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

IN THE HOUSE OF REPRESENTATIVES

March 23, 2007

Mr. STARK (for himself, Mr. RAMSTAD, and Mr. KENNEDY) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) In General.—This Act may be cited as the “Medicare Mental Health Modernization Act of 2007”.

(b) Table of Contents.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
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.

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 TITLE I—ESTABLISHING PARITY FOR MENTAL HEALTH SERVICES

2 SEC. 101. ELIMINATION OF LIFETIME LIMIT ON INPATIENT MENTAL HEALTH SERVICES.

(a) IN GENERAL.—Section 1812 of the Social Security Act (42 U.S.C. 1395d) is amended—

(1) in subsection (b)—

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

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

(C) by striking paragraph (3); and

(2) by striking subsection (c).

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to items and services furnished on or after January 1, 2008.
SEC. 102. PARITY IN TREATMENT FOR OUTPATIENT MENTAL HEALTH SERVICES.

(a) In General.—Section 1833 of the Social Security Act (42 U.S.C. 1395l) is amended by striking subsection (c).

(b) Effective Date.—The amendment made by subsection (a) shall apply to items and services furnished on or after January 1, 2008.

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

SEC. 201. COVERAGE OF INTENSIVE RESIDENTIAL SERVICES.

(a) Coverage Under Part A.—Section 1812(a) of the Social Security Act (42 U.S.C. 1395d(a)) is amended—

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

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

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

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

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

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

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

“(B) furnished under the supervision of a physician pursuant to an individualized, written plan of treatment established and periodically reviewed by a physician (in consultation with appropriate staff participating in such services), which plan sets forth—

“(i) the individual’s diagnosis,

“(ii) the type, amount, frequency, and duration of the items and services provided under the plan, and

“(iii) the goals for treatment under the plan.
In the case of such an individual who is receiving qualified psychologist services (as defined in subsection (ii)), the individual may be under the care of the clinical psychologist with respect to such services under this subsection to the extent permitted under State law.

“(2) The program of residential services described in this paragraph is a nonhospital-based community residential program that furnishes acute mental health services or substance abuse services, or both, on a 24-hour basis. Such services shall include treatment planning and development, medication management, case management, crisis intervention, individual therapy, group therapy, and detoxification services. Such services shall be furnished in any of the following facilities:

“(A) Crisis residential programs or mental illness residential treatment programs.

“(B) Therapeutic family or group treatment homes.

“(C) Residential detoxification centers.


“(3) No service may be treated as an intensive residential service under paragraph (1) unless the facility at which the service is provided—
“(A) is legally authorized to provide such service under the law of the State (or under a State regulatory mechanism provided by State law) in which the facility is located or meets such certification requirements that the Secretary may impose; and

“(B) meets such other requirements as the Secretary may impose to assure the quality of the intensive residential services provided.

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

(e) AMOUNT OF PAYMENT.—Section 1814 of the Social Security Act (42 U.S.C. 1395f) is amended—

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

(2) by adding at the end the following new subsection:

“(m) PAYMENT FOR INTENSIVE RESIDENTIAL SERVICES.—(1) The amount of payment under this part for intensive residential services under section 1812(a)(6) shall be equal to an amount specified under a prospective payment system established by the Secretary, taking into account the prospective payment system established for

“(2) Prior to the date on which the Secretary implements the prospective payment system established under paragraph (1), the amount of payment under this part for such intensive residential services is the reasonable costs of providing such services.”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to items and services furnished on or after January 1, 2008.

SEC. 202. COVERAGE OF INTENSIVE OUTPATIENT SERVICES.

(a) COVERAGE.—Section 1832(a)(2) of the Social Security Act (42 U.S.C. 1395k(a)(2)) is amended—

(1) in subparagraph (I), by striking “and” at the end;

(2) in subparagraph (J), by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following new subparagraph:

“(K) intensive outpatient services (as described in section 1861(ddd)).”.
(b) Services Described.—Section 1861 of the Social Security Act (42 U.S.C. 1395x), as amended by section 201(b), is amended by adding at the end the following new subsection:

“(ddd) Intensive Outpatient Services.—(1) The term ‘intensive outpatient services’ means the items and services described in paragraph (2) prescribed by a physician and provided within the context described in paragraph (3) under the supervision of a physician (or, to the extent permitted under the law of the State in which the services are furnished, a non-physician mental health professional) pursuant to an individualized, written plan of treatment that is established by a physician and periodically reviewed by a physician or, to the extent permitted under the laws of the State in which the services are furnished, a non-physician mental health professional (in consultation with appropriate staff participating in such services), which plan sets forth the patient’s diagnosis, the type, amount, frequency, and duration of the items and services provided under the plan, and the goals for treatment under the plan.

“(2)(A) The items and services described in this paragraph are the items and services described in subparagraph (B) that are reasonable and necessary for the diagnosis or treatment of the individual’s condition, rea-
sonably expected to improve or maintain the individual’s
condition and functional level and to prevent relapse or
hospitalization, and furnished pursuant to such guidelines
relating to frequency and duration of services as the Sec-
retary shall by regulation establish (taking into account
accepted norms of clinical practice).

“(B) For purposes of subparagraph (A), the items
and services described in this paragraph are as follows:
“(i) Psychiatric rehabilitation.
“(ii) Assertive community treatment.
“(iii) Intensive case management.
“(iv) Day treatment for individuals under 21
years of age.
“(v) Ambulatory detoxification.
“(vi) Such other items and services as the Sec-
retary may provide (but in no event to include meals
and transportation).

“(3) The context described in this paragraph for the
provision of intensive outpatient services is as follows:
“(A) Such services are furnished in a facility,
home, or community setting.
“(B) Such services are furnished—
“(i) to assist the individual to compensate
for, or eliminate, functional deficits and inter-
personal and environmental barriers created by
the disability; and

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

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

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

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

(e) Payment.—

(1) In General.—With respect to intensive
outpatient services (as defined in section
1861(ddd)(1) of the Social Security Act (as added
by subsection (b)) furnished under the medicare pro-
gram, the amount of payment under such Act for
such services shall be 80 percent of—

(A) during 2008 and 2009, the reasonable
costs of furnishing such services; and
(B) on or after January 1, 2010, the amount of payment established for such services under the prospective payment system established by the Secretary under paragraph (2) for such services.

(2) ESTABLISHMENT OF PPS.—

(A) IN GENERAL.—With respect to intensive outpatient services (as defined in section 1861(ddd)(1)) of the Social Security Act (as added by subsection (b)) furnished under the medicare program on or after January 1, 2010, the Secretary of Health and Human Services (in this paragraph referred to as the “Secretary”) shall establish a prospective payment system for payment for such services. Such system shall include an adequate patient classification system that reflects the differences in patient resource use and costs and shall provide for an annual update to the rates of payment established under the system.

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

(C) COLLECTION OF DATA AND EVALUATION.—In developing the system described in subparagraph (A), the Secretary may require providers of services under the medicare program to submit such information to the Secretary as the Secretary may require to develop the system, including the most recently available data.

(D) REPORTS TO CONGRESS.—Not later than October 1 of each of 2008 and 2009, the Secretary shall submit to Congress a report on the progress of the Secretary in establishing the prospective payment system under this paragraph.

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

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

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

(C) by inserting after subparagraph (F) the following new subparagraph:
“(G) in the case of intensive outpatient services, (i) that those services are reasonably expected to improve or maintain the individual’s condition and functional level and to prevent relapse or hospitalization, (ii) an individualized, written plan for furnishing such services has been established by a physician and is reviewed periodically by a physician or, to the extent permitted under the laws of the State in which the services are furnished, a non-physician mental health professional, and (iii) such services are or were furnished while the individual is or was under the care of a physician or, to the extent permitted under the law of the State in which the services are furnished, a non-physician mental health professional.”.

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

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

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

(B) by striking “physician’s” and inserting “patient’s”.

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

(A) in paragraph (1), in the matter preceding subparagraph (A), by striking “physician—” and inserting “physician or, to the extent permitted under the law of the State in which the services are furnished, a non-physician mental health professional—”;

(B) in paragraph (2)(E), by inserting before the semicolon at the end the following: “, except that a patient receiving social and psychological services under paragraph (1)(D) may be under the care of a non-physician mental health professional with respect to such services to the extent permitted under the law of the State in which the services are furnished”.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to items and services furnished on or after January 1, 2008.
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.

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

(b) Conforming Amendment.—Section 1861(hh)(2) of the Social Security Act (42 U.S.C. 1395x(hh)(2)) is amended by striking “and other than services furnished to an inpatient of a skilled nursing facility which the facility is required to provide as a requirement for participation”.

(c) Effective Date.—The amendments made by this section shall apply to items and services furnished on or after January 1, 2008.
SEC. 302. COVERAGE OF MARRIAGE AND FAMILY THERAPIST SERVICES.

(a) COVERAGE OF SERVICES.—Section 1861(s)(2) of the Social Security Act (42 U.S.C. 1395x(s)(2)) is amended—

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

(2) in subparagraph (AA), by adding “and” at the end; and

(3) by adding at the end the following new subparagraph:

“(BB) marriage and family therapist services (as defined in subsection (eee));”.

(b) DEFINITION.—Section 1861 of the Social Security Act (42 U.S.C. 1395x), as amended by sections 201(b) and 202(b), is amended by adding at the end the following new subsection:

“(eee) MARRIAGE AND FAMILY THERAPIST SERVICES.—(1) The term ‘marriage and family therapist services’ means services performed by a marriage and family therapist (as defined in paragraph (2)) for the diagnosis and treatment of mental illnesses, which the marriage and family therapist is legally authorized to perform under State law (or the State regulatory mechanism provided by State law) of the State in which such services are performed, provided such services are covered under this title,
as would otherwise be covered if furnished by a physician or as incident to a physician’s professional service, but only if no facility or other provider charges or is paid any amounts with respect to the furnishing of such services.

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

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

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

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

(c) PROVISION FOR PAYMENT UNDER PART B.—Section 1832(a)(2)(B) of the Social Security Act (42 U.S.C. 1395k(a)(2)(B)) is amended by adding at the end the following new clause:

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

(d) AMOUNT OF PAYMENT.—
(1) IN GENERAL.—Section 1833(a)(1) of the Social Security Act (42 U.S.C. 1395l(a)(1)) is amended—

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

(B) by inserting before the semicolon at the end the following: “, and (W) with respect to marriage and family therapist services under section 1861(s)(2)(BB), the amounts paid shall be 80 percent of the lesser of (i) the actual charge for the services or (ii) 75 percent of the amount determined for payment of a psychologist under subparagraph (L)”.

(2) DEVELOPMENT OF CRITERIA WITH RESPECT TO CONSULTATION WITH A PHYSICIAN.—The Secretary of Health and Human Services shall, taking into consideration concerns for patient confidentiality, develop criteria with respect to payment for marriage and family therapist services for which payment may be made directly to the marriage and family therapist under part B of title XVIII of the Social Security Act (42 U.S.C. 1395j et seq.) under which such a therapist must agree to consult with a patient’s attending or primary care physician in accordance with such criteria.
(e) Exclusion of Marriage and Family Therapist Services From Skilled Nursing Facility Prospective Payment System.—Section 1888(e)(2)(A)(ii) of the Social Security Act (42 U.S.C. 1395yy(e)(2)(A)(ii)), as amended in section 301(a), is amended by inserting “marriage and family therapist services (as defined in subsection (eee)(1)),” after “clinical social worker services,”.

(f) Coverage of Marriage and Family Therapist Services Provided in Rural Health Clinics and Federally Qualified Health Centers.—Section 1861(aa)(1)(B) of the Social Security Act (42 U.S.C. 1395x(aa)(1)(B)) is amended by striking “or by a clinical social worker (as defined in subsection (hh)(1)),” and inserting “, by a clinical social worker (as defined in subsection (hh)(1)), or by a marriage and family therapist (as defined in subsection (eee)(2)),”.

(g) Inclusion of Marriage and Family Therapists as Practitioners for Assignment of Claims.—Section 1842(b)(18)(C) of the Social Security Act (42 U.S.C. 1395u(b)(18)(C)) is amended by adding at the end the following new clause:

“(vii) A marriage and family therapist (as defined in section 1861(eee)(2)).”.
(h) Effective Date.—The amendments made by this section shall apply to items and services furnished on or after January 1, 2008.

SEC. 303. COVERAGE OF MENTAL HEALTH COUNSELOR SERVICES.

(a) Coverage of Services.—Section 1861(s)(2) of the Social Security Act (42 U.S.C. 1395x(s)(2)), as amended in section 302(a), is amended—

(1) in subparagraph (AA), by striking “and” at the end;

(2) in subparagraph (BB), by inserting “and” at the end; and

(3) by adding at the end the following new subparagraph:

“(CC) mental health counselor services (as defined in subsection (fff)(2));”.

(b) Definition.—Section 1861 of the Social Security Act (42 U.S.C. 1395x), as amended by sections 201(b), 202(b), and 302(b), is amended by adding at the end the following new subsection:

“(fff) Mental Health Counselor; Mental Health Counselor Services.—(1) The term ‘mental health counselor’ means an individual who—

“(A) possesses a master’s or doctor’s degree in mental health counseling or a related field;
“(B) after obtaining such a degree has performed at least 2 years of supervised mental health counselor practice; and

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

“(2) The term ‘mental health counselor services’ means services performed by a mental health counselor (as defined in paragraph (1)) for the diagnosis and treatment of mental illnesses which the mental health counselor is legally authorized to perform under State law (or the State regulatory mechanism provided by the State law) of the State in which such services are performed, provided such services are covered under this title, as would otherwise be covered if furnished by a physician or as incident to a physician’s professional service, but only if no facility or other provider charges or is paid any amounts with respect to the furnishing of such services.”.

(c) PAYMENT.—

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

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

(B) by inserting before the semicolon at the end the following: “, and (X) with respect
to mental health counselor services under section 1861(s)(2)(CC), the amounts paid shall be 80 percent of the lesser of (i) the actual charge for the services or (ii) 75 percent of the amount determined for payment of a psychologist under subparagraph (L)”.

(2) DEVELOPMENT OF CRITERIA WITH RESPECT TO CONSULTATION WITH A PHYSICIAN.—The Secretary of Health and Human Services shall, taking into consideration concerns for patient confidentiality, develop criteria with respect to payment for mental health counselor services for which payment may be made directly to the mental health counselor under part B of title XVIII of the Social Security Act (42 U.S.C. 1395j et seq.) under which such a counselor must agree to consult with a patient’s attending or primary care physician in accordance with such criteria.

(d) EXCLUSION OF MENTAL HEALTH COUNSELOR SERVICES FROM SKILLED NURSING FACILITY PROSPECTIVE PAYMENT SYSTEM.—Section 1888(e)(2)(A)(ii) of the Social Security Act (42 U.S.C. 1395yy(e)(2)(A)(ii)), as amended by sections 301(a) and 302(e), is amended by inserting “mental health counselor services (as defined
in section 1861(fff)(2)),” after “marriage and family ther-

apist services (as defined in subsection (eee)(1)),”.

(c) Coverage of Mental Health Counselor

Services Provided in Rural Health Clinics and

Federally Qualified Health Centers.—Section

1861(aa)(1)(B) of the Social Security Act (42 U.S.C.

1395x(aa)(1)(B)), as amended by section 302(f), is

amended—

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

(2) by inserting “or a mental health counselor

(as defined in subsection (fff)(1)),” after “marriage

and family therapist (as defined in subsection

(eee)(2)),”.

(f) Inclusion of Mental Health Counselors as

Practitioners for Assignment of Claims.—Section

1842(b)(18)(C) of the Social Security Act (42 U.S.C.

1395u(b)(18)(C)), as amended by section 302(g), is

amended by adding at the end the following new clause:

“(viii) A mental health counselor (as defined in

section 1861(fff)(1)).”.

(g) Effective Date.—The amendments made by

this section shall apply to items and services furnished on

or after January 1, 2008.
SEC. 304. STUDY OF COVERAGE CRITERIA FOR ALZHEIMER'S DISEASE AND RELATED MENTAL ILLNESSES.

(a) Study.—

(1) In general.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall conduct a study to determine whether the criteria for coverage of any therapy service (including occupational therapy services and physical therapy services) or any outpatient mental health care service under the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) unduly restricts the access of any medicare beneficiary who has been diagnosed with Alzheimer's disease or a related mental illness to such a service because the coverage criteria requires the medicare beneficiary to display continuing clinical improvement to continue to receive the service.

(2) Determination of new coverage criteria.—If the Secretary determines that the coverage criteria described in paragraph (1) unduly restricts the access of any medicare beneficiary to the services described in such paragraph, the Secretary shall identify alternative coverage criteria that would permit a medicare beneficiary who has been diag-
nosed with Alzheimer’s disease or a related mental illness to receive coverage for health care services under the medicare program that are designed to control symptoms, maintain functional capabilities, reduce or deter deterioration, and prevent or reduce hospitalization of the beneficiary.

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