

105TH CONGRESS  
2D SESSION

# H. R. 3111

To assure that the services of a nonemergency department physician are available to hospital patients 24-hours-a-day, seven days a week in all non-Federal hospitals with at least 100 licensed beds.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 27, 1998

Mr. VISCLOSKY introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committee on Ways and Means, 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

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## A BILL

To assure that the services of a nonemergency department physician are available to hospital patients 24-hours-a-day, seven days a week in all non-Federal hospitals with at least 100 licensed beds.

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.**

4       This Act may be cited as the “Physician Availability  
5       Act of 1997”.

1 **SEC. 2. REQUIREMENT FOR PHYSICIAN AVAILABILITY IN**  
2 **ACUTE CARE HOSPITALS.**

3 (a) IN GENERAL.—Each covered hospital shall have  
4 a qualified physician available in the hospital 24 hours a  
5 day, seven days a week to attend to the needs of inpatients  
6 of the hospital.

7 (b) DEFINITIONS.—For purposes of this section:

8 (1) COVERED HOSPITAL.—

9 (A) IN GENERAL.—Subject to subpara-  
10 graph (B), the term “covered hospital” means  
11 a subsection (d) hospital (as defined in section  
12 1886(d)(1)(B) of the Social Security Act (42  
13 U.S.C. 1395ww(d)(1)(B)) that has a participa-  
14 tion agreement in effect under section 1866 of  
15 such Act (42 U.S.C. 1395cc), is participating in  
16 the program under title XIX of such Act, or is  
17 receiving a Federal funds under a grant or co-  
18 operative agreement.

19 (B) EXCLUSION FOR FEDERAL FACILITIES  
20 AND SMALL HOSPITALS.—Such term does not  
21 include a hospital that—

22 (i) is a facility of the Federal Govern-  
23 ment, or

24 (ii) the Secretary of Health and  
25 Human Services determines has fewer than

1                   100 licensed beds (as defined by the Sec-  
2                   retary).

3                   (2) PHYSICIAN; QUALIFIED PHYSICIAN.—(A)

4                   The term “physician” means, with respect to a hos-  
5                   pital, an individual who is a doctor of medicine or  
6                   osteopathy legally authorized under State law to  
7                   practice medicine and surgery in that hospital.

8                   (B) The term “qualified physician” means, with  
9                   respect to a hospital, an individual who is a physi-  
10                  cian and whose credentials as such a physician have  
11                  been verified by the administration of the hospital  
12                  (before providing any services at the hospital)  
13                  through appropriate means, including verification  
14                  through the National Practitioner Databank.

15                  (3) PHYSICIAN AVAILABILITY.—A physician is  
16                  considered to be “available” in a hospital if—

17                         (A) the physician is physically present in  
18                         the hospital other than in the hospital’s emer-  
19                         gency room or emergency department;

20                         (B) the physician’s primary responsibility  
21                         is to be in attendance to serve the needs of the  
22                         hospital’s inpatients without delay; and

23                         (C) the physician is not physically present  
24                         in, assigned to, serving in, or expected to cover,

1 the hospital's emergency room or emergency de-  
2 partment.

3 (c) ENFORCEMENT.—

4 (1) WARNING.—If the Secretary of Health and  
5 Human Services (in this section referred to as the  
6 “Secretary”) determines that a hospital has violated  
7 subsection (a), in the first instance the Secretary  
8 shall provide a written warning regarding such viola-  
9 tion to the hospital and shall notify the Inspector  
10 General of the Department of Health and Human  
11 Services (in this section referred to as the “HHS In-  
12 spector General”) of such violation. Subsequently,  
13 the HHS Inspector General shall monitor the com-  
14 pliance of the hospital with the requirement of sub-  
15 section (a).

16 (2) SECOND VIOLATION.—After providing a  
17 warning to a hospital under paragraph (1), if the  
18 Secretary determines that the hospital subsequently  
19 and knowingly violates subsection (a)—

20 (A) the hospital is subject to a civil money  
21 penalty in an amount not to exceed \$100,000,  
22 and

23 (B) the hospital shall submit to the HHS  
24 Inspector General, by not later than 30 days  
25 after the date of such a determination, a reme-

1           dial plan to prevent future violations of the re-  
2           quirement of such subsection.

3           The provisions of section 1128A of the Social Secu-  
4           rity Act (42 U.S.C. 1320a–7a), other than sub-  
5           sections (a) and (b) of such section, shall apply to  
6           civil money penalties under subparagraph (A) in the  
7           same manner as they apply to a penalty or proceed-  
8           ing under subsection (a) of such section.

9           (3) SUBSEQUENT VIOLATIONS.—After imposing  
10          a civil money penalty under paragraph (2) against a  
11          hospital, if the Secretary determines that the hos-  
12          pital subsequently and knowingly violates subsection  
13          (a), the Secretary may issue an order disqualifying  
14          the hospital from participation in the programs  
15          under titles XVIII and XIX of the Social Security  
16          Act and from receipt of Federal funds under any  
17          grant or cooperative agreement for such period as  
18          the Secretary specifies and until the Secretary re-  
19          ceives satisfactory assurances that the hospital will  
20          be in substantial compliance with the requirement of  
21          subsection (a).

22          (4) FAILURE TO SUBMIT OR COMPLY WITH RE-  
23          MEDIAL PLAN.—If the Secretary determines, after  
24          consultation with the HHS Inspector General, that  
25          a hospital has failed to submit a satisfactory reme-

1       dial plan required under paragraph (2)(B) or is fail-  
2       ing to substantially carry out such a plan, the Sec-  
3       retary may suspend payment of funds to the hospital  
4       under titles XVIII and XIX of the Social Security  
5       Act and under Federal grants or cooperative agree-  
6       ments until the Secretary receives satisfactory assur-  
7       ances that such failures will not continue.

8       (d) EFFECTIVE DATE.—This section shall take effect  
9       on the date that is 6 months after the date of the enact-  
10      ment of this Act.

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