

105TH CONGRESS  
2D SESSION

# S. 2055

To require medicare providers to disclose publicly staffing and performance data in order to promote improved consumer information and choice, to protect employees of medicare providers who report concerns about the safety and quality of services provided by medicare providers or who report violations of Federal or State law by those providers, and to require review of the impact on public health and safety of proposed mergers and acquisitions of medicare providers.

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## IN THE SENATE OF THE UNITED STATES

MAY 8, 1998

Mr. REID introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To require medicare providers to disclose publicly staffing and performance data in order to promote improved consumer information and choice, to protect employees of medicare providers who report concerns about the safety and quality of services provided by medicare providers or who report violations of Federal or State law by those providers, and to require review of the impact on public health and safety of proposed mergers and acquisitions of medicare providers.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

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1 **SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Patient Safety Act of  
3 1998”.

4 **SEC. 2. FINDINGS.**

5       Congress finds as follows:

6           (1) There has been increased and growing pub-  
7       lic concern expressed regarding the quality and safe-  
8       ty of services provided by health care facilities and  
9       institutions, as such facilities have instituted aggres-  
10      sive efforts to reduce levels of staff who provide di-  
11      rect patient care services as a principal means of de-  
12      creasing expenses.

13          (2) A growing body of data suggests a linkage  
14      between the number and mix of nursing staff and  
15      positive patient care outcomes, including the avoid-  
16      ance of patient death and injury.

17          (3) Many employees of health care facilities  
18      have expressed fear for their employment if they re-  
19      port unsafe conditions, including violations of State  
20      or Federal law.

21          (4) Unprecedented consolidation among health  
22      care institutions has led to increasing concern re-  
23      garding the effect of such activity on the health and  
24      safety of communities served by these facilities, yet  
25      the Federal Government has little authority to evalu-  
26      ate such effect in deciding whether or not to approve

1        mergers and acquisitions among health care facili-  
2        ties.

3    **SEC. 3. DEFINITIONS.**

4        For purposes of this Act:

5            (1) LICENSED PRACTICAL NURSE OR LICENSED  
6        VOCATIONAL NURSE.—The term “licensed practical  
7        nurse or licensed vocational nurse” means an indi-  
8        vidual who is entitled under State law or regulation  
9        to practice as a licensed practical nurse or a licensed  
10       vocational nurse.

11           (2) MADE PUBLICLY AVAILABLE.—The term  
12        “made publicly available” means, with respect to in-  
13        formation of a provider, information that is—

14                (A) provided to the Secretary and to any  
15        State agency responsible for licensing or accred-  
16        iting the provider;

17                (B) provided to any State agency which  
18        approves or oversees health care services deliv-  
19        ered by the provider directly or through an in-  
20        suring entity or corporation; and

21                (C) provided to any member of the public  
22        which requests such information directly from  
23        the provider.

1           (3) MEDICARE PROGRAM.—The term “medicare  
2           program” means the programs under title XVIII of  
3           the Social Security Act.

4           (4) PROVIDER.—The term “provider” means an  
5           entity that is—

6                   (A) a psychiatric hospital described in sec-  
7                   tion 1861(f) of the Social Security Act;

8                   (B) a provider of services described in sec-  
9                   tion 1861(u) of such Act;

10                  (C) a rural health clinic described in sec-  
11                  tion 1861(aa)(2) of such Act;

12                  (D) an ambulatory surgical center de-  
13                  scribed in section 1832(a)(2)(F)(i) of such Act;  
14                  or

15                  (E) a renal dialysis facility described in  
16                  section 1881(b)(1)(A) of such Act.

17           (5) REGISTERED NURSE.—The term “reg-  
18           istered nurse” means an individual who is entitled  
19           under State law or regulation to practice as a reg-  
20           istered nurse.

21           (6) SECRETARY.—The term “Secretary” means  
22           the Secretary of Health and Human Services.

1 **SEC. 4. PUBLIC DISCLOSURE OF STAFFING AND OUTCOMES**

2 **DATA.**

3 (a) DISCLOSURE OF STAFFING AND OUTCOMES.—

4 Any provider under the medicare program shall, as a con-  
5 dition of continued participation in such program, make  
6 publicly available information regarding nurse staffing  
7 and patient outcomes as specified by the Secretary. Such  
8 information shall include at least the following:

9 (1) The number of registered nurses providing  
10 direct care. This information shall be expressed both  
11 in raw numbers, in terms of total hours of nursing  
12 care per patient (including adjustment for case mix  
13 and acuity), and as a percentage of nursing staff,  
14 and shall be broken down in terms of the total nurs-  
15 ing staff, each unit, and each shift.

16 (2) The number of licensed practical nurses or  
17 licensed vocational nurses providing direct care. This  
18 information shall be expressed both in raw numbers,  
19 in terms of total hours of nursing care per patient  
20 (including adjustment for case mix and acuity), and  
21 as a percentage of nursing staff, and shall be broken  
22 down in terms of the total nursing staff, each unit,  
23 and each shift.

24 (3) Numbers of unlicensed personnel utilized to  
25 provide direct patient care. This information shall be  
26 expressed both in raw numbers and as a percentage

1 of nursing staff, and shall be broken down in terms  
2 of the total nursing staff, each unit, and each shift.

3 (4) The average number of patients per reg-  
4 istered nurse providing direct patient care. This in-  
5 formation shall be broken down in terms of the total  
6 nursing staff, each unit, and each shift.

7 (5) Patient mortality rate (in raw numbers and  
8 by diagnosis or diagnostic-related group).

9 (6) Incidence of adverse patient care incidents,  
10 including as such incidents at least medication er-  
11 rors, patient injury, decubitus ulcers, nosocomial in-  
12 fections, and nosocomial urinary tract infections.

13 (7) Methods used for determining and adjusting  
14 staffing levels and patient care needs and the provid-  
15 er's compliance with these methods.

16 (b) DISCLOSURE OF COMPLAINTS.—Data regarding  
17 complaints filed with the State agency, the Health Care  
18 Financing Administration, or an accrediting agency, com-  
19 pliance with the standards of which have been deemed to  
20 demonstrate compliance with conditions of participation  
21 under the medicare program, and data regarding inves-  
22 tigation and findings as a result of those complaints and  
23 the findings of scheduled inspection visits, shall be made  
24 publicly available.

1 (c) INFORMATION ON DATA.—All data made publicly  
 2 available under this section shall indicate the source and  
 3 currency of the data provided.

4 (d) WAIVER FOR SMALL PROVIDERS.—The Secretary  
 5 may waive or reduce reporting requirements under this  
 6 section in the case of a small provider (as defined by the  
 7 Secretary) for whom the imposition of the requirements  
 8 would be unduly burdensome.

9 **SEC. 5. PROTECTION OF CERTAIN ACTIVITIES BY EMPLOY-**  
 10 **EES OF MEDICARE PROVIDERS.**

11 (a) IN GENERAL.—No provider under the medicare  
 12 program shall terminate or take other adverse action  
 13 against any employee or groups of employees for actions  
 14 taken for the purpose of—

15 (1) notifying the provider of conditions which  
 16 the employee or group of employees identifies, in  
 17 communications with the provider, as dangerous or  
 18 potentially dangerous or injurious to—

19 (A) patients who currently receive services  
 20 from the provider;

21 (B) individuals who are likely to receive  
 22 services from the provider; or

23 (C) employees of the provider;

24 (2) notifying a Federal or State agency or an  
 25 accreditation agency, compliance with the standards

1 of which have been deemed to demonstrate compli-  
2 ance with conditions of participation under the medi-  
3 care program, of such conditions as are identified in  
4 paragraph (1);

5 (3) notifying other individuals of conditions  
6 which the employee or group of employees reason-  
7 ably believe to be such as are described in paragraph  
8 (1);

9 (4) discussing such conditions as are identified  
10 in paragraph (1) with other employees for the pur-  
11 poses of initiating action described in paragraph (1),  
12 (2), or (3); or

13 (5) other related activities as specified in regu-  
14 lations promulgated by the Secretary.

15 (b) SANCTION.—A determination by the Secretary  
16 that a provider has taken such action as described in sub-  
17 section (a) shall result in termination from participation  
18 in the medicare program for a period of time to be speci-  
19 fied by the Secretary, such period to be not less than 1  
20 month.

21 (c) EXCEPTION.—The protections of this section shall  
22 not apply to any employee who knowingly or recklessly  
23 provides substantially false information to the Secretary.

1 **SEC. 6. EVALUATION OF HEALTH AND SAFETY OF CERTAIN**  
2 **MERGERS AND ACQUISITIONS BY OR AMONG**  
3 **MEDICARE PROVIDERS.**

4 (a) **IMPACT REPORT.**—Any provider under the medi-  
5 care program that files with the Department of Justice  
6 and the Federal Trade Commission notification of a trans-  
7 action which is required to be reported pursuant to section  
8 7A of the Clayton Act (15 U.S.C. 18a) shall, on the same  
9 date as such notification is submitted, provide the Sec-  
10 retary with a written report that includes the overall im-  
11 pact of such transaction on the health services available  
12 and readily accessible to the community and that includes  
13 the impact of such transaction on each of the following:

14 (1) On the availability and accessibility of pri-  
15 mary, acute care, and emergency services.

16 (2) On the availability and accessibility of serv-  
17 ices for mothers and children.

18 (3) On the availability and accessibility of serv-  
19 ices to the elderly.

20 (4) On the availability and accessibility of serv-  
21 ices to other specific populations, including the poor,  
22 the uninsured, ethnic minorities, women, the dis-  
23 abled, and the lesbian and gay communities.

24 (5) On the availability and accessibility of spe-  
25 cialized services, including services for the preven-  
26 tion, detection, and treatment of the human im-

1       munodeficiency virus and related illnesses, mental  
2       health services, and substance abuse services.

3           (6) On the safety and quality of health care  
4       services to be provided, including anticipated  
5       changes in numbers and mix of nursing and other  
6       patient care staff and on other factors related to pa-  
7       tient outcomes.

8           (7) On the availability and accessibility of social  
9       services and other services within the community.

10          (8) On overall employment within the commu-  
11       nity.

12          (9) On the provider's workforce, including—

13               (A) the status of existing collective bar-  
14       gaining contracts, if any; and

15               (B) plans for retraining and redeployment  
16       of employees who are displaced as a result of  
17       the contemplated transaction.

18          (10) On the financial stability of the merged  
19       entity, taking into account at least projected acquisi-  
20       tion costs, related expenses, and planned marketing  
21       or advertising campaigns for the new entity.

22          (11) On other factors to be specified in regula-  
23       tions to be promulgated by the Secretary.

24       Such report shall be in addition to any documentation re-  
25       quired by any other Federal or State agency.

1 (b) AVAILABILITY.—A report under subsection (a)  
2 shall be made publicly available by the provider and by  
3 the Secretary upon request. In addition, the provider shall  
4 make publicly available any documentation submitted to  
5 the Department of Justice, the Federal Trade Commis-  
6 sion, or other Federal or State agency regarding the con-  
7 templated transaction.

8 (c) HEARINGS.—The Secretary shall conduct, or ar-  
9 range for, public hearings on the elements of each report  
10 submitted under subsection (a) and any other factors re-  
11 lated to the health, safety, and welfare of patients served  
12 by the provider and the community involved, including the  
13 provider’s workforce. Such hearings shall be held at a time  
14 or times and location or locations readily accessible to the  
15 public and may be conducted jointly with relevant State  
16 agencies.

17 (d) REVIEW.—The Secretary shall review each such  
18 proposed transaction. Such review shall be based on the  
19 written report submitted under subsection (a), a tran-  
20 script of testimony at the public hearing under subsection  
21 (c), and any other factors which the Secretary finds are  
22 relevant to the health, safety, and welfare of the patients  
23 served by the provider and the community, including the  
24 provider’s workforce.

1       (e) FINDINGS.—(1) The Secretary shall, within 45  
2 days of completion of a hearing under subsection (c), issue  
3 written findings on the likely impact of the contemplated  
4 transaction on the health and safety of the patients and  
5 communities served by the provider, including the provid-  
6 er's workforce.

7       (2) If the Secretary determines that the overall im-  
8 pact of the transaction on the health and safety of patients  
9 and the community is a negative one, the Secretary shall  
10 issue, as part of the findings, a finding of negative impact  
11 on health and safety.

12       (3) In issuing findings under this subsection, the Sec-  
13 retary may confer with such other agencies (such as the  
14 Department of Justice, the Federal Trade Commission,  
15 and the Department of Labor) as may have an interest  
16 in the impact on the public of the proposed transaction.

17       (f) SANCTIONS.—A provider that executes a trans-  
18 action which is the subject of a finding of negative impact  
19 on health and safety under subsection (e)(2) (or a provider  
20 which fails to file a report with the Secretary pursuant  
21 to subsection (a)) shall be deemed not to be in compliance  
22 with the conditions of participation under the medicare  
23 program. Such a determination shall be subject to such  
24 procedures and appeal as provided for in regulations pro-  
25 mulgated by the Secretary. In the case of a determination

1 that conditions effected by the transaction in question  
2 pose immediate jeopardy or irreparable harm to patient  
3 health, safety, and welfare, the Secretary shall (if such  
4 transaction is completed) immediately suspend the entity's  
5 participation in the medicare program and such suspen-  
6 sion shall continue in force during any administrative or  
7 judicial review for the transaction sought by the entity.

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