

109<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 686

To amend title XVIII of the Social Security Act to provide whistleblower protection to employees of clinical laboratories who furnish services under the Medicare Program, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 9, 2005

Mr. CUMMINGS (for himself and Mr. RUPPERSBERGER) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, 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

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## A BILL

To amend title XVIII of the Social Security Act to provide whistleblower protection to employees of clinical laboratories who furnish services under the Medicare Program, 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 “Clinical Laboratory  
5 Compliance Improvement Act of 2005”.

1 **SEC. 2. PROTECTION OF EMPLOYEES OF PROVIDERS AND**  
2 **SUPPLIERS OF CLINICAL DIAGNOSTIC LAB-**  
3 **ORATORY TESTS WHO REPORT VIOLATIONS.**

4 (a) IN GENERAL.—Section 1846 of the Social Secu-  
5 rity Act (42 U.S.C. 1395w–2) is amended by adding at  
6 the end the following new subsection:

7 “(c)(1)(A) Each provider or clinical laboratory ap-  
8 proved for participation under this title to provide clinical  
9 diagnostic laboratory tests shall post in a conspicuous  
10 place a notice to employees that indicates the manner in  
11 which to report instances of noncompliance with condi-  
12 tions of participation under this title of the provider or  
13 laboratory (as the case may be), including deficiencies with  
14 respect to testing, quality, and inadequately trained per-  
15 sonnel.

16 “(B)(i) A notice under subparagraph (A) shall in-  
17 clude—

18 “(I) the name and contact information of the  
19 appropriate entity, accreditation organization, or  
20 State or Federal agency to report instances of non-  
21 compliance; and

22 “(II) a description of the rights and protections  
23 under this section of individuals who report in-  
24 stances of noncompliance.

25 “(ii) The Secretary shall specify the form of the no-  
26 tice.

1           “(2)(A) A provider or clinical laboratory approved for  
2 participation under this title to provide clinical diagnostic  
3 laboratory tests shall not discriminate or retaliate in any  
4 manner against any employee of the provider or laboratory  
5 (as the case may be) because that employee, or any other  
6 person, has presented a grievance or complaint, or has ini-  
7 tiated or cooperated in any investigation or proceeding of  
8 any kind, relating to the clinical diagnostic laboratory  
9 tests performed by the provider or laboratory (as the case  
10 may be) or other requirements and prohibitions of this  
11 title.

12           “(B) An employee of a provider or clinical laboratory  
13 approved for participation under this title to provide clin-  
14 ical diagnostic laboratory tests who has been discriminated  
15 or retaliated against in employment in violation of this  
16 subsection may initiate judicial action in a United States  
17 District Court and shall be entitled to reinstatement, reim-  
18 bursement for lost wages and work benefits caused by the  
19 unlawful acts of the employing provider or laboratory (as  
20 the case may be). Prevailing employees are entitled to rea-  
21 sonable attorney’s fees and costs associated with pursuing  
22 the judicial action.

23           “(C) No action may be brought under subparagraph  
24 (B) more than 2 years after the discrimination or retalia-  
25 tion with respect to which the action is brought.

1 “(D) For purposes of this paragraph—

2 “(i) an adverse employment action shall be  
3 treated as ‘retaliation or discrimination’; and

4 “(ii) an adverse employment action includes—

5 “(I) the failure to promote an individual or  
6 provide any other employment-related benefit  
7 for which the individual would otherwise be eli-  
8 gible;

9 “(II) an adverse evaluation or decision  
10 made in relation to accreditation, certification,  
11 credentialing, or licensing of the individual; and

12 “(III) a personnel action that is adverse to  
13 the individual concerned.”

14 (b) CLERICAL AMENDMENT.—The heading of such  
15 section is amended by adding at the end the following:  
16 “; **WHISTLEBLOWER PROTECTIONS.**”

17 (c) EFFECTIVE DATE.—The amendment made by  
18 subsection (a) shall take effect January 1, 2006.

19 **SEC. 3. REQUIREMENT FOR UNANNOUNCED SURVEYS.**

20 (a) IN GENERAL.—Section 1846 of the Social Secu-  
21 rity Act (42 U.S.C. 1395w-2), as amended by section  
22 2(a), is further amended by adding at the end the fol-  
23 lowing new subsections:

24 “(d)(1) Upon receipt by an investigative organization  
25 of a report of an instance of noncompliance with condi-

1 tions of participation by a provider or clinical laboratory  
2 approved for participation under this title to provide clin-  
3 ical diagnostic laboratory tests, the investigative organiza-  
4 tion shall—

5           “(A) provide notice to the Secretary and other  
6           investigative organizations involved of receipt of the  
7           report within 3 business days of such receipt using  
8           a standard format and manner of transmission de-  
9           veloped by the Secretary for such purpose;

10           “(B) promptly determine whether to investigate  
11           the report; and

12           “(C) if appropriate, promptly investigate the re-  
13           port.

14           “(2) In measuring performance of an investigative or-  
15           ganization under a contract entered into with the Sec-  
16           retary, the Secretary shall provide for appropriate adjust-  
17           ments to payments under the contract for failure to carry  
18           out the responsibilities of this subsection.

19           “(3) In this subsection, the term ‘investigative orga-  
20           nization’ means an accreditation organization, a State  
21           agency, or other entity responsible for surveys of such pro-  
22           viders or clinical laboratories.

23           “(e)(1) Each provider or clinical laboratory approved  
24           for participation under this title to provide clinical diag-  
25           nostic laboratory tests shall be subject to a standard sur-

1 vey, to be conducted without any prior notice to the pro-  
2 vider or laboratory (as the case may be). Each survey shall  
3 include verification of compliance with requirements under  
4 subsection (c).

5 “(2) Any individual who notifies (or causes to be noti-  
6 fied) in advance a provider or laboratory of the time or  
7 date on which such a survey is scheduled to be conducted  
8 is subject to a civil money penalty not to exceed \$2,000.

9 “(3) The Secretary shall review each State’s proce-  
10 dures for the scheduling and conduct of standard surveys  
11 to assure that the State has taken all reasonable steps  
12 to avoid giving notice of such a survey through the sched-  
13 uling procedures and the conduct of the surveys them-  
14 selves.

15 “(f) The Secretary shall submit to Congress an an-  
16 nual report on the actions taken under this section. Each  
17 report shall include information on reports made under  
18 subsection (c), actions taken under subsection (d), the  
19 promptness with which such actions were taken, the find-  
20 ings of any investigation of such reports, and any actions  
21 taken based upon such findings.”

22 (b) CLERICAL AMENDMENT.—The heading of such  
23 section, as amended by section 2(b), is further amended  
24 by adding at the end the following: “; **UNANNOUNCED**  
25 **SURVEYS.**”

1           (c) EFFECTIVE DATE.—The amendment made by  
2 subsection (a) shall take effect January 1, 2006.

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