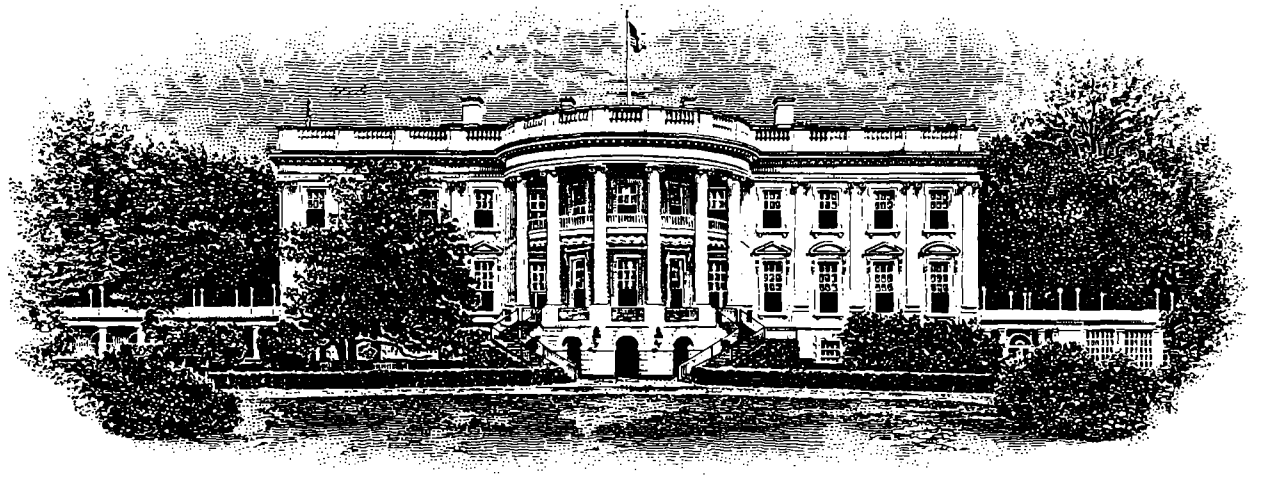
nursing homes

The White House



Press Release
Vencor Backup
Budget #s

Briefing Memo
Legislation

PHOTOCOPY
PRESERVATION

March 24, 1999

Bill Signing Ceremony for H.R. 540, Nursing Home Resident Protection Amendments

Date: **Thursday, March 25, 1999**
Location: **Oval Office**
Time: **10:35AM - 10:50AM**
From: **Larry Stein**

I. PURPOSE

To sign into law H.R. 540, which amends Title XIX of the Social Security Act to prohibit transfers or discharges of residents of nursing facilities as a result of a voluntary withdrawal from participation in the Medicaid Program.

II. BACKGROUND

In April 1998, a nursing home operated by Vencor, Inc. in Tampa, Florida, attempted to evict 52 Medicaid residents ostensibly for the purpose of remodeling the nursing home facility. A judge halted the evictions, and the nursing home allowed the residents to remain. A State agency concluded that the evictions were based solely on the fact that these residents relied on Medicaid to pay their nursing home bills. Since that time, Vencor reversed its actions in Tampa and invited back all the discharged patients. In the Vencor case, Medicaid patients were protected by current law and regulations because the Vencor facility continued to participate in the Medicaid program. However, other facilities that have withdrawn from the Medicaid program are free to evict Medicaid patients.

H.R. 540 affords protection from discharge or transfer based on Medicaid status to residents of nursing homes which decide to withdraw from the Medicaid program. The residents protected include those who are presently receiving Medicaid benefits in nursing homes, as well as those patients who are already residents but not yet dependent on Medicaid.

For those individuals who take up residence in the nursing home after the effective date of the facility's withdrawal from the Medicaid program, H.R. 540 provides that they must be informed orally and in writing that the nursing home may transfer or discharge the resident once the resident is unable to pay the charges of the facility through non-Medicaid sources.

The two individuals whose story inspired this legislation will be present at the event - Mr Nelson Mongiovi and his wife, Geri Mongiovi. Almost eleven months ago, officials at

the above mentioned Tampa nursing home told Nelson Mongiovi that he would have to relocate his 93 year old, Alzheimer's-afflicted mother, Adalaida (who passed away last year), so that the facility could complete "renovations." After learning that the temporary relocation was actually a permanent eviction of all 53 residents whose housing and care were paid for by Medicaid, the Mongiovi's have been outspoken advocates for the need for this legislation.

Rep. Jim Davis (D-FL) and Sen. Bob Graham (D-FL) sponsored H.R. 540 which passed overwhelmingly in the House (398-12) and passed by unanimous consent in the Senate. This signing ceremony has been arranged at their request.

III. PARTICIPANTS

Pre-Brief
The President
John Podesta
Steve Ricchetti
Doug Sosnik
Larry Stein
Bruce Reed
Mary Beth Cahill
Chris Jennings

Ceremony
The President
Sen. Evan Bayh (D-IN)
Sen. Robert Graham (D-FL)
Sen. Daniel Patrick Moynihan (D-NY)
Sen. William Roth (R-DE)
Rep. Michael Bilirakis (R-FL)
Rep. Sherrod Brown (D-OH)
Rep. Jim Davis (D-FL)
Rep. Henry Waxman (D-CA)
Alice Hedt, National Citizens' Coalition for Nursing Home Reform
Mike Rodgers, American Association of Homes and Services for the Aging
Bruce Yarwood, American Health Care Association
Toby Edelman, National Senior Center Law Center
Mr. Nelson Mongiovi
Mrs. Geri Mongiovi

IV. PRESS PLAN

Stills only.

V. SEQUENCE OF EVENTS

-- The President greets guests and Members of Congress.

-- The President signs the bill.

-- Members of Congress and guests depart.

VI. REMARKS

None.

VII. ATTACHMENTS

None.

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Bill 2 of 2
There is 1 other version of this bill.

GPO's PDF version of this bill	References to this bill in the Congressional Record	Link to Senate Committee Report 13	Link to the Bill Summary & Status file.	*Full Display* - 6,204 bytes.[Help]

Nursing Home Residential Security Act of 1999 (Reported in the Senate)

S 494 RS

Calendar No. 36

106th CONGRESS

1st Session

S. 494

[Report No. 106-13]

To amend title XIX of the Social Security Act to prohibit transfers or discharges of residents of nursing facilities as a result of a voluntary withdrawal from participation in the medicaid program.

IN THE SENATE OF THE UNITED STATES

March 2, 1999

Mr. GRAHAM (for himself, Mr. GRASSLEY, Mr. ROTH, Mr. MOYNIHAN, Mr. CHAFEE, Mr. ROCKEFELLER, Mr. MACK, Mr. BREAUX, Mr. KERREY, Ms. MIKULSKI, Mr. BRYAN, Mr. HOLLINGS, Mr. INOUYE, Mr. HARKIN, Mr. BAYH, Mr. ROBB, Mr. MURKOWSKI, Mr. BAUCUS, Mr. CONRAD, and Mr. SANTORUM) introduced the following bill; which was read twice and referred to the Committee on Finance

March 10, 1999

Reported by Mr. ROTH, without amendment

A BILL

To amend title XIX of the Social Security Act to prohibit transfers or discharges of residents of nursing facilities as a result of a voluntary withdrawal from participation in the medicaid program.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `Nursing Home Residential Security Act of 1999'.

SEC. 2. RESTRICTIONS ON TRANSFERS OR DISCHARGES OF NURSING FACILITY RESIDENTS IN THE CASE OF VOLUNTARY WITHDRAWAL FROM PARTICIPATION UNDER THE MEDICAID PROGRAM.

(a) IN GENERAL- Section 1919(c)(2) of the Social Security Act (42 U.S.C. 1396r(c)(2)) is amended by adding at the end the following new subparagraph:

`(F) CONTINUING RIGHTS IN CASE OF VOLUNTARY WITHDRAWAL FROM PARTICIPATION-

`(i) IN GENERAL- In the case of a nursing facility that voluntarily withdraws from participation in a State plan under this title but continues to provide services of the type provided by nursing facilities--

`(I) the facility's voluntary withdrawal from participation is not an acceptable basis for the transfer or discharge of residents of the facility who were residing in the facility on the day before the effective date of the withdrawal (including those residents who were not entitled to medical assistance as of such day);

`(II) the provisions of this section continue to apply to such residents until the date of their discharge from the facility; and

`(III) in the case of each individual who begins residence in the facility after the effective date of such withdrawal, the facility shall provide notice orally and in a prominent manner in writing on a separate page at the time the individual begins residence of the information described in clause (ii) and shall obtain from each such individual at such time an acknowledgment of receipt of such information that is in writing, signed by the individual, and separate from other documents signed by such individual.

Nothing in this subparagraph shall be construed as affecting any requirement of a participation agreement that a nursing facility provide advance notice to the State or the Secretary, or both, of its intention to terminate the agreement.

`(ii) INFORMATION FOR NEW RESIDENTS- The information described in this clause for a resident is the following:

`(I) The facility is not participating in the program under this title with respect to that resident.

`(II) The facility may transfer or discharge the resident from the facility at such time as the resident is unable to pay the charges of the facility, even though the resident may have become eligible for medical assistance for nursing facility services under this title.

`(iii) CONTINUATION OF PAYMENTS AND OVERSIGHT AUTHORITY- Notwithstanding any other provision of this title, with respect to the residents described in clause (i)(I), a participation agreement of a facility described in clause (i) is deemed to continue in effect under such plan after the effective date of the facility's voluntary withdrawal from participation under the State plan for purposes of--

`(I) receiving payments under the State plan for nursing facility services provided to such residents;

`(II) maintaining compliance with all applicable requirements of this title; and

`(III) continuing to apply the survey, certification, and enforcement authority provided under subsections (g) and (h) (including involuntary termination of a participation agreement deemed continued under this clause).

`(iv) NO APPLICATION TO NEW RESIDENTS- This paragraph (other than subclause (III) of clause (i)) shall not apply to an individual who begins residence in a facility on or after the effective date of the withdrawal from participation under this subparagraph.'.

(b) EFFECTIVE DATE- The amendment made by subsection (a) applies to voluntary withdrawals from participation occurring on or after the date of the enactment of this Act.

Calendar No. 36

106th CONGRESS

1st Session

S. 494

[Report No. 106-13]

A BILL

To amend title XIX of the Social Security Act to prohibit transfers or discharges of residents of nursing facilities as a result of a voluntary withdrawal from participation in the medicaid program.

March 10, 1999

Reported without amendment

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THE NURSING HOME RESIDENT PROTECTION ACT OF 1999

SUMMARY OF THE NEW LEGISLATION

This legislation prohibits nursing homes who decide to stop accepting Medicaid patients because of the lower reimbursement rates from evicting those residents who currently depend on the program to pay for their care. Currently, two thirds of nursing home residents depend on Medicaid to pay for their nursing home care, and with nursing home costs averaging $40,000 a year, about half of residents who begin by paying for their care with their own money and health insurance must turn to Medicaid within three to five years.

SUMMARY OF THE VENCOR CASE

The Nursing Home Resident Protection Act of 1999 was inspired by a case in April of 1998, in which the Rehabilitation and Healthcare Center of Tampa (part of Vencor, Inc.), proposed to transfer or discharge 52 Medicaid residents on the grounds that their health and safety would be endangered due to building renovations. Such a transfer is permissible, however, upon investigation, the state found that the renovations were superficial, amounting to no more than recarpeting and wallpapering, which created a suspicion that Medicaid patients were being dumped to make room for better-paying clients. The facility received approximately $2,700 each month for each Medicaid patient and would receive at least $3,450 monthly for each privately insured patient. A group of residents sued Vencor and obtained a court order halting evictions at the Tampa facility. The lawsuit and the intense press attention led the company to stop the transfer of patients and apologize to the patients and their families. The 10 residents who had already been discharged were invited to return to the facility.

The Rehabilitation and Healthcare Center was fined $260,000 under Florida's licensure authority and HCFA fined the facility $100,000 for the 10 days the facility was found to have placed residents in immediate jeopardy to their health and safety.

Vencor had initiated similar discharges in their facilities in Indiana, Kentucky, and Georgia. However, the HCFA regional offices were unable to prove that the facilities had violated Federal quality of care standards and the investigations were dropped.

CURRENT AUTHORITY UNDER MEDICAID

Because Medicaid nursing home nursing home participation is voluntary, current law allows nursing homes to determine and change the extent of their participation. If a nursing home wants to reduce the portion of its facilities that are available to Medicaid patients, it must give 30 days notice of its intentions to both the State and affected residents and ensure that any displaced residents continuously receive all necessary care as they are moved to other appropriate facilities.

Current Medicaid regulations state that nursing homes cannot transfer or discharge patients without providing 30 days notice unless: the resident's needs can no longer be met in the facility; the resident no longer needs nursing home care; the safety of the resident is endangered; the resident has failed after reasonable and appropriate notice to pay (or to have paid under Medicaid) for their care; or if the nursing home closes down.

PRESIDENT CLINTON UNVEILS NEW PROTECTIONS FOR NURSING HOME RESIDENTS
Signing Ceremony for the Nursing Home Resident Protection Act of 1999
March 23, 1999

Today, President Clinton signed the Nursing Home Resident Protection Act of 1999, which prohibits nursing homes that decide to withdraw from the Medicaid program from expelling or transferring current residents who are enrolled in Medicaid. He also urged Congress to pass the nursing home quality enforcement provisions in his FY 2000 budget, which provides over $309 million to prevent nursing home resident abuse and neglect, an unprecedented 31 percent increase ($74 million) over last year's funding level.

A BIPARTISAN EFFORT TO PROTECT VULNERABLE OLDER AMERICANS

Today, the President signed the Nursing Home Resident Protection Act of 1999, which provides critical new protections to the hundreds of thousands of nursing home patients who rely on Medicaid to pay for their care. Current law allows nursing homes to reduce or eliminate the portion of their facilities that are available to Medicaid patients as long as the residents are given 30 days notice they are forced to leave the facility. This legislation, which was sponsored by Congressmen Davis (D-FL) and Bilrakis (R-FL) together with Senator Bob Graham (D-FL), prohibits nursing homes who decide to stop accepting Medicaid patients from evicting those residents who currently depend on the program to pay for their care. It was approved by an overwhelming margin (398-12) in the House and by voice vote in the Senate. Two thirds of nursing home residents depend on Medicaid to pay for their nursing home care, and with nursing home costs averaging $40,000 a year, about half of residents who begin by paying for their care with their own money and health insurance must turn to Medicaid within three to five years.

AN UNPRECEDENTED INVESTMENT IN QUALITY CARE FOR NURSING HOME RESIDENTS

President Clinton has proposed an unprecedented investment of $309 million for nursing home quality enforcement activities in his FY 2000 budget, an increase of 31 percent ($74 million) over the FY last year's funding level. In addition to providing an additional $47 million for state survey and certification activities, an increase of 22 percent over last year's funding level, the proposals in the President's budget will provide additional assurances that nursing-home residents will receive the quality care that they deserve and expect by: requiring nursing homes to conduct criminal background checks of employees; establishing a national registry of workers who have been convicted of abusing residents; and allowing more types of nursing home workers with proper training to help residents eat and drink during busy mealtimes. President Clinton's investment in ensuring high quality care for these vulnerable older Americans stands in stark contrast to the proposed Republican budget, which cuts funding for nursing home quality enforcement activities by 10 percent.

BUILDING ON A LONGSTANDING COMMITMENT TO PROVIDING QUALITY HEALTH CARE TO NURSING HOME RESIDENTS

The Clinton Administration has made ensuring the health and safety of nursing home residents a top priority and has issued the toughest nursing home regulations in the history of the Medicare and Medicaid programs. Since 1993 President Clinton has taken steps to ensure that all nursing home residents receive good quality care, including increased monitoring of nursing homes to ensure that they are in compliance; requiring states to crack down on nursing homes that repeatedly violate health and safety requirements; and changing the inspection process to increase the focus on preventing bedsores, malnutrition and resident abuse. Most recently, the President has directed HHS to: create higher civil monetary penalties for quality violations and permit these penalties to be more quickly determined and imposed; require states to investigate resident complaints within 10 days; and begin a national campaign this spring to educate the public about the risk of malnutrition and dehydration and preventing abuse and neglect.

HHS NURSING HOME OVERSIGHT SPENDING: FY 1999 AND FY 2000

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Dollars In Millions

ACTIVITY	FY 1999	FY 2000	$ Increase	% Increase
SURVEY & CERTIFICATION/NURSING HOMES				
Medicare				
Direct Survey Costs				
Base Funding /1	$118.6	$127.7	$9.1	7.7%
Nursing Home Initiative	$4.0	$14.5	$10.5	262.5%
Subtotal, Direct Surveys	$122.6	$142.2	$19.6	16.0%
Support Contracts				
Base Funding /2	$4.7	$3.6	($1.0)	-22.1%
Nursing Home Initiative	$0.0	$3.6	$3.6	------
Subtotal, Support Contracts	$4.7	$7.2	$2.6	56.0%
Subtotal, Medicare (Direct + Support)	*$127.3*	*$149.4*	*$22.1*	*17.4%*
Medicaid				
Federal Share				
Base Funding /3	$93.9	$103.3	$9.3	10.0%
Nursing Home Initiative	$0.0	$15.6	$15.6	------
Subtotal, Medicaid/Federal Only	*$93.9*	*$118.9*	*$24.9*	26.6%
Total Survey & Certification/(Medicare + Medicaid)	$221.2	$268.3	$47.1	21.3%
FEDERAL ADMINISTRATION				
Federal Surveyor Activity				
Base Funding /4	$9.4	$9.7	$0.3	3.2%
Nursing Home Initiative	$0.0	$6.9	$6.9	------
Patient Abuse Registry	$0.0	$10.0	$10.0	------
Total Federal Admin	$9.4	$26.6	$17.2	183.0%
DEPARTMENTAL APPEALS BOARD				
Base Funding	$1.2	$1.3	$0.1	11.2%
Nursing Home Initiative	$0.0	$2.8	$2.8	------
Total DAB	$1.2	$4.1	$2.9	252.6%
OFFICE OF GENERAL COUNSEL				
Base Funding	$3.9	$3.9	$0.0	0.0%
Nursing Home Initiative	$0.0	$6.7	$6.7	------
Total OGC	$3.9	$10.6	$6.7	171.8%
TOTAL NURSING OVERSIGHT HOME SPENDING	**$235.6**	**$309.6**	**$73.9**	**31.4%**

/1 Includes nursing home direct survey costs ($116.3 million in FY 1999 and $121.4 million in FY 2000), MDS costs ($0 in FY 1999 and $4 million in FY 2000), and allocation of miscellaneous direct costs (see back-up sheet).

/2 Represents nursing-home only portion of the $7.0 million in base support contract funding (see back-up sheet).

/3 See back-up sheet for calculation of Medicaid survey and cert base funding for Medicaid nursing homes.

/4 FY 1999 total equals $8.6 million for 108 FTE plus $0.8 million for travel for look-behind surveys; FY 2000 total equals $8.6 million for 108 FTE plus $1.1 million for travel for look-behind surveys

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HHS NURSING HOME OVERSIGHT SPENDING: FY 1999 AND FY 2000

Dollars In Millions

SUMMARY BY ACTIVITY	FY 1999	FY 2000	$ Increase	% Increase
HCFA				
Medicare Survey and Certification	$127.3	$149.4	$22.1	17.4%
Medicaid Survey and Certification	$93.9	$118.9	$24.9	26.6%
Federal Administration	$9.4	$26.6	$17.2	183.0%
Departmental Appeals Board	$1.2	$4.1	$2.9	252.6%
Office of General Counsel	$3.9	$10.6	$6.7	171.8%
TOTAL NURSING HOME OVERSIGHT SPENDING	**$235.6**	**$309.6**	**$73.9**	**31.4%**
Base Funding	*$231.6*	*$249.5*	*$17.8*	*7.7%*
Nursing Home Initiative Funding	*$4.0*	*$60.1*	*$56.1*	*1402.5%*

Back-up Sheet/Misc. Direct Survey Costs and Support Contract Costs

Dollars in millions

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FY 1999

Direct Survey Activity (not including $4m earmark for initiative)			Calculation
Nursing Homes	116.346	74.2%	
Other Providers	40.554	25.8%	
Direct Survey Activity Costs	156.900		
Nursing Homes	2.299		3.1 * 74.2% (# appears on first page)
Other Providers	0.801		3.1 * 25.8%
Misc. Direct Survey Costs	3.100		from 1999 CJ
Nursing Homes	118.645	74.2%	116.348 + 2.299 misc
Other Providers	41.355	25.8%	40.554 + .801 misc
Total Direct Survey Costs	160.000		

Support Contract Activity	Total	Nursing Home	Calculation
QIES Operation Support	1.725	1.279	1.725 * 74.2%
Telecommunications	1.000	0.742	1.000* 74.2%
Software Development/COTS	0.816	0.605	0.816* 74.2%
Network Refreshing	0.120	0.089	0.120* 74.2%
Collection of Data for Core Data Set	0.400	0.297	0.400* 74.2%
Quality Improvement (MDS)	0.300	0.300	0.300 * 100% -- nursing home only
Systems Improvement (OSCAR)	0.840	0.840	0.840 * 100% -- nursing home only
Surveyor Training	0.699	0.518	0.699* 74.2%
Psychiatric Hospital Survey Review	1.100	0.000	not nursing home related
Total 1999 Support Contract	7.000	4.670	

FY 2000

Direct Survey Activity (not including $14.5m for initiative)			
Nursing Homes	121.40	69.0%	
Other Providers	47.60	27.0%	
MDS/OASIS	7.00	4.0%	
Direct Survey Activity Costs	175.90		
Nursing Homes	2.278	69.0%	3.3 * 69.0% (# appears on first page)
Other Providers	1.022	31.0%	3.3 * 31.0%
Misc. Direct Survey Costs	3.300		from 2000 CJ
Nursing Homes	123.678	69.0%	121.4 + 2.278 misc
Other Providers	48.522	27.1%	47.5 + 1.022 misc
MDS/OASIS	7.00	3.9%	
Total Direct Survey Costs	179.200		

Support Contract Activity	Total	Nursing Home	Calculation
QIES Development	4.400	3.037	1.725 * 69.0%
Maintenance of OSCAR System	0.600	0.600	0.600* 100% -- nursing home only
Psychiatric Hospital Survey Review	2.000	0.000	not nursing home related
Total 2000 Support Contract	7.000	3.637	

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Back-up Sheet/Medicaid Survey and Cert
Dollars in millions

FY 1999	Spending	Assumption
Medicaid Share of Dually Certified Facilities (from 1999 CJ)	94.024	
	x 75%	Federal Share
	70.518	
Plus Cost for Medicaid Only Facilities (1802 facilities according to OSCAR)	23.401	1802 X $12,986 unit cost
1999 Medicaid Survey & Cert/Nursing Home Only	93.919	

FY 2000		
Medicaid Share of Dually Certified Facilities (from 2000 CJ)	97.759	
	x 75%	Federal Share
	73.318	
Plus Cost for Medicaid Only Facilities (2306 facilities according to OSCAR)	29.946	2306 X $12,986 unit cost
1999 Medicaid Survey & Cert/Nursing Home Only	103.265	