

WAIVER OF MEDICARE AND MEDICAID NURSING FACILITY
PROHIBITION

MARCH 13, 1997.—Ordered to be printed

Mr. ARCHER, from the Committee on Ways and Means,
submitted the following

REPORT

[To accompany H.R. 968]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 968) to amend title XVIII and XIX of the Social Security Act to permit a waiver of the prohibition of offering nurse aide training and competency evaluation programs in certain nursing facilities, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

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The amendments (stated in terms of the page and line numbers of the introduced bill) are as follows:

Page 2, line 12, strike “(iii)” and insert “(iii)(I)”.

Page 2, line 14, insert “(or skilled nursing facility for purposes of title XVIII)” after “nursing facility”.

I. INTRODUCTION

A. PURPOSE AND SUMMARY

H.R. 968 amends title XVIII and title XIX of the Social Security Act to permit a waiver of the prohibition on offering nurse aide training and competency evaluation programs in certain nursing facilities. This measure permits a State to waive the current prohibition if the State: (1) determines that there is no other program offered within a reasonable distance of the facility; (2) assures, through an oversight effort, that an adequate environment exists for operating the program in the facility; and, (3) provides notice of such determination to the State long-term care ombudsman.

B. BACKGROUND AND NEED FOR LEGISLATION

Under current law, a nursing facility may lose its ability to offer facility-based nurse aide training and competency evaluation programs for reasons that may be unrelated to the quality of its training activities. This unintended consequence of current law arises from instances in which a deficiency may exist, but may be unrelated to the nurse aide training and evaluation programs, and is being or has been corrected. As a result, nursing facilities, particularly those in rural communities, face difficulties filling staff positions because they are prevented from conducting on-site nurse aide training and evaluation programs.

This measure would revise current law to permit the continuation of nurse aide training and competency evaluation programs in affected facilities under certain circumstances. In order for a facility to continue its training and evaluation programs, the State in which the facility is located would have to make a determination that no similar program is in existence within a reasonable distance of the facility, conduct oversight activities to ensure that an adequate environment exists for operating the program in the facility, and provide notice of such determination to the State long-term care ombudsman. The Committee and the Administration agree that these training programs should continue under certain circumstances.

C. LEGISLATIVE HISTORY

Committee bill

H.R. 968 was introduced March 6, 1997 by Mr. Ehrlich of Maryland, et al., and referred to the Committee on Ways and Means, and in addition, to the Committee on Commerce. The bill, as introduced, contained a provision to permit a waiver of the prohibition of offering nurse aide training and competency evaluation programs in certain nursing facilities. The Committee on Ways and Means considered the bill on March 12, 1997, and ordered the bill favorably reported, without amendment, by voice vote, with a quorum present.

Legislative hearing

The Committee of Ways and Means held a hearing on Medicare payment and policy issues related to skilled nursing facilities on March 4, 1997.

II. EXPLANATION OF THE BILL

PERMIT A WAIVER OF THE PROHIBITION OF OFFERING NURSE AIDE TRAINING AND COMPETENCY EVALUATION PROGRAMS IN CERTAIN NURSING FACILITIES (SEC. 1 OF THE BILL AND SEC. 4201(f)(1) OF OBRA 1987)

Present law

Under Medicare and Medicaid, nursing facilities must comply with federal and state laws regarding nurse aide training and competency evaluation programs. OBRA 1987 required the Secretary of Health and Human Services to establish and enforce such requirements. As such, if a nursing facility has been subject to an extended (or partial extended) survey, it is prohibited from operating a nurse aide training and competency evaluation program.

Explanation of provision

The provision would permit a waiver of the prohibition of offering nurse aide training and competency evaluation programs in certain nursing facilities if the State: (1) determines there is no other training program within a reasonable distance of the facility; (2) assures that an adequate environment exists for operating the program in the facility; and, (3) provides notice to the State long-term care ombudsman.

Reasons for change

Nursing facilities in rural areas face difficulties recruiting nurse aides; many rural areas have no such training facilities, making it difficult to recruit nurse aides which may affect patient care. Nursing home providers, particularly those located in rural communities, have raised concerns about the prohibition on nurse aide training and competency evaluation programs in a facility as the result of being subject to an extended (or partial extended) survey.

Effective date

The provision is effective upon enactment.

III. VOTE OF THE COMMITTEE

In compliance with clause 2(l)(2)(B) of rule XI of the Rules of the House of Representatives, the following statement is made concerning the vote of the Committee in its consideration of the bill, H.R. 968:

MOTION TO REPORT THE BILL

The bill, H.R. 968, was ordered favorably reported by voice vote on March 12, 1997, with a quorum present.

IV. BUDGET EFFECTS OF THE BILL

A. COMMITTEE ESTIMATE OF BUDGETARY EFFECTS

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of this bill, H.R. 968, as reported: The Committee agrees with the estimate prepared by CBO which is included below.

B. STATEMENT REGARDING NEW BUDGET AUTHORITY AND TAX EXPENDITURES

In compliance with subdivision (B) of clause 2(1)(3) rule XI of the Rules of the House of Representatives, the Committee states that the provisions of H.R. 968 do not involve any new budget authority, or any increase or decrease in revenues or tax expenditures.

C. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET OFFICE

In compliance with subdivision (C) of clause 2(1)(3) of rule XI of the Rules of the House of Representatives, requiring a cost estimate prepared by the Congressional Budget Office, the following report prepared by CBO is provided.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 13, 1997.

Hon. BILL ARCHER,
*Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 968, a bill to permit a waiver of the prohibition of offering nurse aide training and competency evaluation programs in certain nursing facilities.

If you wish for further details on this estimate, we will be pleased to provide them. The CBO staff contact is Robin Rudowitz.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

H.R. 968—A bill to permit a waiver of the prohibition of offering nurse aide training and competency evaluation programs in certain nursing facilities

CBO estimates that enactment of this bill would have no budgetary impact.

Nursing facilities must meet certain requirements to be certified for payment by the Medicare and Medicaid programs. Among these are provisions included in the Omnibus Budget Reconciliation Act of 1987 that require nursing facilities to conduct nurse aid training and competency evaluation programs. However, the Secretary can approve such programs at nursing facilities only under certain conditions. In rural areas where there are no nearby training programs, the bill would allow the Secretary to waive some of the restrictions so that a training program could be conducted at a nurs-

ing facility as long as the program was not conducted by the nursing facility.

This bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 (UMRA) and would impose no costs on state, local, or tribal governments.

The CBO staff contact for the estimate is Robin Rudowitz. This estimate was approved by Paul N. Van de Water, Assistant Director for Budget Analysis.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to subdivision (A) of clause 2(l)(3) of rule XI of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that it was as a result of its oversight activities with respect to the Medicare program that the Committee concluded that it is appropriate to enact the provision contained in the bill as reported.

B. SUMMARY OF FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

With respect to subdivision (D) of clause 2(l)(3) of rule XI of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that no oversight findings or recommendations have been submitted to this Committee by the Committee on Government Reform and Oversight with respect to the provisions contained in this bill.

C. CONSTITUTIONAL AUTHORITY STATEMENT

With respect to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, relating to Constitutional Authority, the Committee states that the Committee's action in reporting the bill is derived from Article I of the Constitution, Section 8 ("The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and to provide for * * * the general Welfare of the United States * * *").

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

THE SOCIAL SECURITY ACT

* * * * *

TITLE XVIII—HEALTH INSURANCE FOR THE AGED AND DISABLED

* * * * *

REQUIREMENTS FOR, AND ASSURING QUALITY OF CARE IN, SKILLED
NURSING FACILITIES

SEC. 1819. (a) * * *

* * * * *

(f) RESPONSIBILITIES OF SECRETARY RELATING TO SKILLED NURS-
ING FACILITY REQUIREMENTS.—

(1) GENERAL RESPONSIBILITY.—It is the duty and responsibil-
ity of the Secretary to assure that requirements which govern
the provision of care in skilled nursing facilities under this
title, and the enforcement of such requirements, are adequate
to protect the health, safety, welfare, and rights of residents
and to promote the effective and efficient use of public moneys.

(2) REQUIREMENTS FOR NURSE AIDE TRAINING AND COM-
PETENCY EVALUATION PROGRAMS AND FOR NURSE AIDE COM-
PETENCY EVALUATION PROGRAMS.—

(A) * * *

(B) APPROVAL OF CERTAIN PROGRAMS.—Such require-
ments—

(i) * * *

* * * * *

(iii) *subject to subparagraph (C)*, shall prohibit ap-
proval of such a program—

(I) * * *

* * * * *

(C) WAIVER AUTHORIZED.—*Clause (iii)(I) of subparagraph
(B) shall not apply to a program offered in (but not by) a
nursing facility (or skilled nursing facility for purposes of
title XVIII) in a State if the State—*

*(i) determines that there is no other such program of-
fered within a reasonable distance of the facility,*

*(ii) assures, through an oversight effort, that an ade-
quate environment exists for operating the program in
the facility, and*

*(iii) provides notice of such determination and assur-
ances to the State long-term care ombudsman.*

* * * * *

TITLE XIX—GRANTS TO STATES FOR MEDICAL ASSISTANCE
PROGRAMS

* * * * *

REQUIREMENTS FOR NURSING FACILITIES

SEC. 1919. (a) * * *

* * * * *

(f) RESPONSIBILITIES OF SECRETARY RELATING TO NURSING FACIL-
ITY REQUIREMENTS.—

(1) GENERAL RESPONSIBILITY.—It is the duty and responsibil-
ity of the Secretary to assure that requirements which govern
the provision of care in nursing facilities under State plans ap-
proved under this title, and the enforcement of such require-

ments, are adequate to protect the health, safety, welfare, and rights of residents and to promote the effective and efficient use of public moneys.

(2) REQUIREMENTS FOR NURSE AIDE TRAINING AND COMPETENCY EVALUATION PROGRAMS AND FOR NURSE AIDE COMPETENCY EVALUATION PROGRAMS.—

(A) * * *

(B) APPROVAL OF CERTAIN PROGRAMS.—Such requirements—

(i) * * *

* * * * *

(iii) *subject to subparagraph (C)*, shall prohibit approval of such a program—

(I) * * *

* * * * *

(C) WAIVER AUTHORIZED.—*Clause (iii)(I) of subparagraph (B) shall not apply to a program offered in (but not by) a nursing facility (or skilled nursing facility for purposes of title XVIII) in a State if the State—*

(i) determines that there is no other such program offered within a reasonable distance of the facility,

(ii) assures, through an oversight effort, that an adequate environment exists for operating the program in the facility, and

(iii) provides notice of such determination and assurances to the State long-term care ombudsman.

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