

106TH CONGRESS  
1ST SESSION

# S. 736

To amend titles XVIII and XIX of the Social Security Act to ensure that individuals enjoy the right to be free from restraint, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MARCH 25, 1999

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

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## A BILL

To amend titles XVIII and XIX of the Social Security Act to ensure that individuals enjoy the right to be free from restraint, and for other purposes.

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 “Freedom From Re-  
5       straint Act of 1999”.

1 **SEC. 2. INDIVIDUALS’ RIGHT TO FREEDOM FROM RE-**  
 2 **STRAINT AND REPORTING OF SENTINEL**  
 3 **EVENTS UNDER MEDICARE.**

4 (a) IN GENERAL.—Part D of title XVIII of the Social  
 5 Security Act (42 U.S.C. 1395x et seq.) is amended by add-  
 6 ing at the end the following:

7 “INDIVIDUALS’ FREEDOM FROM RESTRAINT AND  
 8 REPORTING OF SENTINEL EVENTS

9 “SEC. 1897. (a) DEFINITIONS.—In this section:

10 “(1) PROVIDER OF SERVICES.—The term ‘pro-  
 11 vider of services’ has the meaning given that term  
 12 in section 1861(u), except that for purposes of this  
 13 section the term includes a psychiatric hospital but  
 14 does not include a home health agency.

15 “(2) SENTINEL EVENT.—The term ‘sentinel  
 16 event’ means an unexpected occurrence involving an  
 17 individual in the care of a provider of services for  
 18 treatment for a psychiatric or psychological illness  
 19 that results in death or serious physical or psycho-  
 20 logical injury that is unrelated to the natural course  
 21 of the individual’s illness or underlying condition.

22 “(b) PROTECTION OF RIGHT TO BE FREE FROM RE-  
 23 STRAINTS.—A provider of services eligible to be paid  
 24 under this title for providing services to an individual enti-  
 25 tled to benefits under part A or enrolled under part B  
 26 (including an individual provided with a Medicare+Choice

1 plan offered by a Medicare+Choice organization under  
 2 part C) shall—

3 “(1) protect and promote the right of each such  
 4 individual to be free from physical or mental abuse,  
 5 corporal punishment, involuntary seclusion, and any  
 6 physical or chemical restraints imposed for purposes  
 7 of discipline or convenience;

8 “(2) impose restraints—

9 “(A) only to ensure the physical safety of  
 10 the individual or other individuals in the care or  
 11 custody of the provider; and

12 “(B) only upon the written order of a phy-  
 13 sician that specifies the duration and cir-  
 14 cumstances under which the restraints are to be  
 15 used (except in emergency circumstances speci-  
 16 fied by the Secretary until such an order could  
 17 reasonably be obtained); and

18 “(2) submit the reports required under sub-  
 19 section (c).

20 “(c) REPORTS.—

21 “(1) REPORTS TO AGENCIES OR ENTITIES WITH  
 22 OVERSIGHT AUTHORITY.—

23 “(A) IN GENERAL.—A provider of services  
 24 shall report each sentinel event that occurs to

1 an individual while the individual is in the care  
2 or custody of the provider to—

3 “(i) in the case of a provider of serv-  
4 ices participating in the program estab-  
5 lished under this title or the medicaid pro-  
6 gram under title XIX as a result of accred-  
7 itation by a national accrediting body, the  
8 national accrediting body for that provider;  
9 and

10 “(ii) in the case of all other providers  
11 of services, the Secretary or, upon agree-  
12 ment between the Secretary and the rel-  
13 evant State, the State agency designated  
14 by the Secretary.

15 “(B) INVESTIGATION AND FURTHER RE-  
16 PORTING OF SENTINEL EVENTS.—Upon receipt  
17 of a report made pursuant to subparagraph  
18 (A), the agency or entity with oversight author-  
19 ity shall—

20 “(i) ensure that the provider—

21 “(I) conducts an investigation of  
22 the sentinel event reported;

23 “(II) determines the root cause  
24 or causes of the sentinel event; and

1 “(III) establishes a time-limited  
2 plan or strategy, that allows the agen-  
3 cy or entity with oversight authority  
4 to review and approve the analyses  
5 and any corrective actions proposed or  
6 made by the provider of services, to  
7 correct the problem or problems that  
8 resulted in the sentinel event, and to  
9 lead to risk reduction; and

10 “(ii) prepare and submit the reports  
11 required under paragraph (2).

12 “(2) REPORTS TO THE SECRETARY.—

13 “(A) IN GENERAL.—Subject to subpara-  
14 graph (D), the agency or entity with oversight  
15 authority shall submit a report containing the  
16 information described in subparagraph (B) to  
17 the Secretary in such form and manner, and by  
18 such date, as the Secretary prescribes.

19 “(B) INFORMATION TO BE REPORTED.—

20 “(i) IN GENERAL.—The report sub-  
21 mitted under subparagraph (A) shall be  
22 submitted to the Secretary at regular in-  
23 tervals, but not less frequently than annu-  
24 ally, and shall include—

1 “(I) a description of the sentinel  
2 events occurring during the period  
3 covered by the report;

4 “(II) a description of any correc-  
5 tive action taken by the providers of  
6 services with respect to the sentinel  
7 events or any other measures nec-  
8 essary to prevent similar sentinel  
9 events from occurring in the future;

10 “(III) proposed systems changes  
11 identified as a result of analysis of  
12 events from multiple providers; and

13 “(IV) such additional information  
14 as the Secretary determines to be es-  
15 sential to ensure compliance with the  
16 requirements of this section.

17 “(ii) INFORMATION EXCLUDED.—The  
18 report submitted under subparagraph (A)  
19 shall not identify any individual provider of  
20 services, practitioner, or individual.

21 “(C) ADDITIONAL REPORTING REQUIRE-  
22 MENTS WHEN A PROVIDER HAS BEEN IDENTI-  
23 FIED AS HAVING A PATTERN OF POOR PER-  
24 FORMANCE.—

1 “(i) IN GENERAL.—In addition to the  
2 report required under subparagraph (A),  
3 the agency or entity with oversight author-  
4 ity shall report to the Secretary the name  
5 and address of any provider of services  
6 with a pattern of poor performance.

7 “(ii) DETERMINATION OF PATTERN.—  
8 The agency or entity with oversight au-  
9 thority shall determine if a pattern of poor  
10 performance exists with respect to a pro-  
11 vider of services in accordance with the  
12 definition of pattern of poor performance  
13 developed by the Secretary under clause  
14 (iii).

15 “(iii) DEVELOPMENT OF DEFINI-  
16 TION.—The Secretary, in consultation with  
17 national accrediting organizations and oth-  
18 ers, shall develop a definition to identify a  
19 provider of services with a pattern of poor  
20 performance.

21 “(D) AUTHORITY TO WAIVE REPORTING  
22 REQUIREMENT.—The Secretary may waive the  
23 requirement to submit a report required under  
24 this paragraph (but not a report regarding a  
25 sentinel event that resulted in death required

1 under paragraph (3)) upon consideration of the  
 2 severity of the sentinel event.

3 “(3) ADDITIONAL REPORTING REQUIREMENTS  
 4 FOR SENTINEL EVENTS RESULTING IN DEATH.—In  
 5 addition to the report required under paragraph (1),  
 6 a provider of services shall report any sentinel event  
 7 resulting in death to—

8 “(A) the Secretary or the Secretary’s des-  
 9 ignee;

10 “(B) the State Attorney General or, upon  
 11 agreement with the State Attorney General, to  
 12 the appropriate law enforcement agency;

13 “(C) the State agency responsible for li-  
 14 censing the provider of services; and

15 “(D) the State protection and advocacy  
 16 system established pursuant to part C of title I  
 17 of the Developmental Disabilities Assistance  
 18 and Bill of Rights Act (42 U.S.C. 6041 et seq.)  
 19 for the State in which the event occurred.

20 “(4) RESPONSIBILITIES OF THE AGENCY OR  
 21 ENTITY WITH OVERSIGHT AUTHORITY.—Upon re-  
 22 ceipt of a report of a sentinel event that resulted in  
 23 death, the agency or entity with oversight authority  
 24 shall, in addition to the requirements of paragraph  
 25 (2)—



1           “(A) determine whether the death was re-  
2           lated to the use of restraints or seclusion; and

3           “(B) notify the Secretary of the determina-  
4           tion.

5           “(5) SANCTIONS FOR FAILURE TO REPORT.—

6           “(A) IN GENERAL.—The Secretary shall  
7           establish sanctions, including intermediate sanc-  
8           tions, as appropriate, for failure of a provider  
9           of services or an agency or entity with oversight  
10          authority to submit the reports and information  
11          required under this subsection.

12          “(B) REMOVAL OF AGENCY OR ENTITY  
13          WITH OVERSIGHT AUTHORITY.—The Secretary,  
14          after notice to an agency or entity with over-  
15          sight authority of a provider of services, as de-  
16          termined in paragraph (1), and opportunity to  
17          comply, may remove the agency or entity of  
18          such authority if the agency or entity refuses to  
19          submit the reports and information required  
20          under this subsection.

21          “(6) LIABILITY FOR REPORTING.—An indi-  
22          vidual, provider of services, agency, or entity shall be  
23          liable with respect to any information contained in  
24          a report required under this subsection if the indi-  
25          vidual, provider of services, agency, or entity had

1 knowledge of the falsity of the information contained  
2 in the report at the time the report was submitted  
3 under this subsection. Nothing in the preceding sen-  
4 tence shall be construed as limiting the liability of  
5 an individual, provider of services, agency, or entity  
6 for damages relating to the occurrence of a sentinel  
7 event, including a sentinel event that results in  
8 death.

9 “(7) NONDISCLOSURE OF ANALYSIS.—Notwith-  
10 standing any other provision of law or regulation,  
11 the root cause analysis developed under this sub-  
12 section shall be kept confidential and shall not be  
13 subject to disclosure or discovery in a civil action.

14 “(d) ESTABLISHMENT OR DESIGNATION OF SEN-  
15 TINEL EVENTS DATABASE.—

16 “(1) IN GENERAL.—Not later than 1 year after  
17 the date of enactment of this section, the Secretary  
18 shall establish or designate a database of informa-  
19 tion using the reports submitted under paragraphs  
20 (2) and (3) of subsection (c) (in this subsection re-  
21 ferred to as the ‘Sentinel Events Database’).

22 “(2) CONTENTS.—

23 “(A) IN GENERAL.—Subject to subpara-  
24 graph (B), the Sentinel Events Database shall  
25 include the following:

1 “(i) The name and address of any  
2 provider of services that is the subject of  
3 a report submitted under subsection (c)(3),  
4 if the agency or entity with oversight au-  
5 thority has determined that the death was  
6 related to the use of restraints or seclu-  
7 sion.

8 “(ii) The information reported by the  
9 agency or entity under subparagraphs (B)  
10 and (C) of subsection (c)(2).

11 “(B) CONFIDENTIALITY.—The Secretary  
12 shall establish procedures to ensure that the  
13 privacy of individuals whose treatment is the  
14 subject of a report submitted under paragraph  
15 (2) or (3) of subsection (c) is protected.

16 “(3) PROCEDURES FOR ENTRY OF INFORMA-  
17 TION.—

18 “(A) IN GENERAL.—The Secretary shall—

19 “(i) prior to entry of information in  
20 the Sentinel Events Database, disclose the  
21 information to the provider of services that  
22 is the subject of the information; and

23 “(ii) establish procedures to—

24 “(I) resolve disputes regarding  
25 the accuracy of the information; and

1 “(II) ensure the accuracy of the  
2 information.

3 “(B) NO DELAY OF SANCTIONS.—Any  
4 sanction to be imposed by the Secretary against  
5 a provider of services or an agency or entity  
6 with oversight authority in relation to a sentinel  
7 event shall not be delayed as a result of a dis-  
8 pute regarding the accuracy of information to  
9 be entered into the database.

10 “(4) ACCESS TO THE DATABASE.—

11 “(A) AVAILABILITY.—The Secretary shall  
12 establish procedures for making the information  
13 maintained in the Sentinel Events Database re-  
14 lated to a sentinel event resulting in death, and  
15 any reports of sentinel injuries arising from  
16 those providers of services with a pattern of  
17 poor performance identified in accordance with  
18 subsection (c)(2)(C), available to Federal and  
19 State agencies, national accrediting bodies,  
20 health care researchers, and the public.

21 “(B) INTERNET ACCESS.—In addition to  
22 any other procedures that the Secretary devel-  
23 ops under subparagraph (A), the information in  
24 the Sentinel Events Database shall be accessible  
25 through the Internet.

1 “(C) FEES FOR DISCLOSURE.—

2 “(i) IN GENERAL.—Subject to clause  
3 (ii), the Secretary may establish or approve  
4 reasonable fees for disclosing information  
5 maintained in the Sentinel Events Data-  
6 base.

7 “(ii) NO FEE FOR FEDERAL AGEN-  
8 CIES.—No fee shall be charged to a Fed-  
9 eral agency for access to the Sentinel  
10 Events Database.

11 “(iii) APPLICATION OF FEES.—Fees  
12 collected under this clause shall be applied  
13 by the Secretary toward the cost of main-  
14 taining the Sentinel Events Database.”.

15 (b) EFFECTIVE DATE.—

16 (1) IN GENERAL.—Subject to paragraph (2),  
17 the amendments made by this section take effect on  
18 the date of enactment of this Act.

19 (2) REPORTING REQUIREMENTS.—The report-  
20 ing requirements under section 1897(c) of the Social  
21 Security Act, as added by subsection (a), shall apply  
22 to sentinel events occurring on and after the date of  
23 enactment of this Act.

1 **SEC. 3. INDIVIDUALS' RIGHT TO FREEDOM FROM RE-**  
 2 **STRAINT AND REPORTING OF SENTINEL**  
 3 **EVENTS UNDER MEDICAID.**

4 (a) STATE PLANS FOR MEDICAL ASSISTANCE.—Sec-  
 5 tion 1902(a) of the Social Security Act (42 U.S.C.  
 6 1396a(a)) is amended—

7 (1) in paragraph (65), by striking the period  
 8 and inserting “; and”; and

9 (2) by adding at the end the following:

10 “(66) provide that the State will ensure that  
 11 any congregate care provider (as defined in section  
 12 1905(v)) that provides services to an individual for  
 13 which medical assistance is available shall—

14 “(A) protect and promote the right of each  
 15 individual to be free from physical or mental  
 16 abuse, corporal punishment, involuntary seclu-  
 17 sion, and any physical or chemical restraints  
 18 imposed for purposes of discipline or conven-  
 19 ience;

20 “(B) impose restraints only—

21 “(i) to ensure the physical safety of  
 22 the individual or other individuals; and

23 “(ii) upon the written order of a phy-  
 24 sician that specifies the duration and cir-  
 25 cumstances under which the restraints are  
 26 to be used (except in emergency cir-

1                   cumstances specified by the Secretary until  
2                   such an order could reasonably be ob-  
3                   tained); and

4                   “(C) submit the reports required under  
5                   subsection (c) of section 1897 (relating to sen-  
6                   tinel events) in the same manner as a provider  
7                   of services under that section is required to  
8                   submit such reports.”.

9           (b) DEFINITION OF CONGREGATE CARE PRO-  
10   VIDER.—Section 1905 of the Social Security Act (42  
11   U.S.C. 1396d) is amended by adding at the end the fol-  
12   lowing:

13           “(v) The term ‘congregate care provider’ means an  
14   entity that provides hospital services, nursing facility serv-  
15   ices, services of intermediate care facilities for the men-  
16   tally retarded, hospice care, residential treatment centers  
17   for children, services in an institution for mental diseases,  
18   inpatient psychiatric hospital services for individuals  
19   under age 21, or congregate care services under a waiver  
20   authorized under section 1915(c).”.

21           (c) EFFECTIVE DATE.—

22           (1) IN GENERAL.—Subject to paragraph (2),  
23           the amendments made by this section take effect on  
24           the date of enactment of this Act.

1           (2) REPORTING REQUIREMENTS.—The report-  
2       ing requirements under section 1902(a)(66)(C) of  
3       the Social Security Act (42 U.S.C.  
4       1396a(a)(66)(C)), as added by subsection (a), shall  
5       apply to sentinel events occurring on and after the  
6       date of enactment of this Act.

○