

112TH CONGRESS
1ST SESSION

S. 58

To amend title XVIII of the Social Security Act to provide for patient protection by establishing safe nurse staffing levels at certain Medicare providers, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 25 (legislative day, JANUARY 5), 2011

Mr. INOUE 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 establishing safe nurse staffing levels at certain Medicare providers, 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.**

4 This Act may be cited as the “Registered Nurse Safe
5 Staffing Act of 2011”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

1 (1) There are a number of hospitals throughout
2 the United States that do not provide adequate reg-
3 istered nurse staffing to protect the health and safe-
4 ty of patients.

5 (2) Research shows that patient safety in hos-
6 pitals is directly proportionate to the number of reg-
7 istered nurses working in the hospital. Higher staff-
8 ing levels by experienced registered nurses are re-
9 lated to lower rates of negative patient outcomes, in-
10 cluding falls, infections, medication errors, and even
11 death.

12 (3) Inadequate nurse staffing was found to be
13 a contributing factor in 24 percent of all unantici-
14 pated events that resulted in patient death, injury,
15 or permanent loss of function.

16 (4) Registered nurses play a vital role in pre-
17 venting patient care errors, for example registered
18 nurses intercepted 86 percent of medical errors be-
19 fore those errors affected patients.

20 (5) As a payer for inpatient and outpatient hos-
21 pital services for individuals entitled to benefits
22 under the Medicare program, the Federal Govern-
23 ment has a compelling interest in promoting the
24 safety of such individuals by requiring any hospital

1 participating in that program to establish minimum
2 safe staffing levels for registered nurses.

3 (6) Adequate registered nurse staffing levels are
4 necessary for the delivery of safe, quality care. Inad-
5 adequate registered nurse staffing levels contribute to
6 nurse burnout and exacerbate the current nursing
7 shortage in the United States.

8 (7) Nearly 25 percent of registered nurses indi-
9 cate that they are considering leaving direct patient
10 care nursing due to inadequate nurse staffing, and
11 nearly 60 percent of registered nurses report they
12 know of another nurse who left direct care nursing
13 because of concerns about inadequate nurse staffing.

14 (8) The cost to a hospital to replace a direct
15 patient care registered nurse is more than 101 per-
16 cent, and as much as 106 percent, of a registered
17 nurse's annual salary.

18 (9) As a result of insufficient staff, registered
19 nurses are being required to perform professional
20 services under conditions that do not support quality
21 health care or a healthful work environment for reg-
22 istered nurses.

1 **SEC. 3. ESTABLISHMENT OF SAFE NURSE STAFFING LEV-**
2 **ELS BY MEDICARE PARTICIPATING HOS-**
3 **PITALS.**

4 (a) REQUIREMENT OF MEDICARE PROVIDER AGREE-
5 MENT.—Section 1866(a)(1) of the Social Security Act (42
6 U.S.C. 1395cc(a)(1)) is amended—

7 (1) in subparagraph (V), by striking “and” at
8 the end;

9 (2) in subparagraph (W), as added by section
10 3005 of the Patient Protection and Affordable Care
11 Act (Public Law 111–148)—

12 (A) by moving such subparagraph 2 ems to
13 the left; and

14 (B) by striking the period at the end;

15 (3) in subparagraph (W), as added by section
16 6406(b) of the Patient Protection and Affordable
17 Care Act (Public Law 111–148)—

18 (A) by moving such subparagraph 2 ems to
19 the left;

20 (B) by redesignating such subparagraph as
21 subparagraph (X); and

22 (C) by striking the period at the end and
23 inserting “, and”; and

24 (4) by inserting after subparagraph (X), as re-
25 designating by paragraph (3)(B), the following new
26 subparagraph:

1 “(i) address the unique characteristics
2 of the patients and hospital units; and

3 “(ii) result in the delivery of safe,
4 quality patient care, consistent with the re-
5 quirements under subsection (c).

6 “(b) HOSPITAL NURSE STAFFING COMMITTEE.—

7 “(1) ESTABLISHMENT.—Each participating
8 hospital shall establish a hospital nurse staffing
9 committee (hereinafter in this section referred to as
10 the ‘Committee’).

11 “(2) COMPOSITION.—A Committee established
12 pursuant to this subsection shall be composed of
13 members as follows:

14 “(A) MINIMUM 55 PERCENT NURSE PAR-
15 TICIPATION.—Not less than 55 percent of the
16 members of the Committee shall be registered
17 nurses who provide direct patient care but who
18 are neither hospital nurse managers nor part of
19 the hospital administration staff.

20 “(B) INCLUSION OF HOSPITAL NURSE
21 MANAGERS.—The Committee shall include
22 members who are hospital nurse managers.

23 “(C) INCLUSION OF NURSES FROM SPE-
24 CIALTY UNITS.—The members of the Com-
25 mittee shall include at least 1 registered nurse

1 who provides direct care from each nurse spe-
2 cialty or unit of the hospital (each such spe-
3 cialty or unit as determined by the hospital).

4 “(D) OTHER HOSPITAL PERSONNEL.—The
5 Committee shall include such other personnel of
6 the hospital as the hospital determines to be ap-
7 propriate.

8 “(3) DUTIES.—

9 “(A) DEVELOPMENT OF STAFFING
10 PLAN.—The Committee shall develop a hospital-
11 wide staffing plan for nursing services furnished
12 in the hospital consistent with the requirements
13 under subsection (c).

14 “(B) REVIEW AND MODIFICATION OF
15 STAFFING PLAN.—The Committee shall—

16 “(i) conduct regular, ongoing moni-
17 toring of the implementation of the hos-
18 pital-wide staffing plan for nursing services
19 furnished in the hospital;

20 “(ii) carry out evaluations of the hos-
21 pital-wide staffing plan for nursing services
22 at least annually; and

23 “(iii) make such modifications to the
24 hospital-wide staffing plan for nursing
25 services as may be appropriate.

1 “(C) ADDITIONAL DUTIES.—The Com-
2 mittee shall—

3 “(i) develop policies and procedures
4 for overtime requirements of registered
5 nurses providing direct patient care and
6 for appropriate time and manner of relief
7 of such registered nurses during routine
8 absences; and

9 “(ii) carry out such additional duties
10 as the Committee determines to be appro-
11 priate.

12 “(c) STAFFING PLAN REQUIREMENTS.—

13 “(1) PLAN REQUIREMENTS.—Subject to para-
14 graph (2), a hospital-wide staffing plan for nursing
15 services developed and implemented under this sec-
16 tion shall—

17 “(A) be based upon input from the reg-
18 istered nurse staff of the hospital who provide
19 direct patient care or their exclusive representa-
20 tives, as well as the chief nurse executive;

21 “(B) be based upon the number of patients
22 and the level and variability of intensity of care
23 to be provided to those patients, with appro-
24 priate consideration given to admissions, dis-
25 charges, and transfers during each shift;

1 “(C) take into account contextual issues
2 affecting nurse staffing and the delivery of care,
3 including architecture and geography of the en-
4 vironment and available technology;

5 “(D) take into account the level of edu-
6 cation, training, and experience of those reg-
7 istered nurses providing direct patient care;

8 “(E) take into account the staffing levels
9 and services provided by other health care per-
10 sonnel associated with nursing care, such as
11 certified nurse assistants, licensed vocational
12 nurses, licensed psychiatric technicians, nursing
13 assistants, aides, and orderlies;

14 “(F) take into account staffing levels rec-
15 ommended by specialty nursing organizations;

16 “(G) establish adjustable minimum num-
17 bers of registered nurses based upon an assess-
18 ment by registered nurses of the level and vari-
19 ability of intensity of care required by patients
20 under existing conditions;

21 “(H) take into account unit and facility
22 level staffing, quality and patient outcome data,
23 and national comparisons, as available;

24 “(I) ensure that a registered nurse shall
25 not be assigned to work in a particular unit of

1 the hospital without first having established the
2 ability to provide professional care in such unit;
3 and

4 “(J) provide for exemptions from some or
5 all requirements of the hospital-wide staffing
6 plan for nursing services during a declared
7 state of emergency (as defined in subsection
8 (1)(1)) if the hospital is requested or expected
9 to provide an exceptional level of emergency or
10 other medical services.

11 “(2) LIMITATION.—A staffing system developed
12 and implemented under this section—

13 “(A) shall not preempt any registered-
14 nurse staffing levels established under State law
15 or regulation; and

16 “(B) may not utilize any minimum number
17 of registered nurses established under para-
18 graph (1)(G) as an upper limit on the nurse
19 staffing of the hospital to which such minimum
20 number applies.

21 “(d) REPORTING AND RELEASE TO PUBLIC OF CER-
22 TAIN STAFFING INFORMATION.—

23 “(1) REQUIREMENTS FOR HOSPITALS.—Each
24 participating hospital shall—

1 “(A) post daily for each shift, in a clearly
2 visible place, a document that specifies in a uni-
3 form manner (as prescribed by the Secretary)
4 the current number of licensed and unlicensed
5 nursing staff directly responsible for patient
6 care in each unit of the hospital, identifying
7 specifically the number of registered nurses;

8 “(B) upon request, make available to the
9 public—

10 “(i) the nursing staff information de-
11 scribed in subparagraph (A);

12 “(ii) a detailed written description of
13 the hospital-wide staffing plan imple-
14 mented by the hospital pursuant to sub-
15 section (a); and

16 “(iii) not later than 90 days after the
17 date on which an evaluation is carried out
18 by the Committee under subsection
19 (b)(3)(B)(ii), a copy of such evaluation;
20 and

21 “(C) not less frequently than quarterly,
22 submit to the Secretary in a uniform manner
23 (as prescribed by the Secretary) the nursing
24 staff information described in subparagraph (A)
25 through electronic data submission.

1 “(2) SECRETARIAL RESPONSIBILITIES.—The
2 Secretary shall—

3 “(A) make the information submitted pur-
4 suant to paragraph (1)(C) publicly available in
5 a comprehensible format (as described in sub-
6 section (e)(2)(D)(ii)), including by publication
7 on the Hospital Compare Internet website of
8 the Department of Health and Human Services;
9 and

10 “(B) provide for the auditing of such infor-
11 mation for accuracy as a part of the process of
12 determining whether the participating hospital
13 is in compliance with the conditions of its
14 agreement with the Secretary under section
15 1866, including under subsection (a)(1)(Y) of
16 such section.

17 “(e) RECORDKEEPING; COLLECTION AND REPORT-
18 ING OF QUALITY DATA; EVALUATION.—

19 “(1) RECORDKEEPING.—Each participating
20 hospital shall maintain for a period of at least 3
21 years (or, if longer, until the conclusion of any pend-
22 ing enforcement activities) such records as the Sec-
23 retary deems necessary to determine whether the
24 hospital has implemented a hospital-wide staffing
25 plan for nursing services pursuant to subsection (a).

1 “(2) COLLECTION AND REPORTING OF QUALITY
2 DATA ON NURSING SERVICES.—

3 “(A) IN GENERAL.—The Secretary shall
4 require the collection, aggregation, mainte-
5 nance, and reporting of quality data relating to
6 nursing services furnished by each participating
7 hospital.

8 “(B) USE OF ENDORSED MEASURES.—In
9 carrying out this paragraph, the Secretary shall
10 use only quality measures for nursing-sensitive
11 care that are endorsed by the entity with a con-
12 tract under section 1890(a).

13 “(C) USE OF QUALIFIED THIRD PARTY EN-
14 TITIES FOR COLLECTION AND SUBMISSION OF
15 DATA.—

16 “(i) IN GENERAL.—A participating
17 hospital may enter into agreements with
18 third party entities that have demonstrated
19 expertise in the collection and submission
20 of quality data on nursing services to col-
21 lect, aggregate, maintain, and report the
22 quality data of the hospital pursuant to
23 subparagraph (A).

24 “(ii) CONSTRUCTION.—Nothing in
25 clause (i) shall be construed to excuse or

1 exempt a participating hospital that has
2 entered into an agreement described in
3 such clause from compliance with require-
4 ments for quality data collection, aggrega-
5 tion, maintenance, and reporting imposed
6 under this paragraph.

7 “(D) REPORTING OF QUALITY DATA.—

8 “(i) PUBLICATION ON HOSPITAL COM-
9 PARE WEBSITE.—Subject to the succeeding
10 provisions of this subparagraph, the Sec-
11 retary shall make the data submitted pur-
12 suant to subparagraph (A) publicly avail-
13 able, including by publication on the Hos-
14 pital Compare Internet website of the De-
15 partment of Health and Human Services.

16 “(ii) COMPREHENSIBLE FORMAT.—
17 Data made available to the public under
18 clause (i) shall be presented in a clearly
19 understandable format that permits con-
20 sumers of hospital services to make mean-
21 ingful comparisons among hospitals, in-
22 cluding concise explanations in plain
23 English of how to interpret the data, of the
24 difference in types of nursing staff, of the
25 relationship between nurse staffing levels

1 and quality of care, and of how nurse
2 staffing may vary based on patient case
3 mix.

4 “(iii) OPPORTUNITY TO CORRECT ER-
5 RORS.—The Secretary shall establish a
6 process under which participating hospitals
7 may review data submitted to the Sec-
8 retary pursuant to subparagraph (A) to
9 correct errors, if any, contained in that
10 data submission before making the data
11 available to the public under clause (i).

12 “(3) EVALUATION OF DATA.—The Secretary
13 shall provide for the analysis of quality data col-
14 lected from participating hospitals under paragraph
15 (2) in order to evaluate the effect of hospital-wide
16 staffing plans for nursing services implemented pur-
17 suant to subsection (a) on—

18 “(A) patient outcomes that are nursing
19 sensitive (such as pressure ulcers, fall occur-
20 rence, falls resulting in injury, length of stay,
21 and central line catheter infections); and

22 “(B) nursing workforce safety and reten-
23 tion (including work-related injury, staff skill
24 mix, nursing care hours per patient day, va-
25 cancy and voluntary turnover rates, overtime

1 rates, use of temporary agency personnel, and
2 nurse satisfaction).

3 “(f) REFUSAL OF ASSIGNMENT.—A nurse may refuse
4 to accept an assignment as a nurse in a participating hos-
5 pital, or in a unit of a participating hospital, if—

6 “(1) the assignment is in violation of the hos-
7 pital-wide staffing plan for nursing services imple-
8 mented pursuant to subsection (a); or

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

13 “(g) ENFORCEMENT.—

14 “(1) RESPONSIBILITY.—The Secretary shall en-
15 force the requirements and prohibitions of this sec-
16 tion in accordance with the succeeding provisions of
17 this subsection.

18 “(2) PROCEDURES FOR RECEIVING AND INVES-
19 TIGATING COMPLAINTS.—The Secretary shall estab-
20 lish procedures under which—

21 “(A) any person may file a complaint that
22 a participating hospital has violated a require-
23 ment of or a prohibition under this section; and

24 “(B) such complaints are investigated by
25 the Secretary.

1 “(3) REMEDIES.—Except as provided in para-
2 graph (5), if the Secretary determines that a partici-
3 pating hospital has violated a requirement of this
4 section, the Secretary—

5 “(A) shall require the hospital to establish
6 a corrective action plan to prevent the recur-
7 rence of such violation; and

8 “(B) may impose civil money penalties
9 under paragraph (4).

10 “(4) CIVIL MONEY PENALTIES.—

11 “(A) IN GENERAL.—In addition to any
12 other penalties prescribed by law, the Secretary
13 may impose a civil money penalty of not more
14 than \$10,000 for each knowing violation of a
15 requirement of this section, except that the Sec-
16 retary shall impose a civil money penalty of
17 more than \$10,000 for each such violation in
18 the case of a participating hospital that the
19 Secretary determines has a pattern or practice
20 of such violations (with the amount of such ad-
21 ditional penalties being determined in accord-
22 ance with a schedule or methodology specified
23 in regulations).

24 “(B) PROCEDURES.—The provisions of
25 section 1128A (other than subsections (a) and

1 (b)) shall apply to a civil money penalty under
2 this paragraph in the same manner as such
3 provisions apply to a penalty or proceeding
4 under section 1128A.

5 “(C) PUBLIC NOTICE OF VIOLATIONS.—

6 “(i) INTERNET WEBSITE.—The Sec-
7 retary shall publish on an appropriate
8 Internet website of the Department of
9 Health and Human Services the names of
10 participating hospitals on which civil
11 money penalties have been imposed under
12 this section, the violation for which the
13 penalty was imposed, and such additional
14 information as the Secretary determines
15 appropriate.

16 “(ii) CHANGE OF OWNERSHIP.—With
17 respect to a participating hospital that had
18 a change in ownership, as determined by
19 the Secretary, penalties imposed on the
20 hospital while under previous ownership
21 shall no longer be published by the Sec-
22 retary on such Internet website after the
23 1-year period beginning on the date of the
24 change in ownership.

1 “(5) PENALTY FOR FAILURE TO COLLECT AND
2 REPORT QUALITY DATA ON NURSING SERVICES.—

3 “(A) IN GENERAL.—In the case of a par-
4 ticipating hospital that fails to comply with re-
5 quirements under subsection (e)(2) to collect,
6 aggregate, maintain, and report quality data re-
7 lating to nursing services furnished by the hos-
8 pital, instead of the remedies described in para-
9 graph (3), the provisions of subparagraph (B)
10 shall apply with respect to each such failure of
11 the participating hospital.

12 “(B) PENALTY.—In the case of a failure
13 by a participating hospital to comply with the
14 requirements under subsection (e)(2) for a year,
15 each such failure shall be deemed to be a failure
16 to submit data required under section
17 1833(t)(17)(A), section 1886(b)(3)(B)(viii),
18 section 1886(j)(7)(A), or section
19 1886(m)(5)(A), as the case may be, with re-
20 spect to the participating hospital involved for
21 that year.

22 “(h) WHISTLEBLOWER PROTECTIONS.—

23 “(1) PROHIBITION OF DISCRIMINATION AND
24 RETALIATION.—A participating hospital shall not
25 discriminate or retaliate in any manner against any

1 patient or employee of the hospital because that pa-
2 tient or employee, or any other person, has pre-
3 sented a grievance or complaint, or has initiated or
4 cooperated in any investigation or proceeding of any
5 kind, relating to—

6 “(A) the hospital-wide staffing plan for
7 nursing services developed and implemented
8 under this section; or

9 “(B) any right, other requirement or pro-
10 hibition under this section, including a refusal
11 to accept an assignment described in subsection
12 (f).

13 “(2) RELIEF FOR PREVAILING EMPLOYEES.—

14 An employee of a participating hospital who has
15 been discriminated or retaliated against in employ-
16 ment in violation of this subsection may initiate judi-
17 cial action in a United States district court and shall
18 be entitled to reinstatement, reimbursement for lost
19 wages, and work benefits caused by the unlawful
20 acts of the employing hospital. Prevailing employees
21 are entitled to reasonable attorney’s fees and costs
22 associated with pursuing the case.

23 “(3) RELIEF FOR PREVAILING PATIENTS.—A

24 patient who has been discriminated or retaliated
25 against in violation of this subsection may initiate

1 judicial action in a United States district court. A
2 prevailing patient shall be entitled to liquidated
3 damages of \$5,000 for a violation of this statute in
4 addition to any other damages under other applica-
5 ble statutes, regulations, or common law. Prevailing
6 patients are entitled to reasonable attorney’s fees
7 and costs associated with pursuing the case.

8 “(4) LIMITATION ON ACTIONS.—No action may
9 be brought under paragraph (2) or (3) more than 2
10 years after the discrimination or retaliation with re-
11 spect to which the action is brought.

12 “(5) TREATMENT OF ADVERSE EMPLOYMENT
13 ACTIONS.—For purposes of this subsection—

14 “(A) an adverse employment action shall
15 be treated as discrimination or retaliation; and

16 “(B) the term ‘adverse employment action’
17 includes—

18 “(i) the failure to promote an indi-
19 vidual or provide any other employment-re-
20 lated benefit for which the individual would
21 otherwise be eligible;

22 “(ii) an adverse evaluation or decision
23 made in relation to accreditation, certifi-
24 cation, credentialing, or licensing of the in-
25 dividual; and

1 “(iii) a personnel action that is ad-
2 verse to the individual concerned.

3 “(i) RELATIONSHIP TO STATE LAWS.—Nothing in
4 this section shall be construed as exempting or relieving
5 any person from any liability, duty, penalty, or punish-
6 ment provided by the law of any State or political subdivi-
7 sion of a State, other than any such law which purports
8 to require or permit any action prohibited under this title.

9 “(j) RELATIONSHIP TO CONDUCT PROHIBITED
10 UNDER THE NATIONAL LABOR RELATIONS ACT OR
11 OTHER COLLECTIVE BARGAINING LAWS.—Nothing in
12 this section shall be construed as—

13 “(1) permitting conduct prohibited under the
14 National Labor Relations Act or under any other
15 Federal, State, or local collective bargaining law; or

16 “(2) preempting, limiting, or modifying a collec-
17 tive bargaining agreement entered into by a partici-
18 pating hospital.

19 “(k) REGULATIONS.—

20 “(1) IN GENERAL.—The Secretary shall pro-
21 mulgate such regulations as are appropriate and
22 necessary to implement this section.

23 “(2) IMPLEMENTATION.—

24 “(A) IN GENERAL.—Except as provided in
25 subparagraph (B), as soon as practicable but

1 not later than 2 years after the date of the en-
2 actment of this section, a participating hospital
3 shall have implemented a hospital-wide staffing
4 plan for nursing services under this section.

5 “(B) SPECIAL RULE FOR RURAL HOS-
6 PITALS.—In the case of a participating hospital
7 located in a rural area (as defined in section
8 1886(d)(2)(D)), such participating hospital
9 shall have implemented a hospital-wide staffing
10 plan for nursing services under this section as
11 soon as practicable but not later than 4 years
12 after the date of the enactment of this section.

13 “(1) DEFINITIONS.—In this section:

14 “(1) DECLARED STATE OF EMERGENCY.—The
15 term ‘declared state of emergency’ means an offi-
16 cially designated state of emergency that has been
17 declared by the Federal Government or the head of
18 the appropriate State or local governmental agency
19 having authority to declare that the State, county,
20 municipality, or locality is in a state of emergency,
21 but does not include a state of emergency that re-
22 sults from a labor dispute in the health care indus-
23 try or consistent understaffing.

24 “(2) PARTICIPATING HOSPITAL.—The term
25 ‘participating hospital’ means a hospital (as defined

1 in section 1861(e)) that has entered into a provider
2 agreement under section 1866.

3 “(3) PERSON.—The term ‘person’ means one or
4 more individuals, associations, corporations, unincor-
5 porated organizations, or labor unions.

6 “(4) REGISTERED NURSE.—The term ‘reg-
7 istered nurse’ means an individual who has been
8 granted a license to practice as a registered nurse in
9 at least 1 State.

10 “(5) SHIFT.—The term ‘shift’ means a sched-
11 uled set of hours or duty period to be worked at a
12 participating hospital.

13 “(6) UNIT.—The term ‘unit’ means, with re-
14 spect to a hospital, an organizational department or
15 separate geographic area of a hospital, including a
16 burn unit, a labor and delivery room, a post-anes-
17 thesia service area, an emergency department, an
18 operating room, a pediatric unit, a stepdown or in-
19 termediate care unit, a specialty care unit, a telem-
20 etry unit, a general medical care unit, a subacute
21 care unit, and a transitional inpatient care unit.”.

○