

108TH CONGRESS  
1ST SESSION

# S. 952

To amend title XVIII of the Social Security Act to reduce the work hours and increase the supervision of resident-physicians to ensure the safety of patients and resident-physicians themselves.

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## IN THE SENATE OF THE UNITED STATES

APRIL 30, 2003

Mr. CORZINE introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend title XVIII of the Social Security Act to reduce the work hours and increase the supervision of resident-physicians to ensure the safety of patients and resident-physicians themselves.

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 “Patient and Physician  
5        Safety and Protection Act of 2003”.

6        **SEC. 2. FINDINGS.**

7        Congress finds the following:

1           (1) The Federal Government, through the medi-  
2           care program, pays approximately \$8,000,000,000  
3           per year solely to train resident-physicians in the  
4           United States, and as a result, has an interest in as-  
5           suring the safety of patients treated by resident-phy-  
6           sicians and the safety of resident-physicians them-  
7           selves.

8           (2) Resident-physicians spend as much as 30 to  
9           40 percent of their time performing activities not re-  
10          lated to the educational mission of training com-  
11          petent physicians.

12          (3) The excessive numbers of hours worked by  
13          resident-physicians is inherently dangerous for pa-  
14          tient care and for the lives of resident-physicians.

15          (4) The scientific literature has consistently  
16          demonstrated that the sleep deprivation of the mag-  
17          nitude seen in residency training programs leads to  
18          cognitive impairment.

19          (5) A substantial body of research indicates  
20          that excessive hours worked by resident-physicians  
21          lead to higher rates of medical error, motor vehicle  
22          accidents, depression, and pregnancy complications.

23          (6) The medical community has not adequately  
24          addressed the issue of excessive resident-physician  
25          work hours.

1           (7) The Federal Government has regulated the  
2 work hours of other industries when the safety of  
3 employees or the public is at risk.

4           (8) The Institute of Medicine has found that as  
5 many as 98,000 deaths occur annually due to med-  
6 ical errors and has suggested that 1 necessary ap-  
7 proach to reducing errors in hospitals is reducing  
8 the fatigue of resident-physicians.

9 **SEC. 3. REVISION OF MEDICARE HOSPITAL CONDITIONS OF**  
10 **PARTICIPATION REGARDING WORKING**  
11 **HOURS OF MEDICAL RESIDENTS, INTERNS,**  
12 **AND FELLOWS.**

13           (a) IN GENERAL.—Section 1866 of the Social Secu-  
14 rity Act (42 U.S.C. 1395cc) is amended—

15           (1) in subsection (a)(1)—

16           (A) by striking “and” at the end of sub-  
17 paragraph (R);

18           (B) by striking the period at the end of  
19 subparagraph (S) and inserting “, and”; and

20           (C) by inserting after subparagraph (S)  
21 the following new subparagraph:

22           “(T) in the case of a hospital that uses the  
23 services of postgraduate trainees (as defined in sub-  
24 section (j)(4)), to meet the requirements of sub-  
25 section (j).”; and

1           (2) by adding at the end the following new sub-  
2           section:

3           “(j)(1)(A) In order that the working conditions and  
4           working hours of postgraduate trainees promote the provi-  
5           sion of quality medical care in hospitals, as a condition  
6           of participation under this title, each hospital shall estab-  
7           lish the following limits on working hours for postgraduate  
8           trainees:

9           “(i) Subject to subparagraphs (B) and (C),  
10          postgraduate trainees may work no more than a  
11          total of 24 hours per shift.

12          “(ii) Subject to subparagraph (C), postgraduate  
13          trainees may work no more than a total of 80 hours  
14          per week.

15          “(iii) Subject to subparagraph (C), post-  
16          graduate trainees—

17                 “(I) shall have at least 10 hours between  
18                 scheduled shifts;

19                 “(II) shall have at least 1 full day out of  
20                 every 7 days off and 1 full weekend off per  
21                 month;

22                 “(III) subject to subparagraph (B), who  
23                 are assigned to patient care responsibilities in  
24                 an emergency department shall work no more  
25                 than 12 continuous hours in that department;

1           “(IV) shall not be scheduled to be on call  
2           in the hospital more often than every third  
3           night; and

4           “(V) shall not engage in work outside of  
5           the educational program that interferes with  
6           the ability of the postgraduate trainee to  
7           achieve the goals and objectives of the program  
8           or that, in combination with the program work-  
9           ing hours, exceeds 80 hours per week.

10          “(B)(i) Subject to clause (ii), the Secretary shall pro-  
11          mulgate such regulations as may be necessary to ensure  
12          quality of care is maintained during the transfer of direct  
13          patient care from 1 postgraduate trainee to another at the  
14          end of each shift.

15          “(ii) Such regulations shall ensure that, except in the  
16          case of individual patient emergencies, the period in which  
17          a postgraduate trainee is providing for the transfer of di-  
18          rect patient care (as referred to in clause (i)) does not  
19          extend such trainee’s shift by more than 3 hours beyond  
20          the 24-hour period referred to in subparagraph (A)(i) or  
21          the 12-hour period referred to in subparagraph  
22          (A)(iii)(III), as the case may be.

23          “(C) The work hour limitations under subparagraph  
24          (A) and requirements of subparagraph (B) shall not apply

1 to a hospital during a state of emergency declared by the  
2 Secretary that applies with respect to that hospital.

3 “(2) The Secretary shall promulgate such regulations  
4 as may be necessary to monitor and supervise post-  
5 graduate trainees assigned patient care responsibilities as  
6 part of an approved medical training program, as well as  
7 to assure quality patient care.

8 “(3) Each hospital shall inform postgraduate trainees  
9 of—

10 “(A) their rights under this subsection, includ-  
11 ing methods to enforce such rights (including so-  
12 called whistle-blower protections); and

13 “(B) the effects of their acute and chronic sleep  
14 deprivation both on themselves and on their pa-  
15 tients.

16 “(4) For purposes of this subsection, the term ‘post-  
17 graduate trainee’ means a postgraduate medical resident,  
18 intern, or fellow.”.

19 (b) DESIGNATION.—

20 (1) IN GENERAL.—The Secretary of Health and  
21 Human Services (in this subsection referred to as  
22 the “Secretary”) shall designate an individual within  
23 the Department of Health and Human Services to  
24 handle all complaints of violations that arise from a  
25 postgraduate trainee (as defined in paragraph (4) of

1 section 1886(j) of the Social Security Act, as added  
2 by subsection (a)) who reports that the hospital op-  
3 erating the medical residency training program for  
4 which the trainee is enrolled is in violation of the re-  
5 quirements of such section.

6 (2) GRIEVANCE RIGHTS.—A postgraduate train-  
7 ee may file a complaint with the Secretary con-  
8 cerning a violation of the requirements under such  
9 section 1886(j). Such a complaint may be filed anon-  
10 ymously. The Secretary may conduct an investiga-  
11 tion and take such corrective action with respect to  
12 such a violation.

13 (3) ENFORCEMENT.—

14 (A) CIVIL MONEY PENALTY ENFORCE-  
15 MENT.—Subject to subparagraph (B), any hos-  
16 pital that violates the requirements under such  
17 section 1886(j) is subject to a civil money pen-  
18 alty not to exceed \$100,000 for each medical  
19 residency training program operated by the hos-  
20 pital in any 6-month period. The provisions of  
21 section 1128A of the Social Security Act (other  
22 than subsections (a) and (b)) shall apply to civil  
23 money penalties under this paragraph in the  
24 same manner as they apply to a penalty or pro-  
25 ceeding under section 1128A(a) of such Act.

1           (B) CORRECTIVE ACTION PLAN.—The Sec-  
2           retary shall establish procedures for providing a  
3           hospital that is subject to a civil monetary pen-  
4           alty under subparagraph (A) with an oppor-  
5           tunity to avoid such penalty by submitting an  
6           appropriate corrective action plan to the Sec-  
7           retary.

8           (4) DISCLOSURE OF VIOLATIONS AND ANNUAL  
9           REPORTS.—The individual designated under para-  
10          graph (1) shall—

11           (A) provide for annual anonymous surveys  
12           of postgraduate trainees to determine compli-  
13           ance with the requirements under such section  
14           1886(j) and for the disclosure of the results of  
15           such surveys to the public on a medical resi-  
16           dency training program specific basis;

17           (B) based on such surveys, conduct appro-  
18           priate on-site investigations;

19           (C) provide for disclosure to the public of  
20           violations of and compliance with, on a hospital  
21           and medical residency training program specific  
22           basis, such requirements; and

23           (D) make an annual report to Congress on  
24           the compliance of hospitals with such require-



1           ments, including providing a list of hospitals  
2           found to be in violation of such requirements.

3           (c) WHISTLEBLOWER PROTECTIONS.—

4           (1) IN GENERAL.—A hospital covered by the re-  
5           quirements of section 1866(j) of the Social Security  
6           Act, as added by subsection (a), shall not penalize,  
7           discriminate, or retaliate in any manner against an  
8           employee with respect to compensation, terms, con-  
9           ditions, or privileges of employment, who in good  
10          faith (as defined in paragraph (2)), individually or  
11          in conjunction with another person or persons—

12                   (A) reports a violation or suspected viola-  
13                   tion of such requirements to a public regulatory  
14                   agency, a private accreditation body, or man-  
15                   agement personnel of the hospital;

16                   (B) initiates, cooperates, or otherwise par-  
17                   ticipates in an investigation or proceeding  
18                   brought by a regulatory agency or private ac-  
19                   creditation body concerning matters covered by  
20                   such requirements;

21                   (C) informs or discusses with other em-  
22                   ployees, with a representative of the employees,  
23                   with patients or patient representatives, or with  
24                   the public, violations or suspected violations of  
25                   such requirements; or

1 (D) otherwise avails himself or herself of  
2 the rights set forth in such section or this sub-  
3 section.

4 (2) GOOD FAITH DEFINED.—For purposes of  
5 this subsection, an employee is deemed to act “in  
6 good faith” if the employee reasonably believes—

7 (A) that the information reported or dis-  
8 closed is true; and

9 (B) that a violation has occurred or may  
10 occur.

11 (d) EFFECTIVE DATE.—The amendments made by  
12 subsection (a) shall take effect on the first July 1 that  
13 begins at least 1 year after the date of enactment of this  
14 Act.

15 **SEC. 4. ADDITIONAL FUNDING FOR HOSPITAL COSTS.**

16 There are hereby appropriated to the Secretary of  
17 Health and Human Services such amounts as may be re-  
18 quired to provide for additional payments to hospitals for  
19 their reasonable additional, incremental costs incurred in  
20 order to comply with the requirements imposed by this Act  
21 (and the amendments made by this Act).

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