

107TH CONGRESS
1ST SESSION

H. R. 3331

To amend titles XVIII and XIX of the Social Security Act to impose requirements with respect to staffing in nursing facilities receiving payments under the Medicare or Medicaid Program.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 16, 2001

Ms. SCHAKOWSKY (for herself, Mr. WAXMAN, Mr. BLAGOJEVICH, Mr. RUSH, Mr. EVANS, Mr. FROST, Mrs. MCCARTHY of New York, and Mr. SANDERS) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, 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 amend titles XVIII and XIX of the Social Security Act to impose requirements with respect to staffing in nursing facilities receiving payments under the Medicare or Medicaid Program.

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 “Quality Care for Nurs-
5 ing Home Patients Act of 2001”.

1 **SEC. 2. NURSE STAFFING REQUIREMENTS.**

2 (a) IN GENERAL.—Sections 1819(b)(4) and
3 1919(b)(4) of the Social Security Act (42 U.S.C. 1395i–
4 3(b)(4); 1396r(b)(4)) are each amended by adding at the
5 end the following new subparagraph:

6 “(D) MINIMUM STAFFING REQUIRE-
7 MENTS.—

8 “(i) LICENSED NURSES.—A facility
9 shall have at least one licensed nurse on
10 duty on the premises for every—

11 “(I) 15 residents present during
12 the day,

13 “(II) 20 residents present during
14 the evening, and

15 “(III) 30 residents present dur-
16 ing the night.

17 “(ii) DIRECT CAREGIVERS.—In addi-
18 tion to the requirement under clause (i), a
19 facility shall also have at least one direct
20 caregiver on duty on the premises for
21 every—

22 “(I) 5 residents present during
23 the day,

24 “(II) 10 residents present during
25 the evening, and

1 “(III) 15 residents present dur-
2 ing the night.

3 “(iii) COUNTING.—In determining
4 compliance with the staffing levels under
5 this subparagraph, an individual may not
6 be counted while performing noncaregiving
7 services, such as administrative services,
8 food preparation, housekeeping, laundry,
9 maintenance services, or other
10 noncaregiving-related activities.

11 “(iv) AUTHORITY TO ESTABLISH
12 HIGHER STANDARDS.—The Secretary may
13 establish higher minimum staffing require-
14 ments, for resident case mix and such
15 other factors as the Secretary determines
16 appropriate, than those imposed under
17 clauses (i) and (ii).

18 “(v) RULES OF CONSTRUCTION.—

19 “(I) NONPREEMPTION.—Nothing
20 in this subparagraph shall be con-
21 strued to prohibit a State from impos-
22 ing higher minimum staffing require-
23 ments on facilities than those imposed
24 under this subparagraph.

1 “(II) MINIMUM STANDARDS
2 ONLY.—Compliance with the staffing
3 requirements imposed under this sub-
4 paragraph alone shall not be con-
5 strued as complying with the require-
6 ment under paragraph (2) to provide
7 services to attain or maintain the
8 highest practicable physical, mental,
9 and psychosocial well-being of each
10 resident.

11 “(III) SUPPLEMENTARY RE-
12 QUIREMENTS.—The staffing require-
13 ments of this subparagraph are in ad-
14 dition to the requirements of subpara-
15 graph (C).

16 “(vi) DEFINITIONS.—In this subpara-
17 graph and paragraph (8):

18 “(I) LICENSED NURSE.—The
19 term ‘licensed nurse’ means a reg-
20 istered professional nurse, licensed
21 practical nurse, or licensed vocational
22 nurse who meets State licensing re-
23 quirements, and who furnishes any of
24 the following services:

1 “(aa) Direct care (including
2 treatment and medications).

3 “(bb) Resident assessment
4 and observation.

5 “(cc) Supervision of direct
6 patient care at the unit level.

7 “(dd) Planning or coordina-
8 tion of nursing services with
9 other resident services.

10 “(II) DIRECT CAREGIVER.—The
11 term ‘direct caregiver’ means a cer-
12 tified nurse assistant who provides di-
13 rect care (as defined by the Secretary)
14 or a licensed nurse who primarily pro-
15 vides direct care.

16 “(III) DAY.—The term ‘day’
17 means an eight-hour period com-
18 mencing not earlier than 6 a.m. nor
19 later than 8 a.m.

20 “(IV) EVENING.—The term
21 ‘evening’ means an eight-hour period
22 commencing not earlier than 2 p.m.
23 nor later than 4 p.m.

24 “(V) NIGHT.—The term ‘night’
25 means an eight-hour period com-

1 mencing not earlier than 10 p.m. nor
 2 later than 12 midnight.”.

3 (b) ADJUSTMENT TO PAYMENTS.—

4 (1) MEDICARE.—Section 1888(e)(4)(G) of such
 5 Act (42 U.S.C. 1395yy(e)(4)(G)) is amended by
 6 adding at the end the following new clause:

7 “(iv) ADJUSTMENT TO REFLECT
 8 COSTS OF MINIMUM STAFFING.—The Sec-
 9 retary shall provide for an appropriate ad-
 10 justment to account for the costs attrib-
 11 utable to meeting the minimum staffing re-
 12 quirements of subsections (b)(4)(D) and
 13 (f)(8) of section 1819.”.

14 (2) MEDICAID.—Section 1902(a)(13)(A) of
 15 such Act (42 U.S.C. 1396a(a)(13)(A)) is amended—

16 (A) in clause (iii), by striking the final
 17 “and”;

18 (B) in clause (iv), by striking the semi-
 19 colon and inserting “, and”; and

20 (C) by inserting after clause (iv) the fol-
 21 lowing new clause:

22 “(v) in the case of nursing facilities,
 23 such rates take into account the costs at-
 24 tributable to the requirements of section
 25 1919(b)(4)(D).”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to services provided on or after
3 the date that is two years after the date of enactment of
4 this Act.

5 (d) REPORT TO CONGRESS ON ADEQUACY OF PER-
6 SONNEL TO MEET STAFFING REQUIREMENTS.—Not later
7 than one year after the date of enactment of this Act, the
8 Secretary of Health and Human Services shall submit to
9 the Congress a report regarding the adequacy of personnel
10 in nursing facilities covered under titles XVIII and XIX
11 of the Social Security Act to meet the direct care staffing
12 requirements required under sections 1819(b)(4)(D) and
13 1919(b)(4)(D) of the Social Security Act (as added by
14 subsection (a)) and, if inadequate, recommendations on
15 steps that should be taken to ensure that adequate num-
16 bers of trained staff are available to meet such require-
17 ments, including ways to attract and retain such direct
18 caregiving personnel.

19 **SEC. 3. DISCLOSURE OF STAFFING LEVELS.**

20 (a) IN GENERAL.—Section 1819(b)(8) and
21 1919(b)(8) of the Social Security Act (42 U.S.C. 1395i-
22 3(b)(8); 1396r(b)(8)), as added by section 941 of the
23 Medicare, Medicaid, and SCHIP Benefits Improvement
24 and Protection Act of 2000 (114 Stat. 2763A–585), as

1 enacted into law by section 1(a)(6) of Public Law 106–
 2 554, are each amended to read as follows:

3 “(8) DISCLOSURE OF STAFFING LEVELS.—

4 “(A) IN GENERAL.—A facility shall con-
 5 spicuously post the notices described in sub-
 6 paragraph (B), in the manner described in sub-
 7 paragraph (C), in each area or unit of the facil-
 8 ity where residents reside.

9 “(B) NOTICES DESCRIBED.—Notices re-
 10 ferred to in subparagraph (A) are the following:

11 “(i) MINIMUM STAFFING REQUIRE-
 12 MENTS.—A notice describing the minimum
 13 staffing requirements set forth in sub-
 14 section (b)(4)(D).

15 “(ii) CURRENT STAFF INFORMA-
 16 TION.—A notice showing, separately for
 17 each shift in the area or unit of the facility
 18 in which it is posted—

19 “(I) the name of the direct care
 20 clinical supervisor for that area or
 21 unit;

22 “(II) the current number of di-
 23 rect caregivers (including licensed
 24 nurses) present on the premises who
 25 perform resident care and the name

1 and credential or professional title of
2 each such caregiver;

3 “(III) the current ratio of resi-
4 dents to licensed nurses present on
5 the premises;

6 “(IV) the current ratio of resi-
7 dents to direct caregivers (including
8 licensed nurses) present on the prem-
9 ises assigned to that area or unit; and

10 “(V) the current number of resi-
11 dents of such area or unit.

12 “(C) MANNER OF POSTING; FORMAT OF
13 NOTICE.—

14 “(i) MANNER OF POSTING.—Notices
15 posted under subparagraph (A) shall be
16 posted adjacent to each other in each area
17 or unit to which such notices apply in the
18 facility, and posted in a manner visible and
19 accessible to residents, their families, care-
20 givers, and prospective residents of such
21 facility.

22 “(ii) FORMAT OF NOTICE.—The Sec-
23 retary shall develop a uniform format for
24 the notices referred to in subparagraph (B)

1 for facilities to carry out the requirements
2 of this paragraph.

3 “(D) RECORDKEEPING.—The facility shall
4 retain records of such notices for not fewer
5 than two years, and shall make the information
6 contained in those notices available upon re-
7 quest.”.

8 (b) CONFORMING AMENDMENTS.—Sections
9 1819(b)(4) and 1919(b)(4) of such Act (42 U.S.C. 1395i–
10 3(b)(4); 1396r(b)(4)) are each amended in subparagraph
11 (D)(v), as added by section 2(a) of this Act, by inserting
12 “and paragraph (8)” after “this subparagraph”.

13 (c) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to services provided on or after
15 the date that is two years after the date of enactment of
16 this Act.

17 **SEC. 4. ADMINISTRATIVE STAFFING REQUIREMENTS.**

18 (a) IN GENERAL.—Sections 1819(d)(1) and
19 1919(d)(1) of the Social Security Act (42 U.S.C. 1395i–
20 3(d)(1); 1396r(d)(1)) are each amended by adding at the
21 end the following new subparagraph:

22 “(D) ADMINISTRATIVE STAFFING.—A fa-
23 cility must maintain at least the administrative
24 staff described in the following clauses:

1 “(i) DIRECTOR OF NURSING SERV-
2 ICES.—An individual who serves full time
3 as a director of nursing services and who
4 is a registered professional nurse.

5 “(ii) ASSISTANT DIRECTOR OF NURS-
6 ING SERVICES.—An individual who serves
7 full time as an assistant director of nurs-
8 ing services and who is a registered profes-
9 sional nurse, except that in a facility with
10 fewer than 100 beds, such individual may
11 serve part time and may also serve as a di-
12 rect care clinical nursing supervisor.

13 “(iii) DIRECTOR OF IN-SERVICE EDU-
14 CATION.—An individual who serves full
15 time as a director of in-service education,
16 who is a registered professional nurse, and
17 who has, to the extent practicable and ap-
18 propriate, training in adult education and
19 gerontology, except that in a facility with
20 fewer than 100 beds, such individual may
21 serve part time.

22 “(iv) DIRECT CARE CLINICAL NURS-
23 ING SUPERVISOR.—For each shift each
24 day, an individual who serves full time as
25 a direct care clinical nursing supervisor

1 and who is a registered professional nurse,
 2 except that in a facility with fewer than
 3 100 beds, such an individual may serve
 4 part time and may also serve as an assist-
 5 ant director of nursing.

6 An individual may not satisfy more than one re-
 7 quirement of clauses (i) through (iv), except as
 8 specifically provided.”.

9 (b) CONFORMING AMENDMENTS.—Sections
 10 1819(b)(4) and 1919(b)(4) of such Act (42 U.S.C. 1395i–
 11 3(b)(4); 1396r(b)(4)) are each amended in subparagraph
 12 (D)(v), as added by section 2(a) and amended by section
 13 3(b) of this Act, by striking “and paragraph (8)” and by
 14 inserting “, paragraph (8), and subsection (d)(1)(D)”.

15 (c) PAYMENT MODIFICATION.—

16 (1) MEDICARE.—Section 1888(e)(4)(G)(iv) of
 17 such Act (42 U.S.C. 1395yy(e)(4)(G)(iv)), as added
 18 by section 2(b)(1) of this Act, is amended by strik-
 19 ing “section 1819(b)(4)(D)” and inserting “sub-
 20 sections (b)(4)(D) and (d)(1)(D) of section 1819”.

21 (2) MEDICAID.—Section 1902(a)(13)(A)(v) of
 22 such Act (42 U.S.C. 1396a(a)(13)(A)(v)), as added
 23 by section 2(b)(2) of this Act, is amended by strik-
 24 ing “section 1919(b)(4)(D)” and inserting “sub-
 25 sections (b)(4)(D) and (d)(1)(D) of section 1919”.

1 (d) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to services provided on or after
3 the date that is two years after the date of enactment of
4 this Act.

5 **SEC. 5. APPLICATION OF REQUIREMENTS TO ALL BEDS.**

6 (a) MEDICARE.—Section 1819 of the Social Security
7 Act (42 U.S.C. 1395i–3) is amended—

8 (1) by redesignating subsection (i) as subsection
9 (j); and

10 (2) by inserting after subsection (h) the fol-
11 lowing new subsection:

12 “(i) APPLICABILITY OF PROTECTIONS TO ALL RESI-
13 DENTS.—The provisions of this section shall apply with
14 respect to all residents of a skilled nursing facility, without
15 regard to whether the resident is entitled to have payment
16 made for skilled nursing facility services under this title.”.

17 (b) MEDICAID.—Section 1919(g) of the Social Secu-
18 rity Act (42 U.S.C. 1396r(g)) is amended by adding at
19 the end the following new paragraph:

20 (1) by redesignating subsection (i) as subsection
21 (j); and

22 (2) by inserting after subsection (h) the fol-
23 lowing new subsection:

24 “(i) APPLICABILITY OF PROTECTIONS TO ALL RESI-
25 DENTS.—The provisions of this section shall apply with

1 respect to all residents of a nursing facility, without regard
2 to whether the resident is entitled to have payment made
3 for nursing facility services under the State plan or under
4 any other provision of this Act.”.

○