

110TH CONGRESS
2D SESSION

H. R. 5739

To assure that the services of a nonemergency department physician are available to hospital patients 24 hours a day, seven days a week in all non-Federal hospitals with at least 100 licensed beds.

IN THE HOUSE OF REPRESENTATIVES

APRIL 9, 2008

Ms. SCHAKOWSKY (for herself and Mr. VISCLOSKY) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To assure that the services of a nonemergency department physician are available to hospital patients 24 hours a day, seven days a week in all non-Federal hospitals with at least 100 licensed beds.

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 “Physician Availability
5 Act of 2008”.

1 **SEC. 2. REQUIREMENT FOR PHYSICIAN AVAILABILITY IN**
2 **ACUTE CARE HOSPITALS.**

3 (a) IN GENERAL.—Each covered hospital shall have
4 a qualified physician available in the hospital 24 hours a
5 day, seven days a week to attend to the needs of inpatients
6 of the hospital.

7 (b) DEFINITIONS.—For purposes of this section:

8 (1) COVERED HOSPITAL.—

9 (A) IN GENERAL.—Subject to subpara-
10 graph (B), the term “covered hospital” means
11 a subsection (d) hospital (as defined in section
12 1886(d)(1)(B) of the Social Security Act (42
13 U.S.C. 1395ww(d)(1)(B)) that—

14 (i) has a participation agreement in
15 effect under section 1866 of such Act (42
16 U.S.C. 1395cc);

17 (ii) is participating in the program
18 under title XIX of such Act; or

19 (iii) is receiving Federal funds under
20 a grant or cooperative agreement.

21 (B) EXCLUSION FOR FEDERAL FACILITIES
22 AND SMALL HOSPITALS.—Such term does not
23 include a hospital that—

24 (i) is a facility of the Federal Govern-
25 ment; or

1 (ii) the Secretary of Health and
2 Human Services determines has fewer than
3 100 licensed beds (as defined by the Sec-
4 retary).

5 (2) PHYSICIAN; QUALIFIED PHYSICIAN.—

6 (A) The term “physician” means, with re-
7 spect to a hospital, an individual who is a doc-
8 tor of medicine or osteopathy legally authorized
9 under State law to practice medicine and sur-
10 gery in that hospital.

11 (B) The term “qualified physician” means,
12 with respect to a hospital, an individual who is
13 a physician and whose credentials as such a
14 physician have been verified by the administra-
15 tion of the hospital (before providing any serv-
16 ices at the hospital) through appropriate means,
17 including verification through the National
18 Practitioner Databank.

19 (3) PHYSICIAN AVAILABILITY.—A physician is
20 considered to be “available” in a hospital if—

21 (A) the physician is physically present in
22 the hospital;

23 (B) the physician’s primary responsibility
24 is to be in attendance to serve the needs of the
25 hospital’s inpatients without delay; and

1 (C) the physician is not physically present
2 in, assigned to, serving in, or expected to cover,
3 the hospital's emergency room or emergency de-
4 partment.

5 (c) ENFORCEMENT.—

6 (1) WARNING.—If the Secretary of Health and
7 Human Services (in this section referred to as the
8 “Secretary”) determines that a hospital has violated
9 subsection (a), in the first instance the Secretary
10 shall provide a written warning regarding such viola-
11 tion to the hospital and shall notify the Inspector
12 General of the Department of Health and Human
13 Services (in this section referred to as the “HHS In-
14 spector General”) of such violation. Subsequently,
15 the HHS Inspector General shall monitor the com-
16 pliance of the hospital with the requirement of sub-
17 section (a).

18 (2) SECOND VIOLATION.—After providing a
19 warning to a hospital under paragraph (1), if the
20 Secretary determines that the hospital subsequently
21 and knowingly violates subsection (a)—

22 (A) the hospital is subject to a civil money
23 penalty in an amount not to exceed \$100,000,
24 and

1 (B) the hospital shall submit to the HHS
2 Inspector General, by not later than 30 days
3 after the date of such a determination, a reme-
4 dial plan to prevent future violations of the re-
5 quirement of such subsection.

6 The provisions of section 1128A of the Social Secu-
7 rity Act (42 U.S.C. 1320a–7a), other than sub-
8 sections (a) and (b) of such section, shall apply to
9 civil money penalties under subparagraph (A) in the
10 same manner as they apply to a penalty or pro-
11 ceeding under subsection (a) of such section.

12 (3) SUBSEQUENT VIOLATIONS.—After imposing
13 a civil money penalty under paragraph (2) against a
14 hospital, if the Secretary determines that the hos-
15 pital subsequently and knowingly violates subsection
16 (a), the Secretary may issue an order disqualifying
17 the hospital from participation in the programs
18 under titles XVIII and XIX of the Social Security
19 Act and from receipt of Federal funds under any
20 grant or cooperative agreement for such period as
21 the Secretary specifies and until the Secretary re-
22 ceives satisfactory assurances that the hospital will
23 be in substantial compliance with the requirement of
24 subsection (a).

1 (4) FAILURE TO SUBMIT OR COMPLY WITH RE-
2 MEDIAL PLAN.—If the Secretary determines, after
3 consultation with the HHS Inspector General, that
4 a hospital has failed to submit a satisfactory reme-
5 dial plan required under paragraph (2)(B) or is fail-
6 ing to substantially carry out such a plan, the Sec-
7 retary may suspend payment of funds to the hospital
8 under titles XVIII and XIX of the Social Security
9 Act and under Federal grants or cooperative agree-
10 ments until the Secretary receives satisfactory assur-
11 ances that such failures will not continue.

12 (d) EFFECTIVE DATE.—This section shall take effect
13 on the first day of the first month that begins more than
14 180 days after the date of the enactment of this Act.

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