

108TH CONGRESS  
2D SESSION

# H. R. 4374

To require Medicare providers to disclose publicly staffing and performance in order to promote improved consumer information and choice.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 17, 2004

Mr. HINCHEY 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

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## A BILL

To require Medicare providers to disclose publicly staffing and performance in order to promote improved consumer information and choice.

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 Safety Act of  
5 2004”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds as follows:

1           (1) The past decade has been a turbulent time  
2 for health care facilities and nurses.

3           (2) Recent research published in the Journal of  
4 the American Medical Association has shown that  
5 registered nurse staffing levels have a significant im-  
6 pact on preventable deaths in hospitals, and that the  
7 odds of patient mortality increase 7 percent for  
8 every additional patient added to the average reg-  
9 istered nurse's workload.

10          (3) Recent research supported by the Agency  
11 for Health Care Research and Quality, the Centers  
12 for Medicare & Medicaid Services, and the National  
13 Institute for Nursing Research shows that inad-  
14 equate registered nurse staffing is directly related to  
15 serious complications such as pneumonia, upper gas-  
16 trointestinal bleeding, and urinary tract infections,  
17 as well as failure to stop deaths caused by shock,  
18 cardiac arrest, sepsis, and deep vein thrombosis in  
19 hospitalized patients.

20          (4) The Joint Commission on the Accreditation  
21 of Healthcare Organizations recently reported that  
22 inadequate nurse staffing contributes to nearly a  
23 quarter of all unexpected incidents that kill or injure  
24 hospitalized patients.

1           (5) The Institute of Medicine has reported that  
2           both nursing-to-resident staffing levels and the ratio  
3           of professional nurses to other nursing personnel are  
4           important indicators of high quality of care, and  
5           that the participation of registered nurses in direct  
6           care giving and in the provision of hands-on guid-  
7           ance to nurse assistants is positively associated with  
8           quality of care in nursing facilities.

9           (6) Recent research conducted by the Centers  
10          for Medicare & Medicaid Services found strong, ob-  
11          jective proof that nurse staffing in nursing homes is  
12          directly related to quality measures such as sepsis,  
13          urinary tract infections, incidence of pressure sores,  
14          resisting care improvement, and weight loss.

15          (7) As a payer for inpatient and outpatient hos-  
16          pital services for individuals entitled to benefits  
17          under the medicare and medicaid programs estab-  
18          lished under titles XVIII and XIX of the Social Se-  
19          curity Act, the Federal Government has a compelling  
20          interest in promoting the safety of such individuals  
21          by requiring providers participating in such pro-  
22          grams to provide these individuals with information  
23          regarding nurse staffing levels.

1 **SEC. 3. 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 patient care. This information shall be ex-  
11 pressed both in raw numbers, in terms of total hours  
12 of nursing care per patient (including adjustment for  
13 case mix and acuity), and as a percentage of nursing  
14 staff, and shall be broken down in terms of the total  
15 nursing 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, licensed practical nurse, or unlicensed  
5 personnel providing direct patient care. This infor-  
6 mation shall be broken down in terms of the total  
7 nursing staff, each unit, and each shift.

8 (5) Risk-adjusted patient mortality rate (in raw  
9 numbers and by diagnosis or diagnostic-related  
10 group).

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

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

18 (b) DISCLOSURE OF COMPLAINTS.—Data regarding  
19 complaints filed with the State agency, the Centers for  
20 Medicare & Medicaid Services, or an accrediting agency,  
21 compliance with the standards of which have been deemed  
22 to demonstrate compliance with conditions of participation  
23 under the medicare program, and data regarding inves-  
24 tigation 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 reduce reporting requirements under this section in  
8 the case of a small provider (as defined by the Secretary)  
9 for whom the imposition of the requirements would be un-  
10 duly burdensome.

11 (e) REPORTING TO SECRETARY.—Providers shall  
12 submit to the Secretary in a uniform manner (as pre-  
13 scribed by the Secretary) the nursing staff information de-  
14 scribed in subsection (a) through electronic means not less  
15 frequently than quarterly.

16 (f) SECRETARIAL RESPONSIBILITIES.—The Sec-  
17 retary shall—

18 (1) make the information submitted pursuant  
19 to subsection (a) publicly available, including by  
20 publication of such information on the Internet site  
21 of the Department of Health and Human Services;  
22 and

23 (2) provide for the auditing of such information  
24 for accuracy as a part of the process of determining

1 whether a provider is eligible for continued partici-  
2 pation in the medicare program.

3 (g) DEFINITIONS.—For purposes of this section:

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

10 (2) PUBLICLY AVAILABLE.—The term “publicly  
11 available” means, with respect to information of a  
12 provider, information that is—

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

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

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

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

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

3                   (A) a psychiatric hospital described in sec-  
4                   tion 1861(f) of the Social Security Act (42  
5                   U.S.C. 1395x(f));

6                   (B) a provider of services described in sec-  
7                   tion 1861(u) of such Act (42 U.S.C. 1395x(u)),  
8                   other than a skilled nursing facility, as defined  
9                   in section 1819(a) of such Act (42 U.S.C.  
10                  1395i–3(a));

11                  (C) a rural health clinic described in sec-  
12                  tion 1861(aa)(2) of such Act (42 U.S.C.  
13                  1395x(aa)(2));

14                  (D) an ambulatory surgical center de-  
15                  scribed in section 1832(a)(2)(F)(i) of such Act  
16                  (42 U.S.C. 1395k(a)(2)(F)(i)); or

17                  (E) a renal dialysis facility described in  
18                  section 1881(b)(1)(A) of such Act (42 U.S.C.  
19                  1395rr(b)(1)(A)).

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

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

1 **SEC. 4. PUBLIC DISCLOSURE OF ACCURATE DATA ON**  
2 **NURSING FACILITY STAFFING.**

3 (a) **MEDICARE.**—Section 1819(b)(8) of the Social Se-  
4 curity Act (42 U.S.C. 1395i–3(b)) is amended—

5 (1) in subparagraph (A), by adding at the end  
6 the following new sentence: “The information posted  
7 under this subparagraph shall include information  
8 regarding nurse staffing with respect to beds made  
9 available by reason of an agreement under section  
10 1883.”; and

11 (2) by adding at the end the following new sub-  
12 paragraphs:

13 “(C) **SUBMISSION AND POSTING OF**  
14 **DATA.**—

15 “(i) **IN GENERAL.**—Beginning on Jan-  
16 uary 1, 2005, a skilled nursing facility  
17 shall submit to the Secretary in a uniform  
18 manner (as prescribed by the Secretary)  
19 the nursing staff data described in section  
20 3(a) of the Patient Safety Act of 2004  
21 through electronic means not less fre-  
22 quently than quarterly and the Secretary  
23 shall make such data publicly available (as  
24 defined in section 3(g)(2) of such Act), in-  
25 cluding by posting such data on an Inter-  
26 net website.

1                   “(ii) INFORMATION ON NURSE  
2                   AIDES.—In addition to the nursing staff  
3                   data described in clause (i), a skilled nurs-  
4                   ing facility shall submit to the Secretary  
5                   the numbers of nurse aides (as defined in  
6                   paragraph (5))(F)) utilized to provide di-  
7                   rect patient care. This information shall be  
8                   expressed both in raw numbers and as a  
9                   percentage of nursing staff and shall be  
10                  broken down in terms of the total nursing  
11                  staff, each unit, and each shift.

12                  “(D) AUDIT OF DATA.—As part of each  
13                  standard survey conducted under subsection  
14                  (g)(2)(A), there shall be an audit of the nursing  
15                  staff data reported under subparagraph (C) to  
16                  ensure that such data are accurate.”.

17                  (b) MEDICAID.—Section 1919(b)(8) of the Social Se-  
18                  curity Act (42 U.S.C. 1395r(b)(8)) is amended—

19                  (1) in subparagraph (A), by adding at the end  
20                  the following new sentence: “The information posted  
21                  under this subparagraph shall include information  
22                  regarding nurse staffing with respect to beds made  
23                  available by reason of an agreement under section  
24                  1883.”; and

1           (2) by adding at the end the following new sub-  
2 paragraphs:

3                   “(C) SUBMISSION AND POSTING OF  
4 DATA.—

5                   “(i) IN GENERAL.—Beginning on Jan-  
6 uary 1, 2005, a nursing facility shall sub-  
7 mit to the Secretary in a uniform manner  
8 (as prescribed by the Secretary) the nurs-  
9 ing staff data described in section 3(a) of  
10 the Patient Safety Act of 2004 through  
11 electronic means not less frequently than  
12 quarterly and the Secretary shall make  
13 such data publicly available (as defined in  
14 section 3(g)(2) of such Act), including by  
15 posting such data on an Internet website.

16                   “(ii) INFORMATION ON NURSE  
17 AIDES.—In addition to the nursing staff  
18 data described in clause (i), a skilled nurs-  
19 ing facility shall submit to the Secretary  
20 the numbers of nurse aides (as defined in  
21 paragraph (5))(F)) utilized to provide di-  
22 rect patient care. This information shall be  
23 expressed both in raw numbers and as a  
24 percentage of nursing staff and shall be

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

3 “(D) AUDIT OF DATA.—As part of each  
4 standard survey conducted under subsection  
5 (g)(2)(A), there shall be an audit of the nursing  
6 staff data reported under subparagraph (C) to  
7 ensure that such data are accurate.”.

8 **SEC. 5. CREATING A STAFFING QUALITY MEASURE FOR**  
9 **CONSUMERS TO COMPARE NURSING FACILI-**  
10 **TIES.**

11 (a) IN GENERAL.—Beginning no later than 90 days  
12 after the date of the enactment of this Act, and for as  
13 long as the Secretary of Health and Human Services pub-  
14 lishes quality measures to help the public compare the  
15 quality of care that nursing facilities provide, these quality  
16 measures shall include a quality measure for nursing staff  
17 that—

18 (1) reflects the average daily total nursing  
19 hours worked for the quarterly reporting period for  
20 which data are submitted under sections  
21 1819(b)(8)(C) and 1919(b)(8)(C) of the Social Secu-  
22 rity Act (as added by subsections (a)(2) and (b)(2),  
23 respectively, of section 4), as well as, in the case of  
24 a skilled nursing facility, other information required  
25 to be reported under section 3(a);

1           (2) is sensitive to case mix and quality out-  
2 comes;

3           (3) indicates the percentile in which each nurs-  
4 ing facility falls compared with other nursing facili-  
5 ties in the State;

6           (4) indicates the rate of retention of registered  
7 nurses, licensed practical nurses, and certified nurse  
8 assistants; and

9           (5) includes such other measures as the Sec-  
10 retary determines to be appropriate.

11 The Secretary shall not be required to comply with the  
12 requirements of paragraph (2) to the extent that the devel-  
13 opment of a methodology to comply with such requirement  
14 would delay the implementation of this section.

15       (b) FORM AND MANNER.—The nursing facility com-  
16 parative staffing measure described in subsection (a) shall  
17 be displayed in the same form and manner as information  
18 that the Secretary displays to help the public compare the  
19 quality of care that nursing facilities provide.

20 **SEC. 6. PROTECTION OF CERTAIN ACTIVITIES BY EMPLOY-**  
21 **EES OF MEDICARE PROVIDERS.**

22       (a) IN GENERAL.—Subject to subsection (c), no pro-  
23 vider under the medicare program shall terminate or take  
24 other adverse employment action (including the failure to  
25 promote an individual or provide any employment-related

1 benefit, an adverse evaluation or decision made in relation  
2 to accreditation, certification, credentialing or licensing of  
3 an individual, or other adverse personnel action) against  
4 any employee or group of employees for actions taken for  
5 the purpose of—

6 (1) notifying the provider of conditions which  
7 the employee or group of employees identifies, in  
8 communications with the provider, as dangerous or  
9 potentially dangerous or injurious to—

10 (A) patients who currently receive services  
11 from the provider;

12 (B) individuals who are likely to receive  
13 services from the provider; or

14 (C) employees of the provider;

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

21 (3) notifying other individuals of conditions  
22 which the employee or group of employees reason-  
23 ably believe to be such as are described in paragraph  
24 (1);

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

5           (5) other related activities as specified in regu-  
6           lations promulgated by the Secretary of Health and  
7           Human Services.

8           (b) SANCTION.—A provider that takes an action in  
9           violation of subsection (a) is subject to a civil money pen-  
10          alty of not more than \$20,000 for each such action. The  
11          provisions of section 1128A of the Social Security Act  
12          (other than subsections (a) and (b)) shall apply to civil  
13          money penalties under this subsection in the same manner  
14          as they apply to a penalty or proceeding under section  
15          1128A(a) of such Act.

16          (c) EXCEPTION.—The provisions of subsection (a)  
17          shall not apply to the knowing or reckless provision of sub-  
18          stantially false information by an employee or group of  
19          employees.

20       **SEC. 7. REPORT.**

21           Not later than 90 days after the date of the enact-  
22          ment of this Act, the Secretary of Health and Human  
23          Services shall submit to Congress a report on—

24           (1) the manner in which the Secretary intends  
25          to implement reporting of additional nurse staffing

1 variables such as unit worked, day of week (weekday  
2 and weekend), and type of care (direct or adminis-  
3 trative) provided; and

4 (2) the most effective mechanisms for auditing  
5 nurse staffing data under sections 1819(b)(8)(D)  
6 and 1919(b)(8)(D) of the Social Security Act (as  
7 added by subsections (a)(2) and (b)(2), respectively,  
8 of section 4) and for auditing nurse staffing data  
9 under section 3(f)(2).

○