To amend the Public Health Service Act to establish direct care registered nurse-to-patient staffing ratio requirements in hospitals, and for other purposes.

IN THE SENATE OF THE UNITED STATES
MAY 4, 2017

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

A BILL
To amend the Public Health Service Act to establish direct care registered nurse-to-patient staffing ratio requirements in hospitals, and for other purposes.

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS; FINDINGS.
(a) SHORT TITLE.—This Act may be cited as the “Nurse Staffing Standards for Hospital Patient Safety and Quality Care Act of 2017”.
(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents; findings.
Sec. 2. Minimum direct care registered nurse staffing requirement.
Sec. 3. Enforcement of requirements through Federal programs.
Sec. 4. Nurse workforce initiative.

(c) FINDINGS.—Congress finds the following:

(1) The Federal Government has a substantial interest in promoting quality care and improving the delivery of health care services to patients in health care facilities in the United States.

(2) Recent changes in health care delivery systems that have resulted in higher acuity levels among patients in health care facilities increase the need for improved quality measures in order to protect patient care and reduce the incidence of medical errors.

(3) Inadequate and poorly monitored registered nurse staffing practices that result in too few registered nurses providing direct care jeopardize the delivery of quality health care services.

(4) Numerous studies have shown that patient outcomes are directly correlated to direct care registered nurse staffing levels, including a 2010 Health Services Research study that concluded that implementation of minimum nurse-to-patient staffing ratios in California has led to improved patient outcomes and nurse retention and a 2014 Agency for Healthcare Research and Quality study that concluded increases in nurse staffing and skill mix lead
to improved quality and reduced length of stay at no additional cost.

(5) Requirements for direct care registered nurse staffing ratios will help address the registered nurse shortage in the United States by aiding in recruitment of new registered nurses and improving retention of registered nurses who are considering leaving direct patient care because of demands created by inadequate staffing.

(6) Establishing adequate minimum direct care registered nurse-to-patient ratios that take into account patient acuity measures will improve the delivery of quality health care services and guarantee patient safety.

(7) Establishing safe staffing standards for direct care registered nurses is a critical component of assuring that there is adequate hospital staffing at all levels to improve the delivery of quality care and protect patient safety.

SEC. 2. MINIMUM DIRECT CARE REGISTERED NURSE STAFFING REQUIREMENT.

(a) Minimum Direct Care Registered Nurse Staffing Requirements.—The Public Health Service Act (42 U.S.C. 201 et seq.) is amended by adding at the end the following new title:
“TITLE XXXIV—MINIMUM DIRECT CARE REGISTERED NURSE STAFFING REQUIREMENT

“SEC. 3401. MINIMUM NURSE STAFFING REQUIREMENT.

“(a) Staffing Plan.—

“(1) In general.—A hospital shall implement a staffing plan that—

“(A) provides adequate, appropriate, and quality delivery of health care services and protects patient safety; and

“(B) is consistent with the requirements of this title.

“(2) Effective dates.—

“(A) Implementation of staffing plan.—Subject to subparagraph (B), the requirements under paragraph (1) shall take effect on a date to be determined by the Secretary, but not later than 1 year after the date of the enactment of this title.

“(B) Application of minimum direct care registered nurse-to-patient ratios.—The requirements under subsection (b) shall take effect as soon as practicable, as determined by the Secretary, but not later than—
“(i) 2 years after the date of enactment of this title; and

“(ii) in the case of a hospital in a rural area (as defined in section 1886(d)(2)(D) of the Social Security Act), 4 years after the date of enactment of this title.

“(b) Minimum Direct Care Registered Nurse-to-Patient Ratios.—

“(1) In general.—Except as provided in paragraph (4) and other provisions of this section, a hospital’s staffing plan shall provide that, at all times during each shift within a unit of the hospital, and with a full complement of ancillary and support staff, a direct care registered nurse may be assigned to not more than the following number of patients in that unit:

“(A) One patient in trauma emergency units.

“(B) One patient in operating room units, provided that a minimum of 1 additional person serves as a scrub assistant in such unit.

“(C) Two patients in critical care units, including neonatal intensive care units, emergency critical care and intensive care units,
labor and delivery units, coronary care units, acute respiratory care units, postanesthesia units, and burn units.

“(D) Three patients in emergency room units, pediatrics units, stepdown units, telemetry units, antepartum units, and combined labor, deliver, and postpartum units.

“(E) Four patients in medical-surgical units, intermediate care nursery units, acute care psychiatric units, and other specialty care units.

“(F) Five patients in rehabilitation units and skilled nursing units.

“(G) Six patients in postpartum (3 couples) units and well-baby nursery units.

“(2) Similar units with different names.—The Secretary may apply minimum direct care registered nurse-to-patient ratios established in paragraph (1) for a hospital unit referred to in such paragraph to a type of hospital unit not referred to in such paragraph if such type of hospital unit provides a level of care to patients whose needs are similar to the needs of patients cared for in the hospital unit referred to in such paragraph.
“(3) Application of ratios to hospital nursing practice standards.—

“(A) In general.—A patient assignment may be included in the calculation of the direct care registered nurse-to-patient ratios required in this subsection only if care is provided by a direct care registered nurse and the provision of care to the particular patient is within that direct care registered nurse’s competence.

“(B) Demonstration of unit-specific competence.—A hospital shall not assign a direct care registered nurse to a hospital unit unless that hospital determines that the direct care registered nurse has demonstrated current competence in providing care in that unit, and has also received orientation to that hospital’s unit sufficient to provide competent care to patients in that unit.

“(C) Duties of the assigned direct care registered nurse.—Each patient shall be assigned to a direct care registered nurse who shall directly provide the assessment, planning, supervision, implementation, and evaluation of the nursing care provided to the patient at least every shift and has the responsibility
for the provision of care to a particular patient within his or her scope of practice.

“(D) Nurse Administrators and Supervisors.—A registered nurse who is a nurse administrator, nurse supervisor, nurse manager, charge nurse, case manager, or any other hospital administrator or supervisor, shall not be included in the calculation of the direct care registered nurse-to-patient ratio unless that nurse has a current and active direct patient care assignment and provides direct patient care in compliance with the requirements of this section, including competency requirements. The exemption in this subsection shall apply only during the hours in which the individual registered nurse has the principal responsibility of providing direct patient care and has no additional job duties as would a direct care registered nurse.

“(E) Other Personnel.—Other personnel may perform patient care tasks based on their training and demonstrated skill but may not perform or assist in direct care registered nurse functions unless authorized to do in ac-
cordance with State scope of practice laws and regulations.

“(F) Temporary Nursing Personnel.—
A hospital shall not assign any nursing personnel from temporary nursing agencies patient care to any hospital unit without such personnel having demonstrated competence on the assigned unit and received orientation to that hospital’s unit sufficient to provide competent care to patients in that unit.

“(G) Ancillary and Additional Staffing.—The need for additional staffing of direct care registered nurses, licensed vocational or practical nurses, licensed psychiatric technicians, certified nursing or patient care assistants, or other licensed or unlicensed ancillary staff above the minimum registered nurse-to-patient ratios shall be based on the assessment of the individual patient’s nursing care requirement, the individual patient’s nursing care plan, and acuity level.

“(4) Restrictions.—

“(A) Prohibition Against Averaging.—
A hospital shall not average the number of patients and the total number of direct care reg-
istered nurses assigned to patients in a hospital
unit during any 1 shift or over any period of
time for purposes of meeting the requirements
under this subsection.

“(B) Prohibition against imposition
of mandatory overtime requirements.—A
hospital shall not impose mandatory overtime
requirements to meet the hospital unit direct
care registered nurse-to-patient ratios required
under this subsection.

“(C) Relief during routine ab-
sences.—A hospital shall ensure that only a
direct care registered nurse who has dem-
onstrated current competence to the hospital in
providing care on a particular unit and has also
received orientation to that hospital's unit suffi-
cient to provide competent care to patients in
that unit may relieve another direct care reg-
istered nurse during breaks, meals, and other
routine, expected absences from a hospital unit.

“(D) Application of direct care reg-
istered nurse-to-patient ratios in pa-
tient-acuity adjustable units.—Patients
shall be cared for only on units or patient care
areas where the direct care registered nurse-to-
patient ratios meet the level of intensity, type of care, and the individual requirements and needs of each patient. Notwithstanding paragraph (2), hospitals that provide patient care in units or patient care areas that are acuity adaptable or acuity adjustable shall apply the direct care registered nurse-to-patient ratio required in this section for the highest patient acuity level or level of care in that unit or patient care area, and shall comply with all other requirements of this section.

“(E) USE OF VIDEO MONITORS.—A hospital shall not employ video monitors or any form of electronic visualization of a patient as a substitute for the direct observation required for patient assessment by the direct care registered nurse or required for patient protection. Video monitors or any form of electronic visualization of a patient shall not be included in the calculation of the direct care registered nurse-to-patient ratio required in this subsection and shall not replace the requirement of paragraph (3)(D) that each patient shall be assigned to a direct care registered nurse who shall directly provide the assessment, planning, supervision,
implementation, and evaluation of the nursing

care provided to the patient at least every shift

and have the responsibility for the provision of
care to a particular patient within his or her

scope of practice.

“(F) USE OF OTHER TECHNOLOGY.—A

hospital shall not employ technology that sub-

stitutes for the assigned registered nurse’s pro-

fessional judgment in assessment, planning, im-

plementation, and evaluation of care.

“(5) ADJUSTMENT OF RATIOS.—

“(A) IN GENERAL.—If necessary to protect

patient safety, the Secretary may prescribe reg-

ulations that—

“(i) increase minimum direct care reg-

istered nurse-to-patient ratios under this

subsection to reduce the number of pa-

tients that may be assigned to each direct

care nurse; or

“(ii) add minimum direct care reg-

istered nurse-to-patient ratios for units not

referred to in paragraphs (1) and (2).

“(B) CONSULTATION.—Such regulations

shall be prescribed after consultation with af-

fected hospitals and registered nurses.
“(6) Ancillary and additional staffing.—

“(A) In general.—The Secretary may prescribe regulations requiring additional staffing of direct care registered nurses, licensed vocational or practice nurses, licensed psychiatric technicians, certified nursing or patient care assistants, or other licensed or unlicensed ancillary staff above the minimum registered nurse-to-patient ratios that is based on the assessment of the individual patient’s nursing care needs, the individual patient’s nursing care plan, and acuity level.

“(B) Consultation.—Such regulations shall be prescribed after consultation with affected hospitals, registered nurses, and ancillary staff.

“(7) Relationship to state-imposed ratios.—Nothing in this title shall preempt State standards that the Secretary determines to be as stringent as Federal requirements for a staffing plan established under this title. Minimum direct care registered nurse-to-patient ratios established under this subsection shall not preempt State requirements that the Secretary determines are as stringent as to
Federal requirements for direct care registered nurse-to-patient ratios established under this title.

“(8) Exemption in Emergencies.—The requirements established under this subsection shall not apply during a state of emergency if a hospital is requested or expected to provide an exceptional level of emergency or other medical services. If a hospital seeks to apply the exemption under this paragraph in response to a complaint filed against the hospital for a violation of the provisions of this title, the hospital must demonstrate that prompt and diligent efforts were made to maintain required staffing levels. The Secretary shall issue guidance to hospitals that describes situations that constitute a state of emergency for purposes of the exemption under this paragraph and shall establish necessary penalties for violations of this paragraph consistent with section 3406.

“(c) Development and Reevaluation of Staffing Plan.—

“(1) Considerations in development of plan.—In developing the staffing plan, a hospital shall provide for direct care registered nurse-to-patient ratios above the minimum direct care registered nurse-to-patient ratios required under sub-
section (b) if appropriate based upon consideration of, at minimum, the following factors:

“(A) The number of patients on a particular unit on a shift-by-shift basis.

“(B) The acuity level and nursing care plan of patients on a particular unit on a shift-by-shift basis.

“(C) The anticipated admissions, discharges, and transfers of patients during each shift that impacts direct patient care.

“(D) Specialized experience required of direct care registered nurses on a particular unit.

“(E) Staffing levels and services provided by licensed vocational or practical nurses, licensed psychiatric technicians, certified nurse assistants, or other ancillary staff in meeting direct patient care needs not required by a direct care registered nurse.

“(F) The level of familiarity with hospital practices, policies, and procedures by temporary agency direct care registered nurses used during a shift.

“(G) Obstacles to efficiency in the delivery of patient care presented by physical layout.
“(2) Documentation of Staffing.—A hospital shall specify the system used to document actual staffing in each unit for each shift.

“(3) Annual Reevaluation of Plan.—

“(A) In General.—A hospital shall annually evaluate its staffing plan in each unit in relation to actual patient care requirements.

“(B) Update.—A hospital shall update its staffing plan to the extent appropriate based on such evaluation.

“(4) Transparency.—

“(A) In General.—Any staffing plan or method used to create and evaluate acuity-level and adopted by a hospital under this section shall be transparent in all respects, including disclosure of detailed documentation of the methodology used to determine nursing staffing, identifying each factor, assumption, and value used in applying such methodology.

“(B) Public Availability.—The Secretary shall establish procedures to provide that the documentation submitted under subsection (d) is available for public inspection in its entirety.
“(5) Registered nurse participation.—A staffing plan of a hospital—

“(A) shall be developed and subsequent re-evaluations shall be conducted under this subsection on the basis of input from direct care registered nurses at the hospital from each unit or patient care area; and

“(B) where such nurses are represented through collective bargaining, shall require bargaining with the applicable recognized or certified collective bargaining representative of such nurses.

Nothing in this title shall be construed to permit conduct prohibited under the National Labor Relations Act (29 U.S.C. 151 et seq.) or chapter 71 of title 5, United States Code.

“(6) Staffing committees.—If a hospital maintains a staffing committee, then the committee shall include at least one registered nurse from each hospital unit and shall be composed of at least 50 percent direct care registered nurses. The staffing committee shall include meaningful representation of other direct care nonmanagement staff. Direct care registered nurses who serve on the committee shall be selected by other direct care registered nurses
from their unit. Other direct care nonmanagement staff shall be selected by other direct care non-
management staff. Participation on staffing commit-
tees shall be considered a part of the employee’s reg-
ularly scheduled workweek.

“(d) Submission of Plan to Secretary.—A hos-
pital shall submit to the Secretary its staffing plan and
any annual updates under subsection (c)(3)(B). A feder-
ally operated hospital may submit its staffing plan
through the department or agency operating the hospital.

“SEC. 3402. POSTING, RECORDS, AND AUDITS.

“(a) Posting Requirements.—In each unit, a hos-
pital shall post a uniform notice in a form specified by
the Secretary in regulation that—

“(1) explains requirements imposed under sec-
tion 3401;

“(2) includes actual direct care registered
nurse-to-patient ratios during each shift;

“(3) includes the actual number and titles of di-
rect care registered nurses assigned during each
shift; and

“(4) is visible, conspicuous, and accessible to
staff, patients, and the public.

“(b) Records.—
“(1) Maintenance of records.—Each hospital shall maintain accurate records of actual direct care registered nurse-to-patient ratios in each unit for each shift for no less than 3 years. Such records shall include—

“(A) the number of patients in each unit;

“(B) the identity and duty hours of—

“(i) each direct care registered nurse assigned to each patient in each unit in each shift; and

“(ii) ancillary staff who are under the coordination of the direct care registered nurse;

“(C) certification that each nurse received rest and meal breaks and the identity and duty hours of each direct care registered nurse who provided such relief; and

“(D) a copy of each notice posted under subsection (a).

“(2) Availability of records.—Each hospital shall make its records maintained under paragraph (1) available to—

“(A) the Secretary;

“(B) registered nurses and their collective bargaining representatives (if any); and
“(C) the public under regulations established by the Secretary, or in the case of a federally operated hospital, under section 552 of title 5, United States Code (commonly known as the Freedom of Information Act).

“(c) Audits.—The Secretary shall conduct periodic audits to ensure—

“(1) implementation of the staffing plan in accordance with this title; and

“(2) accuracy in records maintained under this section.

“SEC. 3403. MINIMUM DIRECT CARE LICENSED PRACTICAL NURSE STAFFING REQUIREMENTS.

“(a) Establishment.—A hospital’s staffing plan shall comply with minimum direct care licensed practical nurse staffing requirements that the Secretary establishes for units in hospitals. Such staffing requirements shall be established not later than 18 months after the date of the enactment of this title, and shall be based on the study conducted under subsection (b).

“(b) Study.—Not later than 1 year after the date of the enactment of this title, the Secretary, acting through the Director of the Agency for Healthcare Research and Quality, shall complete a study of licensed practical nurse staffing and its effects on patient care in
hospitals. The Director may contract with a qualified enti-

ty or organization to carry out such study under this para-

graph. The Director shall consult with licensed practical

nurses and organizations representing licensed practical

nurses regarding the design and conduct of the study.

“(c) Application of Registered Nurse Provi-
sions to Licensed Practical Nurse Staffing Re-
quirements.—Paragraphs (2), (4)(A), (4)(B), (4)(C),
and (6) of section 3401(b), paragraphs (1), (2), (3), and
(4) of section 3401(c), and section 3402 shall apply to
the establishment and application of direct care licensed
practical nurse staffing requirements under this section
pursuant to the additional staffing requirements under
subsection (b)(3)(G) of section 3401 and in the same man-
ner that they apply to the establishment and application
of direct care registered nurse-to-patient ratios under sec-
tions 3401 and 3402.

“(d) Effective Date.—The requirements of this
section shall take effect as soon as practicable, as deter-
mined by the Secretary, but not later than—

“(1) 2 years after the date of the enactment of
this title; and

“(2) in the case of a hospital in a rural area
(as defined in section 1886(d)(2)(D) of the Social
Security Act), 4 years after the date of the enactment of this title.

“(e) Study.—Not later than 1 year after the date of the enactment of this title, the Secretary, acting through the Director of the Agency for Healthcare Research and Quality shall complete a study of registered and practical nurse staffing requirements in clinics and other outpatient settings, and its effects on patient care in outpatient settings. The Director may contract with a qualified entity or organization to carry out such study under this subsection. The Director shall consult with registered nurses and licensed practice nurses working in outpatient settings, including professional nursing associations and labor organizations representing both registered and practice nurses working in outpatient settings regarding the design and conduct of the study.

“SEC. 3404. ADJUSTMENT IN REIMBURSEMENT.

“(a) Medicare Reimbursement.—The Secretary shall adjust payments made to hospitals (other than federally operated hospitals) under title XVIII of the Social Security Act in an amount equal to the net amount of additional costs incurred in providing services to Medicare beneficiaries that are attributable to compliance with requirements imposed under sections 3401 through 3403. The amount of such payment adjustments shall take into
account recommendations contained in the report submitted by the Medicare Payment Advisory Commission under subsection (c).

“(b) Authorization of Appropriation for Federally Operated Hospitals.—There are authorized to be appropriated such additional sums as are required for federally operated hospitals to comply with the additional requirements established under sections 3401 through 3403.

“(c) MedPac Report.—Not later than 2 years after the date of the enactment of this title, the Medicare Payment Advisory Commission (established under section 1805 of the Social Security Act) shall submit to Congress and the Secretary a report estimating total costs and savings attributable to compliance with requirements imposed under sections 3401 through 3403. Such report shall include recommendations on the need, if any, to adjust reimbursement for Medicare payments under subsection (a).

“SEC. 3405. WHISTLEBLOWER AND PATIENT PROTECTIONS.

“(a) Professional Obligation and Rights.—All nurses have a duty and right to act based on their professional judgment in accordance with State nursing laws and regulations of the State in which the direct nursing care is being performed and to provide care in the exclu-
sive interests of the patients and to act as the patient’s advocate.

“(b) Acceptance of Patient Care Assignments.—The nurse is responsible for providing competent, safe, therapeutic, and effective nursing care to assigned patients. Before accepting a patient assignment, a nurse shall—

“(1) have the necessary professional knowledge, judgment, skills, and ability to provide the required care;

“(2) determine using professional judgment in accordance with State nursing laws and regulations of the State in which the direct nursing care is being performed whether the nurse is competent to perform the nursing care required; and

“(3) determine whether acceptance of a patient assignment would expose the patient or nurse to risk of harm.

“(c) Objection to or Refusal of Assignment.—A nurse may object to, or refuse to participate in, any activity, policy, practice, assignment, or task if in good faith—

“(1) the nurse reasonably believes it to be in violation of section 3401 or 3403; or
“(2) the nurse is not prepared by education, training, or experience to fulfill the assignment without compromising the safety of any patient or jeopardizing the license of the nurse.

“(d) Retaliation for Objection to or Refusal of Assignment Barred.—

“(1) No discharge, discrimination, or retaliation.—No hospital shall discharge, retaliate, discriminate, or otherwise take adverse action in any manner with respect to any aspect of a nurse’s employment (as defined in section 3407), including discharge, promotion, compensation, or terms, conditions, or privileges of employment, based on the nurse’s refusal of a work assignment under subsection (c).

“(2) No filing of complaint.—No hospital shall file a complaint or a report against a nurse with a State professional disciplinary agency because of the nurse’s refusal of a work assignment under subsection (c).

“(e) Cause of Action.—Any nurse, collective bargaining representative, or legal representative of any nurse who has been discharged, discriminated against, or retaliated against in violation of subsection (d)(1) or against whom a complaint or report has been filed in violation of
subsection (d)(2) may (without regard to whether a com-
plaint has been filed under subsection (f) of this section
or subsection (b) of section 3406) bring a cause of action
in a United States district court. A nurse who prevails
on the cause of action shall be entitled to one or more
of the following:

“(1) Reinstatement.

“(2) Reimbursement of lost wages, compensa-
tion, and benefits.

“(3) Attorneys’ fees.

“(4) Court costs.

“(5) Other damages.

“(f) COMPLAINT TO SECRETARY.—A nurse, patient,
collective bargaining representative, or other individual
may file a complaint with the Secretary against a hospital
that violates the provisions of this title. For any complaint
filed, the Secretary shall—

“(1) receive and investigate the complaint;

“(2) determine whether a violation of this title
as alleged in the complaint has occurred; and

“(3) if such a violation has occurred, issue an
order that the complaining nurse or individual shall
not suffer any discharge, retaliation, discrimination,
or other adverse action prohibited by subsection (d)
or subsection (h).
“(g) Toll-Free Telephone Number.—

“(1) In general.—The Secretary shall provide for the establishment of a toll-free telephone hotline to provide information regarding the requirements under section 3401 through 3403 and to receive reports of violations of such section.

“(2) Notice to patients.—A hospital shall provide each patient admitted to the hospital for inpatient care with the hotline described in paragraph (1), and shall give notice to each patient that such hotline may be used to report inadequate staffing or care.

“(h) Protection for Reporting.—

“(1) Prohibition on retaliation or discrimination.—A hospital shall not discriminate or retaliate in any manner against any patient, employee, or contract employee of the hospital, or any other individual, on the basis that such individual, in good faith, individually or in conjunction with another person or persons, has presented a grievance or complaint, or has initiated or cooperated in any investigation or proceeding of any governmental entity, regulatory agency, or private accreditation body, made a civil claim or demand, or filed an ac-
tion relating to the care, services, or conditions of
the hospital or of any affiliated or related facilities.

“(2) GOOD FAITH DEFINED.—For purposes of
this subsection, an individual shall be deemed to be
acting in good faith if the individual reasonably be-
lieves—

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

“(B) a violation of this title has occurred
or may occur.

“(i) PROHIBITION ON INTERFERENCE WITH
RIGHTS.—

“(1) EXERCISE OF RIGHTS.—It shall be unlaw-
ful for any hospital to—

“(A) interfere with, restrain, or deny the
exercise, or attempt to exercise, by any person
of any right provided or protected under this
title; or

“(B) coerce or intimidate any person re-
garding the exercise or attempt to exercise such
right.

“(2) OPPOSITION TO UNLAWFUL POLICIES OR
PRACTICES.—It shall be unlawful for any hospital to
discriminate or retaliate against any person for op-
posing any hospital policy, practice, or actions which
are alleged to violate, breach, or fail to comply with any provision of this title.

“(3) Prohibition on interference with protected communications.—A hospital (or an individual representing a hospital) shall not make, adopt, or enforce any rule, regulation, policy, or practice which in any manner directly or indirectly prohibits, impedes, or discourages a direct care nurse from, or intimidates, coerces, or induces a direct care nurse regarding, engaging in free speech activities or disclosing information as provided under this title.

“(4) Prohibition on interference with collective action.—A hospital (or an individual representing a hospital) shall not in any way interfere with the rights of nurses to organize, bargain collectively, and engage in concerted activity under section 7 of the National Labor Relations Act (29 U.S.C. 157).

“(j) Notice.—A hospital shall post in an appropriate location in each unit a conspicuous notice in a form specified by the Secretary that—

“(1) explains the rights of nurses, patients, and other individuals under this section;
“(2) includes a statement that a nurse, patient, or other individual may file a complaint with the Secretary against a hospital that violates the provisions of this title; and

“(3) provides instructions on how to file such a complaint.

“(k) EFFECTIVE DATE.—

“(1) REFUSAL; RETALIATION; CAUSE OF ACTION.—

“(A) IN GENERAL.—Subsections (c) through (e) shall apply to objections and refusals occurring on or after the effective date of the provision of this title to which the objection or refusal relates.

“(B) EXCEPTION.—Subsection (c)(2) shall not apply to objections or refusals in any hospital before the requirements of section 3401(a) or 3403(a), as applicable, apply to that hospital.

“(2) PROTECTIONS FOR REPORTING.—Subsection (h)(1) shall apply to actions occurring on or after the effective date of the provision to which the violation relates, except that such subsection shall apply to initiation, cooperation, or participation in
an investigation or proceeding on or after the date
of enactment of this title.

“(3) NOTICE.—Subsection (j) shall take effect
18 months after the date of enactment of this title.

“SEC. 3406. ENFORCEMENT.

“(a) IN GENERAL.—The Secretary shall enforce the
requirements and prohibitions of this title in accordance
with this section.

“(b) PROCEDURES FOR RECEIVING AND INVESTIGATING COMPLAINTS.—The Secretary shall establish
procedures under which—

“(1) any person may file a complaint alleging
that a hospital has violated a requirement or a pro-
hibition of this title; and

“(2) such complaints shall be investigated by
the Secretary.

“(c) REMEDIES.—If the Secretary determines that a
hospital has violated a requirement of this title, the Sec-
retary—

“(1) shall require the facility to establish a cor-
rective action plan to prevent the recurrence of such
violation; and

“(2) may impose civil money penalties, as de-
scribed in subsection (d).

“(d) CIVIL PENALTIES.—
“(1) IN GENERAL.—In addition to any other penalties prescribed by law, the Secretary may impose civil penalties as follows:

“(A) HOSPITAL LIABILITY.—The Secretary may impose on a hospital found to be in violation of this title a civil money penalty of—

“(i) not more than $25,000 for the first knowing violation of this title by such hospital; and

“(ii) not more than $50,000 for any subsequent knowing violation of this title by such hospital.

“(B) INDIVIDUAL LIABILITY.—The Secretary may impose on an individual who—

“(i) is employed by a hospital found by the Secretary to have violated this title; and

“(ii) knowingly violates this title, a civil money penalty of not more than $20,000 for each such violation by the individual.

“(2) PROCEDURES.—The provisions of section 1128A of the Social Security Act (other than subsections (a) and (b)) shall apply with respect to a civil money penalty or proceeding under this subsection in the same manner as such provisions apply.
with respect to a civil money penalty or proceeding
under such section 1128A.

“(e) Public Notice of Violations.—

“(1) Internet Website.—The Secretary shall
publish on the internet website of the Department of
Health and Human Services the names of hospitals
on which a civil money penalty has been imposed
under this section, the violation for which such pen-
alty was imposed, and such additional information
as the Secretary determines appropriate.

“(2) Change of Ownership.—With respect to
a hospital that had a change of ownership, as deter-
mined by the Secretary, penalties imposed on the
hospital while under previous ownership shall no
longer be published by the Secretary pursuant to
paragraph (1) after the 1-year period beginning on
the date of change of ownership.

“(f) Use of Funds.—Funds collected by the Sec-
etary pursuant to this section are authorized to be appro-
priated to carry out this title.

“Sec. 3407. Definitions.

“For purposes of this title:

“(1) Acuity Level.—The term ‘acuity level’
means the determination, using a hospital acuity
measurement tool that has been developed and es-
established in coordination with direct care registered
nurses and made transparent pursuant to section
3401(c)(4), of nursing care requirements, based on
the assigned direct care registered nurse’s profes-
sional judgment of—

“(A) the severity and complexity of an in-
dividual patient’s illness or injury;

“(B) the need for specialized equipment;

and

“(C) the intensity of nursing interventions
required.

“(2) COMPETENCE.—The term ‘competence’ or
‘competent’ means the satisfactory application of the
duties and responsibilities of a registered nurse in
providing nursing care to specific patient popu-
lations and for acuity levels for each patient care
unit or area pursuant to the State nursing laws and
regulations of the State in which the direct nursing
care is being performed.

“(3) DIRECT CARE LICENSED PRACTICAL
NURSE.—The term ‘direct care licensed practical
nurse’ means an individual who has been granted a
license by at least one State to practice as a licensed
practical nurse or a licensed vocational nurse and
who provides bedside care for one or more patients.
“(4) 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 for one or more patients.

“(5) Employment.—The term ‘employment’ includes the provision of services under a contract or other arrangement.

“(6) Hospital.—The term ‘hospital’ has the meaning given that term in section 1861(e) of the Social Security Act, and includes a hospital that is operated by the Department of Veterans Affairs, the Department of Defense, the Indian Health Services Program, or any other department or agency of the United States.

“(7) Nurse.—The term ‘nurse’ means any direct care registered nurse or direct care licensed practice nurse (as the case may be), regardless of whether or not the nurse is an employee.

“(8) Nursing care plan.—The term ‘nursing care plan’ means a plan developed by the assigned direct care registered nurse (in accordance with nursing law in the State in which the nursing care is performed) that indicates the nursing care to be given to individual patients that—
“(A) considers the acuity level of the patient;

“(B) is developed in coordination with the patient, the patient’s family, or other representatives when appropriate, and staff of other disciplines involved in the care of the patient;

“(C) reflects all elements of the nursing process; and

“(D) recommends the number and skill mix of additional licensed and unlicensed direct care staff needed to fully implement the nursing care plan.

“(9) PROFESSIONAL JUDGMENT.—The term ‘professional judgment’ means, in accordance with State nursing laws and regulations of the State in which the direct nursing care is being performed, the direct care registered nurse’s application of knowledge, expertise, and experience in conducting a comprehensive nursing assessment of each patient and in making independent decisions about patient care including the need for additional staff.

“(10) STAFFING PLAN.—The term ‘staffing plan’ means a staffing plan required under section 3401.
“(11) State of Emergency.—The term ‘state of emergency’—

“(A) means a state of emergency that is an unpredictable or unavoidable occurrence at an unscheduled or unpredictable interval, relating to health care delivery and requiring immediate medical interventions and care; and

“(B) does not include a state of emergency that results from a labor dispute in the health care industry or consistent understaffing.

“SEC. 3408. RULE OF CONSTRUCTION.

“Nothing in this title shall be construed to authorize disclosure of private and confidential patient information, if such disclosure is not authorized or required by other applicable law.”.

(b) Recommendations to Congress.—Not later than 1 year after the date of enactment of this Act, the Secretary of Health and Human Services shall submit to Congress a report containing recommendations for ensuring that sufficient numbers of nurses are available to meet the requirements imposed by title XXXIV of the Public Health Service Act, as added by subsection (a).

(c) Report by HRSA.—

(1) In General.—Not later than 2 years after the date of enactment of this Act, the Administrator
of the Health Resources and Services Administration, in consultation with the National Health Care Workforce Commission, shall submit to Congress a report regarding the relationship between nurse staffing levels and nurse retention in hospitals.

(2) UPDATED REPORT.—Not later than 5 years after the date of enactment of this Act, the Administrator of the Health Resources and Services Administration, in consultation with the National Health Care Workforce Commission, shall submit to Congress an update of the report submitted under paragraph (1).

SEC. 3. ENFORCEMENT OF REQUIREMENTS THROUGH FEDERAL PROGRAMS.

(a) MEDICARE PROGRAM.—Section 1866(a)(1) of the Social Security Act (42 U.S.C. 1395cc(a)(1)) is amended—

(1) in subparagraph (X), by striking ‘‘, and’’ and inserting a comma;

(2) in subparagraph (Y), by striking the period at the end and inserting ‘‘, and’’; and

(3) by inserting after the subparagraph (Y) the following new subparagraph:
“(Z) in the case of a hospital, to comply with the provisions of title XXXIV of the Public Health Service Act.”.

(b) MEDICAID PROGRAM.—Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)) is amended—

(1) by striking “and” at the end of paragraph (82);

(2) by striking the period at the end of paragraph (83) and inserting “; and”; and

(3) by inserting after paragraph (83) the following new paragraph:

“(84) provide that any hospital that receives a payment under such plan comply with the provisions of title XXXIV of the Public Health Service Act (relating to minimum direct care registered nurse staffing requirements).”.

(c) HEALTH BENEFITS PROGRAM OF THE DEPARTMENT OF VETERANS AFFAIRS.—Section 8110(a) of title 38, United States Code, is amended by adding at the end the following new paragraphs:

“(7) In the case of a Department medical facility that is a hospital, the hospital shall comply with the provisions of title XXXIV of the Public Health Service Act.
“(8) Nothing either in chapter 74 of this title or in section 7106 of title 5 shall preclude enforcement of the provisions of title XXXIV of the Public Health Service Act with respect to a Department hospital through grievance procedures negotiated in accordance with chapter 71 of title 5.”.

(d) Health Benefits Program of the Department of Defense.—

(1) In general.—Chapter 55 of title 10, United States Code, is amended by adding at the end the following new section:

“§ 1110c. Staffing requirements

“In the case of a facility of the uniformed services that is a hospital, the hospital shall comply with the provisions of title XXXIV of the Public Health Service Act.”.

(2) Clerical amendment.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1110b the following new item:

“1110c. Staffing requirements.”.

(e) Indian Health Services Program.—Title VIII of the Indian Health Care Improvement Act (25 U.S.C. 1671 et seq.) is amended by adding at the end the following new section:
“SEC. 833. STAFFING REQUIREMENTS.

“All hospitals of the Service shall comply with the provisions of title XXXIV of the Public Health Service Act (relating to minimum direct care registered nurse staffing requirements).”.

(f) FEDERAL LABOR-MANAGEMENT RELATIONS.—

(1) IN GENERAL.—Section 7106 of title 5, United States Code, is amended by adding at the end the following:

“(c) Nothing in this section shall preclude enforcement of the provisions of title XXXIV of the Public Health Service Act through grievance procedures negotiated in accordance with section 7121.”.

(2) CONFORMING AMENDMENT.—Section 7106(a) of title 5, United States Code, is amended by striking “Subject to subsection (b) of this title,” and inserting “Subject to subsections (b) and (c),”.

SEC. 4. NURSE WORKFORCE INITIATIVE.

(a) SCHOLARSHIP AND STIPEND PROGRAM.—Section 846(d) of the Public Health Service Act (42 U.S.C. 297n(d)) is amended—

(1) in the section heading, by inserting “AND STIPEND” after “SCHOLARSHIP”; and

(2) in paragraph (1), by inserting “or stipends” after “scholarships”. 

S 1063 IS
(b) Nurse Retention Grants.—Section 831A(b) of the Public Health Service Act (42 U.S.C. 296p–1(b)) is amended—

(1) by striking “Grants for Career Ladder Program.—” and inserting “Grants for Nurse Retention.—”;

(2) in paragraph (2), by striking “; or” and inserting a semicolon;

(3) in paragraph (3), by striking the period and inserting a semicolon; and

(4) by adding at the end the following:

“(4) to provide additional support to nurses entering the workforce by implementing nursing preceptorship projects that establish a period of practical and clinical experiences and training for nursing students, newly hired nurses, and recent graduates of a direct care degree program for registered nurses; or

“(5) to implement mentorship projects that assist new or transitional direct care registered nurses in adapting to the hospital setting.”.