

105TH CONGRESS
1ST SESSION

H. R. 443

To amend part A of title XVIII of the Social Security Act to deny Medicare payment with respect to non-profit hospitals that transfer assets or control to for-profit entities without approval.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 9, 1997

Mr. STARK (for himself, Mr. FILNER, Mr. KENNEDY of Rhode Island, Mr. BROWN of Ohio, Mr. WAXMAN, Mr. McDERMOTT, and Mr. LEWIS of Georgia) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend part A of title XVIII of the Social Security Act to deny Medicare payment with respect to non-profit hospitals that transfer assets or control to for-profit entities without approval.

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 “Medicare Nonprofit
5 Hospital Protection Act of 1997”.

1 **SEC. 2. DISQUALIFICATION FROM MEDICARE PAYMENT OF**
 2 **NON-PROFIT HOSPITALS THAT TRANSFER AS-**
 3 **SETS OR CONTROL TO A FOR-PROFIT ENTITY**
 4 **WITHOUT APPROVAL.**

5 (a) IN GENERAL.—Part A of title XVIII of the Social
 6 Security Act is amended by adding at the end the follow-
 7 ing new section:

8 “DISQUALIFICATION OF CERTAIN NONPROFIT HOSPITALS
 9 FROM PAYMENT IF ASSETS OR CONTROL TRANS-
 10 FERRED TO A FOR-PROFIT ENTITY WITHOUT AP-
 11 PROVAL

12 “SEC. 1821. (a) REQUIREMENT.—No payment may
 13 be made under this part with respect to inpatient hospital
 14 services of a hospital if the hospital, on or after January
 15 7, 1997, was owned or controlled by a nonprofit entity
 16 and there is an impermissible transfer (as defined in sub-
 17 section (b)) with respect to the hospital or the entity.

18 “(b) IMPERMISSIBLE TRANSFERS.—

19 “(1) IN GENERAL.—For purposes of this sec-
 20 tion, the term ‘impermissible transfer’ means any
 21 covered transfer (as defined in paragraph (2)) that
 22 has not been considered to be approved in accord-
 23 ance with subsection (c).

24 “(2) COVERED TRANSFER DEFINED.—For pur-
 25 poses of this section, the term ‘covered transfer’

1 means, with respect to a hospital that is owned or
2 controlled by a nonprofit entity—

3 “(A) the sale, transfer, lease, exchange, op-
4 tion, conveyance, or other disposition of, the as-
5 sets of the hospital (or of the entity in relation
6 to the hospital) to a for-profit entity, if a mate-
7 rial amount of the assets relating to the hos-
8 pital are involved in such disposition; or

9 “(B) the transfer of control, responsibility,
10 or governance of a material amount of the as-
11 sets or operation of the hospital (or of the en-
12 tity in relation to the hospital) to any for-profit
13 entity.

14 Transfers described in this paragraph may be ef-
15 fected through sale, joint venture, joint operating
16 agreement, or any other means.

17 “(3) OTHER DEFINITIONS.—For purposes of
18 this section:

19 “(A) The term ‘acquired hospital’ means,
20 with respect to a covered transfer, the non-prof-
21 it hospital the assets or control of which are the
22 subject of the transfer.

23 “(B) The term ‘acquiring entity’ means,
24 with respect to a covered transfer, the for-profit
25 entity that is involved in the transfer.

1 “(c) CONDITIONS FOR APPROVAL.—Subject to sub-
2 section (d)—

3 “(1) IN GENERAL.—A covered transfer with re-
4 spect to an acquired hospital owned or controlled by
5 a nonprofit entity is not considered to be approved
6 in accordance with this subsection unless—

7 “(A) the acquiring entity has disclosed to
8 the Secretary, in a form and manner specified
9 by the Secretary, the information described in
10 paragraph (2) relating to the transfer;

11 “(B) there has been an independent fair-
12 ness review conducted of the proposed transfer
13 and the report on the review concludes that no
14 assets of the acquired hospital in relation to the
15 nonprofit entity have inappropriately benefited
16 any private parties; and

17 “(C) the Secretary has approved the
18 transfer.

19 “(3) INFORMATION TO BE DISCLOSED.—The in-
20 formation described in this paragraph is a complete
21 description of the terms of covered transfer, together
22 with a description of all collateral arrangements, in-
23 cluding information describing—

24 “(A) the acquired hospital and the non-
25 profit entity that owns or controls the hospital;

1 “(B) the acquiring entity;

2 “(C) other parties to the transfer;

3 “(D) terms of the proposed transfer;

4 “(E) the value of consideration to be pro-
5 vided in connection with the transfer (including
6 details as to the basis for the valuation);

7 “(F) copies of documents relating to the
8 transfer;

9 “(G) the identity of individuals and per-
10 sons who are officers, directors, or affiliates of
11 the nonprofit entity and whether they have any
12 direct or indirect economic interest in the trans-
13 fer (including any promise or discussion of fu-
14 ture employment); and

15 “(H) such other information as the Sec-
16 retary may require.

17 “(3) PUBLIC DISCLOSURE.—The Secretary shall
18 provide for public disclosure (including disclosure
19 through electronic means on the Internet) of infor-
20 mation described in paragraph (3) provided under
21 paragraph (1)(A) and the report on the transfer de-
22 scribed in paragraph (1)(B).

23 “(4) CONDITIONS FOR APPROVAL OF TRANS-
24 FERS.—The Secretary may not approve a covered
25 transfer relating to an acquired hospital owned or

1 controlled by a nonprofit entity unless, after comple-
2 tion of the public hearing described in paragraph
3 (6), the Secretary determines that the following con-
4 ditions are met:

5 “(A) Due care was exercised by the non-
6 profit entity in deciding to enter into the trans-
7 fer, selecting the acquiring entity, and negotiat-
8 ing the terms of the transfer.

9 “(B) The nonprofit entity sought appro-
10 priate expert assistance in making decisions in
11 relation to the transfer.

12 “(C) The nonprofit entity took all reason-
13 able steps to avoid conflict of interests.

14 “(D) The nonprofit entity will receive fair
15 market value for its assets transferred in con-
16 nection with the covered transfer.

17 “(E) No charitable funds are placed at
18 risk in connection with the covered transfer.

19 “(F) The amount of any compensation
20 under any management contract entered into in
21 connection with the covered transfer is fair.

22 “(G) The proceeds to the nonprofit entity
23 in connection with the covered transfer will be
24 used only for appropriate charitable purposes
25 consistent with the entity’s non-profit charter

1 and for the promotion of health in the affected
2 community and such proceeds will be controlled
3 as charitable funds independent of the acquir-
4 ing entity.

5 “(H) Any charitable corporation estab-
6 lished to hold proceeds of the acquired hospital
7 in connection with the covered transfer will be
8 broadly based in the community.

9 “(I) There are sufficient safeguards to as-
10 sure the affected community continues to have
11 access to affordable hospital services.

12 “(J) The acquiring entity has made a com-
13 mitment to provide comparable care to the dis-
14 advantaged, the uninsured, and the under-
15 insured, and to provide benefits to the affected
16 community.

17 “(K) The acquiring entity has no contrac-
18 tual right to receive or direct future grants in
19 relation to the acquired hospital.

20 “(L) The acquiring entity has paid the
21 Secretary, with respect to the covered transfer,
22 a fee sufficient to cover the costs of the Sec-
23 retary in administering this section in relation
24 to such transfer.

1 “(6) PUBLIC HEARING.—Before approving a
2 covered transfer, the Secretary shall provide for no-
3 tice and a public hearing to take place in the com-
4 munity of the acquired hospital concerning the
5 transfer and publication of a public report on testi-
6 mony received at the hearing.

7 “(d) APPLICATION OF ALTERNATIVE STATE LAW
8 REQUIREMENTS.—A covered transfer is deemed to meet
9 an applicable requirement of subsection (c) relating to the
10 transfer to the extent that the Secretary determines that
11 there is a State law that imposes a requirement at least
12 as stringent as the requirement involved with respect to
13 the transfer.

14 “(e) DELEGATION OF AUTHORITY.—The Secretary
15 may exercise the Secretary’s authority under this section
16 through any appropriate official in the Department of
17 Health and Human Services.

18 “(f) NO EFFECT ON OTHER RIGHTS.—The fact that
19 the Secretary has approved a covered transfer under this
20 section shall not supersede other rights that any entity
21 (including the federal government or a State or local gov-
22 ernment) may have to challenge the transfer on any
23 grounds.”.

24 (b) EFFECTIVE DATE.—The amendment made by
25 this section shall apply with respect to covered transfers

- 1 for which agreements or transactions are entered into on
- 2 or after January 7, 1997.

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