

111TH CONGRESS
1ST SESSION

H. R. 63

To amend title XVIII of the Social Security Act to require hospitals reimbursed under the Medicare system to establish and implement security procedures to reduce the likelihood of infant patient abduction and baby switching, including procedures for identifying all infant patients in the hospital in a manner that ensures that it will be evident if infants are missing from the hospital.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 6, 2009

Ms. JACKSON-LEE of Texas introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on the Judiciary and Energy and Commerce, 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

A BILL

To amend title XVIII of the Social Security Act to require hospitals reimbursed under the Medicare system to establish and implement security procedures to reduce the likelihood of infant patient abduction and baby switching, including procedures for identifying all infant patients in the hospital in a manner that ensures that it will be evident if infants are missing from the hospital.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Infant Protection and
3 Baby Switching Prevention Act of 2009”.

4 **SEC. 2. MEDICARE PAYMENTS TO HOSPITALS CONTINGENT**
5 **ON IMPLEMENTATION OF SECURITY PROCE-**
6 **DURES REGARDING INFANT PATIENT PRO-**
7 **TECTION AND BABY SWITCHING.**

8 (a) **AGREEMENTS WITH HOSPITALS.**—Section
9 1866(a)(1) of the Social Security Act (42 U.S.C.
10 1395cc(a)(1)) is amended—

11 (1) in subparagraph (U), by striking “and” at
12 the end;

13 (2) in subparagraph (V), by striking the period
14 at the end and inserting “, and”; and

15 (3) by inserting after subparagraph (V) the fol-
16 lowing new subparagraph:

17 “(W) in the case of hospitals and critical access
18 hospitals that provide neonatal or infant care, to
19 have in effect security procedures that meet stand-
20 ards established by the Secretary (in consultation
21 with appropriate organizations) to reduce the likeli-
22 hood of infant patient abduction and baby switching,
23 including standards for identifying all infant pa-
24 tients in the hospital in a manner that ensures that
25 it will be evident if infants are missing from the hos-
26 pital.”.

1 (b) REGULATIONS.—

2 (1) IN GENERAL.—In promulgating regulations
3 under subparagraph (W) of section 1866(a)(1) of
4 such Act (42 U.S.C. 1395cc(a)(1)), as added by sub-
5 section (a), the Secretary of Health and Human
6 Services shall—

7 (A) consult with various organizations rep-
8 resenting consumers, appropriate State and
9 local regulatory agencies, hospitals, and critical
10 access hospitals;

11 (B) take into account variations in size
12 and location of hospitals and critical access hos-
13 pitals, and the percentage of overall services
14 furnished by such hospitals and critical access
15 hospitals that neonatal care and infant care
16 represent; and

17 (C) promulgate specific regulations that
18 address each size and type of hospital covered.

19 (2) DEADLINE FOR PUBLICATION.—Not later
20 than 12 months after the date of the enactment of
21 this Act, the Secretary shall publish the regulations
22 required under paragraph (1). In order to carry out
23 this requirement in a timely manner, the Secretary
24 may promulgate regulations that take effect on an

1 interim basis, after notice and pending opportunity
2 for public comment.

3 (c) PENALTIES.—

4 (1) AMOUNT OF PENALTY.—A hospital that
5 participates in the Medicare program under title
6 XVIII of the Social Security Act under an agree-
7 ment pursuant to section 1866 of such Act (42
8 U.S.C. 1395cc) that commits a violation described in
9 paragraph (2) of this subsection is subject to a civil
10 money penalty of not more than \$50,000 (or not
11 more than \$25,000 in the case of a hospital with
12 less than 100 beds) for each such violation.

13 (2) VIOLATION DESCRIBED.—A hospital de-
14 scribed in paragraph (1) commits a violation for
15 purposes of this subsection if the hospital fails to
16 have in effect security procedures that meet stand-
17 ards established by the Secretary under section
18 1866(a)(1)(W) of such Act, as added by subsection
19 (a), to reduce the likelihood of infant patient abduc-
20 tion and baby switching, including standards for
21 identifying all infant patients in the hospital in a
22 manner that ensures that it will be evident if infants
23 are missing from the hospital.

24 (3) ADMINISTRATIVE PROVISIONS.—The provi-
25 sions of section 1128A of such Act (42 U.S.C.

1 1320a–7a), other than subsections (a) and (b), shall
2 apply to a civil money penalty under this subsection
3 in the same manner as such provisions apply with
4 respect to a penalty or proceeding under section
5 1128A(a).

6 (d) EFFECTIVE DATE.—This section, and the amend-
7 ments made by this section, shall take effect on the date
8 that is 18 months after the date of the enactment of this
9 Act, and shall apply to contracts entered into or renewed
10 under section 1866 of such Act (42 U.S.C. 1395cc) on
11 or after such date.

12 **SEC. 3. BABY SWITCHING PROHIBITED.**

13 (a) IN GENERAL.—Chapter 55 of title 18, United
14 States Code, is amended by adding at the end the fol-
15 lowing:

16 **“§ 1205. Baby switching**

17 “(a) Whoever being in interstate commerce knowingly
18 alters or destroys an identification record of a newborn
19 patient with the intention that the newborn patient be
20 misidentified by any person shall be fined not more than
21 \$250,000 in the case of an individual and not more than
22 \$500,000 in the case of an organization, or imprisoned
23 not more than ten years, or both.

24 “(b) As used in this section, the term ‘identification
25 record’ means a record maintained by a hospital to aid

1 in the identification of newborn patients of the hospital,
2 including any of the following:

3 “(1) The footprint, fingerprint, or photograph
4 of the newborn patient.

5 “(2) A written description of the infant.

6 “(3) An identification bracelet or anklet put on
7 the newborn patient, or the mother of the newborn
8 patient, by a staff member of the hospital.”.

9 (b) CLERICAL AMENDMENT.—The table of sections
10 at the beginning of chapter 55 of title 18, United States
11 Code, is amended by adding at the end the following new
12 item:

“1205. Baby switching.”.

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