

108TH CONGRESS  
1ST SESSION

# H. R. 1228

To amend title XVIII of the Social Security Act to reduce the work hours and increase the supervision of resident-physicians to ensure the safety of patients and resident-physicians themselves.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 12, 2003

Mr. CONYERS introduced the following bill; which was referred to the Committee on Energy and 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 title XVIII of the Social Security Act to reduce the work hours and increase the supervision of resident-physicians to ensure the safety of patients and resident-physicians themselves.

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 and Physician  
5 Safety and Protection Act of 2003”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1           (1) The Federal government, through its medi-  
2           care program, pays approximately \$8 billion per year  
3           solely to train resident-physicians in the United  
4           States, and as a result, has an interest in assuring  
5           the safety of patients treated by resident-physicians  
6           and the safety of resident-physicians themselves.

7           (2) Resident-physicians spend a significant  
8           amount of their time performing activities not re-  
9           lated to the educational mission of training com-  
10          petent physicians.

11          (3) The excessive numbers of hours worked by  
12          resident-physicians is inherently dangerous for pa-  
13          tient care and for the lives of resident-physicians.

14          (4) The scientific literature has consistently  
15          demonstrated that the sleep deprivation of the mag-  
16          nitude seen in residency training programs leads to  
17          cognitive impairment.

18          (5) A substantial body of research indicates  
19          that excessive hours worked by resident-physicians  
20          lead to higher rates of medical error, motor vehicle  
21          accidents, depression and pregnancy complications.

22          (6) The medical community has not adequately  
23          addressed the issue of excessive resident-physician  
24          work hours.

1           (7) Different medical specialty training pro-  
2           grams have different patient care considerations but  
3           the effects of sleep deprivation on resident-physi-  
4           cians does not change between specialties.

5           (8) The Federal government has regulated the  
6           work hours of other industries when the safety of  
7           employees or the public is at risk.

8   **SEC. 3. REVISION OF MEDICARE HOSPITAL CONDITIONS OF**  
9                   **PARTICIPATION    REGARDING    WORKING**  
10                   **HOURS OF RESIDENTS.**

11           (a) IN GENERAL.—Section 1866 of the Social Secu-  
12           rity Act (42 U.S.C. 1395cc) is amended—

13                   (1) in subsection (a)(1)—

14                           (A) by striking “and” at the end of sub-  
15                           paragraph (R);

16                           (B) by striking the period at the end of  
17                           subparagraph (S) and inserting “; and”; and

18                           (C) by inserting after subparagraph (S)  
19                           the following new subparagraph:

20                           “(T) in the case of a hospital that uses the  
21                           services of physician residents or postgraduate train-  
22                           ees, to meet the requirements of subsection (j).”;  
23                           and

24                           (2) by adding at the end the following new sub-  
25                           section:

1       “(j)(1)(A) In order that the working conditions and  
2 working hours of physicians and postgraduate trainees  
3 promote the provision of quality medical care in hospitals,  
4 as a condition of participation under this title each hos-  
5 pital shall establish the following limits on working hours  
6 for certain members of the medical staff and postgraduate  
7 trainees:

8           “(i) Subject to subparagraph (C), postgraduate  
9 trainees may work no more than a total of 80 hours  
10 per week and 24 hours per shift.

11          “(ii) Subject to subparagraph (C), postgraduate  
12 trainees—

13           “(I) shall have at least 10 hours between  
14 scheduled shifts;

15           “(II) shall have at least 1 full day out of  
16 every 7 days off and one full weekend off per  
17 month;

18           “(III) who are assigned to patient care re-  
19 sponsibilities in an emergency department shall  
20 work no more than 12 continuous hours in that  
21 department; and

22           “(IV) shall not be scheduled to be on call  
23 in the hospital more often than every third  
24 night.

1       “(B) The Secretary shall promulgate such regulations  
2 as may be necessary to ensure quality of care is main-  
3 tained during the transfer of direct patient care from one  
4 postgraduate trainee to another at the end of each such  
5 24 hour period referred to in subparagraph (A) and shall  
6 take into account cases of individual patient emergencies.

7       “(C) The work hour limitations under subparagraph  
8 (A) and requirements of subparagraph (B) shall not apply  
9 to a hospital during a state of emergency declared by the  
10 Secretary that applies with respect to that hospital.

11       “(2) The Secretary shall promulgate such regulations  
12 as may be necessary to monitor and supervise post-  
13 graduate trainees assigned patient care responsibilities as  
14 part of an approved medical training program, as well as  
15 to assure quality patient care.

16       “(3) Each hospital shall inform postgraduate trainees  
17 of—

18               “(A) their rights under this subsection, includ-  
19 ing methods to enforce such rights (including so-  
20 called whistle-blower protections); and

21               “(B) the effects of their acute and chronic sleep  
22 deprivation both on themselves and on their pa-  
23 tients.

1       “(4) For purposes of this subsection, the term ‘post-  
2 graduate trainee’ includes a postgraduate intern, resident,  
3 or fellow.”.

4       (b) DESIGNATION.—

5           (1) IN GENERAL.—The Secretary of Health and  
6 Human Services shall designate an individual within  
7 the Department of Health and Human Services to  
8 handle all complaints of violations that arise from  
9 residents who report that their programs are in vio-  
10 lation of the requirements of section 1866(j) of the  
11 Social Security Act (as added by subsection (a)).

12           (2) GRIEVANCE RIGHTS.—A post graduate  
13 trainee or physician resident may file a complaint  
14 with the Secretary of Health and Human Services  
15 concerning a violation of such requirements. Such a  
16 complaint may be filed anonymously. The Secretary  
17 may conduct an investigation and take such correc-  
18 tive action with respect to such a violation.

19           (3) CIVIL MONEY PENALTY ENFORCEMENT.—  
20 Any hospital that violates such requirement is sub-  
21 ject to a civil money penalty not to exceed \$100,000  
22 for each resident training program in any 6-month  
23 period. The provisions of section 1128A of the Social  
24 Security Act (other than subsections (a) and (b))  
25 shall apply to civil money penalties under this para-

1 graph in the same manner as they apply to a pen-  
2 alty or proceeding under section 1128A(a) of such  
3 Act.

4 (4) DISCLOSURE OF VIOLATIONS AND ANNUAL  
5 REPORTS.—The individual designated under para-  
6 graph (1) shall—

7 (A) provide for annual anonymous surveys  
8 of postgraduate trainees to determine compli-  
9 ance with such requirements and for the dislo-  
10 sure of the results of such surveys to the public  
11 on a residency-program specific basis;

12 (B) based on such surveys, conduct appro-  
13 priate on-site investigations;

14 (C) provide for disclosure to the public of  
15 violations and compliance, on a hospital and  
16 residence-program specific basis, of such re-  
17 quirements; and

18 (D) make an annual report to Congress on  
19 the compliance of hospitals with such require-  
20 ments, including providing a list of hospitals  
21 found to be in violation of such requirements.

22 (c) WHISTLEBLOWER PROTECTIONS.—

23 (1) IN GENERAL.—A hospital covered by the re-  
24 quirements of section 1866(j)(1) of the Social Secu-  
25 rity Act (as inserted by subsection (a)) shall not pe-

1       nalize, discriminate, or retaliate in any manner  
2       against an employee with respect to compensation,  
3       terms, conditions or privileges of employment, who  
4       in good faith (as defined in paragraph (2)), individ-  
5       ually or in conjunction with another person or per-  
6       sons—

7               (A) reports a violation or suspected viola-  
8               tion of such requirements to a public regulatory  
9               agency, a private accreditation body, or man-  
10              agement personnel of the hospital;

11             (B) initiates, cooperates or otherwise par-  
12             ticipates in an investigation or proceeding  
13             brought by a regulatory agency or private ac-  
14             creditation body concerning matters covered by  
15             such requirements;

16             (C) informs or discusses with other em-  
17             ployees, with a representative of the employees,  
18             with patients or patient representatives, or with  
19             the public, violations or suspected violations of  
20             such requirements; or

21             (D) otherwise avails himself or herself of  
22             the rights set forth in such section or this sub-  
23             section.

1           (2) GOOD FAITH DEFINED.—For purposes of  
2 this subsection, an employee is deemed to act “in  
3 good faith” if the employee reasonably believes—

4                   (A) that the information reported or dis-  
5 closed is true; and

6                   (B) that a violation has occurred or may  
7 occur.

8           (d) EFFECTIVE DATE.—The amendments made by  
9 subsection (a) shall take effect on the first July 1 that  
10 begins at least 1 year after the date of the enactment of  
11 this Act.

12 **SEC. 4. ADDITIONAL FUNDING FOR HOSPITAL COSTS.**

13           There are hereby appropriated to the Secretary of  
14 Health and Human Services such amounts as may be re-  
15 quired to provide for additional payments to hospitals for  
16 their reasonable additional, incremental costs incurred in  
17 order to comply with the requirements imposed by this Act  
18 (and the amendments made by this Act).

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