

110TH CONGRESS
1ST SESSION

S. 1471

To provide for the voluntary development by States of qualifying best practices for health care and to encourage such voluntary development by amending titles XVIII and XIX of the Social Security Act to provide differential rates of payment favoring treatment provided consistent with qualifying best practices under the Medicare and Medicaid programs, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 24, 2007

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

A BILL

To provide for the voluntary development by States of qualifying best practices for health care and to encourage such voluntary development by amending titles XVIII and XIX of the Social Security Act to provide differential rates of payment favoring treatment provided consistent with qualifying best practices under the Medicare and Medicaid programs, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Improved Medical De-
3 cision Incentive Act of 2007”.

4 **SEC. 2. FINDINGS.**

5 Congress makes the following findings:

6 (1) The United States spends more per capita
7 on health care than any other nation, and yet it has
8 mediocre health outcomes, including the second-
9 highest infant mortality rate of all industrialized na-
10 tions.

11 (2) The efficacy of best practices guidelines in
12 improving health care delivery and patient outcomes
13 is well established.

14 (3) Existing payment systems compensate phy-
15 sicians without adequate attention to the appro-
16 priateness or quality of care delivered and often
17 without reference to established best practices.

18 (4) Identification of and adherence to best prac-
19 tices can improve the quality of health care while re-
20 ducing overall costs to the health care system.

21 (5) Orderly administrative proceedings involving
22 knowledgeable professionals will enhance best prac-
23 tices for health care.

24 (6) Control of medical practices through denial
25 of claims by insurance companies has proven waste-
26 ful and confusing, and has failed to motivate ade-

1 quate development and use of best practices for
2 health care.

3 **SEC. 3. VOLUNTARY STATE DEVELOPMENT AND APPROVAL**
4 **OF QUALIFYING BEST PRACTICES; INCEN-**
5 **TIVES FOR PRIVATE INSURERS.**

6 (a) STATE APPROVAL OF BEST PRACTICES.—

7 (1) IN GENERAL.—A State health department
8 may approve best practices in a course of, or as a
9 means of treatment for, a particular condition, ill-
10 ness, or procedure, as the qualifying standard of
11 care for the State in order to take advantage of the
12 differential rates of payment implemented under sec-
13 tions 1898 and 1902(dd) of the Social Security Act
14 (as added by sections 4 and 5, respectively) and the
15 private insurance incentive under subsection (b).

16 (2) QUALIFYING PROCESS FOR STATE AP-
17 PROVAL.—In order for best practices approved by a
18 State under paragraph (1) to qualify as best prac-
19 tices for purposes of implementing such differential
20 rates of payment and for purposes of such private
21 insurance incentive, a State health department
22 shall—

23 (A) allow any duly constituted State med-
24 ical society or medical specialty group to file
25 with the State health department a course or

1 means of treatment representing best practices
2 for a particular condition, illness, or procedure
3 to be applicable in the State, including cost-ef-
4 fective prevention and management measures;

5 (B) provide for notice and hearing con-
6 sistent with the administrative procedures of
7 the State with respect to the approval of best
8 practices for a particular condition, illness, or
9 procedure;

10 (C) permit any health insurer described in
11 subsection (b)(1), including any individual au-
12 thorized by the Secretary of Health and Human
13 Services to act as a representative of the Medi-
14 care and Medicaid programs under titles XVIII
15 and XIX, respectively, of the Social Security
16 Act (42 U.S.C. 1395 et seq.; 1396 et seq.), to
17 intervene in any administrative proceeding to
18 approve such best practices;

19 (D) provide appropriate notice of any such
20 administrative proceeding to established advo-
21 cacy groups concerned with the condition or ill-
22 ness involved in the proceeding; and

23 (E) in the case where the State health de-
24 partment determines that a course of treatment
25 filed in accordance with subparagraph (A)

1 would lower system costs and improve quality of
2 care, approve that best practices course of
3 treatment within its jurisdiction as the quali-
4 fying standard of care under this subsection for
5 that condition, illness, or procedure.

6 (3) PRIORITY OF APPROVALS.—State health de-
7 partments are encouraged to prioritize approval of
8 best practices that address conditions, illnesses, or
9 procedures where those best practices are reasonably
10 anticipated to result in the greatest overall cost sav-
11 ings and quality improvements.

12 (4) APPROVAL OF QUALIFYING BEST PRAC-
13 TICES.—If, at the conclusion of a process that meets
14 the requirements of paragraph (2), the State health
15 department approves best practices (as described in
16 paragraph (1)), those best practices shall be—

17 (A) deemed qualifying best practices;

18 (B) the basis for differential rates of pay-
19 ment under sections 1898 and 1902(dd) of the
20 Social Security Act (as added by sections 4 and
21 5, respectively); and

22 (C) eligible for the private insurance incen-
23 tive under subsection (b).

24 (5) DEFINITION OF STATE.—In this subsection
25 the term “State” includes such regional or local

1 areas as the State health department determines ap-
2 propriate.

3 (b) INCENTIVE FOR PRIVATE INSURERS TO PROVIDE
4 TIMELY PAYMENT FOR SERVICES PROVIDED IN ACCORD-
5 ANCE WITH BEST PRACTICES.—

6 (1) IN GENERAL.—Notwithstanding any other
7 provision of law, in the case where qualifying best
8 practices have been approved by a State health de-
9 partment in accordance with subsection (a), any
10 health insurer doing business in interstate commerce
11 and providing health care coverage within the State
12 shall pay all provider charges for any service pro-
13 vided in accordance with such best practices not
14 later than 30 days after the date on which such
15 service is provided and, absent fraud, without regard
16 for the insurer’s internal utilization review or claims
17 denial procedure.

18 (2) STANDING TO ENFORCE.—Any provider or
19 specialty group that does business in a State where
20 the State health department has approved qualifying
21 best practices in accordance with subsection (a) may
22 bring a civil action in an appropriate United States
23 district court to enjoin efforts by any health insurer
24 to challenge or delay payment for services provided
25 by the provider or a member of the specialty group

1 in accordance with such best practices approved in
 2 the State. The district court shall award a provider
 3 or specialty group costs and attorney’s fees in such
 4 a civil action if the court finds that the challenge or
 5 delay was a willful violation of this Act.

6 **SEC. 4. IMPLEMENTATION OF DIFFERENTIAL RATES OF**
 7 **PAYMENT FOR QUALIFYING BEST PRACTICES**
 8 **UNDER THE MEDICARE PROGRAM.**

9 (a) DIFFERENTIAL RATES OF PAYMENT FOR QUALI-
 10 FYING BEST PRACTICES.—Title XVIII of the Social Secu-
 11 rity Act (42 U.S.C. 1395 et seq.) is amended by adding
 12 at the end the following new section:

13 “DIFFERENTIAL RATES OF PAYMENT FOR QUALIFYING
 14 BEST PRACTICES

15 “SEC. 1898. (a) IN GENERAL.—

16 “(1) DIFFERENTIAL RATES OF PAYMENT.—
 17 Notwithstanding any other provision of law, the Sec-
 18 retary shall establish procedures to provide differen-
 19 tial rates of payment for items and services covered
 20 under the program under this title that favor treat-
 21 ment provided consistent with qualifying best prac-
 22 tices approved by a State in accordance with section
 23 3(a) of the Improved Medical Decision Incentive Act
 24 of 2007.

1 “(2) REGULATIONS.—Not later than March 31,
2 2008, the Secretary shall promulgate regulations to
3 carry out this subsection.

4 “(3) BUDGET NEUTRALITY.—The Secretary
5 shall ensure that the procedures established under
6 paragraph (1) do not result in overall expenditures
7 for any year under this title that are more than the
8 expenditures which would have been made if such
9 procedures had not been established, taking into ac-
10 count—

11 “(A) any savings anticipated as a result of
12 the application of best practices to items and
13 services covered under the program under this
14 title; and

15 “(B) the net effects of reimbursement in-
16 creases and decreases as a result of the dif-
17 ferential in rates of payment established under
18 such program.

19 “(b) ADOPTION OF NATIONAL BEST PRACTICES.—

20 “(1) IN GENERAL.—Such procedures shall
21 specify that, in any case where the Secretary finds
22 a national standard for best practices to be appro-
23 priate, the Secretary may adopt national best prac-
24 tices. Subject to paragraph (2), such national best
25 practices shall be applicable within a State as a

1 qualifying best practice in accordance with section
2 3(a) of the Improved Medical Decision Incentive Act
3 of 2007 and the basis for the establishment of dif-
4 ferential rates of payment under the program under
5 this title.

6 “(2) LIMITATION.—In any case where the State
7 health department has approved qualifying best
8 practices in the State for a condition, illness, or pro-
9 cedure in accordance with such section 3(a), national
10 best practices adopted under paragraph (1) shall
11 only be applicable within such State as a qualifying
12 best practice and the basis for the establishment of
13 such differential rates of payment if the Secretary
14 finds, after a hearing in the State that meets the
15 procedural requirements under paragraph (2) of
16 such section 3(a), that the national best practices
17 will improve health care outcomes and lower health
18 care costs in the State to a greater extent than the
19 qualifying best practices approved by the State
20 health department for that condition, illness, or pro-
21 cedure in accordance with such section 3(a).”.

22 (b) EFFECTIVE DATE.—The amendment made by
23 this section shall apply to items and services furnished on
24 or after March 31, 2008.

1 **SEC. 5. IMPLEMENTATION OF DIFFERENTIAL RATES OF**
2 **PAYMENT FOR QUALIFYING BEST PRACTICES**
3 **UNDER THE MEDICAID PROGRAM.**

4 (a) STATE PLAN AMENDMENT.—Section 1902(a) of
5 the Social Security Act (42 U.S.C. 1396a(a)) is amend-
6 ed—

7 (1) in paragraph (69), by striking “and” at the
8 end;

9 (2) in paragraph (70)(B)(iv), by striking the
10 period at the end and inserting “; and”; and

11 (3) by inserting after paragraph (70)(B)(iv) the
12 following new paragraph:

13 “(71) provide, in accordance with procedures
14 established by the Secretary under subsection (dd)
15 and after consultation with and upon the rec-
16 ommendation of the State health department (and
17 the approval of the Secretary), for differential rates
18 of payment for medical assistance under the plan
19 that favor treatment provided consistent with quali-
20 fying best practices approved by the State health de-
21 partment in accordance with section 3(a) of the Im-
22 proved Medical Decision Incentive Act of 2007, ex-
23 cept that in establishing such payment rates, the
24 State shall ensure that the amounts paid under such
25 rates do not exceed the amount the State would have
26 paid for such medical assistance under the plan if

1 such differential rates of payment had not been
2 made, taking into account any annual increases in
3 population and inflation.”.

4 (b) ESTABLISHMENT OF PROCEDURES.—Section
5 1902 of the Social Security Act (42 U.S.C. 1396a) is
6 amended by adding at the end the following new sub-
7 section:

8 “(dd) DIFFERENTIAL RATES OF PAYMENT FOR
9 QUALIFYING BEST PRACTICES AND ADOPTION OF NA-
10 TIONAL BEST PRACTICES.—

11 “(1) DIFFERENTIAL RATES OF PAYMENT FOR
12 QUALIFYING BEST PRACTICES.—

13 “(A) IN GENERAL.—Notwithstanding any
14 other provision of law, the Secretary shall es-
15 tablish procedures to provide differential rates
16 of payment for medical assistance provided con-
17 sistent with qualifying best practices approved
18 by a State in accordance with section 3(a) of
19 the Improved Medical Decision Incentive Act of
20 2007.

21 “(B) REGULATIONS.—Not later than
22 March 31, 2008, the Secretary shall promulgate
23 regulations to carry out this subsection.

24 “(C) BUDGET NEUTRALITY.—The Sec-
25 retary shall ensure that the procedures estab-

1 lished under subparagraph (A) do not result in
2 overall expenditures for any year under a State
3 plan that are more than the expenditures which
4 would have been made if such procedures had
5 not been established, taking into account—

6 “(i) any savings anticipated as a re-
7 sult of the application of best practices to
8 medical assistance provided under the
9 State plan; and

10 “(ii) the net effects of reimbursement
11 increases and decreases as a result of the
12 differential rates of payment established
13 under such plan.

14 “(2) ADOPTION OF NATIONAL BEST PRAC-
15 TICES.—Such procedures shall specify that, in any
16 case where the Secretary adopts national best prac-
17 tices in accordance with section 1898(b), subject to
18 the limitation under paragraph (2) of such section,
19 such national best practices shall be—

20 “(A) applicable within a State as a quali-
21 fying best practice in accordance with section
22 3(a) of the Improved Medical Decision Incentive
23 Act of 2007; and

1 “(B) the basis for the establishment of dif-
2 ferential rates of payment under the State
3 plan.”.

4 (c) EFFECTIVE DATE.—

5 (1) IN GENERAL.—Except as provided in para-
6 graph (2), the amendments made by this section
7 shall apply to medical assistance furnished on or
8 after March 31, 2008.

9 (2) EXTENSION OF EFFECTIVE DATE FOR
10 STATE LAW AMENDMENT.—In the case of a State
11 plan under title XIX of the Social Security Act (42
12 U.S.C. 1396 et seq.) which the Secretary of Health
13 and Human Services determines requires State legis-
14 lation in order for the plan to meet the additional
15 requirements imposed by the amendments made by
16 this section, the State plan shall not be regarded as
17 failing to comply with the requirements of such title
18 solely on the basis of its failure to meet these addi-
19 tional requirements before the first day of the first
20 calendar quarter beginning after the close of the
21 first regular session of the State legislature that be-
22 gins after the date of enactment of this Act. For
23 purposes of the previous sentence, in the case of a
24 State that has a 2-year legislative session, each year

1 of the session is considered to be a separate regular
2 session of the State legislature.

3 **SEC. 6. OVERSIGHT BY THE CENTERS FOR MEDICARE &**
4 **MEDICAID SERVICES.**

5 (a) REVIEW AND REPORT.—

6 (1) REVIEW.—

7 (A) IN GENERAL.—The Secretary shall
8 conduct an annual review of the efficacy of all
9 qualifying best practices approved pursuant to
10 section 3(a) and, if applicable, any national best
11 practices adopted pursuant to section 1898(b)
12 of the Social Security Act, as added by section
13 4(a).

14 (B) CONSIDERATIONS.—The review con-
15 ducted under subparagraph (A) shall con-
16 sider—

17 (i) the effect of such best practices
18 with respect to improving outcomes and
19 lowering the cost of care; and

20 (ii) the effect and efficacy of differen-
21 tial rates of payment under the Medicare
22 and Medicaid programs under titles XVIII
23 and XIX, respectively, of the Social Secu-
24 rity Act (42 U.S.C. 1395 et seq.; 1396 et
25 seq.) under procedures established pursu-

1 ant to the amendments made by sections 4
2 and 5.

3 (2) REPORT.—The Secretary shall submit an
4 annual report to Congress containing the results of
5 the review conducted under paragraph (1)(A), to-
6 gether with recommendations for such legislation
7 and administrative actions as the Secretary deter-
8 mines appropriate.

9 (b) ANNUAL CONFERENCE.—The Secretary shall
10 host an annual conference of all State health directors,
11 and any State medical societies and medical specialty
12 groups that have filed best practices for approval with a
13 State health department in accordance with subparagraph
14 (A) of section 3(a)(2) and any health insurers and advo-
15 cacy groups that have participated in any administrative
16 proceeding to approve best practices in accordance with
17 subparagraphs (C) and (D), respectively, of such section,
18 to provide—

19 (1) for the exchange of information; and

20 (2) an opportunity to summarize the effects on
21 health care costs, quality, and outcomes of quali-
22 fying best practices approved in accordance with sec-
23 tion 3(a) prior to the date on which the conference
24 is held.

1 (c) AUTHORIZATION.—There are authorized to be ap-
2 propriated such sums as may be necessary for the purpose
3 of carrying out this section.

4 (d) DEFINITION OF SECRETARY.—In this section, the
5 term “Secretary” means the Secretary of Health and
6 Human Services, acting through the Administrator of the
7 Centers for Medicare & Medicaid Services.

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