

106TH CONGRESS
2D SESSION

H. R. 4949

To amend title XIX of the Social Security Act to improve the quality of care furnished in nursing homes.

IN THE HOUSE OF REPRESENTATIVES

JULY 25, 2000

Mr. WAXMAN (for himself, Mr. GEPHARDT, Mr. DINGELL, Mr. STARK, Mr. BROWN of Ohio, Mr. GEORGE MILLER of California, Ms. SCHAKOWSKY, Mr. FORBES, Mr. HOLT, Mr. LANTOS, Ms. LEE, Mr. BLAGOJEVICH, Mr. HINCHEY, and Mr. WYNN) introduced the following bill; which was referred to the Committee on Commerce

A BILL

To amend title XIX of the Social Security Act to improve the quality of care furnished in nursing homes.

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; TABLE OF CONTENTS.**

4 (a) IN GENERAL.—This Act may be cited as the
5 “Nursing Home Quality Protection Act”.

6 (b) TABLE OF CONTENTS.—The table of contents of
7 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Increased sanctions for substandard care furnished in nursing homes.

Sec. 3. Increased resources to improve the quality of care furnished in nursing homes.

Sec. 4. Increased public disclosure of nursing home conditions.

1 **SEC. 2. INCREASED SANCTIONS FOR SUBSTANDARD CARE**
 2 **FURNISHED IN NURSING HOMES.**

3 (a) IN GENERAL.—Section 1919 of the Social Secu-
 4 rity Act (42 U.S.C. 1396r) is amended—

5 (1) by redesignating subsection (i) as subsection
 6 (j); and

7 (2) by inserting after subsection (h) the fol-
 8 lowing new subsection:

9 “(i) REFUND OF FEDERAL MONEYS FOR SUB-
 10 STANDARD NURSING CARE.—

11 “(1) IN GENERAL.—From amounts paid under
 12 a State plan to a nursing facility, the nursing facil-
 13 ity shall refund to the Secretary (for deposit in the
 14 Account established in subsection (j)) for deficiencies
 15 identified in a survey under subsection (g) the fol-
 16 lowing amounts:

17 “(A) \$2,000 for each deficiency that had
 18 the potential to cause more than minimal harm
 19 to a resident of the nursing facility.

20 “(B) \$10,000 for each deficiency that
 21 caused actual harm to a resident of the nursing
 22 facility.

1 “(C) \$25,000 for each deficiency that
2 placed a resident of the nursing facility in im-
3 mediate jeopardy.

4 Amounts under this subparagraph shall be adjusted
5 annually to account for inflation in the manner pro-
6 vided for in section 1924(g).

7 “(2) DEADLINE FOR SUBSTANDARD CARE RE-
8 FUND.—Payment of the amounts payable by a nurs-
9 ing facility to the Secretary under paragraph (1)
10 shall be made not later than 30 days after the nurs-
11 ing facility receives notice of the deficiencies and the
12 amount of substandard care refund due.

13 “(3) WITHHOLDING OF PAYMENTS FOR FAIL-
14 URE TO PAY A SUBSTANDARD CARE REFUND TO THE
15 SECRETARY.—In the case of a nursing facility that
16 does not pay a substandard care refund required
17 under paragraph (1), in order to ensure that pay-
18 ments under the State plan to the facility are re-
19 duced by the amount of substandard care refund
20 due from the facility, the Secretary shall withhold
21 from payments attributable to this section the
22 amount of such substandard care refund.

23 “(4) APPEAL.—

24 “(A) IN GENERAL.—The Secretary shall
25 establish a procedure for a nursing facility to

1 appeal to the Secretary a substandard care re-
2 fund paid or an amount withheld under this
3 paragraph.

4 “(B) REPAYMENTS BY THE SECRETARY.—

5 If a nursing facility is successful on appeal, the
6 Secretary shall pay to the nursing facility an
7 amount equal to the amount of the substandard
8 care refund paid under paragraph (1), or the
9 amount withheld under paragraph (3), or both,
10 if applicable, plus interest accruing on such
11 amount at the rate applicable under section
12 1903(d)(5).

13 “(5) RELATION TO OTHER SANCTIONS.—

14 “(A) IN GENERAL.—A substandard care
15 refund paid by or an amount withheld from a
16 nursing facility for a deficiency under this
17 paragraph—

18 “(i) shall not affect the authority of a
19 State or the Secretary to take enforcement
20 actions or impose sanctions against the
21 nursing facility under any other provision
22 of law with respect to the deficiency;

23 “(ii) shall be deducted from civil
24 money penalties assessed by the Secretary

1 with respect to the deficiency under other
 2 provisions of this Act; and

3 “(iii) shall not affect any remedy
 4 available to an individual at common law.

5 “(B) PRESERVING RIGHT TO APPEAL.—

6 The failure of a nursing facility to appeal a
 7 substandard care refund paid by or amount
 8 withheld from the facility for a deficiency under
 9 this paragraph shall have no effect on the right
 10 of the facility to appeal any enforcement action
 11 taken or sanction imposed by the Secretary
 12 with respect to the deficiency under other provi-
 13 sions of this Act.”.

14 (b) EFFECTIVE DATE.—The amendments made by
 15 subsection (a) shall apply with respect to surveys con-
 16 ducted on or after the date that is one year after the date
 17 of the enactment of this Act, without regard to whether
 18 or not final regulations to carry out such amendments
 19 have been promulgated by such date.

20 **SEC. 3. INCREASED RESOURCES TO IMPROVE THE QUALITY**
 21 **OF CARE FURNISHED IN NURSING HOMES.**

22 (a) REINSTITUTION OF BOREN AMENDMENT PAY-
 23 MENT METHODOLOGY.—

24 (1) PURPOSE.—In 1997, Congress repealed the
 25 Boren amendment, which required that the States

1 make reasonable and adequate payments to nursing
2 homes and other health care facilities in order to
3 provide quality care to residents. The purpose of this
4 section is to restore the Boren amendment so that
5 those facilities can provide better care to residents.

6 (2) PROVISION FOR PAYMENT OF REASONABLE
7 AND ADEQUATE COSTS.—Section 1902(a)(13) of the
8 Social Security Act (42 U.S.C. 1396a(a)(13)) is
9 amended to read as follows:

10 “(13) provide for payment of services through
11 the use of rates determined under this paragraph as
12 in effect on August 1, 1997;”.

13 (3) EFFECTIVE DATE.—The amendment made
14 by paragraph (2) shall apply to services furnished on
15 or after the date that is one year after the date of
16 the enactment of this Act.

17 (b) GRANT PROGRAM TO IMPROVE QUALITY OF
18 CARE FURNISHED IN NURSING HOMES.—Section 1919 of
19 the Social Security Act (42 U.S.C. 1396r), as amended
20 by section 2(a), is further amended—

21 (1) by redesignating subsection (j) as sub-
22 section (k); and

23 (2) by inserting after subsection (i) the fol-
24 lowing new subsection:

1 “(j) NURSING FACILITY QUALITY IMPROVEMENT AC-
2 COUNT.—

3 “(1) ESTABLISHMENT OF NURSING FACILITY
4 QUALITY IMPROVEMENT ACCOUNT.—

5 “(A) IN GENERAL.—There is hereby cre-
6 ated on the books of the Treasury an expendi-
7 ture account to be known as the ‘Nursing Facil-
8 ity Quality Improvement Account’ (in this sub-
9 section referred to as the ‘Account’).

10 “(B) DEPOSIT OF FUNDS IN THE AC-
11 COUNT.—The Secretary shall deposit in the
12 Account—

13 “(i) all substandard care refunds from
14 nursing facilities under subsection (i)(1);
15 and

16 “(ii) amounts withheld under sub-
17 section (i)(3).

18 “(C) APPROPRIATED AMOUNTS FROM SUB-
19 STANDARD CARE REFUNDS.—There are hereby
20 appropriated to the Account such amounts as
21 the Secretary deposits to the Account under
22 this paragraph.

23 “(2) GRANTS FOR IMPROVEMENT OF QUALITY
24 OF CARE.—

1 “(A) IN GENERAL.—Subject to the suc-
2 ceeding provisions of this paragraph, from
3 amounts available in the Account, the Secretary
4 shall make grants to States for the purpose of
5 improving the quality of care furnished in nurs-
6 ing facilities operating in the State.

7 “(B) USE OF GRANT FUNDS.—Grants
8 made available to States under subparagraph
9 (A) may be used for any or all of the following
10 specified purposes:

11 “(i) To enable a nursing facility to re-
12 cruit additional nursing staff or to retain
13 existing nursing staff (including through
14 the use of financial incentives).

15 “(ii) To increase education and train-
16 ing of nursing staff.

17 “(iii) To provide incentives to increase
18 the level of nursing staff in a nursing facil-
19 ity.

20 “(iv) Any other purpose that the Sec-
21 retary determines is likely to improve the
22 quality of care furnished to residents of a
23 nursing facility.

24 “(C) TERMS AND CONDITIONS.—The Sec-
25 retary shall establish such terms and conditions

1 as the Secretary determines to be appropriate
2 for the receipt of grant funds under this para-
3 graph. Such terms and conditions shall include
4 the following requirements:

5 “(i) A State shall develop a plan for
6 the use of grant funds.

7 “(ii) In developing the plan required
8 under clause (i), the State shall consult
9 with representatives of nursing facility
10 residents, of nursing facilities, of nursing
11 staff, and of other interested parties, and
12 shall provide for an opportunity for public
13 comment.

14 “(iii) The State shall submit to the
15 Secretary annual reports on the use of
16 grant funds under the plan.

17 “(D) AGGREGATE AMOUNT OF GRANT
18 FUNDS FOR STATES.—The amount of a grant
19 to a State under this subsection may not exceed
20 the aggregate amount of substandard care re-
21 funds (under subsection (i)) from nursing facili-
22 ties operating in the State.

23 “(E) NONPARTICIPATION BY STATES.—
24 Notwithstanding subparagraph (D), if a State
25 does not receive a grant under this subsection,

1 the Secretary may redistribute, in a manner
2 consistent with section 2104(f), the sub-
3 standard care refunds received from nursing fa-
4 cilities in that State to other States.

5 “(F) LIMITATIONS ON USE OF GRANT
6 AMOUNTS.—A State may not use amounts
7 made available under a grant under this
8 paragraph—

9 “(i) to satisfy any requirement for the
10 expenditure of non-Federal funds as a con-
11 dition for the receipt of Federal funds; or

12 “(ii) to make payments to a nursing
13 facility that is not in compliance with Fed-
14 eral labor and employment laws or that
15 has a pattern of violations of such laws.

16 Amounts made available under a grant under
17 this paragraph shall be in addition to, and may
18 not be used to supplant, any funds that are or
19 would otherwise be expended under any Fed-
20 eral, State, or local law by a State or local gov-
21 ernment.

22 “(G) DEFINITION.—In this subsection and
23 subsection (g)(5)(E), the term ‘nursing staff’
24 means a registered professional nurse, a li-

1 censed practical or licensed vocational nurse, or
2 a certified nurse aide.

3 “(3) ANNUAL AUDITS.—

4 “(A) IN GENERAL.—The Secretary shall
5 conduct annual audits of the use of grant funds
6 made available under paragraph (2). The Sec-
7 retary shall assess the extent to which such
8 funds have resulted in increased nursing staff,
9 reduced nursing staff turnover, increased train-
10 ing of nursing staff, and improvements in the
11 quality of care furnished in nursing facilities lo-
12 cated in States receiving such grant funds.

13 “(B) ADDITIONAL TERMS FOR RECEIPT OF
14 GRANT FUNDS.—As a part of a plan under
15 paragraph (2)(C), the State shall afford the
16 Secretary access to any records or information
17 relating to the plan for the purposes of an audit
18 of the State’s use of grant funds.

19 “(C) ANNUAL REPORT.—The Secretary
20 shall submit to Congress an annual report on
21 the audits conducted under this paragraph.”.

1 **SEC. 4. INCREASED PUBLIC DISCLOSURE OF NURSING**
2 **HOME CONDITIONS.**

3 (a) INTERNET DISCLOSURE.—Section 1919(g)(5) of
4 the Social Security Act (42 U.S.C. 1396r(g)(5)) is amend-
5 ed by adding at the end the following new subparagraph:

6 “(E) PUBLICATION ON THE INTERNET OF
7 NURSING FACILITY INFORMATION.—As soon as
8 practicable, but in no case later than January
9 1, 2002, the Secretary shall make available to
10 the public on the Internet site of the Depart-
11 ment of Health and Human Services, and by
12 such other means as the Secretary determines
13 appropriate, the following information with re-
14 spect to each nursing facility:

15 “(i) COMPLIANCE WITH FACILITY
16 STANDARDS.—A summary of the facility’s
17 compliance or noncompliance with Federal
18 nursing facility standards.

19 “(ii) COPIES OF RECENT SURVEYS.—
20 A copy of the three most recent surveys
21 conducted of the nursing facility under
22 subsection (g).

23 “(iii) COMPLAINTS FILED AGAINST
24 THE FACILITY.—A summary of each com-
25 plaint filed against the nursing facility
26 during the three most recent years and a

1 summary of the outcome or current status
2 of the complaint.

3 “(iv) ENFORCEMENT ACTIONS
4 AGAINST THE FACILITY.—A summary of
5 each enforcement action undertaken by the
6 Secretary or a State during the three most
7 recent years with respect to the facility
8 and a summary of the outcome or current
9 status of the action.

10 “(v) NURSE STAFFING RATIOS.—Data
11 on the nursing staff of the facility for each
12 of the four previous calendar quarters, in-
13 cluding the following ratios:

14 “(I) The ratio of registered pro-
15 fessional nurses to residents of the fa-
16 cility.

17 “(II) The ratio of licensed prac-
18 tical or licensed vocational nurses to
19 residents of the facility.

20 “(III) The ratio of certified nurse
21 aides to residents of the facility.

22 “(IV) The ratio of aggregate
23 nursing staff to residents of the facil-
24 ity.

1 Such data shall include information on
2 such ratios by shift. Such ratios shall be
3 calculated by comparing the number of
4 hours such staff expend providing nursing
5 care to residents of the facility to the num-
6 ber of residents in the facility.

7 “(vi) OWNERSHIP DISCLOSURE.—The
8 identity of the owner and operator of the
9 nursing facility, including an identification
10 of whether the facility is a part of a chain
11 of nursing facilities, and if so, the identity
12 of the chain and the number of facilities in
13 such chain.

14 “(vii) LABOR VIOLATIONS.—Violations
15 of Federal labor and employment laws, and
16 costs incurred for activities directly related
17 to influencing employees with respect to
18 unionization, during the three most recent
19 years.

20 “(viii) OTHER PERTINENT INFORMA-
21 TION.—Any other information that the
22 Secretary determines appropriate to inform
23 the public on conditions and quality of care
24 furnished at the facility.

1 After January 1, 2002, the Secretary shall con-
2 tinuously update the information posted on
3 such Internet site and shall ensure that such in-
4 formation is never more than 90 days out of
5 date.”.

6 (b) POSTING OF STAFFING INFORMATION.—Section
7 1919(c)(8) of the Social Security Act (42 U.S.C.
8 1396r(c)(8)) is amended by inserting before the period the
9 following: “and the nurse staffing ratio information under
10 subsection (g)(5)(E)(v)”.

11 (c) RECORDKEEPING AND REPORTING REQUIRE-
12 MENTS.—Section 1919(d) of the Social Security Act (42
13 U.S.C. 1396r(d)) is amended by adding at the end the
14 following new paragraph:

15 “(5) RECORDKEEPING AND REPORTING RE-
16 QUIREMENTS.—

17 “(A) IN GENERAL.—A nursing facility
18 shall maintain such records and make such re-
19 ports to the Secretary as the Secretary may re-
20 quire for the administration and enforcement of
21 this section, including providing to the Sec-
22 retary such information as the Secretary may
23 require to implement subsection (g)(5)(E). The
24 Secretary may specify the form and manner of
25 any report required under this section, and

1 shall establish a procedure for the electronic
2 transmission of such records.

3 “(B) CERTIFICATION.—A report required
4 under this paragraph shall be certified by the
5 administrator of the nursing facility as being
6 true, accurate, and complete.”.

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