

110TH CONGRESS
2D SESSION

S. 3468

To amend title XVIII of the Social Security Act to continue the ability of hospitals to supply a needed workforce of nurses and allied health professionals by preserving funding for hospital operated nursing and allied health education programs.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 10, 2008

Mr. SCHUMER (for himself and Mr. ALEXANDER) introduced the following bill;
which was read twice and referred to the Committee on Finance

A BILL

To amend title XVIII of the Social Security Act to continue the ability of hospitals to supply a needed workforce of nurses and allied health professionals by preserving funding for hospital operated nursing and allied health education programs.

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 “Nursing and Allied
5 Health Education Preservation Act of 2008”.

1 **SEC. 2. PRESERVATION OF PROVIDER OPERATED NURSING**
2 **AND ALLIED HEALTH EDUCATION PRO-**
3 **GRAMS.**

4 (a) IN GENERAL.—Section 1861(v) of the Social Se-
5 curity Act (42 U.S.C. 1395x(v)) is amended by adding at
6 the end the following new paragraph:

7 “(9) PRESERVATION OF PROVIDER-OPERATED
8 NURSING AND ALLIED HEALTH EDUCATION PRO-
9 GRAMS.—

10 “(A) IN GENERAL.—The Secretary shall not
11 deny provider-operated status for a nursing and al-
12 lied health education program that substantially
13 meets requirements in effect under paragraphs (e)
14 and (f) of section 413.85 of title 42, Code of Federal
15 Regulations, as of October 1, 2006, on the basis of
16 an organizational structure, contractual arrange-
17 ments, or legal structure of the program, or a
18 change in such a structure or arrangement, such as
19 those described in subparagraph (B), so long as a
20 hospital, hospitals, or health system continues to
21 substantially control the nursing or allied health pro-
22 gram.

23 “(B) EXAMPLES OF ARRANGEMENTS AND
24 STRUCTURES.—The following are examples of an or-
25 ganizational structure, contractual arrangement,
26 legal structure, or a change in such a structure or

1 arrangement, referred to in subparagraph (A) of a
2 provider-operated program:

3 “(i) The students enrolled in the program
4 are concurrently enrolled in a college, commu-
5 nity college, or university or receive degrees, di-
6 plomas, or other certificates or credentials upon
7 graduation from both the nursing or allied
8 health education and the college, community
9 college, or university.

10 “(ii) The program enters into an agree-
11 ment with a third-party to provide classroom,
12 administrative, or financial services if the con-
13 tract is related to the nursing or allied health
14 education activity and the hospital or other pro-
15 vider retains the authority to modify, amend,
16 rescind, or renew the agreement.

17 “(iii) The program fails to comply with
18 regulations or requirements promulgated for
19 such a program because such compliance would
20 result in direct conflict with requirements—

21 “(I) of the State Board of Nursing or
22 other regulatory agency in the State in
23 which the program is located; or

24 “(II) of a national nursing or allied
25 health accreditation body or a regional, in-

1 stitutional accrediting body that is recog-
2 nized by the Department of Education or
3 such a State Board or regulatory agency.

4 “(iv) The program which is offered by a
5 for profit college or university is wholly owned
6 by a hospital or health system, or by a non-
7 profit college or university that is operated by
8 a hospital or health system, and collectively the
9 college or university and the hospital or health
10 system meets all the requirements in effect
11 under paragraphs (e) and (f) of section 413.85
12 of title 42, Code of Federal Regulations.

13 “(v) The nursing or allied health education
14 program is operated by one or more hospitals,
15 or a health system or chain organization, or any
16 combination of a hospital or hospitals and pro-
17 viders or entities whose principal business is
18 providing hospital services.

19 “(C) LIMITATION ON PAYMENT DENIALS.—The
20 Secretary—

21 “(i) shall not recoup, withhold, offset, dis-
22 allow, or deny reasonable cost, pass-through
23 payment for the costs of approved educational
24 activities for a nursing or allied health edu-
25 cation program described in subparagraph (A)

1 on a ground for which a denial of provider-oper-
2 ated status is not permitted under such sub-
3 paragraph;

4 “(ii) shall not reopen any cost reporting
5 year of any hospital for the purpose of effecting
6 any recoupment or other denial of payment de-
7 scribed in clause (i) and shall withdraw and dis-
8 continue any such reopening effected before the
9 date of the enactment of this paragraph; and

10 “(iii) shall restore to a hospital any such
11 recoupment or denial effected for a previous
12 cost reporting year by not later than the hos-
13 pital’s cost reporting year beginning after such
14 date of enactment.

15 “(D) CONSTRUCTION.—This paragraph shall
16 not affect payment—

17 “(i) with respect to a provider-operated
18 program which is in compliance with regula-
19 tions and guidance issued as of the date of the
20 enactment of this paragraph; or

21 “(ii) to a hospital or provider with respect
22 to reasonable cost, pass-through reimbursement
23 pursuant to section 4004(b) of the Omnibus

1 Budget Reconciliation Act of 1990 (Public Law
2 101-508; 104 Stat. 1388-39).”.

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