

114TH CONGRESS  
1ST SESSION

# S. 2408

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.

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## IN THE SENATE OF THE UNITED STATES

DECEMBER 16, 2015

Mr. FRANKEN introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## 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,*

3 **SECTION 1. SHORT TITLE; FINDINGS; TABLE OF CONTENTS.**

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

6 (b) **FINDINGS.**—Congress finds the following:

1           (1) In 2014, registered nurses ranked sixth  
2           among all occupations for the number of cases of  
3           musculoskeletal disorders resulting in days away  
4           from work, with 11,360 total cases. Nursing assist-  
5           ants reported 20,020 cases in 2014, the second high-  
6           est of any profession. The leading cause of these  
7           health care employees' injuries is patient lifting,  
8           transferring, and repositioning injuries, which con-  
9           stitute a significant risk to the health and welfare of  
10          those employees under the Occupational Safety and  
11          Health Act of 1970 (29 U.S.C. 651 et seq.).

12          (2) The physical demands of the nursing pro-  
13          fession lead many nurses to leave the profession.  
14          Fifty-two percent of nurses complain of chronic back  
15          pain and 38 percent suffer from pain severe enough  
16          to require leave from work. Many nurses and other  
17          health care workers suffering back injury do not re-  
18          turn to work. These consequences constitute a mate-  
19          rial impairment of health for these employees under  
20          the Occupational Safety and Health Act of 1970.

21          (3) Patients are not at optimum levels of safety  
22          while being lifted, transferred, or repositioned manu-  
23          ally. Appropriate mechanical lifts can substantially  
24          reduce skin tears and pressure ulcers suffered by pa-  
25          tients and the frequency of patients being dropped,

1       thus allowing patients a safer means to progress  
2       through their care and avoid disabling injuries due  
3       to unsafe practices.

4               (4) The development of assistive patient han-  
5       dling technology, equipment, and devices has essen-  
6       tially rendered the act of strict manual patient han-  
7       dling outdated and typically unnecessary as a func-  
8       tion of nursing care.

9               (5) A growing number of health care facilities  
10       that have incorporated patient handling technology  
11       and practices have reported positive results. Injuries  
12       among nursing staff and health care workers have  
13       dramatically declined at health care facilities imple-  
14       menting safe patient handling technology, equip-  
15       ment, devices, and practices. As a result, the number  
16       of lost work days due to injury and staff turnover  
17       has declined. Studies have also shown that assistive  
18       patient handling technology successfully reduces  
19       workers' compensation costs for musculoskeletal dis-  
20       orders.

21               (6) A number of States have implemented safe  
22       patient handling, mobility, and injury prevention  
23       standards. The success of these programs at the fa-  
24       cility and State level demonstrates the technological  
25       and economical feasibility of such standards.

1           (7) Establishing a safe patient handling, mobil-  
 2           ity, and injury prevention standard for direct-care  
 3           registered nurses and other health care workers is a  
 4           critical component reasonably necessary for pro-  
 5           tecting the health and safety of nurses and other  
 6           health care workers, addressing the nursing short-  
 7           age, and increasing patient safety.

8           (c) TABLE OF CONTENTS.—The table of contents of  
 9 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.

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

12           (a) RULEMAKING.—Notwithstanding any other provi-  
 13 sion of law, not later than 1 year after the date of enact-  
 14 ment of this Act, the Secretary of Labor shall, pursuant  
 15 to section 6 of the Occupational Safety and Health Act  
 16 of 1970 (29 U.S.C. 655), promulgate an interim standard  
 17 on safe patient handling, mobility, and injury prevention  
 18 (in this section such standard is referred to as the “safe  
 19 patient handling, mobility, and injury prevention stand-  
 20 ard”) to prevent musculoskeletal disorders for direct-care  
 21 registered nurses and all other health care workers han-  
 22 dling patients. The interim standard shall remain in effect

1 until it is replaced by a final safe patient handling, mobil-  
2 ity, and injury prevention standard.

3 (b) REQUIREMENTS.—The safe patient handling, mo-  
4 bility, and injury prevention standard shall require the use  
5 of engineering and safety controls to perform handling of  
6 patients and to reduce the incidence of injuries from man-  
7 ual handling of patients by direct-care registered nurses  
8 and all other health care workers, through the develop-  
9 ment of a comprehensive program, to include the use of  
10 mechanical technology and devices to the greatest degree  
11 feasible. Where the use of mechanical technology and de-  
12 vices is not feasible, such standard shall require the use  
13 of alternative controls and measures to minimize the risk  
14 of injury to nurses and health care workers resulting from  
15 the manual handling of patients. The standard shall apply  
16 to all health care employers, shall generally align with  
17 interprofessional national safe patient handling, mobility,  
18 and injury prevention standards, and shall include each  
19 of the following:

20 (1) PROGRAM DEVELOPMENT.—A requirement  
21 that each health care employer shall develop and im-  
22 plement a safe patient handling, mobility, and injury  
23 prevention program not later than 6 months of the  
24 date of promulgation of the interim standard, and  
25 such program shall include hazard identification,

1 risk assessments, and control measures in relation to  
2 patient care duties and patient handling.

3 (2) TECHNOLOGY AND EQUIPMENT PURCHASE  
4 AND MANAGEMENT.—A requirement that, not later  
5 than 2 years after the date of issuance by the Sec-  
6 retary of Labor of the interim standard, each health  
7 care employer shall purchase, use, maintain, and  
8 make accessible to health care workers, such safe  
9 patient handling equipment, technology, and acces-  
10 sories as the Secretary determines appropriate.

11 (3) HEALTH CARE WORKER PARTICIPATION.—A  
12 requirement that each health care employer shall ob-  
13 tain input from health care workers, to include di-  
14 rect-care registered nurses, health care workers,  
15 their representatives, and their collective bargaining  
16 agents, in developing and implementing the safe pa-  
17 tient handling, mobility, and injury prevention pro-  
18 gram, including training and education and the pur-  
19 chase of technology and equipment and necessary  
20 accessories.

21 (4) DATA TRACKING AND REVIEW.—A require-  
22 ment that each health care employer shall establish  
23 a review program to analyze data relevant to the im-  
24 plementation of the employers' safe patient handling,  
25 mobility, and injury prevention program, and shall

1 account for circumstances where safe patient han-  
2 dling technology or equipment were not utilized in  
3 accordance with the health care employers' safe pa-  
4 tient handling, mobility, and injury prevention  
5 standard. Each health care employer shall upon re-  
6 quest, make available their findings and data used  
7 in such review, to health care workers, their rep-  
8 resentatives, their collective bargaining agents, and  
9 the Secretary of Labor or other Federal agency.  
10 Each health care employer shall maintain the data  
11 and findings from their review for not less than 5  
12 years.

13 (5) INCORPORATION OF TECHNOLOGY INTO FA-  
14 CILITIES.—A requirement that each health care em-  
15 ployer shall consider the feasibility of incorporating  
16 safe patient handling technology as part of process  
17 of new facility design and construction, or facility re-  
18 modeling.

19 (6) EDUCATION AND TRAINING.—A require-  
20 ment that each health care employer shall train  
21 health care workers on safe patient handling, mobil-  
22 ity, and injury prevention policies, technology, equip-  
23 ment, and devices, initially, and on a continuing an-  
24 nual basis, and as necessary. Such training shall  
25 prepare health care workers, to identify, assess, and

1 control musculoskeletal hazards of a general nature,  
2 and those specific to particular patient care areas,  
3 and shall be conducted by an individual with knowl-  
4 edge in the subject matter, and delivered, at least in  
5 part, in an interactive simulated point-of-care train-  
6 ing and hands-on format that reflects the specific  
7 demands of a health care workers' duties.

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

12 (A) explains the safe patient handling, mo-  
13 bility, and injury prevention standard;

14 (B) includes information regarding safe  
15 patient handling, mobility, and injury preven-  
16 tion policies and training;

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

19 (D) explains health care workers' rights  
20 under this Act, including any whistleblower pro-  
21 tections.

22 (8) ANNUAL EVALUATION.—A requirement that  
23 each health care employer shall conduct an annual  
24 written evaluation of the implementation of the safe  
25 patient handling, mobility, and injury prevention



1 program, including handling procedures, selection of  
2 technology, equipment, and engineering controls, as-  
3 sessment of injuries, and new safe patient handling,  
4 mobility, and injury prevention technology and de-  
5 vices that have been developed. The evaluation shall  
6 be conducted with the involvement of nurses, other  
7 health care workers, their representatives, and their  
8 collective bargaining agents, and their input shall be  
9 documented in the evaluation. Health care employers  
10 shall take corrective action as recommended in the  
11 written evaluation.

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

1 (c) INSPECTIONS.—The Secretary of Labor shall con-  
2 duct unscheduled inspections under section 8 of the Occu-  
3 pational Safety and Health Act of 1970 (29 U.S.C. 657)  
4 to ensure implementation of and compliance with the safe  
5 patient handling, mobility, and injury prevention stand-  
6 ard.

7 **SEC. 3. APPLICATION OF SAFE PATIENT HANDLING, MOBIL-**  
8 **ITY, AND INJURY PREVENTION STANDARD TO**  
9 **FACILITIES RECEIVING MEDICARE AND MED-**  
10 **ICAID FUNDS.**

11 (a) IN GENERAL.—Section 1866 of the Social Secu-  
12 rity Act (42 U.S.C. 1395cc) is amended—

13 (1) in subsection (a)(1)(V), by inserting “and  
14 the safe patient handling, mobility, and injury pre-  
15 vention standard (as initially promulgated under sec-  
16 tion 2 of the Nurse and Health Care Worker Protec-  
17 tion Act of 2015)” after “redesignated”); and

18 (2) in subsection (b)(4)—

19 (A) in subparagraph (A), by inserting  
20 “and the safe patient handling, mobility, and  
21 injury prevention standard” after “Bloodborne  
22 Pathogens standard”; and

23 (B) in subparagraph (B), by inserting “or  
24 the safe patient handling, mobility, and injury

1 prevention standard” after “Bloodborne Patho-  
2 gens standard”.

3 (b) **EFFECTIVE DATE.**—The amendments made by  
4 subsection (a) shall apply to hospitals as of the date that  
5 is 1 year after the date of issuance of the final safe patient  
6 handling, mobility, and injury prevention standard de-  
7 scribed in the second sentence of section 2(a).

8 **SEC. 4. NONPREEMPTION.**

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

11 (1) preempt any law, including any rule or reg-  
12 ulation, of a State or political subdivision of a State,  
13 unless such law is in conflict with this Act or a regu-  
14 lation or order issued under this Act;

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

19 (3) curtail or limit in any way the right of indi-  
20 viduals with disabilities under the Americans with  
21 Disabilities Act of 1990 (42 U.S.C. 12101 et seq.)  
22 or section 504 of the Rehabilitation Act of 1973 (29  
23 U.S.C. 794) to those reasonable modifications need-  
24 ed to receive equal access to health care, including  
25 the requirement that health care employees give pri-

1 ority consideration to the lifting, movement, or  
2 transfer needs and preferences of individuals with  
3 disabilities; or

4 (4) preempt or modify in any way the applica-  
5 tion of section 44 of the Internal Revenue Code of  
6 1986 with respect to eligible access expenditures (as  
7 defined in section 44(c) of such Code) of an eligible  
8 small business (as defined in section 44(b) of such  
9 Code).

10 (b) RIGHTS RETAINED BY HEALTH CARE WORK-  
11 ERS.—Nothing in this Act shall be construed to diminish  
12 the rights, privileges, or remedies of any health care work-  
13 er or employee under any Federal or State law, or under  
14 any collective bargaining agreement.

15 **SEC. 5. DEFINITIONS.**

16 For purposes of this Act:

17 (1) DIRECT-CARE REGISTERED NURSE.—The  
18 term “direct-care registered nurse” means an indi-  
19 vidual who has been granted a license by not less  
20 than one State to practice as a registered nurse and  
21 who provides bedside care or outpatient services for  
22 one or more patients or residents.

23 (2) EMPLOYEE.—The term “employee” means  
24 any individual employed by a health care employer,  
25 including health care workers, employees who do not

1 qualify as health care workers, and independent con-  
2 tractors.

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

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

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

22 (6) HEALTH CARE WORKER.—The term “health  
23 care worker” means an individual who has been as-  
24 signed by a health care employer to engage in pa-  
25 tient handling, including direct-care registered

- 1 nurses, independent contractors, or individuals who
- 2 perform the duties of health care workers.

