

105TH CONGRESS  
1ST SESSION

# H. R. 734

To amend titles XVIII and XIX of the Social Security Act to require hospitals participating in the Medicare or Medicaid program to provide notice of availability of Medicare and Medicaid providers as part of discharge planning and to maintain and disclose information on certain referrals.

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## IN THE HOUSE OF REPRESENTATIVES

Mr. STARK 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 amend titles XVIII and XIX of the Social Security Act to require hospitals participating in the Medicare or Medicaid program to provide notice of availability of Medicare and Medicaid providers as part of discharge planning and to maintain and disclose information on certain referrals.

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 “Patient Freedom of  
5 Choice Act of 1997”.

1 **SEC. 2. NOTIFICATION OF AVAILABILITY OF PROVIDERS AS**  
2 **PART OF DISCHARGE PLANNING PROCESS.**

3 (a) **MEDICARE REQUIREMENT.**—Section 1861(ee)(2)  
4 of the Social Security Act (42 U.S.C. 1395x(ee)(2)) is  
5 amended—

6 (1) in subparagraph (D), by inserting before  
7 the period the following: “, including the availability  
8 of those services through individuals and entities  
9 that participate in the program under this title and  
10 that serve the area in which the patient resides and  
11 that request to be listed by the hospital as avail-  
12 able”; and

13 (2) by adding at the end the following:

14 “(H) Consistent with section 1802, the dis-  
15 charge plan shall—

16 “(i) not specify or otherwise limit the  
17 qualified provider which may provide post-hos-  
18 pital care, and

19 “(ii) identify (in a form and manner speci-  
20 fied by the Secretary) any provider (to whom  
21 the individual is referred) in which the hospital  
22 has a disclosable financial interest (as specified  
23 by the Secretary consistent with section  
24 1866(a)(1)(R)) or which has such an interest in  
25 the hospital.”.

1 (b) REQUIREMENT FOR MEDICAID FUNDING.—Sec-  
2 tion 1903(i) of such Act (42 U.S.C. 1396b(i)) is amend-  
3 ed—

4 (1) by striking “or” at the end of paragraph  
5 (14),

6 (2) by striking the period at the end of para-  
7 graph (15) and inserting “; or”, and

8 (3) by inserting after paragraph (15) the fol-  
9 lowing new paragraph:

10 “(16) with respect to any amount expended for  
11 inpatient hospital services of a hospital unless the  
12 hospital has in place a discharge planning process  
13 that meets the requirements of section 1861(ee) with  
14 respect to individuals entitled to medical assistance  
15 under this title in the same manner as such require-  
16 ments otherwise apply to individuals entitled to ben-  
17 efits under title XVIII.”.

18 (c) ADDITIONAL ENFORCEMENT THROUGH CIVIL  
19 MONEY PENALTIES.—Section 1128A(b) of such Act (42  
20 U.S.C. 1320a–7a(b)) is amended by adding at the end the  
21 following new paragraph:

22 “(4) Any hospital that participates in the program  
23 under title XVIII or XIX and that fails to comply with  
24 the discharge planning process described in section  
25 1861(ee)(2) either—

1           “(A) by failing to list participating individuals  
2           and entities requested to be listed under subpara-  
3           graph (D) of such section, or

4           “(B) by violating subparagraph (H) of such  
5           section,

6           shall be subject, in addition to any other penalties that  
7           may be prescribed by law, to a civil money penalty of not  
8           more than \$10,000 for each such violation.”.

9           (d) EFFECTIVE DATES.—The amendments made by  
10          subsection (a) shall apply to discharges occurring on or  
11          after 90 days after the date of the enactment of this Act.  
12          The amendments made by subsection (b) shall apply to  
13          expenditures for inpatient hospital services with respect to  
14          discharges occurring on or after 90 days after the date  
15          of the enactment of this Act. The amendments made by  
16          subsection (c) shall apply to failures and violations occur-  
17          ring on or after 90 days after the date of the enactment  
18          of this Act.

19       **SEC. 3. MAINTENANCE AND DISCLOSURE OF INFORMATION**  
20                               **ON POST-HOSPITAL SERVICE PROVIDERS.**

21          (a) MEDICARE REQUIREMENT.—Section 1866(a)(1)  
22          of the Social Security Act (42 U.S.C. 1395cc(a)(1)) is  
23          amended—

24                (1) by striking “and” at the end of subpara-  
25          graph (P),

1           (2) by striking the period at the end of sub-  
2 paragraph (Q), and

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

4           “(R) in the case of a hospital that has a finan-  
5 cial interest (as specified by the Secretary in regula-  
6 tions) in a provider of post-hospital services (includ-  
7 ing an entity that furnishes durable medical equip-  
8 ment), or in which such a provider has such a finan-  
9 cial interest, or in which another entity has such a  
10 financial interest (directly or indirectly) with such  
11 hospital and such a provider, to maintain and dis-  
12 close to the Secretary (in a form and manner speci-  
13 fied by the Secretary) information on—

14           “(i) the nature of such financial interest,

15           “(ii) the number of individuals who were dis-  
16 charged from the hospital and who were identified as  
17 requiring the type of post-hospital services provided  
18 by such provider, and

19           “(iii) the percentage of such individuals who re-  
20 ceived such services from such provider (or another  
21 such provider).”.

22       (b) REQUIREMENT FOR MEDICAID FUNDING.—Sec-  
23 tion 1903(i)(16) of such Act (42 U.S.C. 1396b(i)), as in-  
24 serted by section 2(b), is amended—

25           (1) by striking “(A)” after “unless”, and

1           (2) by inserting before the period at the end the  
2           following: “, and (B) the hospital is complying with  
3           the requirements of section 1866(a)(1)(R)”.

4           (c) DISCLOSURE OF INFORMATION TO THE PUB-  
5 LIC.—Title XI of such Act is amended by inserting after  
6 section 1145 the following new section:

7           “PUBLIC DISCLOSURE OF CERTAIN INFORMATION ON  
8           HOSPITAL FINANCIAL INTEREST AND REFERRAL  
9           PATTERNS

10          “SEC. 1146. The Secretary shall make available to  
11 the public, in a form and manner specified by the Sec-  
12 retary, information disclosed to the Secretary pursuant to  
13 section 1866(a)(1)(R) or section 1903(i)(16).”.

14          (d) EFFECTIVE DATE.—The Secretary of Health and  
15 Human Services shall issue regulations by not later than  
16 1 year after the date of the enactment of this Act to carry  
17 out the amendments made by this section and such  
18 amendments shall take effect as of such date (on or after  
19 the issuance of such regulations) as the Secretary specifies  
20 in such regulations.

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