

116TH CONGRESS
1ST SESSION

S. 1357

To amend the Public Health Service Act to establish direct care registered nurse-to-patient staffing ratio requirements in hospitals, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 8, 2019

Mr. BROWN (for himself, Ms. BALDWIN, Ms. HARRIS, Mr. SANDERS, and Ms. WARREN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Public Health Service Act to establish direct care registered nurse-to-patient staffing ratio requirements in hospitals, 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; TABLE OF CONTENTS; FINDINGS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Nurse Staffing Standards for Hospital Patient Safety
6 and Quality Care Act of 2019”.

7 (b) TABLE OF CONTENTS.—The table of contents for
8 this Act is as follows:

Sec. 1. Short title; table of contents; findings.

Sec. 2. Minimum direct care registered nurse staffing requirement.
 Sec. 3. Enforcement of requirements through Federal programs.
 Sec. 4. Nurse workforce initiative.

1 (c) FINDINGS.—Congress finds the following:

2 (1) The Federal Government has a substantial
 3 interest in promoting quality care and improving the
 4 delivery of health care services to patients in health
 5 care facilities in the United States.

6 (2) Recent changes in health care delivery sys-
 7 tems that have resulted in higher acuity levels
 8 among patients in health care facilities increase the
 9 need for improved quality measures in order to pro-
 10 tect patient care and reduce the incidence of medical
 11 errors.

12 (3) Inadequate and poorly monitored registered
 13 nurse staffing practices that result in too few reg-
 14 istered nurses providing direct care jeopardize the
 15 delivery of quality health care services.

16 (4) Numerous studies have shown that patient
 17 outcomes are directly correlated to direct care reg-
 18 istered nurse staffing levels, including a 2010
 19 Health Services Research study that concluded that
 20 implementation of minimum nurse-to-patient staff-
 21 ing ratios in California has led to improved patient
 22 outcomes and nurse retention and a 2014 Agency
 23 for Healthcare Research and Quality study that con-
 24 cluded increases in nurse staffing and skill mix lead

1 to improved quality and reduced length of stay at no
2 additional cost.

3 (5) Requirements for direct care registered
4 nurse staffing ratios will help address the registered
5 nurse shortage in the United States by aiding in re-
6 cruitment of new registered nurses and improving
7 retention of registered nurses who are considering
8 leaving direct patient care because of demands cre-
9 ated by inadequate staffing.

10 (6) Establishing adequate minimum direct care
11 registered nurse-to-patient ratios that take into ac-
12 count patient acuity measures will improve the deliv-
13 ery of quality health care services and guarantee pa-
14 tient safety.

15 (7) Establishing safe staffing standards for di-
16 rect care registered nurses is a critical component of
17 assuring that there is adequate hospital staffing at
18 all levels to improve the delivery of quality care and
19 protect patient safety.

20 **SEC. 2. MINIMUM DIRECT CARE REGISTERED NURSE**
21 **STAFFING REQUIREMENT.**

22 (a) MINIMUM DIRECT CARE REGISTERED NURSE
23 STAFFING REQUIREMENTS.—The Public Health Service
24 Act (42 U.S.C. 201 et seq.) is amended by adding at the
25 end the following new title:

1 **“TITLE XXXIV—MINIMUM DI-**
 2 **RECT CARE REGISTERED**
 3 **NURSE STAFFING REQUIRE-**
 4 **MENT**

5 **“SEC. 3401. MINIMUM NURSE STAFFING REQUIREMENT.**

6 “(a) STAFFING PLAN.—

7 “(1) IN GENERAL.—A hospital shall implement
 8 a staffing plan that—

9 “(A) provides adequate, appropriate, and
 10 quality delivery of health care services and pro-
 11 tects patient safety; and

12 “(B) is consistent with the requirements of
 13 this title.

14 “(2) EFFECTIVE DATES.—

15 “(A) IMPLEMENTATION OF STAFFING
 16 PLAN.—Subject to subparagraph (B), the re-
 17 quirements under paragraph (1) shall take ef-
 18 fect on a date to be determined by the Sec-
 19 retary, but not later than 1 year after the date
 20 of the enactment of this title.

21 “(B) APPLICATION OF MINIMUM DIRECT
 22 CARE REGISTERED NURSE-TO-PATIENT RA-
 23 TIOS.—The requirements under subsection (b)
 24 shall take effect as soon as practicable, as de-
 25 termined by the Secretary, but not later than—

1 “(i) 2 years after the date of enact-
2 ment of this title; and

3 “(ii) in the case of a hospital in a
4 rural area (as defined in section
5 1886(d)(2)(D) of the Social Security Act),
6 4 years after the date of enactment of this
7 title.

8 “(b) MINIMUM DIRECT CARE REGISTERED NURSE-
9 TO-PATIENT RATIOS.—

10 “(1) IN GENERAL.—Except as provided in para-
11 graph (4) and other provisions of this section, a hos-
12 pital’s staffing plan shall provide that, at all times
13 during each shift within a unit of the hospital, and
14 with a full complement of ancillary and support
15 staff, a direct care registered nurse may be assigned
16 to not more than the following number of patients
17 in that unit:

18 “(A) One patient in trauma emergency
19 units.

20 “(B) One patient in operating room units,
21 provided that a minimum of 1 additional person
22 serves as a scrub assistant in such unit.

23 “(C) Two patients in critical care units, in-
24 cluding neonatal intensive care units, emer-
25 gency critical care and intensive care units,

1 labor and delivery units, coronary care units,
 2 acute respiratory care units, postanesthesia
 3 units, and burn units.

4 “(D) Three patients in emergency room
 5 units, pediatrics units, stepdown units, telem-
 6 etry units, antepartum units, and combined
 7 labor, deliver, and postpartum units.

8 “(E) Four patients in medical-surgical
 9 units, intermediate care nursery units, acute
 10 care psychiatric units, and other specialty care
 11 units.

12 “(F) Five patients in rehabilitation units
 13 and skilled nursing units.

14 “(G) Six patients in postpartum (3 cou-
 15 plets) units and well-baby nursery units.

16 “(2) SIMILAR UNITS WITH DIFFERENT
 17 NAMES.—The Secretary may apply minimum direct
 18 care registered nurse-to-patient ratios established in
 19 paragraph (1) for a hospital unit referred to in such
 20 paragraph to a type of hospital unit not referred to
 21 in such paragraph if such type of hospital unit pro-
 22 vides a level of care to patients whose needs are
 23 similar to the needs of patients cared for in the hos-
 24 pital unit referred to in such paragraph.

1 “(3) APPLICATION OF RATIOS TO HOSPITAL
2 NURSING PRACTICE STANDARDS.—

3 “(A) IN GENERAL.—A patient assignment
4 may be included in the calculation of the direct
5 care registered nurse-to-patient ratios required
6 in this subsection only if care is provided by a
7 direct care registered nurse and the provision of
8 care to the particular patient is within that di-
9 rect care registered nurse’s competence.

10 “(B) DEMONSTRATION OF UNIT-SPECIFIC
11 COMPETENCE.—A hospital shall not assign a di-
12 rect care registered nurse to a hospital unit un-
13 less that hospital determines that the direct
14 care registered nurse has demonstrated current
15 competence in providing care in that unit, and
16 has also received orientation to that hospital’s
17 unit sufficient to provide competent care to pa-
18 tients in that unit.

19 “(C) DUTIES OF THE ASSIGNED DIRECT
20 CARE REGISTERED NURSE.—Each patient shall
21 be assigned to a direct care registered nurse
22 who shall directly provide the assessment, plan-
23 ning, supervision, implementation, and evalua-
24 tion of the nursing care provided to the patient
25 at least every shift and has the responsibility

1 for the provision of care to a particular patient
2 within his or her scope of practice.

3 “(D) NURSE ADMINISTRATORS AND SU-
4 PERVISORS.—A registered nurse who is a nurse
5 administrator, nurse supervisor, nurse manager,
6 charge nurse, case manager, or any other hos-
7 pital administrator or supervisor, shall not be
8 included in the calculation of the direct care
9 registered nurse-to-patient ratio unless that
10 nurse has a current and active direct patient
11 care assignment and provides direct patient
12 care in compliance with the requirements of this
13 section, including competency requirements.
14 The exemption in this subsection shall apply
15 only during the hours in which the individual
16 registered nurse has the principal responsibility
17 of providing direct patient care and has no ad-
18 ditional job duties as would a direct care reg-
19 istered nurse.

20 “(E) OTHER PERSONNEL.—Other per-
21 sonnel may perform patient care tasks based on
22 their training and demonstrated skill but may
23 not perform or assist in direct care registered
24 nurse functions unless authorized to do in ac-

1 cordance with State scope of practice laws and
2 regulations.

3 “(F) TEMPORARY NURSING PERSONNEL.—

4 A hospital shall not assign any nursing per-
5 sonnel from temporary nursing agencies patient
6 care to any hospital unit without such personnel
7 having demonstrated competence on the as-
8 signed unit and received orientation to that hos-
9 pital’s unit sufficient to provide competent care
10 to patients in that unit.

11 “(G) ANCILLARY AND ADDITIONAL STAFF-

12 ING.—The need for additional staffing of direct
13 care registered nurses, licensed vocational or
14 practical nurses, licensed psychiatric techni-
15 cians, certified nursing or patient care assist-
16 ants, or other licensed or unlicensed ancillary
17 staff above the minimum registered nurse-to-pa-
18 tient ratios shall be based on the assessment of
19 the individual patient’s nursing care require-
20 ment, the individual patient’s nursing care plan,
21 and acuity level.

22 “(4) RESTRICTIONS.—

23 “(A) PROHIBITION AGAINST AVERAGING.—

24 A hospital shall not average the number of pa-
25 tients and the total number of direct care reg-

1 istered nurses assigned to patients in a hospital
2 unit during any 1 shift or over any period of
3 time for purposes of meeting the requirements
4 under this subsection.

5 “(B) PROHIBITION AGAINST IMPOSITION
6 OF MANDATORY OVERTIME REQUIREMENTS.—A
7 hospital shall not impose mandatory overtime
8 requirements to meet the hospital unit direct
9 care registered nurse-to-patient ratios required
10 under this subsection.

11 “(C) RELIEF DURING ROUTINE AB-
12 SENCES.—A hospital shall ensure that only a
13 direct care registered nurse who has dem-
14 onstrated current competence to the hospital in
15 providing care on a particular unit and has also
16 received orientation to that hospital’s unit suffi-
17 cient to provide competent care to patients in
18 that unit may relieve another direct care reg-
19 istered nurse during breaks, meals, and other
20 routine, expected absences from a hospital unit.

21 “(D) APPLICATION OF DIRECT CARE REG-
22 ISTERED NURSE-TO-PATIENT RATIOS IN PA-
23 TIENT-ACUITY ADJUSTABLE UNITS.—Patients
24 shall be cared for only on units or patient care
25 areas where the direct care registered nurse-to-

1 patient ratios meet the level of intensity, type
2 of care, and the individual requirements and
3 needs of each patient. Notwithstanding para-
4 graph (2), hospitals that provide patient care in
5 units or patient care areas that are acuity
6 adaptable or acuity adjustable shall apply the
7 direct care registered nurse-to-patient ratio re-
8 quired in this section for the highest patient
9 acuity level or level of care in that unit or pa-
10 tient care area, and shall comply with all other
11 requirements of this section.

12 “(E) USE OF VIDEO MONITORS.—A hos-
13 pital shall not employ video monitors or any
14 form of electronic visualization of a patient as
15 a substitute for the direct observation required
16 for patient assessment by the direct care reg-
17 istered nurse or required for patient protection.
18 Video monitors or any form of electronic visual-
19 ization of a patient shall not be included in the
20 calculation of the direct care registered nurse-
21 to-patient ratio required in this subsection and
22 shall not replace the requirement of paragraph
23 (3)(D) that each patient shall be assigned to a
24 direct care registered nurse who shall directly
25 provide the assessment, planning, supervision,

1 implementation, and evaluation of the nursing
2 care provided to the patient at least every shift
3 and have the responsibility for the provision of
4 care to a particular patient within his or her
5 scope of practice.

6 “(F) USE OF OTHER TECHNOLOGY.—A
7 hospital shall not employ technology that sub-
8 stitutes for the assigned registered nurse’s pro-
9 fessional judgment in assessment, planning, im-
10 plementation, and evaluation of care.

11 “(5) ADJUSTMENT OF RATIOS.—

12 “(A) IN GENERAL.—If necessary to protect
13 patient safety, the Secretary may prescribe reg-
14 ulations that—

15 “(i) increase minimum direct care reg-
16 istered nurse-to-patient ratios under this
17 subsection to reduce the number of pa-
18 tients that may be assigned to each direct
19 care nurse; or

20 “(ii) add minimum direct care reg-
21 istered nurse-to-patient ratios for units not
22 referred to in paragraphs (1) and (2).

23 “(B) CONSULTATION.—Such regulations
24 shall be prescribed after consultation with af-
25 fected hospitals and registered nurses.

1 “(6) ANCILLARY AND ADDITIONAL STAFFING.—

2 “(A) IN GENERAL.—The Secretary may
3 prescribe regulations requiring additional staff-
4 ing of direct care registered nurses, licensed vo-
5 cational or practice nurses, licensed psychiatric
6 technicians, certified nursing or patient care as-
7 sistants, or other licensed or unlicensed ancil-
8 lary staff above the minimum registered nurse-
9 to-patient ratios that is based on the assess-
10 ment of the individual patient’s nursing care
11 needs, the individual patient’s nursing care
12 plan, and acuity level.

13 “(B) CONSULTATION.—Such regulations
14 shall be prescribed after consultation with af-
15 fected hospitals, registered nurses, and ancillary
16 staff.

17 “(7) RELATIONSHIP TO STATE-IMPOSED RA-
18 TIOS.—Nothing in this title shall preempt State
19 standards that the Secretary determines to be as
20 stringent as Federal requirements for a staffing plan
21 established under this title. Minimum direct care
22 registered nurse-to-patient ratios established under
23 this subsection shall not preempt State requirements
24 that the Secretary determines are as stringent as to

1 Federal requirements for direct care registered
2 nurse-to-patient ratios established under this title.

3 “(8) EXEMPTION IN EMERGENCIES.—The re-
4 quirements established under this subsection shall
5 not apply during a state of emergency if a hospital
6 is requested or expected to provide an exceptional
7 level of emergency or other medical services. If a
8 hospital seeks to apply the exemption under this
9 paragraph in response to a complaint filed against
10 the hospital for a violation of the provisions of this
11 title, the hospital must demonstrate that prompt and
12 diligent efforts were made to maintain required
13 staffing levels. The Secretary shall issue guidance to
14 hospitals that describes situations that constitute a
15 state of emergency for purposes of the exemption
16 under this paragraph and shall establish necessary
17 penalties for violations of this paragraph consistent
18 with section 3406.

19 “(c) DEVELOPMENT AND REEVALUATION OF STAFF-
20 ING PLAN.—

21 “(1) CONSIDERATIONS IN DEVELOPMENT OF
22 PLAN.—In developing the staffing plan, a hospital
23 shall provide for direct care registered nurse-to-pa-
24 tient ratios above the minimum direct care reg-
25 istered nurse-to-patient ratios required under sub-

1 section (b) if appropriate based upon consideration
2 of, at minimum, the following factors:

3 “(A) The number of patients on a par-
4 ticular unit on a shift-by-shift basis.

5 “(B) The acuity level and nursing care
6 plan of patients on a particular unit on a shift-
7 by-shift basis.

8 “(C) The anticipated admissions, dis-
9 charges, and transfers of patients during each
10 shift that impacts direct patient care.

11 “(D) Specialized experience required of di-
12 rect care registered nurses on a particular unit.

13 “(E) Staffing levels and services provided
14 by licensed vocational or practical nurses, li-
15 censed psychiatric technicians, certified nurse
16 assistants, or other ancillary staff in meeting
17 direct patient care needs not required by a di-
18 rect care registered nurse.

19 “(F) The level of familiarity with hospital
20 practices, policies, and procedures by temporary
21 agency direct care registered nurses used dur-
22 ing a shift.

23 “(G) Obstacles to efficiency in the delivery
24 of patient care presented by physical layout.

1 “(2) DOCUMENTATION OF STAFFING.—A hos-
2 pital shall specify the system used to document ac-
3 tual staffing in each unit for each shift.

4 “(3) ANNUAL REEVALUATION OF PLAN.—

5 “(A) IN GENERAL.—A hospital shall annu-
6 ally evaluate its staffing plan in each unit in re-
7 lation to actual patient care requirements.

8 “(B) UPDATE.—A hospital shall update its
9 staffing plan to the extent appropriate based on
10 such evaluation.

11 “(4) TRANSPARENCY.—

12 “(A) IN GENERAL.—Any staffing plan or
13 method used to create and evaluate acuity-level
14 and adopted by a hospital under this section
15 shall be transparent in all respects, including
16 disclosure of detailed documentation of the
17 methodology used to determine nursing staff-
18 ing, identifying each factor, assumption, and
19 value used in applying such methodology.

20 “(B) PUBLIC AVAILABILITY.—The Sec-
21 retary shall establish procedures to provide that
22 the documentation submitted under subsection
23 (d) is available for public inspection in its en-
24 tirety.

1 “(5) REGISTERED NURSE PARTICIPATION.—A
2 staffing plan of a hospital—

3 “(A) shall be developed and subsequent re-
4 evaluations shall be conducted under this sub-
5 section on the basis of input from direct care
6 registered nurses at the hospital from each unit
7 or patient care area; and

8 “(B) where such nurses are represented
9 through collective bargaining, shall require bar-
10 gaining with the applicable recognized or cer-
11 tified collective bargaining representative of
12 such nurses.

13 Nothing in this title shall be construed to permit
14 conduct prohibited under the National Labor Rela-
15 tions Act (29 U.S.C. 151 et seq.) or chapter 71 of
16 title 5, United States Code.

17 “(6) STAFFING COMMITTEES.—If a hospital
18 maintains a staffing committee, then the committee
19 shall include at least one registered nurse from each
20 hospital unit and shall be composed of at least 50
21 percent direct care registered nurses. The staffing
22 committee shall include meaningful representation of
23 other direct care nonmanagement staff. Direct care
24 registered nurses who serve on the committee shall
25 be selected by other direct care registered nurses

1 from their unit. Other direct care nonmanagement
 2 staff shall be selected by other direct care non-
 3 management staff. Participation on staffing commit-
 4 tees shall be considered a part of the employee's reg-
 5 ularly scheduled workweek.

6 “(d) SUBMISSION OF PLAN TO SECRETARY.—A hos-
 7 pital shall submit to the Secretary its staffing plan and
 8 any annual updates under subsection (c)(3)(B). A feder-
 9 ally operated hospital may submit its staffing plan
 10 through the department or agency operating the hospital.

11 **“SEC. 3402. POSTING, RECORDS, AND AUDITS.**

12 “(a) POSTING REQUIREMENTS.—In each unit, a hos-
 13 pital shall post a uniform notice in a form specified by
 14 the Secretary in regulation that—

15 “(1) explains requirements imposed under sec-
 16 tion 3401;

17 “(2) includes actual direct care registered
 18 nurse-to-patient ratios during each shift;

19 “(3) includes the actual number and titles of di-
 20 rect care registered nurses assigned during each
 21 shift; and

22 “(4) is visible, conspicuous, and accessible to
 23 staff, patients, and the public.

24 “(b) RECORDS.—

1 “(1) MAINTENANCE OF RECORDS.—Each hos-
 2 pital shall maintain accurate records of actual direct
 3 care registered nurse-to-patient ratios in each unit
 4 for each shift for no less than 3 years. Such records
 5 shall include—

6 “(A) the number of patients in each unit;

7 “(B) the identity and duty hours of—

8 “(i) each direct care registered nurse
 9 assigned to each patient in each unit in
 10 each shift; and

11 “(ii) ancillary staff who are under the
 12 coordination of the direct care registered
 13 nurse;

14 “(C) certification that each nurse received
 15 rest and meal breaks and the identity and duty
 16 hours of each direct care registered nurse who
 17 provided such relief; and

18 “(D) a copy of each notice posted under
 19 subsection (a).

20 “(2) AVAILABILITY OF RECORDS.—Each hos-
 21 pital shall make its records maintained under para-
 22 graph (1) available to—

23 “(A) the Secretary;

24 “(B) registered nurses and their collective
 25 bargaining representatives (if any); and

1 “(C) the public under regulations estab-
 2 lished by the Secretary, or in the case of a fed-
 3 erally operated hospital, under section 552 of
 4 title 5, United States Code (commonly known
 5 as the Freedom of Information Act).

6 “(c) AUDITS.—The Secretary shall conduct periodic
 7 audits to ensure—

8 “(1) implementation of the staffing plan in ac-
 9 cordance with this title; and

10 “(2) accuracy in records maintained under this
 11 section.

12 **“SEC. 3403. MINIMUM DIRECT CARE LICENSED PRACTICAL**
 13 **NURSE STAFFING REQUIREMENTS.**

14 “(a) ESTABLISHMENT.—A hospital’s staffing plan
 15 shall comply with minimum direct care licensed practical
 16 nurse staffing requirements that the Secretary establishes
 17 for units in hospitals. Such staffing requirements shall be
 18 established not later than 18 months after the date of the
 19 enactment of this title, and shall be based on the study
 20 conducted under subsection (b).

21 “(b) STUDY.—Not later than 1 year after the date
 22 of the enactment of this title, the Secretary, acting
 23 through the Director of the Agency for Healthcare Re-
 24 search and Quality, shall complete a study of licensed
 25 practical nurse staffing and its effects on patient care in

1 hospitals. The Director may contract with a qualified enti-
 2 ty or organization to carry out such study under this para-
 3 graph. The Director shall consult with licensed practical
 4 nurses and organizations representing licensed practical
 5 nurses regarding the design and conduct of the study.

6 “(c) APPLICATION OF REGISTERED NURSE PROVI-
 7 SIONS TO LICENSED PRACTICAL NURSE STAFFING RE-
 8 QUIREMENTS.—Paragraphs (2), (4)(A), (4)(B), (4)(C),
 9 and (6) of section 3401(b), paragraphs (1), (2), (3), and
 10 (4) of section 3401(c), and section 3402 shall apply to
 11 the establishment and application of direct care licensed
 12 practical nurse staffing requirements under this section
 13 pursuant to the additional staffing requirements under
 14 subsection (b)(3)(G) of section 3401 and in the same man-
 15 ner that they apply to the establishment and application
 16 of direct care registered nurse-to-patient ratios under sec-
 17 tions 3401 and 3402.

18 “(d) EFFECTIVE DATE.—The requirements of this
 19 section shall take effect as soon as practicable, as deter-
 20 mined by the Secretary, but not later than—

21 “(1) 2 years after the date of the enactment of
 22 this title; and

23 “(2) in the case of a hospital in a rural area
 24 (as defined in section 1886(d)(2)(D) of the Social

1 Security Act), 4 years after the date of the enact-
2 ment of this title.

3 “(e) STUDY.—Not later than 1 year after the date
4 of the enactment of this title, the Secretary, acting
5 through the Director of the Agency for Healthcare Re-
6 search and Quality shall complete a study of registered
7 and practical nurse staffing requirements in clinics and
8 other outpatient settings, and its effects on patient care
9 in outpatient settings. The Director may contract with a
10 qualified entity or organization to carry out such study
11 under this subsection. The Director shall consult with reg-
12 istered nurses and licensed practice nurses working in out-
13 patient settings, including professional nursing associa-
14 tions and labor organizations representing both registered
15 and practice nurses working in outpatient settings regard-
16 ing the design and conduct of the study.

17 **“SEC. 3404. ADJUSTMENT IN REIMBURSEMENT.**

18 “(a) MEDICARE REIMBURSEMENT.—The Secretary
19 shall adjust payments made to hospitals (other than feder-
20 ally operated hospitals) under title XVIII of the Social Se-
21 curity Act in an amount equal to the net amount of addi-
22 tional costs incurred in providing services to Medicare
23 beneficiaries that are attributable to compliance with re-
24 quirements imposed under sections 3401 through 3403.
25 The amount of such payment adjustments shall take into

1 account recommendations contained in the report sub-
 2 mitted by the Medicare Payment Advisory Commission
 3 under subsection (c).

4 “(b) AUTHORIZATION OF APPROPRIATION FOR FED-
 5 ERALLY OPERATED HOSPITALS.—There are authorized to
 6 be appropriated such additional sums as are required for
 7 federally operated hospitals to comply with the additional
 8 requirements established under sections 3401 through
 9 3403.

10 “(c) MEDPAC REPORT.—Not later than 2 years
 11 after the date of the enactment of this title, the Medicare
 12 Payment Advisory Commission (established under section
 13 1805 of the Social Security Act) shall submit to Congress
 14 and the Secretary a report estimating total costs and sav-
 15 ings attributable to compliance with requirements imposed
 16 under sections 3401 through 3403. Such report shall in-
 17 clude recommendations on the need, if any, to adjust reim-
 18 bursement for Medicare payments under subsection (a).

19 **“SEC. 3405. WHISTLEBLOWER AND PATIENT PROTECTIONS.**

20 “(a) PROFESSIONAL OBLIGATION AND RIGHTS.—All
 21 nurses have a duty and right to act based on their profes-
 22 sional judgment in accordance with State nursing laws
 23 and regulations of the State in which the direct nursing
 24 care is being performed and to provide care in the exclu-

1 sive interests of the patients and to act as the patient's
2 advocate.

3 “(b) ACCEPTANCE OF PATIENT CARE ASSIGN-
4 MENTS.—The nurse is responsible for providing com-
5 petent, safe, therapeutic, and effective nursing care to as-
6 signed patients. Before accepting a patient assignment, a
7 nurse shall—

8 “(1) have the necessary professional knowledge,
9 judgment, skills, and ability to provide the required
10 care;

11 “(2) determine using professional judgment in
12 accordance with State nursing laws and regulations
13 of the State in which the direct nursing care is being
14 performed whether the nurse is competent to per-
15 form the nursing care required; and

16 “(3) determine whether acceptance of a patient
17 assignment would expose the patient or nurse to risk
18 of harm.

19 “(c) OBJECTION TO OR REFUSAL OF ASSIGNMENT.—
20 A nurse may object to, or refuse to participate in, any
21 activity, policy, practice, assignment, or task if in good
22 faith—

23 “(1) the nurse reasonably believes it to be in
24 violation of section 3401 or 3403; or

1 “(2) the nurse is not prepared by education,
2 training, or experience to fulfill the assignment with-
3 out compromising the safety of any patient or jeop-
4 ardizing the license of the nurse.

5 “(d) RETALIATION FOR OBJECTION TO OR REFUSAL
6 OF ASSIGNMENT BARRED.—

7 “(1) NO DISCHARGE, DISCRIMINATION, OR RE-
8 TALIATION.—No hospital shall discharge, retaliate,
9 discriminate, or otherwise take adverse action in any
10 manner with respect to any aspect of a nurse’s em-
11 ployment (as defined in section 3407), including dis-
12 charge, promotion, compensation, or terms, condi-
13 tions, or privileges of employment, based on the
14 nurse’s refusal of a work assignment under sub-
15 section (c).

16 “(2) NO FILING OF COMPLAINT.—No hospital
17 shall file a complaint or a report against a nurse
18 with a State professional disciplinary agency because
19 of the nurse’s refusal of a work assignment under
20 subsection (c).

21 “(e) CAUSE OF ACTION.—Any nurse, collective bar-
22 gaining representative, or legal representative of any nurse
23 who has been discharged, discriminated against, or retali-
24 ated against in violation of subsection (d)(1) or against
25 whom a complaint or report has been filed in violation of

1 subsection (d)(2) may (without regard to whether a com-
 2 plaint has been filed under subsection (f) of this section
 3 or subsection (b) of section 3406) bring a cause of action
 4 in a United States district court. A nurse who prevails
 5 on the cause of action shall be entitled to one or more
 6 of the following:

7 “(1) Reinstatement.

8 “(2) Reimbursement of lost wages, compensa-
 9 tion, and benefits.

10 “(3) Attorneys’ fees.

11 “(4) Court costs.

12 “(5) Other damages.

13 “(f) COMPLAINT TO SECRETARY.—A nurse, patient,
 14 collective bargaining representative, or other individual
 15 may file a complaint with the Secretary against a hospital
 16 that violates the provisions of this title. For any complaint
 17 filed, the Secretary shall—

18 “(1) receive and investigate the complaint;

19 “(2) determine whether a violation of this title
 20 as alleged in the complaint has occurred; and

21 “(3) if such a violation has occurred, issue an
 22 order that the complaining nurse or individual shall
 23 not suffer any discharge, retaliation, discrimination,
 24 or other adverse action prohibited by subsection (d)
 25 or subsection (h).

1 “(g) TOLL-FREE TELEPHONE NUMBER.—

2 “(1) IN GENERAL.—The Secretary shall provide
3 for the establishment of a toll-free telephone hotline
4 to provide information regarding the requirements
5 under section 3401 through 3403 and to receive re-
6 ports of violations of such section.

7 “(2) NOTICE TO PATIENTS.—A hospital shall
8 provide each patient admitted to the hospital for in-
9 patient care with the hotline described in paragraph
10 (1), and shall give notice to each patient that such
11 hotline may be used to report inadequate staffing or
12 care.

13 “(h) PROTECTION FOR REPORTING.—

14 “(1) PROHIBITION ON RETALIATION OR DIS-
15 CRIMINATION.—A hospital shall not discriminate or
16 retaliate in any manner against any patient, em-
17 ployee, or contract employee of the hospital, or any
18 other individual, on the basis that such individual, in
19 good faith, individually or in conjunction with an-
20 other person or persons, has presented a grievance
21 or complaint, or has initiated or cooperated in any
22 investigation or proceeding of any governmental en-
23 tity, regulatory agency, or private accreditation
24 body, made a civil claim or demand, or filed an ac-

1 tion relating to the care, services, or conditions of
2 the hospital or of any affiliated or related facilities.

3 “(2) GOOD FAITH DEFINED.—For purposes of
4 this subsection, an individual shall be deemed to be
5 acting in good faith if the individual reasonably be-
6 lieves—

7 “(A) the information reported or disclosed
8 is true; and

9 “(B) a violation of this title has occurred
10 or may occur.

11 “(i) PROHIBITION ON INTERFERENCE WITH
12 RIGHTS.—

13 “(1) EXERCISE OF RIGHTS.—It shall be unlaw-
14 ful for any hospital to—

15 “(A) interfere with, restrain, or deny the
16 exercise, or attempt to exercise, by any person
17 of any right provided or protected under this
18 title; or

19 “(B) coerce or intimidate any person re-
20 garding the exercise or attempt to exercise such
21 right.

22 “(2) OPPOSITION TO UNLAWFUL POLICIES OR
23 PRACTICES.—It shall be unlawful for any hospital to
24 discriminate or retaliate against any person for op-
25 posing any hospital policy, practice, or actions which

1 are alleged to violate, breach, or fail to comply with
2 any provision of this title.

3 “(3) PROHIBITION ON INTERFERENCE WITH
4 PROTECTED COMMUNICATIONS.—A hospital (or an
5 individual representing a hospital) shall not make,
6 adopt, or enforce any rule, regulation, policy, or
7 practice which in any manner directly or indirectly
8 prohibits, impedes, or discourages a direct care
9 nurse from, or intimidates, coerces, or induces a di-
10 rect care nurse regarding, engaging in free speech
11 activities or disclosing information as provided under
12 this title.

13 “(4) PROHIBITION ON INTERFERENCE WITH
14 COLLECTIVE ACTION.—A hospital (or an individual
15 representing a hospital) shall not in any way inter-
16 fere with the rights of nurses to organize, bargain
17 collectively, and engage in concerted activity under
18 section 7 of the National Labor Relations Act (29
19 U.S.C. 157).

20 “(j) NOTICE.—A hospital shall post in an appropriate
21 location in each unit a conspicuous notice in a form speci-
22 fied by the Secretary that—

23 “(1) explains the rights of nurses, patients, and
24 other individuals under this section;

1 “(2) includes a statement that a nurse, patient,
2 or other individual may file a complaint with the
3 Secretary against a hospital that violates the provi-
4 sions of this title; and

5 “(3) provides instructions on how to file such a
6 complaint.

7 “(k) EFFECTIVE DATE.—

8 “(1) REFUSAL; RETALIATION; CAUSE OF AC-
9 TION.—

10 “(A) IN GENERAL.—Subsections (c)
11 through (e) shall apply to objections and refus-
12 als occurring on or after the effective date of
13 the provision of this title to which the objection
14 or refusal relates.

15 “(B) EXCEPTION.—Subsection (c)(2) shall
16 not apply to objections or refusals in any hos-
17 pital before the requirements of section 3401(a)
18 or 3403(a), as applicable, apply to that hos-
19 pital.

20 “(2) PROTECTIONS FOR REPORTING.—Sub-
21 section (h)(1) shall apply to actions occurring on or
22 after the effective date of the provision to which the
23 violation relates, except that such subsection shall
24 apply to initiation, cooperation, or participation in

1 an investigation or proceeding on or after the date
2 of enactment of this title.

3 “(3) NOTICE.—Subsection (j) shall take effect
4 18 months after the date of enactment of this title.

5 **“SEC. 3406. ENFORCEMENT.**

6 “(a) IN GENERAL.—The Secretary shall enforce the
7 requirements and prohibitions of this title in accordance
8 with this section.

9 “(b) PROCEDURES FOR RECEIVING AND INVES-
10 TIGATING COMPLAINTS.—The Secretary shall establish
11 procedures under which—

12 “(1) any person may file a complaint alleging
13 that a hospital has violated a requirement or a pro-
14 hibition of this title; and

15 “(2) such complaints shall be investigated by
16 the Secretary.

17 “(c) REMEDIES.—If the Secretary determines that a
18 hospital has violated a requirement of this title, the Sec-
19 retary—

20 “(1) shall require the facility to establish a cor-
21 rective action plan to prevent the recurrence of such
22 violation; and

23 “(2) may impose civil money penalties, as de-
24 scribed in subsection (d).

25 “(d) CIVIL PENALTIES.—

1 “(1) IN GENERAL.—In addition to any other
2 penalties prescribed by law, the Secretary may im-
3 pose civil penalties as follows:

4 “(A) HOSPITAL LIABILITY.—The Secretary
5 may impose on a hospital found to be in viola-
6 tion of this title a civil money penalty of—

7 “(i) not more than \$25,000 for the
8 first knowing violation of this title by such
9 hospital; and

10 “(ii) not more than \$50,000 for any
11 subsequent knowing violation of this title
12 by such hospital.

13 “(B) INDIVIDUAL LIABILITY.—The Sec-
14 retary may impose on an individual who—

15 “(i) is employed by a hospital found
16 by the Secretary to have violated this title;
17 and

18 “(ii) knowingly violates this title,
19 a civil money penalty of not more than \$20,000
20 for each such violation by the individual.

21 “(2) PROCEDURES.—The provisions of section
22 1128A of the Social Security Act (other than sub-
23 sections (a) and (b)) shall apply with respect to a
24 civil money penalty or proceeding under this sub-
25 section in the same manner as such provisions apply

1 with respect to a civil money penalty or proceeding
 2 under such section 1128A.

3 “(e) PUBLIC NOTICE OF VIOLATIONS.—

4 “(1) INTERNET WEBSITE.—The Secretary shall
 5 publish on the internet website of the Department of
 6 Health and Human Services the names of hospitals
 7 on which a civil money penalty has been imposed
 8 under this section, the violation for which such pen-
 9 alty was imposed, and such additional information
 10 as the Secretary determines appropriate.

11 “(2) CHANGE OF OWNERSHIP.—With respect to
 12 a hospital that had a change of ownership, as deter-
 13 mined by the Secretary, penalties imposed on the
 14 hospital while under previous ownership shall no
 15 longer be published by the Secretary pursuant to
 16 paragraph (1) after the 1-year period beginning on
 17 the date of change of ownership.

18 “(f) USE OF FUNDS.—Funds collected by the Sec-
 19 retary pursuant to this section are authorized to be appro-
 20 priated to carry out this title.

21 **“SEC. 3407. DEFINITIONS.**

22 “For purposes of this title:

23 “(1) ACUITY LEVEL.—The term ‘acuity level’
 24 means the determination, using a hospital acuity
 25 measurement tool that has been developed and es-

1 tablished in coordination with direct care registered
 2 nurses and made transparent pursuant to section
 3 3401(c)(4), of nursing care requirements, based on
 4 the assigned direct care registered nurse’s profes-
 5 sional judgment of—

6 “(A) the severity and complexity of an in-
 7 dividual patient’s illness or injury;

8 “(B) the need for specialized equipment;
 9 and

10 “(C) the intensity of nursing interventions
 11 required.

12 “(2) COMPETENCE.—The term ‘competence’ or
 13 ‘competent’ means the satisfactory application of the
 14 duties and responsibilities of a registered nurse in
 15 providing nursing care to specific patient popu-
 16 lations and for acuity levels for each patient care
 17 unit or area pursuant to the State nursing laws and
 18 regulations of the State in which the direct nursing
 19 care is being performed.

20 “(3) DIRECT CARE LICENSED PRACTICAL
 21 NURSE.—The term ‘direct care licensed practical
 22 nurse’ means an individual who has been granted a
 23 license by at least one State to practice as a licensed
 24 practical nurse or a licensed vocational nurse and
 25 who provides bedside care for one or more patients.

1 “(4) DIRECT CARE REGISTERED NURSE.—The
2 term ‘direct care registered nurse’ means an indi-
3 vidual who has been granted a license by at least
4 one State to practice as a registered nurse and who
5 provides bedside care for one or more patients.

6 “(5) EMPLOYMENT.—The term ‘employment’
7 includes the provision of services under a contract or
8 other arrangement.

9 “(6) HOSPITAL.—The term ‘hospital’ has the
10 meaning given that term in section 1861(e) of the
11 Social Security Act, and includes a hospital that is
12 operated by the Department of Veterans Affairs, the
13 Department of Defense, the Indian Health Services
14 Program, or any other department or agency of the
15 United States.

16 “(7) NURSE.—The term ‘nurse’ means any di-
17 rect care registered nurse or direct care licensed
18 practice nurse (as the case may be), regardless of
19 whether or not the nurse is an employee.

20 “(8) NURSING CARE PLAN.—The term ‘nursing
21 care plan’ means a plan developed by the assigned
22 direct care registered nurse (in accordance with
23 nursing law in the State in which the nursing care
24 is performed) that indicates the nursing care to be
25 given to individual patients that—

1 “(A) considers the acuity level of the pa-
2 tient;

3 “(B) is developed in coordination with the
4 patient, the patient’s family, or other represent-
5 atives when appropriate, and staff of other dis-
6 ciplines involved in the care of the patient;

7 “(C) reflects all elements of the nursing
8 process; and

9 “(D) recommends the number and skill
10 mix of additional licensed and unlicensed direct
11 care staff needed to fully implement the nursing
12 care plan.

13 “(9) PROFESSIONAL JUDGMENT.—The term
14 ‘professional judgment’ means, in accordance with
15 State nursing laws and regulations of the State in
16 which the direct nursing care is being performed, the
17 direct care registered nurse’s application of knowl-
18 edge, expertise, and experience in conducting a com-
19 prehensive nursing assessment of each patient and
20 in making independent decisions about patient care
21 including the need for additional staff.

22 “(10) STAFFING PLAN.—The term ‘staffing
23 plan’ means a staffing plan required under section
24 3401.

1 “(11) STATE OF EMERGENCY.—The term ‘state
2 of emergency’—

3 “(A) means a state of emergency that is
4 an unpredictable or unavoidable occurrence at
5 an unscheduled or unpredictable interval, relat-
6 ing to health care delivery and requiring imme-
7 diate medical interventions and care; and

8 “(B) does not include a state of emergency
9 that results from a labor dispute in the health
10 care industry or consistent understaffing.

11 **“SEC. 3408. RULE OF CONSTRUCTION.**

12 “Nothing in this title shall be construed to authorize
13 disclosure of private and confidential patient information,
14 if such disclosure is not authorized or required by other
15 applicable law.”.

16 (b) RECOMMENDATIONS TO CONGRESS.—Not later
17 than 1 year after the date of enactment of this Act, the
18 Secretary of Health and Human Services shall submit to
19 Congress a report containing recommendations for ensur-
20 ing that sufficient numbers of nurses are available to meet
21 the requirements imposed by title XXXIV of the Public
22 Health Service Act, as added by subsection (a).

23 (c) REPORT BY HRSA.—

24 (1) IN GENERAL.—Not later than 2 years after
25 the date of enactment of this Act, the Administrator

1 of the Health Resources and Services Administra-
 2 tion, in consultation with the National Health Care
 3 Workforce Commission, shall submit to Congress a
 4 report regarding the relationship between nurse
 5 staffing levels and nurse retention in hospitals.

6 (2) UPDATED REPORT.—Not later than 5 years
 7 after the date of enactment of this Act, the Adminis-
 8 trator of the Health Resources and Services Admin-
 9 istration, in consultation with the National Health
 10 Care Workforce Commission, shall submit to Con-
 11 gress an update of the report submitted under para-
 12 graph (1).

13 **SEC. 3. ENFORCEMENT OF REQUIREMENTS THROUGH FED-**
 14 **ERAL PROGRAMS.**

15 (a) MEDICARE PROGRAM.—Section 1866(a)(1) of the
 16 Social Security Act (42 U.S.C. 1395cc(a)(1)) is amend-
 17 ed—

18 (1) in subparagraph (X), by striking “, and”
 19 and inserting a comma;

20 (2) in subparagraph (Y), by striking the period
 21 at the end and inserting “, and”; and

22 (3) by inserting after the subparagraph (Y) the
 23 following new subparagraph:

1 “(Z) in the case of a hospital, to comply with
2 the provisions of title XXXIV of the Public Health
3 Service Act.”.

4 (b) MEDICAID PROGRAM.—Section 1902(a) of the
5 Social Security Act (42 U.S.C. 1396a(a)) is amended—

6 (1) by striking “and” at the end of paragraph
7 (85);

8 (2) by striking the period at the end of para-
9 graph (86) and inserting “; and”; and

10 (3) by inserting after paragraph (86) the fol-
11 lowing new paragraph:

12 “(87) provide that any hospital that receives a
13 payment under such plan comply with the provisions
14 of title XXXIV of the Public Health Service Act (re-
15 lating to minimum direct care registered nurse staff-
16 ing requirements).”.

17 (c) HEALTH BENEFITS PROGRAM OF THE DEPART-
18 MENT OF VETERANS AFFAIRS.—Section 8110(a) of title
19 38, United States Code, is amended by adding at the end
20 the following new paragraphs:

21 “(7) In the case of a Department medical facil-
22 ity that is a hospital, the hospital shall comply with
23 the provisions of title XXXIV of the Public Health
24 Service Act.

1 “(8) Nothing either in chapter 74 of this title
 2 or in section 7106 of title 5 shall preclude enforce-
 3 ment of the provisions of title XXXIV of the Public
 4 Health Service Act with respect to a Department
 5 hospital through grievance procedures negotiated in
 6 accordance with chapter 71 of title 5.”.

7 (d) HEALTH BENEFITS PROGRAM OF THE DEPART-
 8 MENT OF DEFENSE.—

9 (1) IN GENERAL.—Chapter 55 of title 10,
 10 United States Code, is amended by adding at the
 11 end the following new section:

12 **“§ 1110c. Staffing requirements**

13 “In the case of a facility of the uniformed services
 14 that is a hospital, the hospital shall comply with the provi-
 15 sions of title XXXIV of the Public Health Service Act.”.

16 (2) CLERICAL AMENDMENT.—The table of sec-
 17 tions at the beginning of such chapter is amended
 18 by inserting after the item relating to section 1110b
 19 the following new item:

“1110c. Staffing requirements.”.

20 (e) INDIAN HEALTH SERVICES PROGRAM.—Title
 21 VIII of the Indian Health Care Improvement Act (25
 22 U.S.C. 1671 et seq.) is amended by adding at the end
 23 the following new section:

1 **“SEC. 833. STAFFING REQUIREMENTS.**

2 “All hospitals of the Service shall comply with the
3 provisions of title XXXIV of the Public Health Service Act
4 (relating to minimum direct care registered nurse staffing
5 requirements).”.

6 (f) **FEDERAL LABOR-MANAGEMENT RELATIONS.—**

7 (1) **IN GENERAL.**—Section 7106 of title 5,
8 United States Code, is amended by adding at the
9 end the following:

10 “(c) Nothing in this section shall preclude enforce-
11 ment of the provisions of title XXXIV of the Public Health
12 Service Act through grievance procedures negotiated in ac-
13 cordance with section 7121.”.

14 (2) **CONFORMING AMENDMENT.**—Section
15 7106(a) of title 5, United States Code, is amended
16 by striking “Subject to subsection (b) of this title,”
17 and inserting “Subject to subsections (b) and (c),”.

18 **SEC. 4. NURSE WORKFORCE INITIATIVE.**

19 (a) **SCHOLARSHIP AND STIPEND PROGRAM.**—Section
20 846(d) of the Public Health Service Act (42 U.S.C.
21 297n(d)) is amended—

22 (1) in the section heading, by inserting “AND
23 STIPEND” after “SCHOLARSHIP”; and

24 (2) in paragraph (1), by inserting “or stipends”
25 after “scholarships”.

1 (b) NURSE RETENTION GRANTS.—Section 831A(b)
2 of the Public Health Service Act (42 U.S.C. 296p–1(b))
3 is amended—

4 (1) by striking “GRANTS FOR CAREER LADDER
5 PROGRAM.—” and inserting “GRANTS FOR NURSE
6 RETENTION.—”;

7 (2) in paragraph (2), by striking “; or” and in-
8 serting a semicolon;

9 (3) in paragraph (3), by striking the period and
10 inserting a semicolon; and

11 (4) by adding at the end the following:

12 “(4) to provide additional support to nurses en-
13 tering the workforce by implementing nursing pre-
14 ceptorship projects that establish a period of prac-
15 tical and clinical experiences and training for nurs-
16 ing students, newly hired nurses, and recent grad-
17 uates of a direct care degree program for registered
18 nurses; or

19 “(5) to implement mentorship projects that as-
20 sist new or transitional direct care registered nurses
21 in adapting to the hospital setting.”.

○