

108TH CONGRESS
1ST SESSION

S. 373

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 SENATE OF THE UNITED STATES

FEBRUARY 12, 2003

Mr. KENNEDY (for himself, Mr. KERRY, Mr. AKAKA, Mrs. CLINTON, Mr. CORZINE, Mr. DODD, Mr. INOUE, Mr. FEINGOLD, Mr. LEVIN, Mr. LIEBERMAN, Ms. MIKULSKI, Mr. REED, and Mr. SARBANES) 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 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Safe Nursing and Pa-
5 tient Care Act of 2003”.

1 **SEC. 2. FINDINGS.**

2 The Congress finds as follows:

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

7 (2) Research, including a recent study pub-
8 lished in the October 23–30, 2002 issue of the Jour-
9 nal of the American Medical Association (JAMA),
10 documents that higher nurse staffing levels result in
11 better patient outcomes, yet health care providers re-
12 port substantial difficulties in recruiting and retain-
13 ing sufficient nursing staff, as evidenced by the ap-
14 proximately 500,000 licensed nurses who are not
15 practicing nursing.

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

22 (4) The widespread practice of requiring nurses
23 to work extended shifts and forego days off causes
24 nurses to frequently provide care in a state of fa-
25 tigue, contributing to medical errors and other con-
26 sequences that compromise patient safety.

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

7 **SEC. 3. LIMITATIONS ON MANDATORY OVERTIME FOR**
 8 **NURSES.**

9 (a) PROVIDER AGREEMENTS.—Section 1866 of the
 10 Social Security Act (42 U.S.C. 1395cc) is amended—

11 (1) in subsection (a)(1)—

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

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

16 (C) by inserting after subparagraph (S),
 17 the following:

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

21 (2) by adding at the end the following new sub-
 22 section:

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

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

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

8 “(B) 12 hours in a 24-hour period.

9 “(C) 80 hours in a consecutive 14-day pe-
 10 riod.

11 “(2) EXCEPTIONS.—

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

19 “(B) LIMITATIONS.—With respect to a
 20 provider of services to which subparagraph (A)
 21 applies, a nurse may only be required to work
 22 for periods in excess of the periods described in
 23 paragraph (1) if—

24 “(i) the provider has made reasonable
 25 efforts to fill the immediate staffing needs

1 of the provider through alternative means;
 2 and

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

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

7 “(II) the date on which the pro-
 8 vider’s direct role in responding to the
 9 medical needs resulting from the de-
 10 clared state of emergency ends.

11 “(3) REPORT OF VIOLATIONS.—

12 “(A) RIGHT TO REPORT.—

13 “(i) IN GENERAL.—A nurse may file a
 14 complaint with the Secretary against a
 15 provider of services who violates the provi-
 16 sions of this subsection.

17 “(ii) PROCEDURE.—The Secretary
 18 shall establish a procedure under which a
 19 nurse may file a complaint under clause
 20 (i).

21 “(B) INVESTIGATION OF COMPLAINT.—

22 The Secretary shall investigate complaints of
 23 violations filed by a nurse under subparagraph
 24 (A).

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

8 “(4) NURSE NONDISCRIMINATION PROTEC-
 9 TIONS.—

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

19 “(i) reports a violation or suspected
 20 violation of this subsection to a public reg-
 21 ulatory agency, a private accreditation
 22 body, or the management personnel of the
 23 provider of services;

24 “(ii) initiates, cooperates, or otherwise
 25 participates in an investigation or pro-

ceeding brought by a regulatory agency or private accreditation body concerning matters covered by this subsection; or

“(iii) informs or discusses with other employees, with representatives of those employees, or with representatives of associations of health care professionals, violations or suspected violations of this subsection.

“(B) RETALIATORY REPORTING.—A provider of services may not file a complaint or a report against a nurse with the appropriate State professional disciplinary agency because the nurse refused to comply with a request to work mandatory overtime.

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

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

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

“(5) NOTICE.—

“(A) REQUIREMENT TO POST NOTICE.—
Each provider of services shall post conspicu-

1 ously in an appropriate location a sign (in a
2 form specified by the Secretary) specifying
3 rights of nurses under this section.

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

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

19 “(7) CIVIL MONEY PENALTY.—

20 “(A) IN GENERAL.—The Secretary may
21 impose a civil money penalty of not more than
22 \$10,000 for each knowing violation of the provi-
23 sions of this subsection committed by a provider
24 of services.

“(B) PATTERNS OF VIOLATIONS.—Notwithstanding subparagraph (A), the Secretary shall provide for the imposition of more severe civil money penalties under this paragraph for providers of services that establish patterns of repeated violations of such provisions.

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

The Secretary shall publish on the Internet site of the Department of Health and Human Services the names of providers of services against which civil money penalties have been imposed under this paragraph, the violation for which the penalty was imposed, and such additional information as the Secretary determines appropriate. With respect to a provider of services that has had a change in ownership, as determined by the Secretary, penalties imposed on the provider of services while under previous ownership shall no longer be published by the Secretary on such Internet site after the 1-year period beginning on the date of change in ownership.

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

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

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

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

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

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

- 1 “(i) a hospital,
- 2 “(ii) a hospital outpatient department,
- 3 “(iii) a critical access hospital,
- 4 “(iv) an ambulatory surgical center,
- 5 “(v) a home health agency,
- 6 “(vi) a rehabilitation agency,
- 7 “(vii) a clinic, including a rural health
- 8 clinic, or
- 9 “(viii) a Federally qualified health
- 10 center.

11 “(E) DECLARED STATE OF EMERGENCY.—

12 The term ‘declared state of emergency’ means

13 an officially designated state of emergency that

14 has been declared by the Federal Government

15 or the head of the appropriate State or local

16 governmental agency having authority to de-

17 clare that the State, county, municipality, or lo-

18 cality is in a state of emergency, but does not

19 include a state of emergency that results from

20 a labor dispute in the health care industry or

21 consistent understaffing.

22 “(F) STANDARDS OF SAFE PATIENT

23 CARE.—The term ‘standards of safe patient

24 care’ means the recognized professional stand-

1 ards governing the profession of the nurse in-
2 volved.”.

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

6 **SEC. 4. REPORTS.**

7 (a) STANDARDS ON SAFE WORKING HOURS FOR
8 NURSES.—

9 (1) STUDY.—The Secretary of Health and
10 Human Services, acting through the Director of the
11 Agency for Healthcare Research and Quality, shall
12 conduct a study to establish appropriate standards
13 for the maximum number of hours that a nurse, who
14 furnishes health care to patients, may work without
15 compromising the safety of such patients. Such
16 standards may vary by provider of service and by de-
17 partment within a provider of services, by duties or
18 functions carried out by nurses, by shift, and by
19 other factors that the Director determines appro-
20 priate. The Director may contract with an eligible
21 entity or organization to carry out the study under
22 this paragraph.

23 (2) REPORT.—Not later than 2 years after the
24 date of the enactment of this Act, the Secretary
25 shall submit to Congress a report on the study con-

1 ducted under paragraph (1), and shall include rec-
 2 ommendations for such appropriate standards of
 3 maximum work hours.

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

6 (1) STUDY.—

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

15 (B) FEDERALLY OPERATED MEDICAL FA-
 16 CILITIES DEFINED.—In this subsection, the
 17 term “federally operated medical facilities”
 18 means acute care hospitals, freestanding clinics,
 19 and home health care clinics that are operated
 20 by the Department of Veterans Affairs, the De-
 21 partment of Defense, or any other department
 22 or agency of the United States.

23 (2) REPORT.—Not later than 6 months after
 24 the date of the enactment of this Act, the Director
 25 of the Office of Management and Budget shall sub-

1 mit to Congress a report on the study conducted
2 under paragraph (1) and shall include recommenda-
3 tions for the implementation of policies within feder-
4 ally operated medical facilities with respect to over-
5 time requirements for nurses that are consistent
6 with such section 1866(j), as so added.

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