To direct the Secretary of Labor to issue an occupational safety and health standard to reduce injuries to patients, nurses, and all other health care workers by establishing a safe patient handling, mobility, and injury prevention standard, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 16, 2015

Mr. CONYERS (for himself, Mr. SCOTT of Virginia, Ms. WILSON of Florida, Mr. CLAY, Mr. BRENDAN F. BOYLE of Pennsylvania, Mr. DANNY K. DAVIS of Illinois, Mrs. BEATTY, and Ms. GRAHAM) introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committees on Energy and Commerce and 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 direct the Secretary of Labor to issue an occupational safety and health standard to reduce injuries to patients, nurses, and all other health care workers by establishing a safe patient handling, mobility, and injury prevention standard, 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,
SECTION 1. SHORT TITLE; FINDINGS; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Nurse and Health Care Worker Protection Act of 2015”.

(b) FINDINGS.—Congress finds the following:

(1) In 2014, registered nurses ranked sixth among all occupations for the number of cases of musculoskeletal disorders resulting in days away from work, with 11,360 total cases. Nursing assistants reported 20,020 cases in 2014, the second highest of any profession. The leading cause of these health care employees’ injuries is patient lifting, transferring, and repositioning injuries, which constitute a significant risk to the health and welfare of those employees under the Occupational Safety and Health Act of 1970.

(2) The physical demands of the nursing profession lead many nurses to leave the profession. Fifty-two percent of nurses complain of chronic back pain and 38 percent suffer from pain severe enough to require leave from work. Many nurses and other health care workers suffering back injury do not return to work. These consequences constitute a material impairment of health for these employees under the Occupational Safety and Health Act of 1970.

(3) Patients are not at optimum levels of safety while being lifted, transferred, or repositioned manu-
ally. Appropriate mechanical lifts can substantially reduce skin tears and pressure ulcers suffered by patients and the frequency of patients being dropped, thus allowing patients a safer means to progress through their care and avoid disabling injuries due to unsafe practices.

(4) The development of assistive patient handling technology, equipment, and devices has essentially rendered the act of strict manual patient handling outdated and typically unnecessary as a function of nursing care.

(5) A growing number of health care facilities that have incorporated patient handling technology and practices have reported positive results. Injuries among nursing staff and health care workers have dramatically declined at health care facilities implementing safe patient handling technology, equipment, devices, and practices. As a result, the number of lost work days due to injury and staff turnover has declined. Studies have also shown that assistive patient handling technology successfully reduces workers’ compensation costs for musculoskeletal disorders.

(6) A number of States have implemented safe patient handling, mobility and injury prevention
standards. The success of these programs at the facility and State level demonstrates the technological and economical feasibility of such standards.

(7) Establishing a safe patient handling, mobility, and injury prevention standard for direct-care registered nurses and other health care workers is a critical component reasonably necessary for protecting the health and safety of nurses and other health care workers, addressing the nursing shortage, and increasing patient safety.

(c) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; findings; table of contents.
Sec. 2. Safe patient handling, mobility, and injury prevention standard.
Sec. 3. Application of safe patient handling, mobility, and injury prevention standard to facilities receiving Medicare and Medicaid funds.
Sec. 4. Nonpreemption.
Sec. 5. Definitions.

SEC. 2. SAFE PATIENT HANDLING, MOBILITY, AND INJURY PREVENTION STANDARD.

(a) Rulemaking.—Notwithstanding any other provision of law, not later than 1 year after the date of enactment of this Act, the Secretary of Labor shall, pursuant to section 6 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), promulgate an interim final standard on safe patient handling, mobility, and injury prevention (in this section such standard is referred to as the “safe patient handling, mobility, and injury prevention
standard”) to prevent musculoskeletal disorders for direct-care registered nurses and all other health care workers handling patients. The interim final standard shall remain in effect until it is replaced by a final safe patient handling, mobility, and injury prevention standard.

(b) REQUIREMENTS.—The safe patient handling, mobility, and injury prevention standard shall require the use of engineering and safety controls to perform handling of patients and to reduce the incidence of injuries from manual handling of patients by direct-care registered nurses and all other health care workers, through the development of a comprehensive program, to include the use of mechanical technology and devices to the greatest degree feasible. Where the use of mechanical technology and devices is not feasible, the standards shall require the use of alternative controls and measures to minimize the risk of injury to nurses and health care workers resulting from the manual handling of patients. The standard shall apply to all health care employers, shall generally align with interprofessional national safe patient handling, mobility, and injury prevention standards, and shall include the following:

(1) PROGRAM DEVELOPMENT.—A requirement that each health care employer shall develop and implement a safe patient handling, mobility, and injury
prevention program within 6 months of the date of
promulgation of the interim final standard, which
program shall include hazard identification, risk as-
sessments, and control measures in relation to pa-
tient care duties and patient handling.

(2) Technology and equipment purchase
and management.—A requirement that, within 2
years of the date of issuance by the Secretary of an
interim final standard, each health care employer
shall purchase, use, maintain, and make accessible
to health care workers, such safe patient handling
equipment, technology, and accessories as the Sec-
retary determines appropriate.

(3) Health care worker participation.—A
requirement that each health care employer shall ob-
tain input from health care workers, to include di-
rect care registered nurses, health care workers,
their representatives, and their collective bargaining
agents, in developing and implementing the safe pa-
tient handling, mobility, and injury prevention pro-
gram, including training and education and the pur-
chase of technology and equipment and necessary
accessories.

(4) Data tracking and review.—A require-
ment that each health care employer shall establish
a review program to analyze data relevant to the implementation of the employers’ safe patient handling, mobility, and injury prevention program, and shall account for circumstances where safe patient handling technology or equipment were not utilized in accordance with the health care employers’ safe patient handling, mobility, and injury prevention standard. Each health care employer shall upon request, make available their findings and data used in such review, to health care workers, their representatives, their collective bargaining agents, and the Secretary or other Federal agency. Each health care employer shall maintain the data and findings from their review for at least 5 years.

(5) Incorporation of Technology Into Facilities.—A requirement that each health care employer shall consider the feasibility of incorporating safe patient handling technology as part of process of new facility design and construction, or facility remodeling.

(6) Education and Training.—A requirement that each health care employer shall train health care workers on safe patient handling, mobility, and injury prevention policies, technology, equipment, and devices, initially, and on a continuing an-
nual basis, and as necessary. Such training shall prepare health care workers, to identify, assess, and control musculoskeletal hazards of a general nature, and those specific to particular patient care areas, and shall be conducted by an individual with knowledge in the subject matter, and delivered, at least in part, in an interactive simulated point-of-care training and hands-on format that reflects the specific demands of a health care workers’ duties.

(7) NOTICE OF SAFE PATIENT HANDLING AND RIGHTS UNDER THIS ACT.—A requirement that each health care employer shall post a uniform notice in a form specified by the Secretary that—

(A) explains the safe patient handling, mobility, and injury prevention standard;

(B) includes information regarding safe patient handling, mobility, and injury prevention policies and training;

(C) explains procedures to report patient handling-related injuries; and

(D) explains health care workers’ rights under this Act, including any whistleblower protections.

(8) ANNUAL EVALUATION.—A requirement that each health care employer shall conduct an annual
written evaluation of the implementation of the safe patient handling, mobility, and injury prevention program, including handling procedures, selection of technology, equipment, and engineering controls, assessment of injuries, and new safe patient handling, mobility, and injury prevention technology and devices that have been developed. The evaluation shall be conducted with the involvement of nurses, other health care workers, their representatives, and their collective bargaining agents, and their input shall be documented in the evaluation. Health care employers shall take corrective action as recommended in the written evaluation.

(9) RIGHT TO REFUSE UNSAFE ASSIGNMENT.— A requirement that each health care employer shall provide procedures under which a health care worker or employee may refuse to perform the employee’s duties if the employee has a reasonable apprehension that performing such duties would violate the safe patient handling, mobility, and injury prevention standard, and would result in injury or impairment of health to the health care worker, other health care workers, or patients. Where practicable, the health care worker must have communicated the health or safety concern to the health care employer
and have not been able to obtain a correction of the violation.

(c) INSPECTIONS.—The Secretary of Labor shall conduct unscheduled inspections under section 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 657) to ensure implementation of and compliance with the safe patient handling, mobility, and injury prevention standard.

SEC. 3. APPLICATION OF SAFE PATIENT HANDLING, MOBILITY, AND INJURY PREVENTION STANDARD TO FACILITIES RECEIVING MEDICARE AND MEDICAID FUNDS.

(a) In general.—Section 1866 of the Social Security Act (42 U.S.C. 1395cc) is amended—

(1) in subsection (a)(1)(V), by inserting “and safe patient handling, mobility, and injury prevention standard (as initially promulgated under section 2 of the Nurse and Health Care Worker Protection Act of 2015)” before the period at the end; and

(2) in subsection (b)(4)—

(A) in subparagraph (A), by inserting “and the safe patient handling, mobility, and injury prevention standard” after “Bloodborne Pathogens standard”; and
(B) in subparagraph (B), inserting “or the
safe patient handling, mobility, and injury pre-
vention standard” after “Bloodborne Pathogens
standard”.

(b) EFFECTIVE DATE.—The amendments made by
subsection (a) shall apply to health care facilities 1 year
after date of issuance of the final safe patient handling,
mobility, and injury prevention standard required under
section 2.

SEC. 4. NONPREEMPTION.

(a) EFFECT ON OTHER LAWS.—Nothing in this Act
shall be construed to—

(1) preempt any law, rule, or regulation of a
State or political subdivision of a State, unless such
law, rule, or regulation is in conflict with this Act
or a regulation or order issued under this Act;

(2) impair or diminish in any way the authority
of any State to enact and enforce any law which pro-
vides equivalent or greater protections for employees
engaging in conduct protected under this Act;

(3) curtail or limit in any way the right of peo-
ple with disabilities under the Americans with Dis-
abilities Act (42 12101 et seq.) or section 504 of the
Rehabilitation Act of 1973 (29 U.S.C. 794) to those
reasonable modifications needed to receive equal ac-
cess to health care, including the requirement that health care employees give priority consideration to the lifting, movement, or transfer needs and preferences of people with disabilities; or

(4) curtail or limit in any way consideration as an expenditure to acquire or modify equipment for use by or to benefit individuals with disabilities that is specified in section 44 of the Internal Revenue Code of 1986, which is available to eligible small businesses.

(b) Rights Retained by Health Care Workers.—Nothing in this Act shall be construed to diminish the rights, privileges, or remedies of any health care worker or employee under any Federal or State law, or under any collective bargaining agreement.

SEC. 5. DEFINITIONS.

For purposes of this Act:

(1) Direct-care registered nurse.—The term “direct-care registered nurse” means an individual who has been granted a license by at least one State to practice as a registered nurse and who provides bedside care or outpatient services for one or more patients or residents.

(2) Employee.—The term “employee” means any individual employed by a health care employer,
to include health care workers, as well as employees
who do not qualify as health care workers, including
independent contractors.

(3) EMPLOYMENT.—The term “employment”
includes the provision of services under a contract or
other arrangement.

(4) HANDLING.—The term “handling” includes
actions such as lifting, transferring, repositioning,
mobilizing, moving, or any other action involving the
physical movement, manipulation, or support of a
patient by a health care worker, or any direct pa-
tient care action which presents a risk of musculo-
skeletal injury.

(5) HEALTH CARE EMPLOYER.—The term
“health care employer” means an outpatient health
care facility, hospital, nursing home, home health
care agency, social assistance facility or program,
hospice, federally qualified health center, nurse man-
aged health center, rural health clinic or rehabilita-
tive center, or any similar health care facility that
employs direct-care registered nurses or other health
care workers.

(6) HEALTH CARE WORKER.—The term “health
care worker” means an individual who has been as-
signed by a health care employer to engage in pa-
tient handling, including direct-care registered nurses, independent contractors, or individuals who perform the duties of health care workers.