

107TH CONGRESS  
1ST SESSION

# S. 1686

To amend title XVIII of the Social Security Act to provide for patient protection by limiting the number of mandatory overtime hours a nurse may be required to work in certain providers of services to which payments are made under the medicare program.

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## IN THE SENATE OF THE UNITED STATES

NOVEMBER 14, 2001

Mr. KENNEDY (for himself, Mr. KERRY, Mr. REID, Mr. WELLSTONE, and Mrs. CLINTON) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend title XVIII of the Social Security Act to provide for patient protection by limiting the number of mandatory overtime hours a nurse may be required to work in certain providers of services to which payments are made under the medicare program.

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

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Safe Nursing and Pa-  
5       tient Care Act of 2001”.

6       **SEC. 2. FINDINGS.**

7       The Congress finds as follows:

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

5           (2) Research, including a recent study by the  
6           Harvard School of Public Health, documents that  
7           higher nurse staffing levels result in better patient  
8           outcomes, yet health care providers report substan-  
9           tial difficulties in recruiting and retaining sufficient  
10          nursing staff, as evidenced by the approximately  
11          500,000 licensed nurses who are not practicing nurs-  
12          ing.

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

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

24          (5) Limitations on mandatory overtime will en-  
25          sure that health care facilities throughout the coun-

1 try operate in a manner that safeguards public safe-  
 2 ty and guarantees the delivery of quality health care  
 3 services and facilitates the retention and recruitment  
 4 of nurses.

5 **SEC. 3. LIMITATIONS ON MANDATORY OVERTIME FOR**  
 6 **NURSES.**

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

9 (1) in subsection (a)(1)—

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

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

14 (C) by inserting after subparagraph (S),  
 15 the following:

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

19 (2) by adding at the end the following new sub-  
 20 section:

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

24 “(1) PROHIBITION ON MANDATORY OVER-  
 25 TIME.—Except as provided in this subsection, a pro-

1 vider of services shall not, directly or indirectly, re-  
2 quire a nurse to work in excess of any of the fol-  
3 lowing:

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

6 “(B) 12 hours in a 24-hour period.

7 “(C) 80 hours in a consecutive 14-day pe-  
8 riod.

9 “(2) EXCEPTIONS.—

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

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

22 “(i) the provider has made reasonable  
23 efforts to fill the immediate staffing needs  
24 of the provider through alternative means;  
25 and

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

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

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

9 “(3) REPORT OF VIOLATIONS.—

10 “(A) RIGHT TO REPORT.—

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

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

19 “(B) INVESTIGATION OF COMPLAINT.—

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

23 “(C) ACTIONS.—If the Secretary deter-  
24 mines that a provider of services has violated  
25 the provisions of this subsection, the Secretary

1 shall require the provider to establish a plan of  
2 action to eliminate the occurrence of such viola-  
3 tion, and may seek civil money penalties under  
4 paragraph (7).

5 “(4) NURSE NONDISCRIMINATION PROTEC-  
6 TIONS.—

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

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

21 “(ii) initiates, cooperates, or otherwise  
22 participates in an investigation or pro-  
23 ceeding brought by a regulatory agency or  
24 private accreditation body concerning mat-  
25 ters covered by this subsection; or

1 “(iii) informs or discusses with other  
 2 employees, with representatives of those  
 3 employees, or with representatives of asso-  
 4 ciations of health care professionals, viola-  
 5 tions or suspected violations of this sub-  
 6 section.

7 “(B) RETALIATORY REPORTING.—A pro-  
 8 vider of services may not file a complaint or a  
 9 report against a nurse with the appropriate  
 10 State professional disciplinary agency because  
 11 the nurse refused to comply with a request to  
 12 work mandatory overtime.

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

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

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

20 “(5) NOTICE.—

21 “(A) REQUIREMENT TO POST NOTICE.—  
 22 Each provider of services shall post conspicu-  
 23 ously in an appropriate location a sign (in a  
 24 form specified by the Secretary) specifying  
 25 rights of nurses under this section.

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

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

16          “(7) CIVIL MONEY PENALTY.—

17               “(A) IN GENERAL.—The Secretary may  
 18               impose a civil money penalty of not more than  
 19               \$10,000 for each knowing violation of the provi-  
 20               sions of this subsection committed by a provider  
 21               of services.

22               “(B) PATTERNS OF VIOLATIONS.—Not-  
 23               withstanding subparagraph (A), the Secretary  
 24               shall provide for the imposition of more severe  
 25               civil money penalties under this paragraph for



1 providers of services that establish patterns of  
2 repeated violations of such provisions.

3 “(C) ADMINISTRATION OF PENALTIES.—

4 The provisions of section 1128A (other than  
5 subsections (a) and (b)) shall apply to a civil  
6 money penalty under this paragraph in the  
7 same manner as such provisions apply to a pen-  
8 alty or proceeding under section 1128A(a).

9 The Secretary shall publish on the Internet site of  
10 the Department of Health and Human Services the  
11 names of providers of services against which civil  
12 money penalties have been imposed under this para-  
13 graph, the violation for which the penalty was im-  
14 posed, and such additional information as the Sec-  
15 retary determines appropriate. With respect to a  
16 provider of services that has had a change in owner-  
17 ship, as determined by the Secretary, penalties im-  
18 posed on the provider of services while under pre-  
19 vious ownership shall no longer be published by the  
20 Secretary on such Internet site after the 1-year pe-  
21 riod beginning on the date of change in ownership.

22 “(8) RULE OF CONSTRUCTION.—Nothing in  
23 this subsection shall be construed as precluding a  
24 nurse from voluntarily working more than any of the  
25 periods of time described in paragraph (1) so long

1 as such work is done consistent with professional  
2 standards of safe patient care.

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

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

15 “(B) OVERTIME.—The term ‘overtime’  
16 means time worked in excess of the periods of  
17 time described in paragraph (1).

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

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

22 “(i) a hospital,

23 “(ii) a hospital outpatient department,

24 “(iii) a critical access hospital,

25 “(iv) an ambulatory surgical center,

- 1 “(v) a home health agency,  
 2 “(vi) a rehabilitation agency,  
 3 “(vii) a clinic, including a rural health  
 4 clinic, or  
 5 “(viii) a Federally qualified health  
 6 center.

7 “(E) DECLARED STATE OF EMERGENCY.—  
 8 The term ‘declared state of emergency’ means  
 9 an officially designated state of emergency that  
 10 has been declared by the Federal Government  
 11 or the head of the appropriate State or local  
 12 governmental agency having authority to de-  
 13 clare that the State, county, municipality, or lo-  
 14 cality is in a state of emergency, but does not  
 15 include a state of emergency that results from  
 16 a labor dispute in the health care industry or  
 17 consistent understaffing.

18 “(F) STANDARDS OF SAFE PATIENT  
 19 CARE.—The term ‘standards of safe patient  
 20 care’ means the recognized professional stand-  
 21 ards governing the profession of the nurse in-  
 22 volved.”.

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

1 **SEC. 4. REPORTS.**

2 (a) STANDARDS ON SAFE WORKING HOURS FOR  
3 NURSES.—

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

18 (2) REPORT.—Not later than 2 years after the  
19 date of the enactment of this Act, the Secretary  
20 shall submit to Congress a report on the study con-  
21 ducted under paragraph (1), and shall include rec-  
22 ommendations for such appropriate standards of  
23 maximum work hours.

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

26 (1) STUDY.—

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

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

17 (2) REPORT.—Not later than 6 months after  
18 the date of the enactment of this Act, the Director  
19 of the Office of Management and Budget shall sub-  
20 mit to Congress a report on the study conducted  
21 under paragraph (1) and shall include recommenda-  
22 tions for the implementation of policies within feder-  
23 ally operated medical facilities with respect to over-

- 1 time requirements for nurses that are consistent
- 2 with such section 1866(j), as so added.

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