

107TH CONGRESS
1ST SESSION

H. R. 3238

To amend title XVIII of the Social Security Act to provide for patient protection by limiting the number of mandatory overtime hours a nurse may be required to work in certain providers of services to which payments are made under the Medicare Program.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 6, 2001

Mr. STARK (for himself, Mr. LATOURETTE, Mr. RANGEL, Mr. BARRETT, Mr. KLECZKA, Mr. POMEROY, Mr. LEWIS of Georgia, Mr. WAXMAN, Mr. COYNE, Ms. SCHAKOWSKY, Mr. TOWNS, Mr. FILNER, Mr. MURTHA, Ms. KILPATRICK, Ms. SOLIS, Mr. SANDLIN, Mr. OWENS, Ms. LEE, Mr. WEINER, Mr. BRADY of Pennsylvania, Mr. CONYERS, Ms. PELOSI, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. ACKERMAN, Ms. ROYBAL-ALLARD, Mr. GEORGE MILLER of California, Mr. FRANK, and Mr. McDERMOTT) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title XVIII of the Social Security Act to provide for patient protection by limiting the number of mandatory overtime hours a nurse may be required to work in certain providers of services to which payments are made under the Medicare Program.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Safe Nursing and Pa-
3 tient Care Act of 2001”.

4 **SEC. 2. FINDINGS.**

5 The Congress finds as follows:

6 (1) The Federal Government has a substantial
7 interest in assuring that delivery of health care serv-
8 ices to patients in health care facilities is adequate
9 and safe.

10 (2) Research, including a recent study by the
11 Harvard School of Public Health, documents that
12 higher nurse staffing levels result in better patient
13 outcomes, yet health care providers report substan-
14 tial difficulties in recruiting and retaining sufficient
15 nursing staff, as evidenced by the approximately
16 500,000 licensed nurses who are not practicing nurs-
17 ing.

18 (3) While job dissatisfaction and overtime work
19 are contributing to the departure of nurses from
20 their profession, as highlighted by a recent report of
21 the Comptroller General of the United States, health
22 care providers continue to make use of mandatory
23 overtime as a staffing method.

24 (4) The widespread practice of requiring nurses
25 to work extended shifts and forego days off causes
26 nurses to frequently provide care in a state of fa-

1 tigue, contributing to medical errors and other con-
2 sequences that compromise patient safety.

3 (5) Limitations on mandatory overtime will en-
4 sure that health care facilities throughout the coun-
5 try operate in a manner that safeguards public safe-
6 ty and guarantees the delivery of quality health care
7 services and facilitates the retention and recruitment
8 of nurses.

9 **SEC. 3. LIMITATIONS ON MANDATORY OVERTIME FOR**
10 **NURSES.**

11 (a) PROVIDER AGREEMENTS.—Section 1866 of the
12 Social Security Act (42 U.S.C. 1395ee) is amended—

13 (1) in subsection (a)(1)—

14 (A) in subparagraph (R), by striking
15 “and” at the end;

16 (B) in subparagraph (S), by striking the
17 period and inserting “, and”; and

18 (C) by inserting after subparagraph (S),
19 the following:

20 “(T) to comply with the requirements of sub-
21 section (j) (relating to limitations on mandatory
22 overtime for nurses).”; and

23 (2) by adding at the end the following new sub-
24 section:

1 “(j) LIMITATIONS ON MANDATORY OVERTIME FOR
2 NURSES.—For purposes of subsection (a)(1)(T), the re-
3 quirements of this subsection are the following:

4 “(1) PROHIBITION ON MANDATORY OVER-
5 TIME.—Except as provided in this subsection, a pro-
6 vider of services shall not, directly or indirectly, re-
7 quire a nurse to work in excess of any of the fol-
8 lowing:

9 “(A) The scheduled work shift or duty pe-
10 riod of the nurse.

11 “(B) 12 hours in a 24-hour period.

12 “(C) 80 hours in a consecutive 14-day pe-
13 riod.

14 “(2) EXCEPTIONS.—

15 “(A) IN GENERAL.—Subject to subpara-
16 graph (B), the requirements of paragraph (1)
17 shall not apply to a provider of services during
18 a declared state of emergency if the provider is
19 requested, or otherwise is expected, to provide
20 an exceptional level of emergency or other med-
21 ical services to the community.

22 “(B) LIMITATIONS.—With respect to a
23 provider of services to which subparagraph (A)
24 applies, a nurse may only be required to work

1 for periods in excess of the periods described in
2 paragraph (1) if—

3 “(i) the provider has made reasonable
4 efforts to fill the immediate staffing needs
5 of the provider through alternative means;
6 and

7 “(ii) the duration of the work require-
8 ment does not extend past the earlier of—

9 “(I) the date on which the de-
10 clared state of emergency ends; or

11 “(II) the date on which the pro-
12 vider’s direct role in responding to the
13 medical needs resulting from the de-
14 clared state of emergency ends.

15 “(3) REPORT OF VIOLATIONS.—

16 “(A) RIGHT TO REPORT.—

17 “(i) IN GENERAL.—A nurse may file a
18 complaint with the Secretary against a
19 provider of services who violates the provi-
20 sions of this subsection.

21 “(ii) PROCEDURE.—The Secretary
22 shall establish a procedure under which a
23 nurse may file a complaint under clause
24 (i).

1 “(B) INVESTIGATION OF COMPLAINT.—
2 The Secretary shall investigate complaints of
3 violations filed by a nurse under subparagraph
4 (A).

5 “(C) ACTIONS.—If the Secretary deter-
6 mines that a provider of services has violated
7 the provisions of this subsection, the Secretary
8 shall require the provider to establish a plan of
9 action to eliminate the occurrence of such viola-
10 tion, and may seek civil money penalties under
11 paragraph (7).

12 “(4) NURSE NONDISCRIMINATION PROTEC-
13 TIONS.—

14 “(A) IN GENERAL.—A provider of services
15 shall not penalize, discriminate, or retaliate in
16 any manner with respect to any aspect of em-
17 ployment, including discharge, promotion, com-
18 pensation, or terms, conditions, or privileges of
19 employment against a nurse who refuses to
20 work mandatory overtime or who in good faith,
21 individually or in conjunction with another per-
22 son or persons—

23 “(i) reports a violation or suspected
24 violation of this subsection to a public reg-
25 ulatory agency, a private accreditation

1 body, or the management personnel of the
2 provider of services;

3 “(ii) initiates, cooperates, or otherwise
4 participates in an investigation or pro-
5 ceeding brought by a regulatory agency or
6 private accreditation body concerning mat-
7 ters covered by this subsection; or

8 “(iii) informs or discusses with other
9 employees, with representatives of those
10 employees, or with representatives of asso-
11 ciations of health care professionals, viola-
12 tions or suspected violations of this sub-
13 section.

14 “(B) RETALIATORY REPORTING.—A pro-
15 vider of services may not file a complaint or a
16 report against a nurse with the appropriate
17 State professional disciplinary agency because
18 the nurse refused to comply with a request to
19 work mandatory overtime.

20 “(C) GOOD FAITH.—For purposes of this
21 paragraph, a nurse is deemed to be acting in
22 good faith if the nurse reasonably believes—

23 “(i) that the information reported or
24 disclosed is true; and

1 “(ii) that a violation has occurred or
2 may occur.

3 “(5) NOTICE.—

4 “(A) REQUIREMENT TO POST NOTICE.—

5 Each provider of services shall post conspicu-
6 ously in an appropriate location a sign (in a
7 form specified by the Secretary) specifying
8 rights of nurses under this section.

9 “(B) RIGHT TO FILE COMPLAINT.—Such
10 sign shall include a statement that a nurse may
11 file a complaint with the Secretary against a
12 provider of services who violates the provisions
13 of this subsection and information with respect
14 to the manner of filing such a complaint.

15 “(6) POSTING OF NURSE SCHEDULES.—A pro-
16 vider of services shall regularly post in a conspicuous
17 manner the nurse schedules (for such periods of
18 time that the Secretary determines appropriate by
19 type or class of provider of services) for the depart-
20 ment or unit involved, and shall make available upon
21 request to nurses assigned to the department or unit
22 the daily nurse schedule for such department or
23 unit.

24 “(7) CIVIL MONEY PENALTY.—

1 “(A) IN GENERAL.—The Secretary may
2 impose a civil money penalty of not more than
3 \$10,000 for each knowing violation of the provi-
4 sions of this subsection committed by a provider
5 of services.

6 “(B) PATTERNS OF VIOLATIONS.—Not-
7 withstanding subparagraph (A), the Secretary
8 shall provide for the imposition of more severe
9 civil money penalties under this paragraph for
10 providers of services that establish patterns of
11 repeated violations of such provisions.

12 “(C) ADMINISTRATION OF PENALTIES.—
13 The provisions of section 1128A (other than
14 subsections (a) and (b)) shall apply to a civil
15 money penalty under this paragraph in the
16 same manner as such provisions apply to a pen-
17 alty or proceeding under section 1128A(a).

18 The Secretary shall publish on the Internet site of
19 the Department of Health and Human Services the
20 names of providers of services against which civil
21 money penalties have been imposed under this para-
22 graph, the violation for which the penalty was im-
23 posed, and such additional information as the Sec-
24 retary determines appropriate. With respect to a
25 provider of services that has had a change in owner-

1 ship, as determined by the Secretary, penalties im-
2 posed on the provider of services while under pre-
3 vious ownership shall no longer be published by the
4 Secretary on such Internet site after the 1-year pe-
5 riod beginning on the date of change in ownership.

6 “(8) RULE OF CONSTRUCTION.—Nothing in
7 this subsection shall be construed as precluding a
8 nurse from voluntarily working more than any of the
9 periods of time described in paragraph (1) so long
10 as such work is done consistent with professional
11 standards of safe patient care.

12 “(9) DEFINITIONS.—In this subsection:

13 “(A) MANDATORY OVERTIME.—The term
14 ‘mandatory overtime’ means hours worked in
15 excess of the periods of time described in para-
16 graph (1), except as provided in paragraph (2),
17 pursuant to any request made by a provider of
18 services to a nurse which, if refused or declined
19 by the nurse involved, may result in an adverse
20 employment consequence to the nurse, including
21 discharge, discipline, loss of promotion, or retal-
22 iatory reporting of the nurse to the State pro-
23 fessional disciplinary agency involved.

1 “(B) OVERTIME.—The term ‘overtime’
2 means time worked in excess of the periods of
3 time described in paragraph (1).

4 “(C) NURSE.—The term ‘nurse’ means a
5 registered nurse or a licensed practical nurse.

6 “(D) PROVIDER OF SERVICES.—The term
7 ‘provider of services’ means—

8 “(i) a hospital,

9 “(ii) a hospital outpatient department,

10 “(iii) a critical access hospital,

11 “(iv) an ambulatory surgical center,

12 “(v) a home health agency,

13 “(vi) a rehabilitation agency,

14 “(vii) a clinic, including a rural health
15 clinic, or

16 “(viii) a Federally qualified health
17 center.

18 “(E) DECLARED STATE OF EMERGENCY.—

19 The term ‘declared state of emergency’ means
20 an officially designated state of emergency that
21 has been declared by the Federal Government
22 or the head of the appropriate State or local
23 governmental agency having authority to de-
24 clare that the State, county, municipality, or lo-
25 cality is in a state of emergency, but does not

1 include a state of emergency that results from
2 a labor dispute in the health care industry or
3 consistent understaffing.

4 “(F) STANDARDS OF SAFE PATIENT
5 CARE.—The term ‘standards of safe patient
6 care’ means the recognized professional stand-
7 ards governing the profession of the nurse in-
8 volved.”.

9 (b) EFFECTIVE DATE.—The amendments made by
10 this section shall take effect 1 year after the date of enact-
11 ment of this Act.

12 **SEC. 4. REPORTS.**

13 (a) STANDARDS ON SAFE WORKING HOURS FOR
14 NURSES.—

15 (1) STUDY.—The Secretary of Health and
16 Human Services, acting through the Director of the
17 Agency for Healthcare Research and Quality, shall
18 conduct a study to establish appropriate standards
19 for the maximum number of hours that a nurse, who
20 furnishes health care to patients, may work without
21 compromising the safety of such patients. Such
22 standards may vary by provider of service and by de-
23 partment within a provider of services, by duties or
24 functions carried out by nurses, by shift, and by
25 other factors that the Director determines appro-

1 piate. The Director may contract with an eligible
2 entity or organization to carry out the study under
3 this paragraph.

4 (2) REPORT.—Not later than 2 years after the
5 date of the enactment of this Act, the Secretary
6 shall submit to Congress a report on the study con-
7 ducted under paragraph (1), and shall include rec-
8 ommendations for such appropriate standards of
9 maximum work hours.

10 (b) REPORT ON MANDATORY OVERTIME IN FEDER-
11 ALLY OPERATED MEDICAL FACILITIES.—

12 (1) STUDY.—

13 (A) IN GENERAL.—The Director of the Of-
14 fice of Management and Budget shall conduct
15 a study to determine the extent to which feder-
16 ally operated medical facilities have in effect
17 practices and policies with respect to overtime
18 requirements for nurses that are inconsistent
19 with the provisions of section 1866(j) of the So-
20 cial Security Act, as added by section 3.

21 (B) FEDERALLY OPERATED MEDICAL FA-
22 CILITIES DEFINED.—In this subsection, the
23 term “federally operated medical facilities”
24 means acute care hospitals, freestanding clinics,
25 and home health care clinics that are operated

1 by the Department of Veterans Affairs, the De-
2 partment of Defense, or any other department
3 or agency of the United States.

4 (2) REPORT.—Not later than 6 months after
5 the date of the enactment of this Act, the Director
6 of the Office of Management and Budget shall sub-
7 mit to Congress a report on the study conducted
8 under paragraph (1) and shall include recommenda-
9 tions for the implementation of policies within feder-
10 ally operated medical facilities with respect to over-
11 time requirements for nurses that are consistent
12 with such section 1866(j), as so added.

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