

119TH CONGRESS  
2D SESSION

**S.** \_\_\_\_\_

To establish protections for health care providers who raise concerns about the quality of health care services, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

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\_\_\_\_\_ introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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## **A BILL**

To establish protections for health care providers who raise concerns about the quality of health care services, and for other purposes.

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 Safety and  
5 Whistleblower Protections Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) The term “communicate”, with respect to  
9 health care safety information, includes written or  
10 oral communications.

1           (2) The term “government official” means any  
2 local, State, Tribal, or Federal governmental official,  
3 including municipal mayors and their staff, State  
4 governors and their staff, State legislators and their  
5 staff, Federal legislators and their staff, and staff or  
6 leaders of Federal agencies or other Federal authori-  
7 ties.

8           (3) The term “health care facility” means a fa-  
9 cility in which health care services are provided, in-  
10 cluding any hospitals, ambulatory surgery centers,  
11 skilled nursing facilities, home health agencies, clin-  
12 ics, urgent care centers, physician offices, dental of-  
13 fices, end-stage renal facilities, chiropractic offices,  
14 optometry offices, ophthalmology offices, nursing  
15 homes, behavioral health centers, community mental  
16 health centers, addiction treatment facilities, reha-  
17 bilitation centers, hospices, outpatient therapy facili-  
18 ties, and Federally-qualified health centers.

19           (4) The term “health care practitioner” means  
20 an individual who is licensed by a State, or otherwise  
21 authorized, to provide health care services.

22           (5) The term “health care service” means care,  
23 treatment, services, or other procedures to maintain,  
24 diagnose, or otherwise affect an individual’s physical  
25 or mental condition. Such term includes medical,

1 paramedical, nursing, chiropractic, dental, behav-  
2 ioral, psychiatric, psychological, and vision services.

3 (6) The term “patient safety concern” means a  
4 communication regarding a concern that materially  
5 affects the health of one or more patients or that  
6 has the potential to materially affect the health of  
7 one or more patients, including a concern about—

8 (A) the quality of health care, patient safe-  
9 ty, or staffing practices, such as the type of  
10 health care practitioner caring for patients or  
11 the number of patients for whom a health care  
12 practitioner is responsible; or

13 (B) the sufficiency of equipment or sup-  
14 plies for the health care services provided, or  
15 the appropriateness of health care services or  
16 referrals for patients.

17 (7) The term “retaliation” means any adverse  
18 employment action against a health care practitioner  
19 or any other materially adverse action that would  
20 dissuade a reasonable health care practitioner from  
21 raising patient safety concerns, including adverse ac-  
22 tions against a health care practitioner who is no  
23 longer employed by, contracting with, or otherwise  
24 providing health care services at the health facility  
25 to which the patient safety concerns relate.

1 **SEC. 3. PROHIBITION ON RETALIATION.**

2 (a) IN GENERAL.—A health care facility may not re-  
3 taliate against a health care practitioner for commu-  
4 nicating about patient safety concerns, including any writ-  
5 ten or oral patient safety concerns communicated to—

6 (1) any supervisors, colleagues, or another indi-  
7 viduals with authority over health care services or  
8 the clinical or financial operations of the health care  
9 facility;

10 (2) a State authority with oversight of health  
11 care services, health care practitioners, or health  
12 care facilities;

13 (3) a government official, including communica-  
14 tions at a hearing, in response to written or oral  
15 questions from a government officials, or in a meet-  
16 ing, phone call, email, or other communication;

17 (4) a patient safety organization, as defined in  
18 section 921 of the Public Health Service Act (42  
19 U.S.C. 299b–21);

20 (5) any individual, organization, or other body  
21 investigating patient safety concerns in response to  
22 a communication made by another health care prac-  
23 titioner; or

24 (6) only after 90 days following a communica-  
25 tion to a person described in paragraphs (1), (2), or

1 (4) that did not result in significant corrective ac-  
2 tion, to the news media or press.

3 (b) REBUTTABLE PRESUMPTION.—There shall be a  
4 rebuttable presumption that any adverse employment ac-  
5 tion or other materially adverse action against the health  
6 care practitioner within 180 days of the health care practi-  
7 tioner communicating about patient safety concerns is re-  
8 taliation.

9 (c) CONTRIBUTION TO HEALTH CARE FACILITY.—Any  
10 retaliation by a health care practitioner, manager, super-  
11 visor, executive, staffing company, provider organization  
12 that contracts to provide services at the health care facil-  
13 ity, or management services company shall be attributed  
14 to the health care facility that is the subject of the patient  
15 safety concerns. A health care facility may seek indem-  
16 nification or contribution from a staffing company, pro-  
17 vider organization that contracts to provide services at the  
18 health care facility, or management services company for  
19 retaliation attributed to the health care facility under this  
20 subsection.

21 (d) CLARIFICATION.—Nothing in this section pro-  
22 hibits any adverse employment action or other materially  
23 adverse action against a health care practitioner that is  
24 not in retaliation for communicating about patient safety  
25 concerns.

1 (e) INAPPLICABILITY OF CERTAIN CONTRACTUAL  
2 PROVISIONS.—Notwithstanding any other provision of  
3 law, any contractual provision that would prohibit a pro-  
4 vider from communicating about patient safety concerns,  
5 or otherwise speaking truthfully about the quality of  
6 health care services, shall be null and void.

7 (f) INAPPLICABILITY OF NON-COMPETITION PROVI-  
8 SIONS.—A health care practitioner who communicates  
9 about patient safety concerns shall be released from any  
10 existing non-competition agreement with the employer or  
11 contractor of the health care practitioner if the non-com-  
12 petition agreement relates to the health care practitioner’s  
13 employment or contract work at the health facility that  
14 is the subject of the patient safety concerns.

15 (g) BAD FAITH COMMUNICATIONS.—Nothing in this  
16 section shall be construed as prohibiting a civil lawsuit  
17 against a health care practitioner who communicated  
18 about patient safety concerns in bad faith, if an inde-  
19 pendent investigation has determined that the patient  
20 safety concerns were not valid.

21 **SEC. 4. ENFORCEMENT.**

22 (a) INDIVIDUAL ACTIONS.—

23 (1) IN GENERAL.—A health care facility that  
24 retaliates against a health care practitioner for com-  
25 municating patient safety concerns is liable to that

1 practitioner in an amount equal to the equal to the  
2 sums determined in paragraph (2).

3 (2) DAMAGES.—In an individual action under  
4 paragraph (1), the sum awarded for liability is equal  
5 to—

6 (A) actual damage sustained by the health  
7 care practitioner;

8 (B) attorney's fees and costs; and

9 (C) punitive damages of up to \$1,000,000.

10 (b) CLASS ACTIONS.—

11 (1) IN GENERAL.—Class actions are authorized  
12 for health care practitioners who communicate pa-  
13 tient safety concerns at the same health care facility  
14 or at different health care facilities under the same  
15 management or ownership. The subject of the pa-  
16 tient safety concerns or the form of retaliation need  
17 not be identical to establish a common scheme of re-  
18 taliating against health care practitioners who com-  
19 municate patient safety concerns.

20 (2) DAMAGES.—In a class action under para-  
21 graph (1), the sum awarded for liability is equal  
22 to—

23 (A) the greater of \$10,000 or actual dam-  
24 ages for each named individual;

1 (B) a total amount for all other class  
2 members, without regard to a minimum indi-  
3 vidual recovery amount, of the greatest of—

4 (i) actual damages;

5 (ii) \$500,000;

6 (iii) 1 percent of the net worth of the  
7 defendant health care facility; or

8 (iv) if the defendant health care facil-  
9 ity is fully owned, directly or indirectly, by  
10 another entity or entities, and, among all  
11 such entities that own such facility, the en-  
12 tity with the highest net worth owns at  
13 least 1 other health care facility at which  
14 retaliation for raising patient safety con-  
15 cerns is alleged in another action under  
16 this section or in a complaint described in  
17 subsection (d)(1), 1 percent of the net  
18 worth of such entity with the highest net  
19 worth that owns the health care facility;  
20 and

21 (C) attorney's fees and costs.

22 (c) STATUTE OF LIMITATIONS.—Any action alleging  
23 retaliation for communicating patient safety concerns  
24 under this section may be commenced not later than 3

1 years after the last action that is alleged to be retaliatory  
2 occurs.

3 (d) REQUIREMENTS PRIOR TO BRING AN ACTION.—

4 An action alleging retaliation for communicating patient  
5 safety concerns may be filed—

6 (1) after the health care practitioner—

7 (A) files a complaint with the State au-  
8 thority that licenses or otherwise oversees the  
9 health care facility that is the subject of the  
10 complaint; and

11 (B) in the case that the health facility that  
12 is the subject of the patient safety concerns is  
13 a hospital, files a complaint with the Joint  
14 Commission on Hospital Accreditation; and

15 (2) not earlier than the date on which—

16 (A) the State authority described in para-  
17 graph (1)(A) completes its investigation pursu-  
18 ant to such paragraph, and, as applicable, the  
19 Joint Commission on Hospital Accreditation de-  
20 scribed in paragraph (1)(B) completes its inves-  
21 tigation pursuant to such paragraph; or

22 (B) 180 days after the filing of a com-  
23 plaint under paragraph (1)(A) and, if applica-  
24 ble, a complaint under paragraph (1)(B).

1 **SEC. 5. PROFESSIONAL LIABILITY ACTIONS.**

2 In any civil or criminal action against a health care  
3 facility or health care practitioner relating to professional  
4 liability, communications about patient safety concerns  
5 made by the health care practitioner that is the subject  
6 of the civil or criminal action may not be used to draw  
7 an adverse inference about the quality of health care serv-  
8 ices provided by the health care practitioner. The pre-  
9 ceding sentence shall only apply if the communications  
10 about patient safety concerns were made by the health  
11 care practitioner prior to the filing of the civil or criminal  
12 action against the health care facility or health care prac-  
13 titioner.

14 **SEC. 6. REQUIRING THE REPORTING AND RESOLUTION OF**  
15 **PATIENT SAFETY CONCERNS FOR PRO-**  
16 **VIDERS OF SERVICES PARTICIPATING IN**  
17 **MEDICARE.**

18 (a) IN GENERAL.—Section 1866(a)(1) of the Social  
19 Security Act (42 U.S.C. 1395cc(a)(1)) is amended—

20 (1) by moving subparagraphs (W) and (X) 2  
21 ems to the left;

22 (2) in subparagraph (X), by striking “and” at  
23 the end;

24 (3) in subparagraph (Y), by striking the period  
25 at the end and inserting “, and”; and

1 (4) by inserting after subparagraph (Y) the fol-  
2 lowing new subparagraph:

3 “(Z) to establish—

4 “(i) a mechanism that allows a health care  
5 provider or practitioner to anonymously report  
6 patient safety concerns; and

7 “(ii) a process for investigating and ad-  
8 dressing any patient safety concern reported to  
9 the provider of services.”.

10 (b) EFFECTIVE DATE.—The amendments made by  
11 subsection (a) shall take effect 1 year after the date of  
12 enactment of this Act.

13 **SEC. 7. IMPACT ON OTHER LAWS WITH RESPECT TO RE-**  
14 **PORTING PATIENT SAFETY CONCERNS.**

15 Nothing in this Act, including the amendments made  
16 by this Act, shall be construed to limit or supersede the  
17 protections for health care providers with respect to re-  
18 porting patient safety events pursuant to part C of title  
19 IX of the Public Health Service Act (42 U.S.C. 299b-  
20 21 et seq.) or any other Federal or State law on patient  
21 safety reporting.