

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 1044

To amend title XVIII of the Social Security Act to provide for the enforcement of standards relating to the rights of patients in certain medical facilities.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 23, 1993

Mrs. BYRNE introduced the following bill; which was referred jointly to the Committees on Ways and Means and Energy and Commerce

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## A BILL

To amend title XVIII of the Social Security Act to provide for the enforcement of standards relating to the rights of patients in certain medical facilities.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*  
3       That (a)(1) sections 1861(e)(9) and 1861(j)(15) of the  
4       Social Security Act (relating to qualifications of hospitals  
5       and skilled nursing facilities) are each amended by strik-  
6       ing out “health and safety” and inserting in lieu thereof  
7       “health, safety, and rights”.



1 payee of a patient pursuant to section 205(j) of this  
2 Act; and

3 “(3) require the staff of the facility to be  
4 trained and involved in the implementation of these  
5 policies and procedures.

6 “(b) A facility’s policies and procedures regarding  
7 rights of patients of the facility must at least ensure that  
8 the following patients’ rights are provided:

9 “(1) INFORMATION ON PATIENT RIGHTS.—A  
10 patient’s right to be fully informed, as evidenced by  
11 the patient’s written acknowledgment, before or at  
12 the time of admission and during stay of these  
13 rights and of all rules and regulations governing pa-  
14 tient conduct and responsibility.

15 “(2) INFORMATION ON SERVICES AND  
16 CHARGES.—A patient’s right (A) to be fully in-  
17 formed, and given a written statement before or at  
18 the time of admission and during stay, of services  
19 available in the facility and of related charges for  
20 such services, including any charges for services not  
21 covered under this title or title XIX or not covered  
22 by the facility’s basic per diem rate, and (B) to be  
23 informed in writing at least 30 days in advance of  
24 any changes in the availability of services or in the  
25 charges for these services.

1           “(3) INFORMATION ON AND PARTICIPATION IN  
2 MEDICAL TREATMENT.—A patient’s right (A) to be  
3 fully informed by a physician of the patient’s medi-  
4 cal condition, unless medically contraindicated for a  
5 specified and limited period of time (as documented,  
6 by a physician, in the patient’s medical record), (B)  
7 to be afforded the opportunity to participate in the  
8 planning of his medical treatment, and (C) to refuse  
9 to participate in experimental research.

10           “(4) CONDITIONS OF TRANSFER OR DIS-  
11 CHARGE.—A patient’s right (A) to be transferred  
12 within the facility or discharged from the facility  
13 only for medical reasons, for his welfare or that of  
14 other patients, or for nonpayment of his stay (except  
15 as prohibited by this title or title XIX), (B) to be  
16 informed before admission of the causes for such a  
17 transfer or discharge, (C) to be given 30 days’ ad-  
18 vance notice of such a transfer or discharge (except  
19 for emergencies threatening the health or safety of  
20 the patient), and (D) to be given sufficient prepara-  
21 tion and orientation to ensure safe and orderly  
22 transfer or discharge and adjustment and to have  
23 this preparation and orientation documented in his  
24 medical record.

1           “(5) GRIEVANCES.—A patient’s right to be as-  
2           sisted, throughout his period of stay, in his exercise  
3           of his rights as a patient and as a citizen, and to  
4           this end the patient’s right to file complaints under  
5           section 1883, voice grievances, and recommend  
6           changes in policies and service to the staff of the fa-  
7           cility and to outside representatives of his choice (in-  
8           cluding representatives of governmental agencies ad-  
9           ministering the programs under this title and title  
10          XIX) free from restraint, interference, coercion, dis-  
11          crimination, or reprisal.

12           “(6) MANAGEMENT OF PERSONAL FINANCIAL  
13          AFFAIRS.—A patient’s right to manage his personal  
14          financial affairs or be given, at least quarterly, an  
15          itemized accounting of financial transactions made  
16          on his behalf whenever the facility accepts his writ-  
17          ten delegation of this responsibility for any period of  
18          time in conformance with State law.

19           “(7) FREEDOM FROM ABUSE AND RE-  
20          STRAINTS.—A patient’s right—

21                   “(A) to be free from mental and physical  
22                   abuse, and

23                   “(B) to be free from chemical and physical  
24                   restraints, except (i) as authorized in writing by  
25                   a physician for a specified and limited period of

1 time, or (ii) in emergencies when necessary to  
2 protect the patient from injury to himself or to  
3 others (in which case notice of the use of such  
4 restraints, and an explanation of the cir-  
5 cumstances thereof, shall be promptly provided  
6 to the attending physician and noted in the pa-  
7 tient's medical record).

8 “(8) CONFIDENTIALITY OF TREATMENT AND  
9 MEDICAL RECORDS.—A patient's right—

10 “(A) to be assured confidential treatment  
11 of his personal and medical records, and

12 “(B) to approve or refuse the release of  
13 such records to any individual outside the facil-  
14 ity, except in the case of a transfer to another  
15 health care institution or as required by law or  
16 third-party payment contract.

17 “(9) DIGNITY AND PRIVACY.—A patient's right  
18 to be treated with consideration, respect, and full  
19 recognition of his dignity and individuality, including  
20 privacy in treatment and in care for his personal  
21 needs.

22 “(10) WORK REQUIREMENTS.—A patient's  
23 right not to be required to perform services for the  
24 facility.

1           “(11) FREEDOM OF ASSOCIATION.—A patient’s  
2 right to associate and communicate privately (in  
3 writing or otherwise) with persons of his choice.

4           “(12) PARTICIPATION IN ACTIVITIES OF  
5 CHOICE.—A patient’s right to meet with, and par-  
6 ticipate in activities of, social, religious, and commu-  
7 nity groups at his discretion.

8           “(13) USE OF PERSONAL POSSESSIONS.—A pa-  
9 tient’s right to retain and use his personal clothing  
10 and possessions as space permits, unless to do so  
11 would infringe upon rights of other patients, and to  
12 be provided security in storing possessions.

13           “(14) PRIVACY FOR MARRIED PATIENTS.—A  
14 married patient’s right to be assured privacy in vis-  
15 its by the patient’s spouse and, if spouses are both  
16 patients in the facility, the right of the patients to  
17 share the same room if they so desire.

18           “(c) The patient’s rights and responsibilities specified  
19 in paragraphs (1) through (4) of subsection (b), as they  
20 pertain to a patient adjudicated incompetent in accordance  
21 with State law, devolve to the patient’s guardian, next of  
22 kin, sponsoring agency (or agencies), or relative or other  
23 person serving as representative payee under section  
24 205(j) of this Act (except when the facility itself is rep-  
25 resentative payee).

1           “ENFORCEMENT OF PATIENT’S RIGHTS

2           “SEC. 1883. (a) The Secretary shall establish, by reg-  
3 ulation, a schedule of the maximum amount of civil pen-  
4 alties which may be imposed under this section for the  
5 violation of each of the patient’s rights set forth in section  
6 1882(b). No such penalty shall exceed \$500 for a single  
7 violation, except that the civil penalty for a violation of  
8 a patient’s right, under paragraph (5) of such section, to  
9 file a complaint under this section free from restraint, in-  
10 terference, coercion, discrimination, or reprisal shall not  
11 exceed \$1,000. The Secretary shall define in those regula-  
12 tions what constitutes a separate violation for purposes  
13 of this section.

14          “(b)(1) Any patient, or any person on behalf of such  
15 a patient, who claims to have had a right under section  
16 1882(b) violated by the facility may submit a complaint,  
17 written or oral, with the appropriate enforcing agency (as  
18 defined in subsection (f)). No such complaint with respect  
19 to a violation shall be considered by an enforcing agency  
20 under this section unless it is filed with the agency within  
21 180 days after the date the alleged violation occurred.

22          “(2) Upon receiving a complaint concerning a facility  
23 under paragraph (1), an enforcing agency shall promptly  
24 notify the facility of the complaint (including the date,  
25 place, and circumstances of the alleged violation), shall in-

1 vestigate the complaint (keeping confidential insofar as  
2 possible the identity of the complainant and the name of  
3 the patient or patients involved if the complainant is not  
4 such a patient), and shall provide the complainant with  
5 a written report thereon within 30 days of the date the  
6 complaint was filed. A copy of the report of the agency,  
7 including the complaint (with identities of the complainant  
8 and any patients deleted), shall be made part of the  
9 permanent files of the agency and made available to the  
10 public.

11 “(c)(1)(A) If, as a result of an investigation con-  
12 ducted under subsection (b)(2), the enforcing agency de-  
13 termines that a facility has not violated any patients’  
14 rights under section 1882(b), the enforcing agency shall  
15 notify the facility and the complainant of such determina-  
16 tion.

17 “(B) If, as a result of such an investigation, the en-  
18 forcing agency determines that a facility has violated one  
19 or more patients’ rights under section 1882(b), the enforc-  
20 ing agency shall endeavor to provide appropriate adjust-  
21 ment with respect to any such alleged violation (and to  
22 prevent future similar violations) by informal methods of  
23 conference, conciliation, and persuasion. Nothing said or  
24 done during and as part of such informal endeavors may  
25 be made public by the enforcing agency or used as evi-

1 dence in a subsequent proceeding without the written con-  
2 sent of the persons concerned. If after such endeavors (but  
3 in a period no longer than 30 days), the enforcing agency  
4 is not able to secure from the facility a conciliation agree-  
5 ment or other understanding acceptable to the agency and  
6 the complainant, the agency shall assess against the facil-  
7 ity a civil penalty (determined in accordance with the  
8 schedule developed under subsection (a)) by an order  
9 made—

10           “(i) after written notice (including notice of the  
11           enforcing agency’s proposed order and the facility’s  
12           opportunity to request, within 15 days after the date  
13           the notice is received, a hearing on the proposed  
14           order), and

15           “(ii) after opportunity for a hearing in accord-  
16           ance with procedures to be specified by the Sec-  
17           retary in regulations.

18           “(2) Such an order shall provide that the penalty  
19 shall be paid (in accordance with subsection (d)(2)) to the  
20 enforcing agency and the agency shall promptly make pay-  
21 ment to patients (or heirs of patients, in the case of de-  
22 ceased patients) in accordance with the penalties assessed  
23 for violation of their rights. Notwithstanding any other  
24 provision of law, civil penalties paid to any individual in  
25 accordance with this paragraph shall not constitute in-

1 come or resources or otherwise be taken into account (A)  
2 for purposes of determining the eligibility of the individ-  
3 ual, or the family or household of the individual, for assist-  
4 ance under a State plan approved under title XIX, or for  
5 aid, assistance, or benefits in any form under any Federal  
6 program, or any State or local program financed in whole  
7 or in part with Federal funds, which conditions such eligi-  
8 bility to any extent upon the income or resources of the  
9 individual, family, or household, or (B) for purposes of de-  
10 termining the amount or extent of such aid, assistance,  
11 or benefits.

12       “(3) An enforcing agency may suspend imposition of  
13 an order of assessment against a facility if the facility can  
14 provide assurances, satisfactory to the agency, that the fa-  
15 cility has taken such actions as will prevent the reoccur-  
16 rence of the violation (and similar violations) from which  
17 the order results. To the extent that the enforcing agency  
18 determines, based on a later complaint or investigation,  
19 that such actions have not been taken in accordance with  
20 such assurances, the agency shall reimpose such an order.

21       “(d)(1)(A) Not later than 60 days after the final ac-  
22 tion of an enforcing agency with respect to a complaint  
23 or suspension of an order of assessment under this section,  
24 any person adversely affected or aggrieved by the action  
25 is entitled to judicial review thereof in the appropriate

1 United States district court or State court of competent  
2 jurisdiction. The provisions of sections 701(b)(2), and 702  
3 through 706 of title 5, United States Code, shall apply  
4 to such reviews.

5 “(B) Where a patient or facility brings an action for  
6 review of a determination by an enforcing agency which  
7 is not in the patient’s or facility’s favor, respectively, and  
8 the action is determined to constitute harassment of the  
9 facility or patient, respectively, the patient or facility shall  
10 be liable to the enforcing agency for all the agency’s legal  
11 fees and costs (including reasonable attorney’s fees) in  
12 connection with the action.

13 “(2)(A) If an enforcing agency has issued a final  
14 order of an assessment of a penalty against a facility  
15 and—

16 “(i) the order has not been suspended under  
17 subsection (c)(3), the facility shall pay the amount  
18 of the penalty to the enforcing agency within 60  
19 days after the date the order becomes final, or

20 “(ii) the order has been suspended but has been  
21 reimposed, the facility shall pay the amount of the  
22 penalty to the enforcing agency within 60 days after  
23 the date the order was reimposed.

24 “(B)(i) The agency will hold any such amounts paid  
25 to it in escrow and, except as provided in clause (ii), shall

1 make payment of it, in accordance with subsection (b)(2),  
2 at the end of the applicable 60-day period described in  
3 subparagraph (A).

4 “(ii) If judicial review of such an order of an enforc-  
5 ing agency has been sought, the agency shall make pay-  
6 ment of any penalty collected at the conclusion of the re-  
7 view and in accordance with the order of the court.

8 “(3) If a facility fails to make timely payment of a  
9 civil penalty according to paragraph (2), the enforcing  
10 agency shall recover the amount assessed (plus interest  
11 at currently prevailing rates from the last date of such  
12 60-day period) in an action brought in any appropriate  
13 district court of the United States or State court of com-  
14 petent jurisdiction and shall hold or transfer it in the man-  
15 ner provided in that paragraph.

16 “(e) The imposition of a civil penalty under this sec-  
17 tion shall not preclude, and shall be in addition to, any  
18 other monetary damages recoverable by, or other relief  
19 available to, patients or enforcing agencies as a result of  
20 violation of patients’ rights.

21 “(f) For purposes of this section, the term ‘enforcing  
22 agency’ means, with respect to an alleged violation occur-  
23 ring in a State in which the Secretary—

1           “(1) has entered into an agreement under sec-  
2           tion 1864(d)(1), the appropriate State or local agen-  
3           cy or agencies specified in that agreement, or

4           “(2) has not entered into such an agreement,  
5           such office within the Department of Health, Edu-  
6           cation, and Welfare as the Secretary shall designate  
7           by regulation.”.

8           (c) Section 1864 of such Act is amended by adding  
9           at the end the following new subsection:

10          “(d)(1) The Secretary shall make an agreement with  
11          any State which is able and willing to do so and has an  
12          agreement under subsection (a) under which the agency  
13          (or agencies) under subsection (a) will serve as an appro-  
14          priate agency for the purpose of enforcing patients’ rights  
15          under section 1883. The Secretary shall pay for the serv-  
16          ices of such an agency in the manner prescribed in sub-  
17          section (b).

18          “(2) Any agreement under this section with a State  
19          with regard to determining whether a facility meets the  
20          standards relating to patients’ rights and described in sec-  
21          tion 1882 shall include a provision that each routine cer-  
22          tification survey of such a facility shall include a private  
23          meeting between patients and survey personnel to discuss  
24          patients’ experiences within the facility as regards such  
25          rights and compliance with such standards generally.”.

1 (d) Section 1865(a) of such Act is amended by insert-  
2 ing after the second sentence the following new sentence:  
3 “No institution shall be so deemed to meet standards re-  
4 lating to patients’ rights and described in section 1882  
5 unless the accreditation survey of the institution includes  
6 a private meeting between patients and survey personnel  
7 to discuss patients’ experiences within the institution as  
8 regards such rights and compliance with such standards  
9 generally.”.

10 SEC. 2. The Secretary of Health, Education, and  
11 Welfare shall first publish proposed regulations for carry-  
12 ing out the amendments made by this Act not later than  
13 six months after the date of the enactment of this Act  
14 and such regulations shall first become final and fully ef-  
15 fective on the first day of the ninth month which begins  
16 after the date of the enactment of this Act.

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