

108TH CONGRESS  
1ST SESSION

# H. R. 745

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 HOUSE OF REPRESENTATIVES

FEBRUARY 12, 2003

Mr. STARK (for himself, Mr. LATOURETTE, Mr. RANGEL, Mr. KLECZKA, Mr. WAXMAN, Mr. PALLONE, Ms. DEGETTE, Mr. SERRANO, Mr. SIMMONS, Mr. TOWNS, Mr. WEINER, Ms. LEE, Ms. LOFGREN, Ms. SCHAKOWSKY, Mr. MOORE, Ms. NORTON, Ms. WOOLSEY, Mr. FROST, Mr. OWENS, Mr. KILDEE, Ms. DELAURO, Mr. SANDERS, Mrs. CHRISTENSEN, Mr. GRIJALVA, Mr. LYNCH, Mr. FRANK of Massachusetts, Mr. LANGEVIN, Mrs. CAPPS, Mr. MEEHAN, Mr. FILNER, Mr. HINCHEY, Mr. INSLEE, Mr. McDERMOTT, Mr. WEXLER, Mr. NADLER, Mr. GORDON, Mr. BISHOP of New York, Mr. GUTIERREZ, Mr. SANDLIN, Ms. KILPATRICK, Mr. CARDIN, Mr. ANDREWS, Mr. CARSON of Oklahoma, Mr. DAVIS of Illinois, Mr. KUCINICH, and Mr. HOLT) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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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 2003”.

6       **SEC. 2. FINDINGS.**

7       The Congress finds as follows:

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

12              (2) Research, including a recent study pub-  
13      lished in the October 23–30, 2002 issue of the Jour-  
14      nal of the American Medical Association (JAMA),  
15      documents that higher nurse staffing levels result in  
16      better patient outcomes, yet health care providers re-  
17      port substantial difficulties in recruiting and retain-  
18      ing sufficient nursing staff, as evidenced by the ap-  
19      proximately 500,000 licensed nurses who are not  
20      practicing nursing.

21              (3) While job dissatisfaction and overtime work  
22      are contributing to the departure of nurses from  
23      their profession, as highlighted by a recent report of  
24      the Comptroller General of the United States, health

1 care providers continue to make use of mandatory  
2 overtime as a staffing method.

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

8 (5) Limitations on mandatory overtime will en-  
9 sure that health care facilities throughout the coun-  
10 try operate in a manner that safeguards public safe-  
11 ty and guarantees the delivery of quality health care  
12 services and facilitates the retention and recruitment  
13 of nurses.

14 **SEC. 3. LIMITATIONS ON MANDATORY OVERTIME FOR**  
15 **NURSES.**

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

18 (1) in subsection (a)(1)—

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

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

23 (C) by inserting after subparagraph (S),  
24 the following:

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

4 (2) by adding at the end the following new sub-  
 5 section:

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

9 “(1) PROHIBITION ON MANDATORY OVER-  
 10 TIME.—Except as provided in this subsection, a pro-  
 11 vider of services shall not, directly or indirectly, re-  
 12 quire a nurse to work in excess of any of the fol-  
 13 lowing:

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

16 “(B) 12 hours in a 24-hour period.

17 “(C) 80 hours in a consecutive 14-day pe-  
 18 riod.

19 “(2) EXCEPTIONS.—

20 “(A) IN GENERAL.—Subject to subpara-  
 21 graph (B), the requirements of paragraph (1)  
 22 shall not apply to a provider of services during  
 23 a declared state of emergency if the provider is  
 24 requested, or otherwise is expected, to provide

1 an exceptional level of emergency or other med-  
2 ical services to the community.

3 “(B) LIMITATIONS.—With respect to a  
4 provider of services to which subparagraph (A)  
5 applies, a nurse may only be required to work  
6 for periods in excess of the periods described in  
7 paragraph (1) if—

8 “(i) the provider has made reasonable  
9 efforts to fill the immediate staffing needs  
10 of the provider through alternative means;  
11 and

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

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

16 “(II) the date on which the pro-  
17 vider’s direct role in responding to the  
18 medical needs resulting from the de-  
19 clared state of emergency ends.

20 “(3) REPORT OF VIOLATIONS.—

21 “(A) RIGHT TO REPORT.—

22 “(i) IN GENERAL.—A nurse may file a  
23 complaint with the Secretary against a  
24 provider of services who violates the provi-  
25 sions of this subsection.

1                   “(ii) PROCEDURE.—The Secretary  
2                   shall establish a procedure under which a  
3                   nurse may file a complaint under clause  
4                   (i).

5                   “(B) INVESTIGATION OF COMPLAINT.—  
6                   The Secretary shall investigate complaints of  
7                   violations filed by a nurse under subparagraph  
8                   (A).

9                   “(C) ACTIONS.—If the Secretary deter-  
10                  mines that a provider of services has violated  
11                  the provisions of this subsection, the Secretary  
12                  shall require the provider to establish a plan of  
13                  action to eliminate the occurrence of such viola-  
14                  tion, and may seek civil money penalties under  
15                  paragraph (7).

16                  “(4) NURSE NONDISCRIMINATION PROTEC-  
17                  TIONS.—

18                  “(A) IN GENERAL.—A provider of services  
19                  shall not penalize, discriminate, or retaliate in  
20                  any manner with respect to any aspect of em-  
21                  ployment, including discharge, promotion, com-  
22                  pensation, or terms, conditions, or privileges of  
23                  employment against a nurse who refuses to  
24                  work mandatory overtime or who in good faith,

1 individually or in conjunction with another per-  
2 son or persons—

3 “(i) reports a violation or suspected  
4 violation of this subsection to a public reg-  
5 ulatory agency, a private accreditation  
6 body, or the management personnel of the  
7 provider of services;

8 “(ii) initiates, cooperates, or otherwise  
9 participates in an investigation or pro-  
10 ceeding brought by a regulatory agency or  
11 private accreditation body concerning mat-  
12 ters covered by this subsection; or

13 “(iii) informs or discusses with other  
14 employees, with representatives of those  
15 employees, or with representatives of asso-  
16 ciations of health care professionals, viola-  
17 tions or suspected violations of this sub-  
18 section.

19 “(B) RETALIATORY REPORTING.—A pro-  
20 vider of services may not file a complaint or a  
21 report against a nurse with the appropriate  
22 State professional disciplinary agency because  
23 the nurse refused to comply with a request to  
24 work mandatory overtime.

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

4                   “(i) that the information reported or  
5 disclosed is true; and

6                   “(ii) that a violation has occurred or  
7 may occur.

8           “(5) NOTICE.—

9                   “(A) REQUIREMENT TO POST NOTICE.—  
10 Each provider of services shall post conspicu-  
11 ously in an appropriate location a sign (in a  
12 form specified by the Secretary) specifying  
13 rights of nurses under this section.

14                   “(B) RIGHT TO FILE COMPLAINT.—Such  
15 sign shall include a statement that a nurse may  
16 file a complaint with the Secretary against a  
17 provider of services who violates the provisions  
18 of this subsection and information with respect  
19 to the manner of filing such a complaint.

20           “(6) POSTING OF NURSE SCHEDULES.—A pro-  
21 vider of services shall regularly post in a conspicuous  
22 manner the nurse schedules (for such periods of  
23 time that the Secretary determines appropriate by  
24 type or class of provider of services) for the depart-  
25 ment or unit involved, and shall make available upon



1 request to nurses assigned to the department or unit  
2 the daily nurse schedule for such department or  
3 unit.

4 “(7) CIVIL MONEY PENALTY.—

5 “(A) IN GENERAL.—The Secretary may  
6 impose a civil money penalty of not more than  
7 \$10,000 for each knowing violation of the provi-  
8 sions of this subsection committed by a provider  
9 of services.

10 “(B) PATTERNS OF VIOLATIONS.—Not-  
11 withstanding subparagraph (A), the Secretary  
12 shall provide for the imposition of more severe  
13 civil money penalties under this paragraph for  
14 providers of services that establish patterns of  
15 repeated violations of such provisions.

16 “(C) ADMINISTRATION OF PENALTIES.—  
17 The provisions of section 1128A (other than  
18 subsections (a) and (b)) shall apply to a civil  
19 money penalty under this paragraph in the  
20 same manner as such provisions apply to a pen-  
21 alty or proceeding under section 1128A(a).

22 The Secretary shall publish on the Internet site of  
23 the Department of Health and Human Services the  
24 names of providers of services against which civil  
25 money penalties have been imposed under this para-

graph, the violation for which the penalty was imposed, and such additional information as the Secretary determines appropriate. With respect to a provider of services that has had a change in ownership, as determined by the Secretary, penalties imposed on the provider of services while under previous ownership shall no longer be published by the Secretary on such Internet site after the 1-year period beginning on the date of change in ownership.

“(8) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed as precluding a nurse from voluntarily working more than any of the periods of time described in paragraph (1) so long as such work is done consistent with professional standards of safe patient care.

“(9) DEFINITIONS.—In this subsection:

“(A) MANDATORY OVERTIME.—The term ‘mandatory overtime’ means hours worked in excess of the periods of time described in paragraph (1), except as provided in paragraph (2), pursuant to any request made by a provider of services to a nurse which, if refused or declined by the nurse involved, may result in an adverse employment consequence to the nurse, including discharge, discipline, loss of promotion, or retal-

1 iatory reporting of the nurse to the State pro-  
2 fessional disciplinary agency involved.

3 “(B) OVERTIME.—The term ‘overtime’  
4 means time worked in excess of the periods of  
5 time described in paragraph (1).

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

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

10 “(i) a hospital,

11 “(ii) a hospital outpatient department,

12 “(iii) a critical access hospital,

13 “(iv) an ambulatory surgical center,

14 “(v) a home health agency,

15 “(vi) a rehabilitation agency,

16 “(vii) a clinic, including a rural health  
17 clinic, or

18 “(viii) a Federally qualified health  
19 center.

20 “(E) DECLARED STATE OF EMERGENCY.—  
21 The term ‘declared state of emergency’ means  
22 an officially designated state of emergency that  
23 has been declared by the Federal Government  
24 or the head of the appropriate State or local  
25 governmental agency having authority to de-

clare that the State, county, municipality, or locality is in a state of emergency, but does not include a state of emergency that results from a labor dispute in the health care industry or consistent understaffing.

“(F) STANDARDS OF SAFE PATIENT CARE.—The term ‘standards of safe patient care’ means the recognized professional standards governing the profession of the nurse involved.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect 1 year after the date of enactment of this Act.

#### **SEC. 4. REPORTS.**

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

(1) STUDY.—The Secretary of Health and Human Services, acting through the Director of the Agency for Healthcare Research and Quality, shall conduct a study to establish appropriate standards for the maximum number of hours that a nurse, who furnishes health care to patients, may work without compromising the safety of such patients. Such standards may vary by provider of service and by department within a provider of services, by duties or

1 functions carried out by nurses, by shift, and by  
2 other factors that the Director determines appropriate. The Director may contract with an eligible  
3 entity or organization to carry out the study under  
4 this paragraph.  
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6 (2) REPORT.—Not later than 2 years after the  
7 date of the enactment of this Act, the Secretary  
8 shall submit to Congress a report on the study conducted under paragraph (1), and shall include recommendations for such appropriate standards of  
9 maximum work hours.  
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12 (b) REPORT ON MANDATORY OVERTIME IN FEDERALLY OPERATED MEDICAL FACILITIES.—  
13

14 (1) STUDY.—

15 (A) IN GENERAL.—The Director of the Office of Management and Budget shall conduct  
16 a study to determine the extent to which federally operated medical facilities have in effect  
17 practices and policies with respect to overtime requirements for nurses that are inconsistent  
18 with the provisions of section 1866(j) of the Social Security Act, as added by section 3.  
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20  
21  
22

23 (B) FEDERALLY OPERATED MEDICAL FACILITIES DEFINED.—In this subsection, the  
24 term “federally operated medical facilities”  
25

1 means acute care hospitals, freestanding clinics,  
2 and home health care clinics that are operated  
3 by the Department of Veterans Affairs, the De-  
4 partment of Defense, or any other department  
5 or agency of the United States.

6 (2) REPORT.—Not later than 6 months after  
7 the date of the enactment of this Act, the Director  
8 of the Office of Management and Budget shall sub-  
9 mit to Congress a report on the study conducted  
10 under paragraph (1) and shall include recommenda-  
11 tions for the implementation of policies within feder-  
12 ally operated medical facilities with respect to over-  
13 time requirements for nurses that are consistent  
14 with such section 1866(j), as so added.

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