

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.

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## 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

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## 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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