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(Original Signature of Member)

119TH CONGRESS  
2D SESSION

**H. R.** \_\_\_\_\_

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 HOUSE OF REPRESENTATIVES

Ms. SCANLON introduced the following bill; which was referred to the Committee on \_\_\_\_\_

\_\_\_\_\_  
**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:

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

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

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

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

1           (5) The term “health care service” means care,  
2           treatment, services, or other procedures to maintain,  
3           diagnose, or otherwise affect an individual’s physical  
4           or mental condition. Such term includes medical,  
5           paramedical, nursing, chiropractic, dental, behav-  
6           ioral, psychiatric, psychological, and vision services.

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

12                 (A) the quality of health care, patient safe-  
13                 ty, or staffing practices, such as the type of  
14                 health care practitioner caring for patients or  
15                 the number of patients for whom a health care  
16                 practitioner is responsible; or

17                 (B) the sufficiency of equipment or sup-  
18                 plies for the health care services provided, or  
19                 the appropriateness of health care services or  
20                 referrals for patients.

21          (7) The term “retaliation” means any adverse  
22          employment action against a health care practitioner  
23          or any other materially adverse action that would  
24          dissuade a reasonable health care practitioner from  
25          raising patient safety concerns, including adverse ac-

1 tions against a health care practitioner who is no  
2 longer employed by, contracting with, or otherwise  
3 providing health care services at the health facility  
4 to which the patient safety concerns relate.

5 **SEC. 3. PROHIBITION ON RETALIATION.**

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

10 (1) any supervisors, colleagues, or another indi-  
11 viduals with authority over health care services or  
12 the clinical or financial operations of the health care  
13 facility;

14 (2) a State authority with oversight of health  
15 care services, health care practitioners, or health  
16 care facilities;

17 (3) a government official, including communica-  
18 tions at a hearing, in response to written or oral  
19 questions from a government officials, or in a meet-  
20 ing, phone call, email, or other communication;

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

24 (5) any individual, organization, or other body  
25 investigating patient safety concerns in response to

1 a communication made by another health care prac-  
2 titioner; or

3 (6) only after 90 days following a communica-  
4 tion to a person described in paragraphs (1), (2), or  
5 (4) that did not result in significant corrective ac-  
6 tion, to the news media or press.

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

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

1 (d) CLARIFICATION.—Nothing in this section pro-  
2 hibits any adverse employment action or other materially  
3 adverse action against a health care practitioner that is  
4 not in retaliation for communicating about patient safety  
5 concerns.

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

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

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

1 **SEC. 4. ENFORCEMENT.**

2 (a) **INDIVIDUAL ACTIONS.**—

3 (1) **IN GENERAL.**—A health care facility that  
4 retaliates against a health care practitioner for com-  
5 municating patient safety concerns is liable to that  
6 practitioner in an amount equal to the sums deter-  
7 mined in paragraph (2).

8 (2) **DAMAGES.**—In an individual action under  
9 paragraph (1), the sum awarded for liability is equal  
10 to—

11 (A) actual damage sustained by the health  
12 care practitioner;

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

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

15 (b) **CLASS ACTIONS.**—

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

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

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

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

9           (i) actual damages;

10           (ii) \$500,000;

11           (iii) 1 percent of the net worth of the  
12 defendant health care facility; or

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

1 (C) attorney's fees and costs.

2 (c) STATUTE OF LIMITATIONS.—Any action alleging  
3 retaliation for communicating patient safety concerns  
4 under this section may be commenced not later than 3  
5 years after the last action that is alleged to be retaliatory  
6 occurs.

7 (d) REQUIREMENTS PRIOR TO BRING AN ACTION.—  
8 An action alleging retaliation for communicating patient  
9 safety concerns may be filed—

10 (1) after the health care practitioner—

11 (A) files a complaint with the State au-  
12 thority that licenses or otherwise oversees the  
13 health care facility that is the subject of the  
14 complaint; and

15 (B) in the case that the health facility that  
16 is the subject of the patient safety concerns is  
17 a hospital, files a complaint with the Joint  
18 Commission on Hospital Accreditation; and

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

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

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

4 **SEC. 5. PROFESSIONAL LIABILITY ACTIONS.**

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

17 **SEC. 6. REQUIRING THE REPORTING AND RESOLUTION OF**  
18 **PATIENT SAFETY CONCERNS FOR PRO-**  
19 **VIDERS OF SERVICES PARTICIPATING IN**  
20 **MEDICARE.**

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

23 (1) by moving subparagraphs (W) and (X) 2  
24 ems to the left;

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

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

5 (4) by inserting after subparagraph (Y) the fol-  
6 lowing new subparagraph:

7 “(Z) to establish—

8 “(i) a mechanism that allows a health care  
9 provider or practitioner to anonymously report  
10 patient safety concerns; and

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

14 (b) **EFFECTIVE DATE.**—The amendments made by  
15 subsection (a) shall take effect 1 year after the date of  
16 enactment of this Act.

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

19 Nothing in this Act, including the amendments made  
20 by this Act, shall be construed to limit or supersede the  
21 protections for health care providers with respect to re-  
22 porting patient safety events pursuant to part C of title  
23 IX of the Public Health Service Act (42 U.S.C. 299b-  
24 21 et seq.) or any other Federal or State law on patient  
25 safety reporting.