

109TH CONGRESS
1ST SESSION

H. R. 4293

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 HOUSE OF REPRESENTATIVES

NOVEMBER 10, 2005

Mr. WAXMAN (for himself, Mr. DINGELL, Mr. RANGEL, Mr. BROWN of Ohio, Mr. STARK, Mrs. CAPPS, Ms. SCHAKOWSKY, Mr. BACA, Ms. BALDWIN, Mr. BERMAN, Mr. BRADY of Pennsylvania, Ms. CORRINE BROWN of Florida, Mr. CHANDLER, Mr. CLAY, Mr. FRANK of Massachusetts, Mr. GRIJALVA, Mr. GUTIERREZ, Mr. HINCHEY, Mr. HOLDEN, Ms. KAPTUR, Mr. KILDEE, Mr. KUCINICH, Mrs. MALONEY, Mr. MARKEY, Mrs. MCCARTHY, Mr. McDERMOTT, Mr. McNULTY, Mr. MEEHAN, Mr. MOORE of Kansas, Ms. NORTON, Mr. OWENS, Mr. PALLONE, Ms. ROYBAL-ALLARD, Mr. RUSH, Mr. SANDERS, Mr. THOMPSON of Mississippi, Mr. VAN HOLLEN, Ms. WATERS, Mr. WEXLER, Mr. WYNN, Ms. SOLIS, and Mr. HOLT) 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

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,*

1 **SECTION 1. SHORT TITLE; PURPOSE.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Nursing Home Staffing Act of 2005”.

4 (b) PURPOSE.—The purpose of this Act is to improve
5 the quality of care received by residents of nursing facili-
6 ties through the implementation of the minimum nurse
7 staffing levels identified by the Secretary of Health and
8 Human Services in a report to Congress submitted on
9 March 21, 2002.

10 **SEC. 2. IMPLEMENTATION OF NURSE STAFFING STAND-**
11 **ARDS.**

12 (a) IN GENERAL.—Sections 1819(b)(4) and
13 1919(b)(4) of the Social Security Act (42 U.S.C. 1395i–
14 3(b)(4); 1396r(b)(4)) are each amended by adding at the
15 end the following new subparagraph:

16 “(D) MINIMUM STAFFING REQUIRE-
17 MENTS.—

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

26 “(ii) FINAL REGULATIONS.—

1 “(I) IN GENERAL.—Not later
2 than 1 year after the date of the en-
3 actment of this subparagraph, and
4 consistent with the provisions of this
5 clause, the Secretary shall promulgate
6 standards for minimum staffing levels
7 for facilities. Such standards shall
8 provide for sufficient staffing levels
9 during day, evening, and night shifts
10 to ensure that residents of nursing fa-
11 cilities receive the level of care nec-
12 essary to meet the objectives of sub-
13 section (b)(2), and shall provide for
14 appropriate adjustments to account
15 for resident case mix.

16 “(II) MINIMUM STANDARDS.—
17 Subject to subclause (III), standards
18 promulgated under subclause (I) shall
19 be, at a minimum, the HHS minimum
20 nurse staffing ratios (as defined in
21 clause (iii)).

22 “(III) AUTHORITY TO PHASE IN
23 FACILITY COMPLIANCE WITH STAND-
24 ARDS.—If the Secretary determines
25 that compliance with the HHS min-

imum 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 nurse staffing ratios until the date that is the end of the 5-year period that begins on the date of the enactment of this subparagraph. If the Secretary delays implementation of the HHS minimum nurse staffing ratios under the previous sentence, the Secretary shall phase in over such 5-year period alternative minimum staffing standards that gradually increase in each of the years of the phase-in until such standards meet the HHS minimum nurse staffing ratios.

“(IV) COUNTING.—In determining compliance with the staffing levels under this subparagraph, an individual may not be counted while performing services that are not direct nursing care, such as administrative services, food preparation, house-

1 keeping, laundry, maintenance serv-
2 ices, or other activities that are not
3 direct nursing care.

4 “(iii) HHS MINIMUM NURSE STAFF-
5 ING RATIOS.—The term ‘HHS minimum
6 nurse staffing ratios’ means the minimum
7 staffing levels identified in the report to
8 Congress entitled ‘Appropriateness of Min-
9 imum Nurse Staffing Ratios in Nursing
10 Homes, Report to Congress: Phase II
11 Final’ submitted by the Secretary on
12 March 21, 2002, which require—

13 “(I) from 2.4 to 2.8 hours of
14 care per resident per day by a cer-
15 tified nurse aide;

16 “(II) from 1.15 to 1.3 hours of
17 care per resident per day by a licensed
18 practical nurse, a licensed vocational
19 nurse, or a registered nurse; and

20 “(III) from 0.55 to 0.75 hours of
21 care per resident per day by a reg-
22 istered nurse.

23 “(iv) CONSTRUCTION.—

24 “(I) NONPREEMPTION.—Nothing
25 in this subparagraph shall be con-

1 strued as prohibiting the Secretary or
 2 a State (in the case of title XIX) from
 3 imposing higher minimum staffing
 4 levels on facilities than those imposed
 5 under this subparagraph.

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

16 “(III) SUPPLEMENTARY RE-
 17 QUIREMENTS.—The staffing require-
 18 ments of this subparagraph are in ad-
 19 dition to the requirements of subpara-
 20 graph (C).”.

21 (b) POSTING OF STAFFING INFORMATION.—

22 (1) IN GENERAL.—The first sentence of sub-
 23 paragraph (A) of sections 1819(b)(8) and
 24 1919(b)(8) of the Social Security Act (42 U.S.C.
 25 1395i–3(b)(8); 1396r(b)(8)) are each amended by

1 inserting before the period the following: “, a de-
 2 scription of the minimum staffing requirements
 3 under paragraph (4)(D), and the average number of
 4 hours of nursing care that residents of the facility
 5 have received for each of the four previous calendar
 6 quarters”.

7 (2) REPORTS.—Such sections are each amended
 8 by adding at the end the following new subpara-
 9 graph:

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

18 **SEC. 3. INCREASED RESOURCES.**

19 (a) REINSTITUTION OF BOREN AMENDMENT PAY-
 20 MENT METHODOLOGY.—

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

24 “(13) provide for payment of services through
 25 the use of rates determined pursuant to the criteria

1 under this paragraph as in effect on August 1,
2 1997;”.

3 (2) ESTABLISHMENT OF SAFE HARBOR
4 RATES.—Section 1902 of such Act (42 U.S.C.
5 1396a) is amended by adding at the end the fol-
6 lowing: “The Secretary may, by regulation, promul-
7 gate standards or methodologies for determining
8 rates that comply with paragraph (13), and a State
9 that pays rates that meet such standards or meth-
10 odologies is deemed to be in compliance with para-
11 graph (13).”.

12 (3) EFFECTIVE DATE.—The amendment made
13 by this subsection shall apply to services furnished
14 on or after the date that is one year after the date
15 of the enactment of this Act.

16 (b) PERMANENT 1.5 PERCENT INCREASE OF MED-
17 ICAID FMAP BEGINNING WITH FISCAL YEAR 2006.—
18 Section 1905(b) of the Social Security Act (42 U.S.C.
19 1396d(b)) is amended by adding at the end the following:
20 “With respect to calendar quarters beginning after Octo-
21 ber 1, 2005, the Federal medical assistance percentage for
22 a State determined under the first sentence shall be in-
23 creased by 1.50 percentage points.”.

24 (c) FINANCIAL ACCOUNTABILITY.—

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

4 (A) by redesignating subparagraphs (C),
5 (D), and (E) as subparagraphs (D), (E), and
6 (F); and

7 (B) by inserting after subparagraph (B)
8 the following new subparagraph:

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

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

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

○