Anxiety disorders rival depression in their
7 prevalence among older people with a rate of 11.4
8 percent in persons aged 55 and older.

9 (5) Almost 20 percent of the population of indi-
10 viduals age 55 and older, experience specific mental
11 disorders that are not part of normal aging.

12 (6) Unrecognized and untreated depression,
13 Alzheimer's disease, anxiety, late-life schizophrenia,
14 and other mental conditions can be severely impair-
15 ing and may even be fatal.

16 (7) Substance abuse, particularly the abuse of
17 alcohol and prescription drugs, among adults 65 and
18 older is one of the fastest growing health problems
19 in the United States, with 17 percent of this age
20 group suffering from addiction or substance abuse.
21 While addiction often goes undetected and untreated
22 among older adults, aging and disability makes the
23 body more vulnerable to the effects of alcohol and
24 drugs, further exacerbating other age-related health
25 problems. Medicare coverage for addiction treatment

1 of the elderly needs to recognize these special
2 vulnerabilities.

3 (8) The disabled are another population receiv-
4 ing inadequate mental health care through medicare.
5 According to the Centers for Medicare & Medicaid
6 Services, medicare is the primary health care cov-
7 erage for the 5,000,000 nonelderly, disabled people
8 on Social Security Disability Insurance. Up to 40
9 percent of these individuals have a diagnosis of men-
10 tal illness.

11 (9) The current medicare benefit structure dis-
12 criminates against the millions of Americans who
13 suffer from mental illness and maintains an out-
14 dated bias toward institutionally based service deliv-
15 ery. According to the report of the Surgeon General
16 on mental health for 1999, intensive outpatient serv-
17 ices, such as psychiatric rehabilitation and assertive
18 community treatment, represent state-of-the-art
19 mental health services. These evidence-based com-
20 munity support services help people with psychiatric
21 disabilities improve their ability to function in the
22 community and reduce hospitalization rates by 30 to
23 60 percent, even for people with the most severe
24 mental illnesses.

1 **TITLE I—ESTABLISHING PARITY**
2 **FOR MENTAL HEALTH SERVICES**

3 **SEC. 101. ELIMINATION OF LIFETIME LIMIT ON INPATIENT**
4 **MENTAL HEALTH SERVICES.**

5 (a) IN GENERAL.—Section 1812 of the Social Secu-
6 rity Act (42 U.S.C. 1395d) is amended—

7 (1) in subsection (b)—

8 (A) in paragraph (1), by adding “or” at
9 the end;

10 (B) in paragraph (2), by striking “; or” at
11 the end and inserting a period; and

12 (C) by striking paragraph (3); and

13 (2) by striking subsection (c).

14 (b) EFFECTIVE DATE.—The amendments made by
15 subsection (a) shall apply to items and services furnished
16 on or after January 1, 2006.

17 **SEC. 102. PARITY IN TREATMENT FOR OUTPATIENT MEN-**
18 **TAL HEALTH SERVICES.**

19 (a) IN GENERAL.—Section 1833 of the Social Secu-
20 rity Act (42 U.S.C. 1395l) is amended by striking sub-
21 section (c).

22 (b) EFFECTIVE DATE.—The amendment made by
23 subsection (a) shall apply to items and services furnished
24 on or after January 1, 2006.

1 **TITLE II—EXPANDING COV-**
 2 **ERAGE OF COMMUNITY-**
 3 **BASED MENTAL HEALTH**
 4 **SERVICES**

5 **SEC. 201. COVERAGE OF INTENSIVE RESIDENTIAL SERV-**
 6 **ICES.**

7 (a) COVERAGE UNDER PART A.—Section 1812(a) of
 8 the Social Security Act (42 U.S.C. 1395d(a)) is amend-
 9 ed—

10 (1) in paragraph (4), by striking “and” at the
 11 end;

12 (2) in paragraph (5), by striking the period at
 13 the end and inserting “; and”; and

14 (3) by adding at the end the following new
 15 paragraph:

16 “(6) intensive residential services (as defined in
 17 section 1861(bbb)) furnished to an individual for up
 18 to 120 days during any calendar year, except that
 19 such services may be furnished to the individual for
 20 additional days (not to exceed 20 days) during the
 21 year if necessary for the individual to complete a
 22 course of treatment.”.

23 (b) SERVICES DESCRIBED.—Section 1861 of the So-
 24 cial Security Act (42 U.S.C. 1395x) is amended by adding
 25 at the end the following new subsection:

1 “Intensive Residential Services

2 “(bbb)(1) Subject to paragraphs (3) and (4), the
3 term ‘intensive residential services’ means a program of
4 residential services (described in paragraph (2)) that is—

5 “(A) prescribed by a physician for an individual
6 entitled to, or enrolled for, benefits under part A
7 who is under the care of the physician; and

8 “(B) furnished under the supervision of a phy-
9 sician pursuant to an individualized, written plan of
10 treatment established and periodically reviewed by a
11 physician (in consultation with appropriate staff par-
12 ticipating in such services), which plan sets forth—

13 “(i) the individual’s diagnosis,

14 “(ii) the type, amount, frequency, and du-
15 ration of the items and services provided under
16 the plan, and

17 “(iii) the goals for treatment under the
18 plan.

19 In the case of such an individual who is receiving
20 qualified psychologist services (as defined in sub-
21 section (ii)), the individual may be under the care of
22 the clinical psychologist with respect to such services
23 under this subsection to the extent permitted under
24 State law.

1 “(2) The program of residential services described in
2 this paragraph is a nonhospital-based community residen-
3 tial program that furnishes acute mental health services
4 or substance abuse services, or both, on a 24-hour basis.
5 Such services shall include treatment planning and devel-
6 opment, medication management, case management, crisis
7 intervention, individual therapy, group therapy, and de-
8 toxification services. Such services shall be furnished in
9 any of the following facilities:

10 “(A) Crisis residential programs or mental ill-
11 ness residential treatment programs.

12 “(B) Therapeutic family or group treatment
13 homes.

14 “(C) Residential detoxification centers.

15 “(D) Residential centers for substance abuse
16 treatment.

17 “(3) No service may be treated as an intensive resi-
18 dential service under paragraph (1) unless the facility at
19 which the service is provided—

20 “(A) is legally authorized to provide such serv-
21 ice under the law of the State (or under a State reg-
22 ulatory mechanism provided by State law) in which
23 the facility is located or meets such certification re-
24 quirements that the Secretary may impose; and

1 “(B) meets such other requirements as the Sec-
2 retary may impose to assure the quality of the inten-
3 sive residential services provided.

4 “(4) No service may be treated as an intensive resi-
5 dential service under paragraph (1) unless the service is
6 furnished in accordance with standards established by the
7 Secretary for the management of such services.”.

8 (c) AMOUNT OF PAYMENT.—Section 1814 of the So-
9 cial Security Act (42 U.S.C. 1395f) is amended—

10 (1) in subsection (b), in the matter preceding
11 paragraph (1), by inserting “other than intensive
12 residential services,” after “hospice care,”; and

13 (2) by adding at the end the following new sub-
14 section:

15 “Payment for Intensive Residential Services

16 “(m)(1) The amount of payment under this part for
17 intensive residential services under section 1812(a)(6)
18 shall be equal to an amount specified under a prospective
19 payment system established by the Secretary, taking into
20 account the prospective payment system established for
21 psychiatric hospitals pursuant to section 124 of the Medi-
22 care, Medicaid, and SCHIP Balanced Budget Refinement
23 Act of 1999 (113 Stat. 1501A–332), as enacted into law
24 by section 1000(a)(6) of Public Law 106–113.

1 “Intensive Outpatient Services

2 “(ccc)(1) The term ‘intensive outpatient services’
3 means the items and services described in paragraph (2)
4 prescribed by a physician and provided within the context
5 described in paragraph (3) under the supervision of a phy-
6 sician (or, to the extent permitted under the law of the
7 State in which the services are furnished, a non-physician
8 mental health professional) pursuant to an individualized,
9 written plan of treatment that is established by a physi-
10 cian and periodically reviewed by a physician or, to the
11 extent permitted under the laws of the State in which the
12 services are furnished, a non-physician mental health pro-
13 fessional (in consultation with appropriate staff partici-
14 pating in such services), which plan sets forth the patient’s
15 diagnosis, the type, amount, frequency, and duration of
16 the items and services provided under the plan, and the
17 goals for treatment under the plan.

18 “(2)(A) The items and services described in this
19 paragraph are the items and services described in sub-
20 paragraph (B) that are reasonable and necessary for the
21 diagnosis or treatment of the individual’s condition, rea-
22 sonably expected to improve or maintain the individual’s
23 condition and functional level and to prevent relapse or
24 hospitalization, and furnished pursuant to such guidelines
25 relating to frequency and duration of services as the Sec-

1 retary shall by regulation establish (taking into account
2 accepted norms of clinical practice).

3 “(B) For purposes of subparagraph (A), the items
4 and services described in this paragraph are as follows:

5 “(i) Psychiatric rehabilitation.

6 “(ii) Assertive community treatment.

7 “(iii) Intensive case management.

8 “(iv) Day treatment for individuals under 21
9 years of age.

10 “(v) Ambulatory detoxification.

11 “(vi) Such other items and services as the Sec-
12 retary may provide (but in no event to include meals
13 and transportation).

14 “(3) The context described in this paragraph for the
15 provision of intensive outpatient services is as follows:

16 “(A) Such services are furnished in a facility,
17 home, or community setting.

18 “(B) Such services are furnished—

19 “(i) to assist the individual to compensate
20 for, or eliminate, functional deficits and inter-
21 personal and environmental barriers created by
22 the disability; and

23 “(ii) to restore skills to the individual for
24 independent living, socialization, and effective
25 life management.

1 “(C) Such services are furnished by an indi-
2 vidual or entity that—

3 “(i) is legally authorized to furnish such
4 services under State law (or the State regu-
5 latory mechanism provided by State law) or
6 meets such certification requirements that the
7 Secretary may impose; and

8 “(ii) meets such other requirements as the
9 Secretary may impose to assure the quality of
10 the intensive outpatient services provided.”.

11 (c) PAYMENT.—

12 (1) IN GENERAL.—With respect to intensive
13 outpatient services (as defined in section
14 1861(ecc)(1) of the Social Security Act (as added by
15 subsection (b)) furnished under the medicare pro-
16 gram, the amount of payment under such Act for
17 such services shall be 80 percent of—

18 (A) during 2006 and 2007, the reasonable
19 costs of furnishing such services; and

20 (B) on or after January 1, 2008, the
21 amount of payment established for such serv-
22 ices under the prospective payment system es-
23 tablished by the Secretary under paragraph (2)
24 for such services.

25 (2) ESTABLISHMENT OF PPS.—

1 (A) IN GENERAL.—With respect to inten-
2 sive outpatient services (as defined in section
3 1861(ccc)(1)) of the Social Security Act (as
4 added by subsection (b)) furnished under the
5 medicare program on or after January 1, 2008,
6 the Secretary of Health and Human Services
7 (in this paragraph referred to as the “Sec-
8 retary”) shall establish a prospective payment
9 system for payment for such services. Such sys-
10 tem shall include an adequate patient classifica-
11 tion system that reflects the differences in pa-
12 tient resource use and costs and shall provide
13 for an annual update to the rates of payment
14 established under the system.

15 (B) ADJUSTMENTS.—In establishing the
16 system under subparagraph (A), the Secretary
17 shall provide for adjustments in the prospective
18 payment amount for variations in wage and
19 wage-related costs, case mix, and such other
20 factors as the Secretary determines appropriate.

21 (C) COLLECTION OF DATA AND EVALUA-
22 TION.—In developing the system described in
23 subparagraph (A), the Secretary may require
24 providers of services under the medicare pro-
25 gram to submit such information to the Sec-

1 retary as the Secretary may require to develop
2 the system, including the most recently avail-
3 able data.

4 (D) REPORTS TO CONGRESS.—Not later
5 than October 1 of each of 2006 and 2007, the
6 Secretary shall submit to Congress a report on
7 the progress of the Secretary in establishing the
8 prospective payment system under this para-
9 graph.

10 (d) CONFORMING AMENDMENTS.—(1) Section
11 1835(a)(2) of the Social Security Act (42 U.S.C.
12 1395n(a)(2)) is amended—

13 (A) in subparagraph (E), by striking “and” at
14 the end;

15 (B) in subparagraph (F), by striking the period
16 at the end and inserting “; and”; and

17 (C) by inserting after subparagraph (F) the fol-
18 lowing new subparagraph:

19 “(G) in the case of intensive outpatient
20 services, (i) that those services are reasonably
21 expected to improve or maintain the individual’s
22 condition and functional level and to prevent re-
23 lapse or hospitalization, (ii) an individualized,
24 written plan for furnishing such services has
25 been established by a physician and is reviewed

1 periodically by a physician or, to the extent per-
2 mitted under the laws of the State in which the
3 services are furnished, a non-physician mental
4 health professional, and (iii) such services are
5 or were furnished while the individual is or was
6 under the care of a physician or, to the extent
7 permitted under the law of the State in which
8 the services are furnished, a non-physician men-
9 tal health professional.”.

10 (2) Section 1861(s)(2)(B) of the Social Security Act
11 (42 U.S.C. 1395x(s)(2)(B)) is amended by inserting “and
12 intensive outpatient services” after “partial hospitalization
13 services”.

14 (3) Section 1861(ff)(1) of the Social Security Act (42
15 U.S.C. 1395x(ff)(1)) is amended—

16 (A) by inserting “or, to the extent permitted
17 under the law of the State in which the services are
18 furnished, a non-physician mental health profes-
19 sional,” after “under the supervision of a physician”
20 and after “periodically reviewed by a physician”; and

21 (B) by striking “physician’s” and inserting “pa-
22 tient’s”.

23 (4) Section 1861(cc) of the Social Security Act (42
24 U.S.C. 1395x(cc)) is amended—

1 (A) in paragraph (1), in the matter preceding
2 subparagraph (A), by striking “physician—” and in-
3 serting “physician or, to the extent permitted under
4 the law of the State in which the services are fur-
5 nished, a non-physician mental health professional—
6 ”; and

7 (B) in paragraph (2)(E), by inserting before
8 the semicolon at the end the following: “, except that
9 a patient receiving social and psychological services
10 under paragraph (1)(D) may be under the care of
11 a non-physician mental health professional with re-
12 spect to such services to the extent permitted under
13 the law of the State in which the services are fur-
14 nished”.

15 (e) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to items and services furnished on
17 or after January 1, 2006.

1 **TITLE III—IMPROVING BENE-**
2 **FICIARY ACCESS TO MEDI-**
3 **CARE-COVERED SERVICES**

4 **SEC. 301. EXCLUDING CLINICAL SOCIAL WORKER SERVICES**
5 **FROM COVERAGE UNDER THE MEDICARE**
6 **SKILLED NURSING FACILITY PROSPECTIVE**
7 **PAYMENT SYSTEM AND CONSOLIDATED PAY-**
8 **MENT.**

9 (a) **IN GENERAL.**—Section 1888(e)(2)(A)(ii) of the
10 Social Security Act (42 U.S.C. 1395yy(e)(2)(A)(ii)) is
11 amended by inserting “clinical social worker services,”
12 after “qualified psychologist services,”.

13 (b) **CONFORMING AMENDMENT.**—Section
14 1861(hh)(2) of the Social Security Act (42 U.S.C.
15 1395x(hh)(2)) is amended by striking “and other than
16 services furnished to an inpatient of a skilled nursing facil-
17 ity which the facility is required to provide as a require-
18 ment for participation”.

19 (c) **EFFECTIVE DATE.**—The amendments made by
20 this section shall apply to items and services furnished on
21 or after January 1, 2006.

1 **SEC. 302. COVERAGE OF MARRIAGE AND FAMILY THERA-**
 2 **PIST SERVICES.**

3 (a) **COVERAGE OF SERVICES.**—Section 1861(s)(2) of
 4 the Social Security Act (42 U.S.C. 1395x(s)(2)) is amend-
 5 ed—

6 (1) in subparagraph (Y), by striking “and” at
 7 the end;

8 (2) in subparagraph (Z), by adding “and” at
 9 the end; and

10 (3) by adding at the end the following new sub-
 11 paragraph:

12 “(AA) marriage and family therapist services
 13 (as defined in subsection (ddd));”.

14 (b) **DEFINITION.**—Section 1861 of the Social Secu-
 15 rity Act (42 U.S.C. 1395x), as amended by sections
 16 201(b) and 202(b), is amended by adding at the end the
 17 following new subsection:

18 “Marriage and Family Therapist Services

19 “(ddd)(1) The term ‘marriage and family therapist
 20 services’ means services performed by a marriage and
 21 family therapist (as defined in paragraph (2)) for the diag-
 22 nosis and treatment of mental illnesses, which the mar-
 23 riage and family therapist is legally authorized to perform
 24 under State law (or the State regulatory mechanism pro-
 25 vided by State law) of the State in which such services
 26 are performed, provided such services are covered under

1 this title, as would otherwise be covered if furnished by
2 a physician or as incident to a physician's professional
3 service, but only if no facility or other provider charges
4 or is paid any amounts with respect to the furnishing of
5 such services.

6 “(2) The term ‘marriage and family therapist’ means
7 an individual who—

8 “(A) possesses a master's or doctoral degree
9 which qualifies for licensure or certification as a
10 marriage and family therapist pursuant to State
11 law;

12 “(B) after obtaining such degree has performed
13 at least 2 years of clinical supervised experience in
14 marriage and family therapy; and

15 “(C) is licensed or certified as a marriage and
16 family therapist in the State in which marriage and
17 family therapist services are performed.”.

18 (c) PROVISION FOR PAYMENT UNDER PART B.—Sec-
19 tion 1832(a)(2)(B) of the Social Security Act (42 U.S.C.
20 1395k(a)(2)(B)) is amended by adding at the end the fol-
21 lowing new clause:

22 “(v) marriage and family therapist
23 services;”.

24 (d) AMOUNT OF PAYMENT.—

1 (1) IN GENERAL.—Section 1833(a)(1) of the
2 Social Security Act (42 U.S.C. 1395l(a)(1)) is
3 amended—

4 (A) by striking “and” before “(V)”; and

5 (B) by inserting before the semicolon at
6 the end the following: “, and (W) with respect
7 to marriage and family therapist services under
8 section 1861(s)(2)(AA), the amounts paid shall
9 be 80 percent of the lesser of (i) the actual
10 charge for the services or (ii) 75 percent of the
11 amount determined for payment of a psycholo-
12 gist under subparagraph (L)”.

13 (2) DEVELOPMENT OF CRITERIA WITH RE-
14 SPECT TO CONSULTATION WITH A PHYSICIAN.—The
15 Secretary of Health and Human Services shall, tak-
16 ing into consideration concerns for patient confiden-
17 tiality, develop criteria with respect to payment for
18 marriage and family therapist services for which
19 payment may be made directly to the marriage and
20 family therapist under part B of title XVIII of the
21 Social Security Act (42 U.S.C. 1395j et seq.) under
22 which such a therapist must agree to consult with a
23 patient’s attending or primary care physician in ac-
24 cordance with such criteria.

1 (e) EXCLUSION OF MARRIAGE AND FAMILY THERA-
 2 PIST SERVICES FROM SKILLED NURSING FACILITY PRO-
 3 SPECTIVE PAYMENT SYSTEM.—Section 1888(e)(2)(A)(ii)
 4 of the Social Security Act (42 U.S.C. 1395yy(e)(2)(A)(ii)),
 5 as amended in section 301(a), is amended by inserting
 6 “marriage and family therapist services (as defined in sub-
 7 section (ddd)(1)),” after “clinical social worker services,”.

8 (f) COVERAGE OF MARRIAGE AND FAMILY THERA-
 9 PIST SERVICES PROVIDED IN RURAL HEALTH CLINICS
 10 AND FEDERALLY QUALIFIED HEALTH CENTERS.—Sec-
 11 tion 1861(aa)(1)(B) of the Social Security Act (42 U.S.C.
 12 1395x(aa)(1)(B)) is amended by striking “or by a clinical
 13 social worker (as defined in subsection (hh)(1)),” and in-
 14 serting “, by a clinical social worker (as defined in sub-
 15 section (hh)(1)), or by a marriage and family therapist
 16 (as defined in subsection (ddd)(2)),”.

17 (g) INCLUSION OF MARRIAGE AND FAMILY THERA-
 18 PISTS AS PRACTITIONERS FOR ASSIGNMENT OF
 19 CLAIMS.—Section 1842(b)(18)(C) of the Social Security
 20 Act (42 U.S.C. 1395u(b)(18)(C)) is amended by adding
 21 at the end the following new clause:

22 “(vii) A marriage and family therapist (as de-
 23 fined in section 1861(ddd)(2)).”.

1 (h) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply to items and services furnished on
 3 or after January 1, 2006.

4 **SEC. 303. COVERAGE OF MENTAL HEALTH COUNSELOR**
 5 **SERVICES.**

6 (a) COVERAGE OF SERVICES.—Section 1861(s)(2) of
 7 the Social Security Act (42 U.S.C. 1395x(s)(2)), as
 8 amended in section 302(a), is amended—

9 (1) in subparagraph (Z), by striking “and” at
 10 the end;

11 (2) in subparagraph (AA), by inserting “and”
 12 at the end; and

13 (3) by adding at the end the following new sub-
 14 paragraph:

15 “(BB) mental health counselor services (as
 16 defined in subsection (eee)(2));”.

17 (b) DEFINITION.—Section 1861 of the Social Secu-
 18 rity Act (42 U.S.C. 1395x), as amended by sections
 19 201(b), 202(b), and 302(b), is amended by adding at the
 20 end the following new subsection:

21 “Mental Health Counselor; Mental Health Counselor
 22 Services

23 “(eee)(1) The term ‘mental health counselor’ means
 24 an individual who—

1 “(A) possesses a master’s or doctor’s degree in
2 mental health counseling or a related field;

3 “(B) after obtaining such a degree has per-
4 formed at least 2 years of supervised mental health
5 counselor practice; and

6 “(C) is licensed or certified as a mental health
7 counselor or professional counselor by the State in
8 which the services are performed.

9 “(2) The term ‘mental health counselor services’
10 means services performed by a mental health counselor (as
11 defined in paragraph (1)) for the diagnosis and treatment
12 of mental illnesses which the mental health counselor is
13 legally authorized to perform under State law (or the
14 State regulatory mechanism provided by the State law) of
15 the State in which such services are performed, provided
16 such services are covered under this title, as would other-
17 wise be covered if furnished by a physician or as incident
18 to a physician’s professional service, but only if no facility
19 or other provider charges or is paid any amounts with re-
20 spect to the furnishing of such services.”.

21 (c) PAYMENT.—

22 (1) IN GENERAL.—Section 1833(a)(1) of the
23 Social Security Act (42 U.S.C. 1395l(a)(1)), as
24 amended by section 302(d), is amended—

25 (A) by striking “and” before “(W)”; and

1 (B) by inserting before the semicolon at
2 the end the following: “, and (X) with respect
3 to mental health counselor services under sec-
4 tion 1861(s)(2)(BB), the amounts paid shall be
5 80 percent of the lesser of (i) the actual charge
6 for the services or (ii) 75 percent of the amount
7 determined for payment of a psychologist under
8 subparagraph (L)”.

9 (2) DEVELOPMENT OF CRITERIA WITH RE-
10 SPECT TO CONSULTATION WITH A PHYSICIAN.—The
11 Secretary of Health and Human Services shall, tak-
12 ing into consideration concerns for patient confiden-
13 tiality, develop criteria with respect to payment for
14 mental health counselor services for which payment
15 may be made directly to the mental health counselor
16 under part B of title XVIII of the Social Security
17 Act (42 U.S.C. 1395j et seq.) under which such a
18 counselor must agree to consult with a patient’s at-
19 tending or primary care physician in accordance
20 with such criteria.

21 (d) EXCLUSION OF MENTAL HEALTH COUNSELOR
22 SERVICES FROM SKILLED NURSING FACILITY PROSPEC-
23 TIVE PAYMENT SYSTEM.—Section 1888(e)(2)(A)(ii) of
24 the Social Security Act (42 U.S.C. 1395yy(e)(2)(A)(ii)),
25 as amended by sections 301(a) and 302(e), is amended

1 by inserting “mental health counselor services (as defined
 2 in section 1861(eee)(2)),” after “marriage and family
 3 therapist services (as defined in subsection (ddd)(1)),”.

4 (e) COVERAGE OF MENTAL HEALTH COUNSELOR
 5 SERVICES PROVIDED IN RURAL HEALTH CLINICS AND
 6 FEDERALLY QUALIFIED HEALTH CENTERS.—Section
 7 1861(aa)(1)(B) of the Social Security Act (42 U.S.C.
 8 1395x(aa)(1)(B)), as amended by section 302(f), is
 9 amended—

10 (1) by striking “or by a marriage” and insert-
 11 ing “by a marriage”; and

12 (2) by inserting “or a mental health counselor
 13 (as defined in subsection (eee)(1)),” after “marriage
 14 and family therapist (as defined in subsection
 15 (ddd)(2)),”.

16 (f) INCLUSION OF MENTAL HEALTH COUNSELORS AS
 17 PRACTITIONERS FOR ASSIGNMENT OF CLAIMS.—Section
 18 1842(b)(18)(C) of the Social Security Act (42 U.S.C.
 19 1395u(b)(18)(C)), as amended by section 302(g), is
 20 amended by adding at the end the following new clause:

21 “(viii) A mental health counselor (as defined in
 22 section 1861(eee)(1)).”.

23 (g) EFFECTIVE DATE.—The amendments made by
 24 this section shall apply to items and services furnished on
 25 or after January 1, 2006.

1 **SEC. 304. STUDY OF COVERAGE CRITERIA FOR ALZ-**
2 **HEIMER'S DISEASE AND RELATED MENTAL**
3 **ILLNESSES.**

4 (a) STUDY.—

5 (1) IN GENERAL.—The Secretary of Health and
6 Human Services (in this section referred to as the
7 “Secretary”) shall conduct a study to determine
8 whether the criteria for coverage of any therapy
9 service (including occupational therapy services and
10 physical therapy services) or any outpatient mental
11 health care service under the medicare program
12 under title XVIII of the Social Security Act (42
13 U.S.C. 1395 et seq.) unduly restricts the access of
14 any medicare beneficiary who has been diagnosed
15 with Alzheimer’s disease or a related mental illness
16 to such a service because the coverage criteria re-
17 quires the medicare beneficiary to display continuing
18 clinical improvement to continue to receive the serv-
19 ice.

20 (2) DETERMINATION OF NEW COVERAGE CRI-
21 TERIA.—If the Secretary determines that the cov-
22 erage criteria described in paragraph (1) unduly re-
23 stricts the access of any medicare beneficiary to the
24 services described in such paragraph, the Secretary
25 shall identify alternative coverage criteria that would
26 permit a medicare beneficiary who has been diag-

1 nosed with Alzheimer’s disease or a related mental
2 illness to receive coverage for health care services
3 under the medicare program that are designed to
4 control symptoms, maintain functional capabilities,
5 reduce or deter deterioration, and prevent or reduce
6 hospitalization of the beneficiary.

7 (b) REPORT.—Not later than 1 year after the date
8 of enactment of this Act, the Secretary shall submit to
9 the committees of jurisdiction of Congress a report on the
10 study conducted under subsection (a) together with such
11 recommendations for legislative and administrative action
12 as the Secretary determines appropriate.

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