

108TH CONGRESS
1ST SESSION

S. 1988

To amend titles XVIII and XIX of the Social Security Act to establish minimum requirements for nurse staffing in nursing facilities receiving payments under the Medicare or Medicaid Program.

IN THE SENATE OF THE UNITED STATES

DECEMBER 9, 2003

Mr. DASCHLE (for Mr. EDWARDS) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend titles XVIII and XIX of the Social Security Act to establish minimum requirements for nurse 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; PURPOSE.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Nursing Home Staffing Act of 2003”.

6 (b) PURPOSE.—The purpose of this Act is to improve
7 the quality of care received by residents of nursing facili-
8 ties through the implementation of the minimum nurse

1 staffing levels identified by the Secretary of Health and
 2 Human Services in a report to Congress submitted on
 3 March 21, 2002.

4 **SEC. 2. IMPLEMENTATION OF NURSE STAFFING STAND-**
 5 **ARDS.**

6 (a) IN GENERAL.—Sections 1819(b)(4) and
 7 1919(b)(4) of the Social Security Act (42 U.S.C. 1395i–
 8 3(b)(4); 1396r(b)(4)) are each amended by adding at the
 9 end the following new subparagraph:

10 “(D) MINIMUM STAFFING REQUIRE-
 11 MENTS.—

12 “(i) DEADLINE FOR COMPLIANCE
 13 WITH MINIMUM STANDARDS.—With respect
 14 to facility services provided after the date
 15 that is the end of the 2-year period begin-
 16 ning on the date of the enactment of this
 17 subparagraph, a facility shall comply with
 18 the minimum staffing levels promulgated
 19 by the Secretary under clause (ii).

20 “(ii) FINAL REGULATIONS.—

21 “(I) IN GENERAL.—Not later
 22 than 1 year after the date of the en-
 23 actment of this subparagraph, and
 24 consistent with the provisions of this
 25 clause, the Secretary shall promulgate

standards for minimum staffing levels for facilities. Such standards shall provide for sufficient staffing levels during day, evening, and night shifts to ensure that residents of nursing facilities receive the level of care necessary to meet the objectives of subsection (b)(2), and shall provide for appropriate adjustments to account for resident case mix.

“(II) MINIMUM STANDARDS.—

Subject to subclause (III), standards promulgated under subclause (I) shall be, at a minimum, the HHS minimum nurse staffing ratios (as defined in clause (iii)).

“(III) AUTHORITY TO PHASE IN

FACILITY COMPLIANCE WITH STANDARDS.—If the Secretary determines that compliance with the HHS minimum nurse staffing ratios is not feasible for nursing facilities by the end of the 2-year period applicable under clause (i), the Secretary may delay the implementation of the HHS minimum

1 nurse staffing ratios until the date
 2 that is the end of the 5-year period
 3 that begins on the date of the enact-
 4 ment of this subparagraph. If the Sec-
 5 retary delays implementation of the
 6 HHS minimum nurse staffing ratios
 7 under the previous sentence, the Sec-
 8 retary shall phase in over such 5-year
 9 period alternative minimum staffing
 10 standards that gradually increase in
 11 each of the years of the phase-in until
 12 the such standards meet the HHS
 13 minimum nurse staffing ratios.

14 “(IV) COUNTING.—In deter-
 15 mining compliance with the staffing
 16 levels under this subparagraph, an in-
 17 dividual may not be counted while
 18 performing services that are not direct
 19 nursing care, such as administrative
 20 services, food preparation, house-
 21 keeping, laundry, maintenance serv-
 22 ices, or other activities that are not
 23 direct nursing care.

24 “(iii) HHS MINIMUM NURSE STAFF-
 25 ING RATIOS.—The term ‘HHS minimum

nurse staffing ratios’ means the minimum staffing levels identified in the report to Congress entitled ‘Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes, Report to Congress: Phase II Final’ submitted by the Secretary on March 21, 2002, which require—

“(I) from 2.4 to 2.8 hours of care per resident per day by a certified nurse aide, and

“(II) from 1.15 to 1.3 hours of care per resident per day by a licensed practical nurse, a licensed vocational nurse, or a registered nurse, of which from 0.55 to 0.75 hours of care per resident per day shall be provided by a registered nurse.

“(iv) CONSTRUCTION.—

“(I) NONPREEMPTION.—Nothing in this subparagraph shall be construed as prohibiting the Secretary or a State (in the case of title XIX) from imposing higher minimum staffing levels on facilities than those imposed 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 (b) POSTING OF STAFFING INFORMATION.—

17 (1) IN GENERAL.—The first sentence of sub-
 18 paragraph (A) of sections 1819(b)(8) and
 19 1919(b)(8) of the Social Security Act (42 U.S.C.
 20 1395i-3(b)(8); 1396r(b)(8)) are each amended by
 21 inserting before the period the following: “, a de-
 22 scription of the minimum staffing requirements
 23 under paragraph (4)(D), and the average number of
 24 hours of nursing care that residents of the facility

1 have received for each of the four previous calendar
2 quarters”.

3 (2) REPORTS.—Such sections are each amended
4 by adding at the end the following new subpara-
5 graph:

6 “(C) REPORTS OF STAFFING DATA.—A fa-
7 cility shall maintain records on nurse staffing,
8 and shall submit such reports of such records
9 to the Secretary as the Secretary may require
10 for the administration and enforcement of this
11 section. Such records shall be reviewed for accu-
12 racy as part of a standard survey required
13 under subsection (g)(2)(A).”.

14 **SEC. 3. INCREASED RESOURCES.**

15 (a) REINSTITUTION OF BOREN AMENDMENT PAY-
16 MENT METHODOLOGY.—

17 (1) IN GENERAL.—Section 1902(a)(13) of the
18 Social Security Act (42 U.S.C. 1396a(a)(13)) is
19 amended to read as follows:

20 “(13) provide for payment of services through
21 the use of rates determined pursuant to the criteria
22 under this paragraph as in effect on August 1,
23 1997;”.

24 (2) ESTABLISHMENT OF SAFE HARBOR
25 RATES.—Section 1902 of such Act (42 U.S.C.

1 1396a) is amended by adding at the end the fol-
 2 lowing: “The Secretary may, by regulation, promul-
 3 gate standards or methodologies for determining
 4 rates that comply with paragraph (13), and a State
 5 that pays rates that meet such standards or meth-
 6 odologies is deemed to be in compliance with para-
 7 graph (13).”.

8 (3) EFFECTIVE DATE.—The amendment made
 9 by this subsection shall apply to services furnished
 10 on or after the date that is one year after the date
 11 of the enactment of this Act.

12 (b) PERMANENT 1.5 PERCENT INCREASE OF MED-
 13 ICAID FMAP BEGINNING WITH FISCAL YEAR 2004.—
 14 Section 1905(b) of the Social Security Act (42 U.S.C.
 15 1396d(b)) is amended by adding at the end the following:
 16 “With respect to calendar quarters beginning after Octo-
 17 ber 1, 2003, the Federal medical assistance percentage for
 18 a State determined under the first sentence shall be in-
 19 creased by 1.50 percentage points.”.

20 (c) FINANCIAL ACCOUNTABILITY.—

21 (1) IN GENERAL.—Sections 1819(g)(2) and
 22 1919(g)(2) of the Social Security Act (42 U.S.C.
 23 1395i–3(g)(2); 1396r(g)(2)) are each amended—

1 (A) by redesignating subparagraphs (C),
 2 (D), and (E) as subparagraphs (D), (E), and
 3 (F); and

4 (B) by inserting after subparagraph (B)
 5 the following new subparagraph:

6 “(C) FINANCIAL ACCOUNTABILITY.—A
 7 standard or an extended survey may include an
 8 examination of the financial records of a facility
 9 to determine whether payments made to the fa-
 10 cility under this section for services furnished to
 11 residents are being used in a manner consistent
 12 with this section.”.

13 (2) COMPOSITION OF MULTIDISCIPLINARY
 14 TEAM.—Sections 1819(g)(2)(E)(i) and
 15 1919(g)(2)(E)(i) of the Social Security Act (42
 16 U.S.C. 1395i–3(g)(2)(E)(i); 1396r(g)(2)(E)(i)) are
 17 each amended by inserting after the period the fol-
 18 lowing: “This multidisciplinary team may include
 19 professionals trained in financial accounting and au-
 20 diting.”

21 (3) EFFECTIVE DATE.—The amendments made
 22 by paragraph (1) shall apply to surveys conducted
 23 on or after the date of the enactment of this Act.

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