

105TH CONGRESS
2D SESSION

H. R. 3342

To prohibit discrimination or retaliation against health care workers who report unsafe conditions and practices which impact on patient care.

IN THE HOUSE OF REPRESENTATIVES

MARCH 5, 1998

Mr. FOLEY (for himself, Mr. KLINK, Mr. BARCIA, Mr. BROWN of California, Ms. CHRISTIAN-GREEN, Mr. COYNE, Ms. DELAURO, Mr. EHRLICH, Mr. FILNER, Ms. FURSE, Mr. GEJDENSON, Mr. GREEN, Ms. HARMAN, Mr. HINCHEY, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. KENNEDY of Massachusetts, Mr. KENNEDY of Rhode Island, Mr. KLECZKA, Mr. KUCINICH, Ms. JACKSON-LEE of Texas, Mr. MARTINEZ, Mr. MATSUI, Mrs. MEEK of Florida, Mr. MICA, Mr. MILLER of California, Ms. MILLENDER-MCDONALD, Ms. PELOSI, Mr. RAHALL, Ms. RIVERS, Mr. SANDERS, Mr. SANDLIN, Mr. SERRANO, Mr. ADAM SMITH of Washington, Mr. STARK, Mr. TORRES, Mr. TOWNS, Mr. WEYGAND, Ms. WOOLSEY, Mr. WYNN, Mr. YATES, and Mr. MASCARA) introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committee on the Judiciary, 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 prohibit discrimination or retaliation against health care workers who report unsafe conditions and practices which impact on patient care.

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 “Patient Safety and
3 Health Care Whistleblower Protection Act of 1998”.

4 **SEC. 2. PROHIBITION AGAINST DISCRIMINATION OR RE-**
5 **TALIATION.**

6 (a) IN GENERAL.—No person shall retaliate or dis-
7 criminate in any manner against any health care worker
8 because the worker (or any person acting on behalf of the
9 worker) in good faith—

10 (1) engaged in any disclosure of information re-
11 lating to the care, services, or conditions of a health
12 care entity;

13 (2) advocated on behalf of a patient or patients
14 with respect to the care, services, or conditions of a
15 health care entity; or

16 (3) initiated, cooperated, or otherwise partici-
17 pated in any investigation or proceeding of any gov-
18 ernmental entity relating to the care, services, or
19 conditions of a health care entity.

20 (b) ATTEMPTS.—No person shall retaliate or dis-
21 criminate in any manner against any health care worker
22 because the health care worker has attempted or has an
23 intention to engage in an action described in subsection
24 (a).

25 (c) RESTRICTIONS ON REPORTING PROHIBITED.—
26 No person shall by contract, policy, or procedure prohibit

1 or restrict any health care worker from engaging in any
 2 action for which a protection against discrimination or re-
 3 taliation is provided under subsection (a).

4 (d) CONFIDENTIAL INFORMATION.—This section
 5 does not protect disclosures that would violate Federal or
 6 State law or diminish or impair the rights of any person
 7 to the continued protection of confidentiality of commu-
 8 nications provided by State or Federal law.

9 (e) GOOD FAITH ACTION.—A health care worker with
 10 respect to the conduct described in subsection (a)(1) shall
 11 be considered to be acting in good faith if the health care
 12 worker reasonably believes that—

13 (1) the information is true; and

14 (2) the information disclosed by the health care
 15 worker—

16 (A) evidences a violation of any law, rule,
 17 or regulation, or of a generally recognized pro-
 18 fessional or clinical standard; or

19 (B) relates to care, services, or conditions
 20 which potentially endangers one or more pa-
 21 tients or workers or the public.

22 **SEC. 3. CONFIDENTIALITY OF COMPLAINTS TO GOVERN-**
 23 **MENT AGENCIES.**

24 The identity of a health care worker who complains
 25 in good faith to a government agency or department about

1 the quality of care, services, or conditions of a health care
2 entity shall remain confidential and shall not be disclosed
3 by any person except upon the knowing written consent
4 of the health care worker and except in the case in which
5 there is imminent danger to health or public safety or an
6 imminent violation of criminal law.

7 **SEC. 4. ENFORCEMENT.**

8 (a) PRIVATE CAUSE OF ACTION.—

9 (1) Any health care worker who believes that he
10 or she has been retaliated or discriminated against
11 in violation of section 2 may file a civil action in any
12 Federal or State court of competent jurisdiction
13 against the person believed to have violated section
14 2.

15 (2) If the court determines that a violation of
16 section 2 has occurred, the court shall award such
17 damages which result from the unlawful act or acts,
18 including compensatory damages, reinstatement, re-
19 imbursement of any wages, salary, employment ben-
20 efits, or other compensation denied or lost to such
21 employee by reason of the violation, as well as puni-
22 tive damages, attorneys' fees, and costs (including
23 expert witness fees). The court shall award interest
24 on the amount of damages awarded at the prevailing
25 rate.

1 (3) The court may issue temporary, prelimi-
2 nary, and permanent injunctive relief restraining
3 violations of this law, including the restraint of any
4 withholding of the payment of wages, salary, employ-
5 ment benefits, or other compensation, plus interest,
6 found by the court to be due and the restraint of
7 any other change in the terms and conditions of em-
8 ployment and may award such other equitable relief
9 as may be appropriate, including employment, rein-
10 statement, and promotion.

11 (4) An action may be brought under this sub-
12 section not later than 2 years after the date of the
13 last event constituting the alleged violation for which
14 the action is brought.

15 (b) CIVIL PENALTY.—Any person who violates a pro-
16 vision of section 2 shall be subject to a civil penalty of
17 not to exceed \$10,000 for each violation. In determining
18 the amount of any penalty under this subsection, the ap-
19 propriateness of such penalty to the size of the business
20 of the person charged and the gravity of the violation shall
21 be considered. The amount of any penalty under this sub-
22 section, when finally determined, may be—

23 (1) deducted from any sums owing by the
24 United States to the person charged; or

1 (2) ordered by the court, in an action brought
2 for a violation of section 2 brought by the health
3 care worker (or workers) who suffered retaliation or
4 discrimination.

5 (c) CRIMINAL PENALTY.—Any person who willfully
6 and repeatedly violates a provision of section 2 and such
7 violation is related to—

8 (1) a pattern or practice of such violations,

9 (2) quality of care, services, or conditions which
10 would likely lead to serious injury or death for pa-
11 tients or health care workers, or

12 (3) retaliation against a health care worker
13 which could lead to serious injury or death,

14 shall be fined in accordance with title 18, United States
15 Code, imprisoned for not more than 1 year, or both.

16 **SEC. 5. BURDEN OF PROOF.**

17 (a) ON COMPLAINANT.—In any civil action brought
18 under this Act, the complainant shall have the initial bur-
19 den of making a prima facie showing that any behavior
20 described in subsections (a) through (c) of section 2 was
21 a contributing factor in the adverse action or inaction al-
22 leged in the complaint. A prima facie case shall be estab-
23 lished if the complainant can show that—

1 (1) the respondent knew of the complainant's
2 protected activities at the time that the alleged unfav-
3 orable action or inaction was taken; and

4 (2) the discriminatory action occurred within a
5 period of time such that a reasonable person could
6 conclude that an activity protected by section 2(a) or
7 2(b) was a contributing factor in the discriminatory
8 treatment.

9 (b) ON RESPONDENT.—Once the complainant estab-
10 lishes a prima facie case, the burden shifts to the respond-
11 ent to demonstrate, by clear and convincing evidence, that
12 it would have taken the same adverse action or inaction
13 in the absence of such behavior.

14 **SEC. 6. DEFINITIONS.**

15 For purposes of this Act:

16 (1) HEALTH CARE ENTITY.—The term “health
17 care entity” includes a health care facility (such as
18 a hospital, clinic, nursing facility, or other provider
19 of health care services) or a health care carrier (such
20 as an insurance plan or health maintenance organi-
21 zation). Such term also includes those State, Fed-
22 eral, or local agencies whose responsibilities include
23 oversight of health care or health care entities.

24 (2) HEALTH CARE WORKER.—The term “health
25 care worker” includes a worker directly employed by

1 a health care entity as well as an employee of a sub-
2 contractor or independent contractor that provides
3 supplies or services to a health care entity. Such
4 term also includes a nurse, nurse's aide, laboratory
5 technician, physician, intern, resident, clerical em-
6 ployee, laundry staff, kitchen staff, maintenance
7 worker, and a current or former worker or contrac-
8 tor.

9 (3) DISCRIMINATION OR RETALIATION.—The
10 term “discrimination or retaliation” includes a
11 threat, intimidation, or any adverse change in a
12 health care worker's wages, benefits, or terms or
13 conditions of employment. In the case of a health
14 care worker who is not an employee of the health
15 care entity, such term includes any adverse action
16 taken against the worker or the worker's employer,
17 including the cancellation of or refusal to renew a
18 contract with the health care worker or the em-
19 ployer.

20 (4) CARE, SERVICES, OR CONDITIONS.—The
21 term “care, services, or conditions” includes, with
22 respect to a health care entity, all aspects of the
23 care or treatment of patients by the health care en-
24 tity (whether on an inpatient or outpatient basis),
25 any health care related services provided directly or

1 indirectly to a patient of the entity, the provision or
2 use of any supplies or equipment utilized in connec-
3 tion with the provision of such health care services,
4 the coverage or provision of benefits under a health
5 insurance policy or by a health maintenance organi-
6 zation, the processing of claims under a health in-
7 surance policy, and any conditions that exist in any
8 facility of the entity which affect or may affect the
9 quality or safety of the health care services provided
10 to patients.

11 (5) PERSON.—The term “person” includes an
12 institution, Federal, State, or local governmental en-
13 tity, or any other public or private entity.

14 (6) SECRETARY.—The term “Secretary” means
15 the Secretary of Labor.

16 **SEC. 7. NOTICE.**

17 (a) IN GENERAL.—Each health care entity shall post
18 and keep posted, in conspicuous places on the premises
19 of the health care entity where notices to employees and
20 applicants for employment are customarily posted, a no-
21 tice, to be prepared or approved by the Secretary, setting
22 forth excerpts from, or summaries of, the pertinent provi-
23 sions of this Act and information pertaining to the filing
24 of a charge under section 2.

1 (b) PENALTY.—Any employer that willfully violates
2 this section may be assessed by the Secretary a civil pen-
3 alty not to exceed \$100 for each separate offense.

4 **SEC. 8. NONPREEMPTION.**

5 Nothing in this Act preempts any other law, and
6 nothing in this Act shall be construed or interpreted to
7 impair or diminish in any way the authority of any State
8 to enact and enforce any law which provides equivalent
9 or greater protections for health care workers or the dis-
10 closure of unsafe practices or conditions in the health care
11 industry.

12 **SEC. 9. EFFECTIVE DATE.**

13 This Act shall apply to acts of retaliation or discrimi-
14 nation occurring on or after the first day of the first
15 month that begins after the date of the enactment of this
16 Act.

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