

106TH CONGRESS
1ST SESSION

S. 966

To require medicare providers to disclose publicly staffing and performance 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.

IN THE SENATE OF THE UNITED STATES

MAY 5, 1999

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

A BILL

To require medicare providers to disclose publicly staffing and performance 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Patient Safety Act of
3 1999”.

4 **SEC. 2. FINDINGS.**

5 Congress finds the following:

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, as
9 such facilities have instituted aggressive efforts to
10 reduce levels of staff who provide direct patient care
11 services as a principal means of decreasing expenses.

12 (2) A growing body of data suggests—

13 (A) a linkage between the number and mix
14 of nursing staff and positive patient care out-
15 comes, including the avoidance of patient death
16 and injury; and

17 (B) that certain adverse patient care indi-
18 cators, including medication errors, patient in-
19 jury, decubitus ulcers, nosocomial infections,
20 and nosocomial urinary tract infections, signal
21 a deterioration of the quality of care that may
22 lead to patient death and injury.

23 (3) Many employees of health care facilities
24 have expressed fear for their employment if they re-
25 port unsafe conditions, including violations of State
26 or Federal law.

1 (4) Unprecedented consolidation among health
 2 care facilities has led to increasing concern regard-
 3 ing the effect of such activity on the health and safe-
 4 ty of communities served by these facilities, yet the
 5 Federal Government has little authority to evaluate
 6 such effect in deciding whether or not to approve
 7 mergers and acquisitions among health care facili-
 8 ties.

9 **SEC. 3. DEFINITIONS.**

10 For purposes of this Act:

11 (1) LICENSED PRACTICAL NURSE OR LICENSED
 12 VOCATIONAL NURSE.—The term “licensed practical
 13 nurse or licensed vocational nurse” means an indi-
 14 vidual who is entitled under State law or regulation
 15 to practice as a licensed practical nurse or a licensed
 16 vocational nurse.

17 (2) MADE PUBLICLY AVAILABLE.—The term
 18 “made publicly available” means, with respect to in-
 19 formation of a provider, information that is
 20 provided—

21 (A) to the Secretary and to any State
 22 agency responsible for licensing or accrediting
 23 the provider;

24 (B) to any State agency which approves or
 25 oversees health care services delivered by the

1 provider directly or through an insuring entity
2 or corporation; and

3 (C) to any member of the public which re-
4 quests such information directly from the pro-
5 vider.

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

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

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

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

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

17 (D) an ambulatory surgical center de-
18 scribed in section 1832(a)(2)(F)(i) of such Act;

19 or

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

22 (5) REGISTERED NURSE.—The term “reg-
23 istered nurse” means an individual who is entitled
24 under State law or regulation to practice as a reg-
25 istered nurse.

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

3 **SEC. 4. PUBLIC DISCLOSURE OF STAFFING AND OUTCOMES**
4 **DATA.**

5 (a) DISCLOSURE OF STAFFING AND OUTCOMES.—
6 Any provider under the medicare program shall, as a con-
7 dition of continued participation in such program, make
8 publicly available information regarding nurse staffing
9 and patient outcomes as specified by the Secretary. Such
10 information shall include at least the following:

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

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

1 (3) Numbers of unlicensed personnel utilized to
2 provide direct patient care. This information shall be
3 expressed both in raw numbers and as a percentage
4 of nursing staff and shall be broken down in terms
5 of the total nursing staff, each unit, and each shift.

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

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

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

16 (7) Methods used for determining and adjusting
17 staffing levels and patient care needs and the pro-
18 vider's compliance with these methods.

19 (b) DISCLOSURE OF COMPLAINTS.—Data regarding
20 complaints filed with the State agency, the Health Care
21 Financing Administration, or an accrediting agency, com-
22 pliance with the standards of which have been deemed to
23 demonstrate compliance with conditions of participation
24 under the medicare program, and data regarding inves-
25 tigations and findings as a result of those complaints and

1 the findings of scheduled inspection visits, shall be made
2 publicly available.

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

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

11 **SEC. 5. PROTECTION OF CERTAIN ACTIVITIES BY EMPLOY-**
12 **EES OF MEDICARE PROVIDERS.**

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

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

21 (A) patients who currently receive services
22 from the provider;

23 (B) individuals who are likely to receive
24 services from the provider; or

25 (C) employees of the provider;

1 (2) notifying a Federal or State agency or an
2 accreditation agency, compliance with the standards
3 of which have been deemed to demonstrate compli-
4 ance with conditions of participation under the medi-
5 care program, of such conditions as are identified in
6 paragraph (1);

7 (3) notifying other individuals of conditions
8 which the employee or group of employees reason-
9 ably believe to be such as are described in paragraph
10 (1);

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

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

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

23 (c) EXCEPTION.—The protections of this section shall
24 not apply to any employee who knowingly or recklessly
25 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.

25 (e) FINDINGS.—

1 (1) The Secretary shall, within 45 days of com-
2 pletion of a hearing under subsection (c), issue writ-
3 ten findings on the likely impact of the contemplated
4 transaction on the health and safety of the patients
5 and communities served by the provider, including
6 the provider's workforce.

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

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

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

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

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