

109TH CONGRESS  
1ST SESSION

# H. R. 1372

To amend title XVIII of the Social Security Act to impose minimum nurse staffing ratios in Medicare participating hospitals, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 17, 2005

Mrs. CAPPS (for herself and Mr. SIMMONS) 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 impose minimum nurse staffing ratios in Medicare participating hospitals, 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 “Quality Nursing Care  
5       Act of 2005”.

6       **SEC. 2. FINDINGS.**

7       The Congress makes the following findings:

1           (1) There are hospitals throughout the United  
2       States that have inadequate staffing of registered  
3       nurses to protect the well-being and health of the  
4       patients.

5           (2) Studies show that the health of patients in  
6       hospitals is directly proportionate to the number of  
7       registered nurses working in the hospital.

8           (3) There is a critical shortage of registered  
9       nurses in the United States.

10          (4) The effect of that shortage is revealed in  
11       unsafe staffing levels in hospitals.

12          (5) Patient safety is adversely affected by these  
13       unsafe staffing levels, creating a public health crisis.

14          (6) Registered nurses are being required to per-  
15       form professional services under conditions that do  
16       not support quality health care or a healthful work  
17       environment for registered nurses.

18          (7) As a payer for inpatient and outpatient hos-  
19       pital services for individuals entitled to benefits  
20       under the program established under title XVIII of  
21       the Social Security Act, the Federal Government has  
22       a compelling interest in promoting the safety of such  
23       individuals by requiring any hospital participating in  
24       such program to establish minimum safe staffing  
25       levels for registered nurses.

1 **SEC. 3. ESTABLISHMENT OF MINIMUM STAFFING RATIOS**  
2 **BY MEDICARE PARTICIPATING HOSPITALS.**

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

6 (1) by striking “and” at the end of subpara-  
7 graph (U);

8 (2) by striking the period at the end of sub-  
9 paragraph (V) and inserting “, and”; and

10 (3) by inserting after subparagraph (V) and be-  
11 fore the end matter the following:

12 “(W) in the case of a hospital—

13 “(i) to adopt and implement a staffing  
14 system that meets the requirements of sec-  
15 tion 1898;

16 “(ii) to meet the requirements of such  
17 section relating to—

18 “(I) records maintenance;

19 “(II) data collection; and

20 “(III) data submission; and

21 “(iii) to meet the requirements of  
22 such section relating to non-discrimination  
23 and retaliation.”.

24 (b) REQUIREMENTS.—Title XVIII of the Social Secu-  
25 rity Act (42 U.S.C. 1395 et seq.) is amended by adding  
26 at the end the following:

1           “STAFFING REQUIREMENTS FOR MEDICARE  
2                           PARTICIPATING HOSPITALS

3           “SEC. 1898. (a) ESTABLISHMENT OF STAFFING SYS-  
4   TEM.—Each participating hospital shall adopt and imple-  
5   ment a staffing system that ensures a number of reg-  
6   istered nurses on each shift and in each unit of the hos-  
7   pital to ensure appropriate staffing levels for patient care.  
8   A staffing system adopted and implemented under this  
9   section shall—

10           “(1) be developed on the basis of input from  
11   the direct care-giving registered nurse staff or,  
12   where nurses are represented, with the applicable  
13   recognized or certified collective bargaining rep-  
14   resentatives of the registered nurses;

15           “(2) be based upon the number of patients and  
16   the level and variability of intensity of care to be  
17   provided, with appropriate consideration given to ad-  
18   missions, discharges and transfers during each shift;

19           “(3) account for contextual issues affecting  
20   staffing and the delivery of care, including architec-  
21   ture and geography of the environment and available  
22   technology;

23           “(4) reflect the level of preparation and experi-  
24   ence of those providing care;

1           “(5) account for staffing level effectiveness or  
2           deficiencies in related health care classifications, in-  
3           cluding but not limited to, certified nurse assistants,  
4           licensed vocational nurses, licensed psychiatric tech-  
5           nicians, nursing assistants, aides and orderlies;

6           “(6) reflect staffing levels recommended by spe-  
7           cialty nursing organizations;

8           “(7) subject to subsection (b), establish  
9           upwardly adjustable registered nurse-to-patient ra-  
10          tios based upon registered nurses’ assessment of pa-  
11          tient acuity and existing conditions;

12          “(8) provide that a registered nurse shall not be  
13          assigned to work in a particular unit without first  
14          having established the ability to provide professional  
15          care in such unit; and

16          “(9) be based on methods that assure validity  
17          and reliability.

18          “(b) LIMITATION.—A staffing system adopted and  
19          implemented pursuant to subsection (a) may not—

20               “(1) set registered-nurse levels below those re-  
21               quired by any Federal or State law or regulation; or

22               “(2) utilize any minimum registered nurse-to-  
23               patient ratio established pursuant to subsection  
24               (a)(7) as an upper limit on the staffing of the hos-  
25               pital to which such ratio applies.

1       “(c) REPORTING, AND RELEASE TO PUBLIC, OF CER-  
2 TAIN STAFFING INFORMATION.—

3               “(1) REQUIREMENTS FOR HOSPITALS.—Each  
4 participating hospital shall—

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

12                      “(B) upon request, make available to the  
13 public—

14                               “(i) the nursing staff information de-  
15 scribed in subparagraph (A); and

16                               “(ii) a detailed written description of  
17 the staffing system established by the hos-  
18 pital pursuant to subsection (a); and

19                      “(C) submit to the Secretary in a uniform  
20 manner (as prescribed by the Secretary) the  
21 nursing staff information described in subpara-  
22 graph (A) through electronic data submission  
23 not less frequently than quarterly.

24               “(2) SECRETARIAL RESPONSIBILITIES.—The  
25 Secretary shall—

1           “(A) make the information submitted pur-  
2           suant to paragraph (1)(C) publicly available, in-  
3           cluding by publication of such information on  
4           the Internet site of the Department of Health  
5           and Human Services; and

6           “(B) provide for the auditing of such infor-  
7           mation for accuracy as a part of the process of  
8           determining whether an institution is a hospital  
9           for purposes of this title.

10          “(d) RECORD-KEEPING; DATA COLLECTION; EVAL-  
11          UATION.—

12           “(1) RECORD-KEEPING.—Each participating  
13          hospital shall maintain for a period of at least 3  
14          years (or, if longer, until the conclusion of pending  
15          enforcement activities) such records as the Secretary  
16          deems necessary to determine to whether the hos-  
17          pital has adopted and implemented a staffing system  
18          pursuant to subsection (a).

19           “(2) DATA COLLECTION ON CERTAIN OUT-  
20          COMES.—The Secretary shall require the collection,  
21          maintenance, and submission of data by each par-  
22          ticipating hospital sufficient to establish the link be-  
23          tween the staffing system established pursuant to  
24          subsection (a) and—

1           “(A) patient acuity from maintenance of  
2           acuity data through entries on patients’ charts;

3           “(B) patient outcomes that are nursing  
4           sensitive, such as patient falls, adverse drug  
5           events, injuries to patients, skin breakdown,  
6           pneumonia, infection rates, upper gastro-  
7           intestinal bleeding, shock, cardiac arrest, length  
8           of stay, and patient re-admissions;

9           “(C) operational outcomes, such as work-  
10          related injury or illness, vacancy and turnover  
11          rates, nursing care hours per patient day, on-  
12          call use, overtime rates, and needle-stick inju-  
13          ries; and

14          “(D) patient complaints related to staffing  
15          levels.

16          “(3) EVALUATION.—Each participating hospital  
17          shall annually evaluate its staffing system and estab-  
18          lished minimum registered nurse staffing ratios to  
19          assure on-going reliability and validity of the system  
20          and ratios. The evaluation shall be conducted by a  
21          joint management-staff committee comprised of at  
22          least 50 percent of registered nurses who provide di-  
23          rect patient care and where nurses are represented,  
24          with the involvement of the applicable recognized or



1 certified collective bargaining representatives of the  
2 registered nurses.

3 “(e) ENFORCEMENT.—

4 “(1) RESPONSIBILITY.—The Secretary shall en-  
5 force the requirements and prohibitions of this sec-  
6 tion.

7 “(2) PROCEDURES FOR RECEIVING AND INVES-  
8 TIGATING COMPLAINTS.—The Secretary shall estab-  
9 lish procedures under which—

10 “(A) any person may file a complaint that  
11 a participating hospital has violated a require-  
12 ment or a prohibition of this section; and

13 “(B) such complaints are investigated by  
14 the Secretary.

15 “(3) REMEDIES.—If the Secretary determines  
16 that a participating hospital has violated a require-  
17 ment of this section, the Secretary—

18 “(A) shall require the facility to establish  
19 a corrective action plan to prevent the recur-  
20 rence of such violation; and

21 “(B) may impose civil money penalties  
22 under paragraph (4).

23 “(4) CIVIL MONEY PENALTIES.—

24 “(A) IN GENERAL.—In addition to any  
25 other penalties prescribed by law, the Secretary

1 may impose a civil money penalty of not more  
2 than \$10,000 for each knowing violation of a  
3 requirement of this section, except that the Sec-  
4 retary shall impose a civil money penalty of  
5 more than \$10,000 for each such violation in  
6 the case of a participating hospital that the  
7 Secretary determines has a pattern or practice  
8 of such violations (with the amount of such ad-  
9 ditional penalties being determined in accord-  
10 ance with a schedule or methodology specified  
11 in regulations).

12 “(B) PROCEDURES.—The provisions of  
13 section 1128A (other than subsections (a) and  
14 (b)) shall apply to a civil money penalty under  
15 this paragraph in the same manner as such  
16 provisions apply to a penalty or proceeding  
17 under section 1128A.

18 “(C) PUBLIC NOTICE OF VIOLATIONS.—

19 “(i) INTERNET SITE.—The Secretary  
20 shall publish on the Internet site of the  
21 Department of Health and Human Serv-  
22 ices the names of participating hospitals on  
23 which civil money penalties have been im-  
24 posed under this section, the violation for  
25 which the penalty was imposed, and such

1 additional information as the Secretary de-  
2 termines appropriate.

3 “(ii) CHANGE OF OWNERSHIP.—With  
4 respect to a participating hospital that had  
5 a change in ownership, as determined by  
6 the Secretary, penalties imposed on the  
7 hospital while under previous ownership  
8 shall no longer be published by the Sec-  
9 retary of such Internet site after the 1-  
10 year period beginning on the date of  
11 change in ownership.

12 “(f) WHISTLE-BLOWER PROTECTIONS.—

13 “(1) PROHIBITION OF DISCRIMINATION AND  
14 RETALIATION.—A participating hospital shall not  
15 discriminate or retaliate in any manner against any  
16 patient or employee of the hospital because that pa-  
17 tient or employee, or any other person, has pre-  
18 sented a grievance or complaint, or has initiated or  
19 cooperated in any investigation or proceeding of any  
20 kind, relating to the staffing system or other re-  
21 quirements and prohibitions of this section.

22 “(2) RELIEF FOR PREVAILING EMPLOYEES.—

23 An employee of a participating hospital who has  
24 been discriminated or retaliated against in employ-  
25 ment in violation of this subsection may initiate judi-

1 cial action in a United States District Court and  
2 shall be entitled to reinstatement, reimbursement for  
3 lost wages and work benefits caused by the unlawful  
4 acts of the employing hospital. Prevailing employees  
5 are entitled to reasonable attorney's fees and costs  
6 associated with pursuing the case.

7 “(3) RELIEF FOR PREVAILING PATIENTS.—A  
8 patient who has been discriminated or retaliated  
9 against in violation of this subsection may initiate  
10 judicial action in a United States District Court. A  
11 prevailing patient shall be entitled to liquidated  
12 damages of \$5,000 for a violation of this statute in  
13 addition to any other damages under other applica-  
14 ble statutes, regulations or common law. Prevailing  
15 patients are entitled to reasonable attorney's fees  
16 and costs associated with pursuing the case.

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

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

23 “(A) an adverse employment action shall  
24 be treated as ‘retaliation or discrimination’; and

1           “(B) an adverse employment action in-  
2           cludes—

3                   “(i) the failure to promote an indi-  
4                   vidual or provide any other employment-re-  
5                   lated benefit for which the individual would  
6                   otherwise be eligible;

7                   “(ii) an adverse evaluation or decision  
8                   made in relation to accreditation, certifi-  
9                   cation, credentialing, or licensing of the in-  
10                  dividual; and

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

13           “(g) RULES OF CONSTRUCTION.—

14                   “(1) RELATIONSHIP TO STATE LAWS.—Nothing  
15                   in this section shall be construed as exempting or re-  
16                   lieving any person from any liability, duty, penalty,  
17                   or punishment provided by any present or future law  
18                   of any State or political subdivision of a State, other  
19                   than any such law which purports to require or per-  
20                   mit the doing of any act which would be an unlawful  
21                   practice under this title.

22                   “(2) RELATIONSHIP TO CONDUCT PROHIBITED  
23                   UNDER THE NATIONAL LABOR RELATIONS ACT.—  
24                   Nothing in this section shall be construed as permit-  
25                   ting conduct prohibited under the National Labor

1 Relations Act or under any other federal, State, or  
2 local collective bargaining law.

3 “(h) REGULATIONS.—The Secretary shall promul-  
4 gate such regulations as are appropriate and necessary to  
5 implement this Act.

6 “(i) DEFINITIONS.—For purposes of this section—

7 “(1) the term ‘participating hospital’ means a  
8 hospital that has entered into a provider agreement  
9 under section 1866;

10 “(2) the term ‘registered nurse’ means an indi-  
11 vidual who has been granted a license to practice as  
12 a registered nurse in at least one State;

13 “(3) the term ‘unit’ of a hospital is an organi-  
14 zational department or separate geographic area of  
15 a hospital, such as a burn unit, a labor and delivery  
16 room, a post-anesthesia service area, an emergency  
17 department, an operating room, a pediatric unit, a  
18 step-down or intermediate care unit, a specialty care  
19 unit, a telemetry unit, a general medical care unit,  
20 a subacute care unit, and a transitional inpatient  
21 care unit;

22 “(4) a ‘shift’ is a scheduled set of hours or duty  
23 period to be worked at a participating hospital; and

1           “(5) a ‘person’ includes one or more individ-  
2           uals, associations, corporations, unincorporated or-  
3           ganizations or labor unions.”.

4           (c) EFFECTIVE DATE.—The amendments made by  
5 this section shall become effective on January 1, 2006.

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