

107TH CONGRESS  
1ST SESSION

# S. 728

To establish a demonstration project to waive certain nurse aide training requirements for specially trained individuals who perform certain specific tasks in nursing facilities participating in the medicare or medicaid programs, and to conditionally authorize the use of resident assistants in such nursing facilities.

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## IN THE SENATE OF THE UNITED STATES

APRIL 6, 2001

Mr. KOHL (for himself, Mr. DORGAN, and Mr. CONRAD) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To establish a demonstration project to waive certain nurse aide training requirements for specially trained individuals who perform certain specific tasks in nursing facilities participating in the medicare or medicaid programs, and to conditionally authorize the use of resident assistants in such nursing facilities.

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 “Medicare and Medicaid  
5       Nursing Services Quality Improvement Act of 2001”.

1 **SEC. 2. DEMONSTRATION PROJECT TO WAIVE CERTAIN**  
2 **NURSE AIDE TRAINING REQUIREMENTS FOR**  
3 **SPECIALLY TRAINED INDIVIDUALS WHO PER-**  
4 **FORM CERTAIN COVERED TASKS IN MEDI-**  
5 **CARE AND MEDICAID NURSING FACILITIES.**

6 (a) DEMONSTRATION PROJECT.—Not later than Oc-  
7 tober 1, 2001, the Secretary shall conduct a demonstra-  
8 tion project under which a resident assistant may perform  
9 a covered task for a resident of a covered nursing facility  
10 in a demonstration State.

11 (b) REQUIREMENTS.—

12 (1) MINIMUM STAFFING REQUIREMENTS NOT  
13 AFFECTED.—A resident assistant performing a cov-  
14 ered task under this section—

15 (A) may augment, but not replace, existing  
16 staff of a covered nursing facility; and

17 (B) shall not be counted toward meeting or  
18 complying with any requirements for nursing  
19 care staff and functions of such a facility, in-  
20 cluding any minimum nursing staffing require-  
21 ment imposed under section 1819 or 1919 of  
22 the Social Security Act (42 U.S.C. 1395i–3,  
23 1396r).

24 (2) EXCLUSION OF PARTICIPATION.—

25 (A) BASED ON REPLACEMENT OF CER-  
26 TIFIED NURSING STAFF.—

1 (i) IN GENERAL.—Subject to clause  
2 (ii), the Secretary may exclude from par-  
3 ticipation in the demonstration project any  
4 covered facility that the Secretary deter-  
5 mines (on the basis of data submitted  
6 under subsection (c) or otherwise) has re-  
7 placed certified nurse assistants with resi-  
8 dent assistants.

9 (ii) LIMITATION.—The Secretary may  
10 not exclude a facility under clause (i) un-  
11 less the Secretary has reviewed all perti-  
12 nent data that may reflect on a reduction  
13 of nursing staff in the facility, including  
14 changes in resident population and case  
15 mix.

16 (B) BASED ON POOR TREATMENT  
17 RECORDS OR INSUFFICIENT LICENSED  
18 STAFF.—The Secretary may exclude from par-  
19 ticipation in the demonstration project any cov-  
20 ered nursing facility that a State survey agency  
21 recommends be excluded because of unsatisfac-  
22 tory treatment records or insufficient licensed  
23 staff to provide supervision of resident assist-  
24 ants.

25 (c) DATA COLLECTION.—

1 (1) DATA REGARDING INITIAL WORKFORCE.—

2 (A) IN GENERAL.—At the beginning of a  
3 covered nursing facility's participation in the  
4 demonstration project, the facility shall submit  
5 to the appropriate State agency of the dem-  
6 onstration State independently verifiable data  
7 regarding the composition of the facility's work-  
8 force at the time such participation commences.

9 (B) DATA REGARDING RESIDENT ASSIST-  
10 ANTS.—Such data shall include—

11 (i) the number of resident assistants  
12 in the facility hired solely to perform cov-  
13 ered tasks and the number of such assist-  
14 ants performing additional tasks; and

15 (ii) the number of residents of the fa-  
16 cility who are served by such resident as-  
17 sistants.

18 (C) TRANSMITTAL OF DATA TO SEC-  
19 RETARY.—The State agency shall forward such  
20 data to the Secretary.

21 (2) DATA REGARDING PERFORMANCE OF RESI-  
22 DENT ASSISTANTS.—Each such facility shall submit  
23 to such State agency data, at such times and in such  
24 manner as the Secretary may require, regarding the

1 performance of covered tasks by resident assistants  
2 under the demonstration project.

3 (3) TRANSMISSION OF DATA TO THE SEC-  
4 RETARY.—The State agency shall forward data col-  
5 lected under this subsection to the Secretary. The  
6 Secretary shall compile data collected under this sec-  
7 tion with data collected pursuant to sections 1819  
8 and 1919 of the Social Security Act (42 U.S.C.  
9 1395i–3, 1396r) for purposes of excluding a facility  
10 from participation in the project under subsection  
11 (b)(2) and performing the analysis under subsection  
12 (d)(2).

13 (d) REPORTS TO CONGRESS.—

14 (1) ANNUAL REPORTS.—Not later than Decem-  
15 ber 1 of each of 2002 and 2003, the Secretary shall  
16 submit to Congress a report on the project, and in-  
17 clude an analysis that meets the requirements of  
18 paragraph (3).

19 (2) FINAL REPORT.—Not later than December  
20 1, 2004, the Secretary shall submit a report to Con-  
21 gress required under section 3(c)(2)(B) that includes  
22 the recommendations of the advisory panel convened  
23 under paragraph (4).

24 (3) ANALYSIS REQUIREMENTS.—The analysis  
25 required under paragraph (1) shall—

1 (A)(i) examine the effect of resident assist-  
2 ants on the quality of resident care in facilities  
3 in demonstration States, and

4 (ii) compare such quality of resident care  
5 with the quality of resident care in facilities in  
6 other States,  
7 by employing quality indicators determined by  
8 the Secretary, including with regard to nutri-  
9 tion and hydration, nutrition and hydration lev-  
10 els, unplanned weight loss or gain, and the  
11 number of citations for nutrition-related viola-  
12 tions relating to such residents;

13 (B) examine the effect of resident assist-  
14 ants on staffing levels and ratios in covered  
15 nursing facilities, including staffing levels for  
16 duties performed by resident assistants in other  
17 capacities in the facility (such as housekeeping  
18 or claims processing);

19 (C) measure the effect that the presence of  
20 such resident assistants has on certified nurse  
21 assistants, including—

22 (i) recruitment and retention within  
23 the certified nurse assistant profession;

24 (ii) wage structures in effect for such  
25 certified nursing assistants during the

1 demonstration project and, in particular,  
2 whether payment under such structures  
3 decreased as a result of the use of resident  
4 assistants; and

5 (iii) instances of resident assistants  
6 being promoted to certified nurse assistant  
7 positions; and

8 (D) examine resident satisfaction with re-  
9 spect to nutrition and hydration services pro-  
10 vided by resident assistants.

11 (4) ADVISORY PANEL.—

12 (A) DUTIES.—Not later than November 1,  
13 2003, the Secretary shall convene an advisory  
14 panel that shall—

15 (i) review and evaluate the data col-  
16 lected in accordance with subsection (c);  
17 and

18 (ii) submit recommendations on the  
19 use or improvement of resident assistants  
20 in covered nursing facilities.

21 (B) MEMBERSHIP.—The advisory panel  
22 convened under subparagraph (A) shall consist  
23 of representatives of the following:

1 (i) The Health Care Financing Ad-  
 2 ministration of the Department of Health  
 3 and Human Services.

4 (ii) National and local organizations  
 5 representing for-profit and nonprofit cov-  
 6 ered nursing facilities.

7 (iii) Consumer groups.

8 (iv) State long-term care ombudsmen  
 9 or other nursing facility resident advocates  
 10 of the State.

11 (v) Labor organizations.

12 (vi) State survey and licensure agen-  
 13 cies.

14 (vii) Licensed health care providers.

15 (viii) Dietitians.

16 (ix) Speech therapists.

17 (x) Any other entities or individuals  
 18 that the Secretary deems appropriate.

19 (e) AUTHORIZATION OF APPROPRIATIONS.—There is  
 20 authorized to be appropriated such sums as may be nec-  
 21 essary to carry out this section.

22 (f) DEFINITIONS.—In this section:

23 (1) DEMONSTRATION STATE.—The term “dem-  
 24 onstration State” means—

25 (A) Wisconsin,

1 (B) North Dakota, and

2 (C) not more than 6 States (other than  
3 Wisconsin and North Dakota) as selected by  
4 the Secretary which, as of the date of enact-  
5 ment of this Act, have established or proposed  
6 a project, program, or policy to permit individ-  
7 uals who do not meet nurse aide training re-  
8 quirements to perform a covered task.

9 (2) COVERED NURSING FACILITY.—The term  
10 “covered nursing facility” means—

11 (A) a skilled nursing facility (as that term  
12 is defined in section 1819(a) of the Social Secu-  
13 rity Act (42 U.S.C. 1395i–3(a))), and

14 (B) a nursing facility (as that term is de-  
15 fined in section 1919(a) of the Social Security  
16 Act (42 U.S.C. 1396r(a))).

17 (3) RESIDENT ASSISTANT.—

18 (A) IN GENERAL.—The term “resident as-  
19 sistant” means an individual who does not meet  
20 nurse aide training requirements (as defined in  
21 paragraph (5)) but who does meet the require-  
22 ments specified in subparagraph (B).

23 (B) RESIDENT ASSISTANT REQUIRE-  
24 MENTS.—For purposes of subparagraph (A),

1 the requirements specified in this subparagraph  
2 are the following:

3 (i) The individual has successfully  
4 completed an initial training program ad-  
5 ministered by the facility that meets the  
6 requirements of subparagraph (C) and  
7 subsequent competency evaluations, as re-  
8 viewed and approved by the demonstration  
9 State (which, with respect to the training  
10 program, may be during the facility's  
11 standard survey).

12 (ii) The individual is performing a  
13 covered task under the onsite supervision  
14 (as defined in paragraph (6)) of a licensed  
15 health professional (as defined in section  
16 1819(b)(5)(G) of the Social Security Act  
17 (42 U.S.C. 1395i-3(b)(5)(G))).

18 (iii) In the case of an individual per-  
19 forming a feeding and hydration covered  
20 task, the determination of the residents  
21 who may receive such a task from a resi-  
22 dent assistant shall be based on the needs  
23 and potential risks to the resident, as ob-  
24 served and documented in the resident's  
25 written plan of care and the comprehensive

1 assessment of the resident's functional ca-  
2 pacity required under section 1818(b) or  
3 1919(b) of the Social Security Act (42  
4 U.S.C. 1395i-3(b), 1396r(b)).

5 (iv) The individual complies with any  
6 other limitations on performance of duties  
7 which may be established by the dem-  
8 onstration State.

9 (C) TRAINING PROGRAM REQUIRE-  
10 MENTS.—For purposes of subparagraph (B)(i),  
11 a training program shall—

12 (i) relate to the performance of the  
13 covered task to be performed by the indi-  
14 vidual; and

15 (ii) include—

16 (I) feeding skills and assistance  
17 with eating;

18 (II) the importance of good nu-  
19 trition and hydration, including famil-  
20 iarity with signs of malnutrition and  
21 dehydration;

22 (III) an overview of the aging  
23 and disease process, as it relates to  
24 nutrition and hydration services;

1 (IV) how to respond to a choking  
 2 emergency and alert licensed staff to  
 3 other health emergencies;

4 (V) universal precautions for the  
 5 prevention of the spread of commu-  
 6 nicable diseases; and

7 (VI) a statement of residents'  
 8 rights.

9 (4) COVERED TASK.—

10 (A) IN GENERAL.—The term “covered  
 11 task” means feeding and hydration.

12 (B) EXCLUSIONS.—Such term does not  
 13 include—

14 (i) administering medication,

15 (ii) providing direct medical care, in-  
 16 cluding taking vital signs, skin care, or  
 17 wound care, or

18 (iii) performing range of motion or  
 19 other therapeutic exercises with residents.

20 (5) NURSE AIDE TRAINING REQUIREMENTS.—

21 The term “nurse aide training requirements” means  
 22 the requirements of sections 1819(b)(5)(F) and  
 23 1919(b)(5)(F) of the Social Security Act (42 U.S.C.  
 24 1395i–3(b)(5)(F) and 1396r(b)(5)(F)) relating to  
 25 nurse aides.

1           (6) ONSITE SUPERVISION.—The term “onsite  
2 supervision” means that a licensed health profes-  
3 sional referred to in paragraph (3)(B)(ii) is in the  
4 unit or floor where services are being provided, and  
5 is readily available to provide assistance if necessary.

6           (7) SECRETARY.—The term “Secretary” means  
7 the Secretary of Health and Human Services.

8           (8) DEMONSTRATION PROJECT.—The term  
9 “demonstration project” means the demonstration  
10 project conducted under this section.

11           (9) STATE.—The term “State” has the mean-  
12 ing given such term for purposes of titles XVIII and  
13 XIX of the Social Security Act (42 U.S.C. 1395 et  
14 seq., 1396 et seq.).

15 **SEC. 3. AUTHORIZING THE USE OF RESIDENT ASSISTANTS**  
16 **IN NURSING FACILITIES RECEIVING PAY-**  
17 **MENTS UNDER THE MEDICARE OR MEDICAID**  
18 **PROGRAM.**

19           (a) IN GENERAL.—Subsection (b) of sections 1819  
20 and 1919 (42 U.S.C. 1395i–3, 1396r) of the Social Secu-  
21 rity Act, as amended by section 941 of the Medicare, Med-  
22 icaid, and SCHIP Benefits Improvement and Protection  
23 Act of 2000, as enacted into law by section 1(a)(6) of Pub-  
24 lic Law 106–554, are each amended by adding at the end  
25 the following new paragraph:

1           “(9) USE OF RESIDENT ASSISTANTS.—

2           “(A) IN GENERAL.—Subject to the suc-  
3           ceeding provisions of this paragraph, a skilled  
4           nursing facility may use a resident assistant to  
5           perform a covered task for a resident of the fa-  
6           cility that would otherwise be performed by a  
7           nurse aide.

8           “(B) DEFINITION.—The term ‘resident as-  
9           sistant’ means an individual—

10           “(i) who has successfully completed  
11           an initial training program and com-  
12           petency evaluation, and subsequent com-  
13           petency evaluations, approved by the State  
14           under subsection (e)(6); and

15           “(ii) who is competent to perform a  
16           covered task.

17           “(C) REQUIREMENT FOR ONSITE SUPER-  
18           VISION.—A resident assistant may only perform  
19           a covered task under the supervision of a li-  
20           censed health professional (as defined in para-  
21           graph (5)(G)) who is present in the unit or  
22           floor where the covered task is performed and  
23           who is readily available to provide assistance to  
24           the resident assistant.

1           “(D) REQUIREMENT FOR DETERMINATION  
2 OF APPROPRIATE PATIENTS.—A resident assist-  
3 ant may only perform a covered task for a resi-  
4 dent who is approved for such purpose based on  
5 the needs of, and potential risks to, the resi-  
6 dent, as observed and documented in the resi-  
7 dent’s written plan of care and the comprehen-  
8 sive assessment of the resident’s functional ca-  
9 pacity required under this subsection.

10           “(E) ADDITIONAL REQUIREMENTS.—The  
11 individual complies with any other limitations  
12 on performance of duties which may be estab-  
13 lished by the State in which the covered task is  
14 performed.

15           “(F) MINIMUM STAFFING REQUIREMENTS  
16 NOT AFFECTED.—A resident assistant shall not  
17 be counted toward meeting or complying with  
18 any requirement for nursing care staff and  
19 functions of such facilities under this section,  
20 including any minimum nursing staffing re-  
21 quirement.

22           “(G) COVERED TASK DEFINED.—For pur-  
23 poses of this section, the term ‘covered task’  
24 means feeding and hydration.”.

1 (b) SPECIFICATION OF TRAINING PROGRAM AND  
 2 COMPETENCY EVALUATION STANDARDS.—

3 (1) REQUIREMENT FOR STANDARDS.—Sub-  
 4 section (e) of such sections are each amended by  
 5 adding at the end the following new paragraph:

6 “(6) SPECIFICATION AND REVIEW OF RESIDENT  
 7 ASSISTANT TRAINING PROGRAMS AND COMPETENCY  
 8 EVALUATION AND OF RESIDENT ASSISTANT COM-  
 9 PETENCY EVALUATIONS.—The State must—

10 “(A) specify those initial training programs  
 11 and competency evaluations, and those subse-  
 12 quent competency evaluations, that the State  
 13 approves for purposes of subsection (b)(9) and  
 14 that meet the requirements established under  
 15 subsection (f)(8), and

16 “(B) provide for the review and reapproval  
 17 of such evaluations, at a frequency and using a  
 18 methodology consistent with the requirements  
 19 established under subsection (f)(8).”.

20 (2) SPECIFICATION OF STANDARDS.—Sub-  
 21 section (f) of such sections are each amended by  
 22 adding at the end the following new paragraph:

23 “(8) REQUIREMENTS FOR RESIDENT ASSISTANT  
 24 TRAINING PROGRAMS AND COMPETENCY EVALUA-

1 TIONS AND FOR RESIDENT ASSISTANT COMPETENCY  
2 EVALUATIONS.—

3 “(A) IN GENERAL.—For purposes of sub-  
4 sections (b)(9) and (e)(6), the Secretary shall  
5 establish requirements for the approval of resi-  
6 dent assistant training programs and com-  
7 petency evaluations administered by the facility,  
8 including—

9 “(i) requirements described in sub-  
10 paragraph (B),

11 “(ii) minimum hours of initial and on-  
12 going training and retraining,

13 “(iii) qualifications of instructors,

14 “(iv) procedures for determination of  
15 competency, and

16 “(v) the minimum frequency and  
17 methodology to be used by a State in re-  
18 viewing compliance with the requirements  
19 for such evaluations.

20 “(B) REQUIREMENTS DESCRIBED.—For  
21 purposes of subparagraph (A), the requirements  
22 described in this subparagraph are the fol-  
23 lowing:

24 “(i) Feeding skills and assistance with  
25 eating.

1           “(ii) The importance of good nutrition  
2           and hydration, including familiarity with  
3           signs of malnutrition and dehydration.

4           “(iii) An overview of the aging and  
5           disease process, as it relates to nutrition  
6           and hydration services.

7           “(iv) How to respond to a choking  
8           emergency and alert licensed staff to other  
9           health emergencies.

10           “(v) Universal precautions for the  
11           prevention of the spread of communicable  
12           diseases.

13           “(vi) Residents’ rights.

14           “(C) SPECIAL RULE FOR STATE DEM-  
15           ONSTRATION PARTICIPANTS.—In the case of a  
16           State that was a demonstration State (as that  
17           term is defined in subsection (f)(1) of section 2  
18           of the Medicare and Medicaid Nursing Services  
19           Quality Improvement Act of 2001), to the ex-  
20           tent that the demonstration State has in effect  
21           any requirement for the approval of resident as-  
22           sistant training programs and competency eval-  
23           uations that meets or exceeds the same require-  
24           ment that the Secretary establishes under this  
25           paragraph, notwithstanding subsection

1 (b)(9)(B)(i) resident assistants who performed  
2 the covered task in facilities in that State under  
3 that demonstration project—

4 “(i) do not have to complete the entire  
5 initial training program and competency  
6 evaluation required under that subsection;  
7 and

8 “(ii) shall only be required to meet  
9 those requirements for such approval that  
10 the Secretary establishes under this para-  
11 graph that the State does not have in ef-  
12 fect.”.

13 (c) CONTINGENT EFFECTIVE DATE.—(1) The  
14 amendments made by this section shall become effective  
15 (if at all) in accordance with paragraph (2).

16 (2)(A) Not later than December 1, 2004, the Sec-  
17 retary of Health and Human Services (in this paragraph  
18 referred to as the “Secretary”) shall submit to Congress  
19 a report on the results of the demonstration project estab-  
20 lished under section 2 that analyzes the effect on resident  
21 care in authorizing the use of resident assistants to fur-  
22 nish feeding and hydration services to residents in skilled  
23 nursing facilities under the medicare program and resi-  
24 dents in nursing facilities under the medicaid program in  
25 the demonstration States.

1       (B) Such project shall be discontinued, and the  
2 amendments made by this section shall become effective,  
3 on January 1, 2005, unless the Secretary includes in that  
4 report a finding, on the basis of data collected under sec-  
5 tion 2(e) that—

6           (i) authorizing the use of such resident assist-  
7 ants to furnish such services diminishes the quality  
8 of feeding and hydration services furnished to resi-  
9 dents of those facilities; or

10          (ii) any decreased recruitment and retention of  
11 nursing staff of those facilities and reduced salaries  
12 for such nursing staff is directly attributable to the  
13 use of such resident assistants to furnish such serv-  
14 ices.

○