

106TH CONGRESS
1ST SESSION

S. 840

To amend title 11, United States Code, to provide for health care and employee benefits, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 20, 1999

Mr. GRASSLEY (for himself, Mr. TORRICELLI, and Mr. LEAHY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 11, United States Code, to provide for health care and employee benefits, 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. DEFINITIONS.**

4 (a) HEALTH CARE BUSINESS DEFINED.—Section
5 101 of title 11, United States Code, is amended by insert-
6 ing after paragraph (27) the following:

7 “(27A) ‘health care business’—

8 “(A) means any public or private entity
9 (without regard to whether that entity is orga-
10 nized for profit or not for profit) that is pri-

marily engaged in offering to the general public
facilities and services for—

“(i) the diagnosis or treatment of injury, deformity, or disease; and

“(ii) surgical, drug treatment, psychiatric or obstetric care; and

“(B) includes—

“(i) any—

“(I) general or specialized hospital;

“(II) ancillary ambulatory, emergency, or surgical treatment facility;

“(III) hospice;

“(IV) home health agency; and

“(V) other health care institution that is similar to an entity referred to in subclause (I), (II), (III), or (IV); and

“(ii) any long-term care facility, including any—

“(I) skilled nursing facility;

“(II) intermediate care facility;

“(III) assisted living facility;

“(IV) home for the aged;

“(V) domiciliary care facility; and

1 “(VI) health care institution that
2 is related to a facility referred to in
3 subclause (I), (II), (III), (IV), or (V),
4 if that institution is primarily engaged
5 in offering room, board, laundry, or
6 personal assistance with activities of
7 daily living and incidentals to activi-
8 ties of daily living;”.

9 (b) PATIENT DEFINED.—Section 101 of title 11,
10 United States Code, as amended by subsection (a) of this
11 section, is amended by inserting after paragraph (40) the
12 following:

13 “(40A) ‘patient’ means any person who obtains
14 or receives services from a health care business;”.

15 (d) PATIENT RECORDS DEFINED.—Section 101 of
16 title 11, United States Code, as amended by subsection
17 (b) of this section, is amended by inserting after para-
18 graph (40A) the following:

19 “(40B) ‘patient records’ means any written doc-
20 ument relating to a patient or record recorded in a
21 magnetic, optical, or other form of electronic me-
22 dium;”.

1 **SEC. 2. DISPOSAL OF PATIENT RECORDS.**

2 (a) IN GENERAL.—Subchapter III of chapter 3 of
3 title 11, United States Code, is amended by adding at the
4 end the following:

5 **“§ 351. Disposal of patient records**

6 “If a health care business commences a case under
7 chapter 7, 9, or 11, and the trustee does not have a suffi-
8 cient amount of funds to pay for the storage of patient
9 records in the manner required under applicable Federal
10 or State law, the following requirements shall apply:

11 “(1) The trustee shall mail, by certified mail, a
12 written request to each appropriate Federal or State
13 agency to request permission from that agency to
14 deposit the patient records with that agency.

15 “(2) If no appropriate Federal or State agency
16 agrees to permit the deposit of patient records re-
17 ferred to in paragraph (1) by the date that is 60
18 days after the trustee mails a written request under
19 that paragraph, the trustee shall—

20 “(A) publish notice, in 1 or more appro-
21 priate newspapers, that if those patient records
22 are not claimed by the patient or an insurance
23 provider (if applicable law permits the insur-
24 ance provider to make that claim) by the date
25 that is 60 days after the date of that notifica-

tion, the trustee will destroy the patient records; and

“(B) during the 60-day period described in subparagraph (A), the trustee shall attempt to notify directly each patient that is the subject of the patient records concerning the patient records by mailing to the last known address of that patient an appropriate notice regarding the claiming or disposing of patient records.

“(3) If, after providing the notification under paragraph (2), patient records are not claimed during the 60-day period described in paragraph (2)(A) or in any case in which a notice is mailed under paragraph (2)(B), during the 90-day period beginning on the date on which the notice is mailed, by a patient or insurance provider in accordance with that paragraph, the trustee shall destroy those records by—

“(A) if the records are written, shredding or burning the records; or

“(B) if the records are magnetic, optical, or other electronic records, by otherwise destroying those records so that those records cannot be retrieved.”.

1 (b) CLERICAL AMENDMENT.—The chapter analysis
 2 for chapter 3 of title 11, United States Code, is amended
 3 by inserting after the item relating to section 350 the fol-
 4 lowing:

“351. Disposal of patient records.”.

5 **SEC. 3. ADMINISTRATIVE EXPENSE CLAIM FOR COSTS OF**
 6 **CLOSING A HEALTH CARE BUSINESS.**

7 Section 503(b) of title 11, United States Code, is
 8 amended—

9 (1) in paragraph (5), by striking “and” at the
 10 end;

11 (2) in paragraph (6), by striking the period at
 12 the end and inserting “; and”; and

13 (3) by adding at the end the following:

14 “(7) the actual, necessary costs and expenses of
 15 closing a health care business incurred by a trustee,
 16 including any cost or expense incurred—

17 “(A) in disposing of patient records in ac-
 18 cordance with section 351; or

19 “(B) in connection with transferring pa-
 20 tients from the health care business that is in
 21 the process of being closed to another health
 22 care business.”.

23 **SEC. 4. APPOINTMENT OF OMBUDSMAN TO ACT AS PA-**
 24 **TIENT ADVOCATE.**

25 (a) IN GENERAL.—

1 (1) APPOINTMENT OF OMBUDSMAN.—Sub-
2 chapter II of chapter 3 of title 11, United States
3 Code, is amended by inserting after section 331 the
4 following:

5 **“§ 332. Appointment of ombudsman**

6 “(a) Not later than 30 days after a case is com-
7 menced by a health care business under chapter 7, 9, or
8 11, the court shall appoint an ombudsman to represent
9 the interests of the patients of the health care business.

10 “(b) An ombudsman appointed under subsection (a)
11 shall—

12 “(1) monitor the quality of patient care, to the
13 extent necessary under the circumstances, including
14 reviewing records and interviewing patients and phy-
15 sicians;

16 “(2) not later than 60 days after the date of
17 appointment, and not less frequently than every 60
18 days thereafter, report to the court, at a hearing or
19 in writing, regarding the quality of patient care at
20 the health care business involved; and

21 “(3) if the ombudsman determines that the
22 quality of patient care is declining significantly or is
23 otherwise being materially compromised, notify the
24 court by motion or written report, with notice to ap-

1 appropriate parties in interest, immediately upon mak-
 2 ing that determination.

3 “(c) An ombudsman shall maintain any information
 4 obtained by the ombudsman under this section that relates
 5 to patients (including information relating to patient
 6 records) as confidential information.”.

7 (2) CLERICAL AMENDMENT.—The chapter anal-
 8 ysis for chapter 3 of title 11, United States Code,
 9 is amended by inserting after the item relating to
 10 section 331 the following:

“332. Appointment of ombudsman.”.

11 (b) COMPENSATION OF OMBUDSMAN.—Section
 12 330(a)(1) of title 11, United States Code, is amended—

13 (1) in the matter proceeding subparagraph (A),
 14 by inserting “an ombudsman appointed under sec-
 15 tion 331, or” before “a professional person”; and

16 (2) in subparagraph (A), by inserting “ombuds-
 17 man,” before “professional person”.

18 **SEC. 5. DEBTOR IN POSSESSION; DUTY OF TRUSTEE TO**
 19 **TRANSFER PATIENTS.**

20 (a) IN GENERAL.—Section 704(a) of title 11, United
 21 States Code, is amended—

22 (1) in paragraph (8), by striking “and” at the
 23 end;

24 (2) in paragraph (9), by striking the period and
 25 inserting “; and”; and

1 (3) by adding at the end the following:

2 “(10) use all reasonable and best efforts to
3 transfer patients from a health care business that is
4 in the process of being closed to an appropriate
5 health care business that—

6 “(A) is in the vicinity of the health care
7 business that is closing;

8 “(B) provides the patient with services
9 that are substantially similar to those provided
10 by the health care business that is in the proc-
11 ess of being closed; and

12 “(C) maintains a reasonable quality of
13 care.”.

14 (b) CONFORMING AMENDMENT.—Section 1106(a)(1)
15 of title 11, United States Code, is amended by striking
16 “and 704(9)” and inserting “704(9), and 704(10)”.

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