

109TH CONGRESS
1ST SESSION

S. 351

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.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 10, 2005

Mr. KENNEDY (for himself, Mr. KERRY, Mr. AKAKA, Mrs. BOXER, Mrs. CLINTON, Mr. CORZINE, Mr. DODD, Mr. FEINGOLD, Mr. INOUE, Mr. LAUTENBERG, Mr. LEVIN, Mr. LIEBERMAN, Ms. MIKULSKI, Mr. SARBANES, and Mr. REED) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend title XVIII of the Social Security Act to provide for patient protection by 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 2005”.

1 **SEC. 2. FINDINGS.**

2 The Congress finds as follows:

3 (1) The Federal Government has a substantial
4 interest in assuring that the delivery of health care
5 services to patients in health care facilities is ade-
6 quate and safe.

7 (2) Research, including a study published in the
8 Journal of the American Medical Association (in the
9 October 23–30, 2002 issue), documents that higher
10 nurse staffing levels result in better patient out-
11 comes. However, health care facilities report sub-
12 stantial difficulties in recruiting and retaining suffi-
13 cient nursing staff, as evidenced by the fact that ap-
14 proximately 500,000 licensed nurses are not prac-
15 ticing nursing.

16 (3) Job dissatisfaction and overtime work are
17 contributing to the departure of nurses from their
18 profession, as documented by the Government Ac-
19 countability Office in a July 2001 report. Yet, health
20 care providers continue to make use of mandatory
21 overtime as a staffing model.

22 (4) The widespread practice of requiring nurses
23 to work extended shifts and forgo days off frequently
24 causes nurses to provide care in a state of fatigue
25 which contributes to medical errors and results in
26 other consequences that compromise patient safety.

1 (5) The dangers with mandatory overtime are
2 made clear by numerous studies. A November 2003
3 Institute of Medicine report, *Keeping Patients Safe:
4 Transforming the Work Environment of Nurses*,
5 concluded that limiting the number of hours worked
6 per day and consecutive days of work by nursing
7 staff, as is done in other safety-sensitive industries,
8 is a fundamental safety precaution. The report went
9 on to specifically recommend that working more
10 than 12 hours in any 24-hour period and more than
11 60 hours in any 7-day period be prevented except in
12 case of an emergency, such as a natural disaster.

13 (6) Another study published in the July/August
14 2004 *Health Affairs Journal*, *The Working Hours of
15 Hospital Staff Nurses and Patient Safety*, found
16 that nurses who worked shifts of twelve and a half
17 hours or more were three times more likely to com-
18 mit an error than nurses who worked standard shifts
19 of eight and a half hours or less. The study also
20 found that working overtime increased the odds of
21 making at least one error, regardless of how long the
22 shift was originally scheduled.

23 (7) That same study also illustrates how nurses
24 are being forced to work more and more overtime.
25 The majority of nurses surveyed reported working

1 overtime ten or more times in a twenty-eight day pe-
2 riod and one-sixth reported working sixteen or more
3 consecutive hours at least once during the period.
4 Nurses reported being mandated to work overtime
5 on 360 shifts and on another 143 shifts they de-
6 scribed being “coerced” into working voluntary over-
7 time.

8 (8) While no Federal standards currently re-
9 strict mandatory nurse overtime, many States are
10 considering such laws and several States, including
11 California, Connecticut, Maine, Maryland, Min-
12 nesota, New Jersey, Oregon, Washington, and West
13 Virginia, have enacted laws or prescribed regula-
14 tions.

15 (9) Federal limitations on mandatory nurse
16 overtime will ensure that health care facilities
17 throughout the country operate in a manner that
18 safeguards public safety by helping assure the deliv-
19 ery of quality nursing care and facilitating the reten-
20 tion and recruitment of nurses.

21 **SEC. 3. LIMITATIONS ON MANDATORY OVERTIME FOR**
22 **NURSES.**

23 (a) PROVIDER AGREEMENTS.—Section 1866 of the
24 Social Security Act (42 U.S.C. 1395ee) is amended—

25 (1) in subsection (a)(1)—

1 (A) in subparagraph (U), by striking
2 “and” at the end;

3 (B) in subparagraph (V), by striking the
4 period and inserting “, and”; and

5 (C) by inserting after subparagraph (V),
6 the following:

7 “(W) to comply with the requirements of
8 subsection (k) (relating to limitations on man-
9 datory overtime for nurses).”; and

10 (2) by adding at the end the following new sub-
11 section:

12 “(k) LIMITATIONS ON MANDATORY OVERTIME FOR
13 NURSES.—For purposes of subsection (a)(1)(W), the re-
14 quirements of this subsection are the following:

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

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

22 “(B) 12 hours in a 24-hour period.

23 “(C) 80 hours in a consecutive 14-day pe-
24 riod.

25 “(2) EXCEPTIONS.—

1 “(A) IN GENERAL.—Subject to subpara-
2 graph (B), the requirements of paragraph (1)
3 shall not apply to a provider of services during
4 a declared state of emergency if the provider is
5 requested, or otherwise is expected, to provide
6 an exceptional level of emergency or other med-
7 ical services to the community.

8 “(B) LIMITATIONS.—With respect to a
9 provider of services to which subparagraph (A)
10 applies, a nurse may only be required to work
11 for periods in excess of the periods described in
12 paragraph (1) if—

13 “(i) the provider has made reasonable
14 efforts to fill the immediate staffing needs
15 of the provider through alternative means;
16 and

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

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

21 “(II) the date on which the pro-
22 vider’s direct role in responding to the
23 medical needs resulting from the de-
24 clared state of emergency ends.

25 “(3) REPORT OF VIOLATIONS.—

1 “(A) RIGHT TO REPORT.—

2 “(i) IN GENERAL.—A nurse may file a
3 complaint with the Secretary against a
4 provider of services who violates the provi-
5 sions of this subsection.

6 “(ii) PROCEDURE.—The Secretary
7 shall establish a procedure under which a
8 nurse may file a complaint under clause
9 (i).

10 “(B) INVESTIGATION OF COMPLAINT.—
11 The Secretary shall investigate complaints of
12 violations filed by a nurse under subparagraph
13 (A).

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

21 “(4) NURSE NONDISCRIMINATION PROTEC-
22 TIONS.—

23 “(A) IN GENERAL.—A provider of services
24 shall not penalize, discriminate, or retaliate in
25 any manner with respect to any aspect of em-

1 employment, including discharge, promotion, com-
2 pensation, or terms, conditions, or privileges of
3 employment, against a nurse who refuses to
4 work mandatory overtime or who in good faith,
5 individually or in conjunction with another per-
6 son or persons—

7 “(i) reports a violation or suspected
8 violation of this subsection to a public reg-
9 ulatory agency, a private accreditation
10 body, or the management personnel of the
11 provider of services;

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

17 “(iii) informs or discusses with other
18 employees, with representatives of those
19 employees, or with representatives of asso-
20 ciations of health care professionals, viola-
21 tions or suspected violations of this sub-
22 section.

23 “(B) RETALIATORY REPORTING.—A pro-
24 vider of services may not file a complaint or a
25 report against a nurse with the appropriate

1 State professional disciplinary agency because
2 the nurse refused to comply with a request to
3 work mandatory overtime.

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

7 “(i) that the information reported or
8 disclosed is true; and

9 “(ii) that a violation has occurred or
10 may occur.

11 “(5) NOTICE.—

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

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

23 “(6) POSTING OF NURSE SCHEDULES.—A pro-
24 vider of services shall regularly post in a conspicuous
25 manner the nurse schedules (for such periods of

1 time that the Secretary determines appropriate by
2 type or class of provider of services) for the depart-
3 ment or unit involved, and shall make available upon
4 request to nurses assigned to the department or unit
5 the daily nurse schedule for such department or
6 unit.

7 “(7) CIVIL MONEY PENALTY.—

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

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

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

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

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

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

21 “(A) MANDATORY OVERTIME.—The term
22 ‘mandatory overtime’ means hours worked in
23 excess of the periods of time described in para-
24 graph (1), except as provided in paragraph (2),
25 pursuant to any request made by a provider of

1 services to a nurse which, if refused or declined
2 by the nurse involved, may result in an adverse
3 employment consequence to the nurse, including
4 discharge, discipline, loss of promotion, or retal-
5 iatory reporting of the nurse to the State pro-
6 fessional disciplinary agency involved.

7 “(B) OVERTIME.—The term ‘overtime’
8 means time worked in excess of the periods of
9 time described in paragraph (1).

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

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

14 “(i) a hospital (as defined in section
15 1861(e));

16 “(ii) a psychiatric hospital (as defined
17 in section 1861(f));

18 “(iii) a hospital outpatient depart-
19 ment;

20 “(iv) a critical access hospital;

21 “(v) an ambulatory surgical center;

22 “(vi) a home health agency;

23 “(vii) a rehabilitation agency;

24 “(viii) a clinic, including a rural
25 health clinic; or

1 “(ix) a federally qualified health cen-
2 ter.

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

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

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

22 **SEC. 4. REPORTS.**

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

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

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

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

23 (1) STUDY.—

24 (A) IN GENERAL.—The Director of the Of-
25 fice of Management and Budget shall conduct

1 a study to determine the extent to which feder-
2 ally operated medical facilities have in effect
3 practices and policies with respect to overtime
4 requirements for nurses that are inconsistent
5 with the provisions of section 1866(k) of the
6 Social Security Act, as added by section 3.

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

15 (2) REPORT.—Not later than 6 months after
16 the date of the enactment of this Act, the Director
17 of the Office of Management and Budget shall sub-
18 mit to Congress a report on the study conducted
19 under paragraph (1) and shall include recommenda-
20 tions for the implementation of policies within feder-
21 ally operated medical facilities with respect to over-
22 time requirements for nurses that are consistent
23 with such section 1866(k), as so added.

○