

108TH CONGRESS
1ST SESSION

H. R. 78

To amend title XVIII of the Social Security Act to require hospitals reimbursed under the Medicare system to establish and implement security procedures to reduce the likelihood of infant patient abduction and baby switching, including procedures for identifying all infant patients in the hospital in a manner that ensures that it will be evident if infants are missing from the hospital.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 7, 2003

Ms. JACKSON-LEE of Texas introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on the Judiciary and Energy and Commerce, 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 title XVIII of the Social Security Act to require hospitals reimbursed under the Medicare system to establish and implement security procedures to reduce the likelihood of infant patient abduction and baby switching, including procedures for identifying all infant patients in the hospital in a manner that ensures that it will be evident if infants are missing from the hospital.

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.**

2 This Act may be cited as the “Infant Protection and
3 Baby Switching Prevention Act of 2003”.

4 **SEC. 2. MEDICARE AND MEDICAID PAYMENTS TO HOS-**
5 **PITALS CONTINGENT ON IMPLEMENTATION**
6 **OF SECURITY PROCEDURES REGARDING IN-**
7 **FANT PATIENT PROTECTION AND BABY**
8 **SWITCHING.**

9 (a) **AGREEMENTS WITH HOSPITALS.**—Section
10 1866(a)(1) of the Social Security Act (42 U.S.C.
11 1395cc(a)(1)) is amended—

12 (1) in subparagraph (R), by striking “and” at
13 the end;

14 (2) in subparagraph (S), by striking the period
15 at the end and inserting “, and”, and

16 (3) by inserting after subparagraph (S) the fol-
17 lowing new subparagraph:

18 “(T) in the case of hospitals and critical access
19 hospitals that provide neonatal or infant care, to
20 have in effect security procedures that meet stand-
21 ards established by the Secretary (in consultation
22 with appropriate organizations) to reduce the likeli-
23 hood of infant patient abduction and baby switching,
24 including standards for identifying all infant pa-
25 tients in the hospital in a manner that ensures that

1 it will be evident if infants are missing from the hos-
2 pital.”.

3 (b) REGULATIONS.—

4 (1) IN GENERAL.—In promulgating regulations
5 under subparagraph (T) of section 1866(a)(1) of
6 such Act (42 U.S.C. 1395cc(a)(1)), as added by sub-
7 section (a), the Secretary of Health and Human
8 Services shall—

9 (A) consult with various organizations rep-
10 resenting consumers, appropriate State and
11 local regulatory agencies, hospitals, and critical
12 access hospitals,

13 (B) take into account variations in size
14 and location of hospitals and critical access hos-
15 pitals, and the percentage of overall services
16 furnished by such hospitals and critical access
17 hospitals that neonatal care and infant care
18 represent, and

19 (C) promulgate specific regulations that
20 address each size and type of hospital covered.

21 (2) DEADLINE FOR PUBLICATION.—Not later
22 than 12 months after the date of the enactment of
23 this Act, the Secretary shall publish the regulations
24 required under paragraph (1). In order to carry out
25 this requirement in a timely manner, the Secretary

1 may promulgate regulations that take effect on an
2 interim basis, after notice and pending opportunity
3 for public comment.

4 (c) PENALTIES.—

5 (1) AMOUNT OF PENALTY.—A hospital that
6 participates in the Medicare program under title
7 XVIII of the Social Security Act under an agree-
8 ment pursuant to section 1866 of such Act (42
9 U.S.C. 1395cc) that commits a violation described in
10 paragraph (2) of this subsection is subject to a civil
11 money penalty of not more than \$50,000 (or not
12 more than \$25,000 in the case of a hospital with
13 less than 100 beds) for each such violation.

14 (2) VIOLATION DESCRIBED.—A hospital de-
15 scribed in paragraph (1) commits a violation for
16 purposes of this subsection if the hospital fails to
17 have in effect security procedures that meet stand-
18 ards established by the Secretary under section
19 1866(a)(1)(T) of such Act, as added by subsection
20 (a), to reduce the likelihood of infant patient abduc-
21 tion and baby switching, including standards for
22 identifying all infant patients in the hospital in a
23 manner that ensures that it will be evident if infants
24 are missing from the hospital.

1 (3) ADMINISTRATIVE PROVISIONS.—The provi-
2 sions of section 1128A of such Act (42 U.S.C.
3 1320a–7a), other than subsections (a) and (b), shall
4 apply to a civil money penalty under this subsection
5 in the same manner as such provisions apply with
6 respect to a penalty or proceeding under section
7 1128A(a).

8 (d) EFFECTIVE DATE.—The amendments made by
9 this section shall take effect 18 months after the date of
10 the enactment of this Act and apply to the entry and re-
11 newal of contracts under section 1866 of such Act (42
12 U.S.C. 1395cc) on or after such date.

13 **SEC. 3. BABY SWITCHING PROHIBITED.**

14 (a) IN GENERAL.—Chapter 55 of title 18, United
15 States Code, is amended by adding at the end the fol-
16 lowing:

17 **“§ 1205. Baby switching**

18 “(a) Whoever being in interstate commerce knowingly
19 alters or destroys an identification record of a newborn
20 patient with the intention that the newborn patient be
21 misidentified by any person shall be fined not more than
22 \$250,000 in the case of an individual and not more than
23 \$500,000 in the case of an organization, or imprisoned
24 not more than ten years, or both.

1 “(b) As used in this section, the term ‘identification
2 record’ means a record maintained by a hospital to aid
3 in the identification of newborn patients of the hospital,
4 including any of the following:

5 “(1) The footprint, fingerprint, or photograph
6 of the newborn patient.

7 “(2) A written description of the infant.

8 “(3) An identification bracelet or anklet put on
9 the newborn patient, or the mother of the newborn
10 patient, by a staff member of the hospital.”.

11 (b) CLERICAL AMENDMENT.—The table of sections
12 at the beginning of chapter 55 of title 18, United States
13 Code, is amended by adding at the end the following new
14 item:

“1205. Baby switching.”.

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