

109<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 71

To amend title XVIII of the Social Security Act to provide for patient protection by establishing minimum nurse staffing ratios at certain Medicare providers, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 24, 2005

Mr. INOUE 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 establishing minimum nurse staffing ratios at certain Medicare providers, 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 “Registered Nurse Safe  
5       Staffing Act of 2005”.

6       **SEC. 2. FINDINGS.**

7       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 medicare program established under title  
21 XVIII of the Social Security Act, the Federal Gov-  
22 ernment has a compelling interest in promoting the  
23 safety of such individuals by requiring any hospital  
24 participating in such program to establish minimum  
25 safe staffing 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) in subparagraph (R), by striking “and”  
 7 after the comma at the end;

8 (2) in subparagraph (S), by striking the period  
 9 at the end and inserting “, and”; and

10 (3) by inserting after subparagraph (S) the fol-  
 11 lowing new subparagraph:

12 “(T) in the case of a hospital, to meet the re-  
 13 quirements of section 1889.”.

14 (b) REQUIREMENTS.—Part D of title XVIII of the  
 15 Social Security Act is amended by inserting after section  
 16 1888 the following new section:

17 “STAFFING REQUIREMENTS FOR MEDICARE  
 18 PARTICIPATING HOSPITALS

19 “SEC. 1889. (a) ESTABLISHMENT OF STAFFING SYS-  
 20 TEM.—

21 “(1) IN GENERAL.—Each participating hospital  
 22 shall adopt and implement a staffing system that en-  
 23 sures a number of registered nurses on each shift  
 24 and in each unit of the hospital to ensure appro-  
 25 priate staffing levels for patient care.

1           “(2) STAFFING SYSTEM REQUIREMENTS.—Sub-  
2           ject to paragraph (3), a staffing system adopted and  
3           implemented under this section shall—

4                   “(A) be based upon input from the direct  
5                   care-giving registered nurse staff or their exclu-  
6                   sive representatives, as well as the chief nurse  
7                   executive;

8                   “(B) be based upon the number of patients  
9                   and the level and variability of intensity of care  
10                  to be provided, with appropriate consideration  
11                  given to admissions, discharges, and transfers  
12                  during each shift;

13                  “(C) account for contextual issues affect-  
14                  ing staffing and the delivery of care, including  
15                  architecture and geography of the environment  
16                  and available technology;

17                  “(D) reflect the level of preparation and  
18                  experience of those providing care;

19                  “(E) account for staffing level effectiveness  
20                  or deficiencies in related health care classifica-  
21                  tions, including but not limited to, certified  
22                  nurse assistants, licensed vocational nurses, li-  
23                  censed psychiatric technicians, nursing assist-  
24                  ants, aides, and orderlies;

1           “(F) reflect staffing levels recommended by  
2 specialty nursing organizations;

3           “(G) establish upwardly adjustable reg-  
4 istered nurse-to-patient ratios based upon reg-  
5 istered nurses’ assessment of patient acuity and  
6 existing conditions;

7           “(H) provide that a registered nurse shall  
8 not be assigned to work in a particular unit  
9 without first having established the ability to  
10 provide professional care in such unit; and

11           “(I) be based on methods that assure va-  
12 lidity and reliability.

13           “(3) LIMITATION.—A staffing system adopted  
14 and implemented under paragraph (1) may not—

15           “(A) set registered-nurse levels below those  
16 required by any Federal or State law or regula-  
17 tion; or

18           “(B) utilize any minimum registered  
19 nurse-to-patient ratio established pursuant to  
20 paragraph (2)(G) as an upper limit on the  
21 staffing of the hospital to which such ratio ap-  
22 plies.

23           “(b) REPORTING, AND RELEASE TO PUBLIC, OF  
24 CERTAIN STAFFING INFORMATION.—

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

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

10           “(B) upon request, make available to the  
11 public—

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

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

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

22           “(2) SECRETARIAL RESPONSIBILITIES.—The  
23 Secretary shall—

24           “(A) make the information submitted pur-  
25 suant to paragraph (1)(C) publicly available, in-

1 including by publication of such information on  
2 the Internet site of the Department of Health  
3 and Human Services; and

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

8 “(c) RECORDKEEPING; DATA COLLECTION; EVALUA-  
9 TION.—

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

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

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

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

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

12           “(D) patient complaints related to staffing  
13 levels.

14           “(3) EVALUATION.—Each participating hospital  
15 shall annually evaluate its staffing system and estab-  
16 lish minimum registered nurse staffing ratios to as-  
17 sure ongoing reliability and validity of the system  
18 and ratios. The evaluation shall be conducted by a  
19 joint management-staff committee comprised of at  
20 least 50 percent of registered nurses who provide di-  
21 rect patient care.

22           “(d) ENFORCEMENT.—

23           “(1) RESPONSIBILITY.—The Secretary shall en-  
24 force the requirements and prohibitions of this sec-

1       tion in accordance with the succeeding provisions of  
2       this subsection.

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

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

9                       “(B) such complaints are investigated by  
10                      the Secretary.

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

14                      “(A) shall require the facility to establish  
15                      a corrective action plan to prevent the recur-  
16                      rence of such violation; and

17                      “(B) may impose civil money penalties  
18                      under paragraph (4).

19               “(4) CIVIL MONEY PENALTIES.—

20                      “(A) IN GENERAL.—In addition to any  
21                      other penalties prescribed by law, the Secretary  
22                      may impose a civil money penalty of not more  
23                      than \$10,000 for each knowing violation of a  
24                      requirement of this section, except that the Sec-  
25                      retary shall impose a civil money penalty of

1 more than \$10,000 for each such violation in  
2 the case of a participating hospital that the  
3 Secretary determines has a pattern or practice  
4 of such violations (with the amount of such ad-  
5 ditional penalties being determined in accord-  
6 ance with a schedule or methodology specified  
7 in regulations).

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

14 “(C) PUBLIC NOTICE OF VIOLATIONS.—

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

24 “(ii) CHANGE OF OWNERSHIP.—With  
25 respect to a participating hospital that had

1 a change in ownership, as determined by  
2 the Secretary, penalties imposed on the hos-  
3 pital while under previous ownership shall  
4 no longer be published by the Secretary of  
5 such Internet site after the 1-year period  
6 beginning on the date of change in owner-  
7 ship.

8 “(e) WHISTLEBLOWER PROTECTIONS.—

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

18 “(2) RELIEF FOR PREVAILING EMPLOYEES.—  
19 An employee of a participating hospital who has  
20 been discriminated or retaliated against in employ-  
21 ment in violation of this subsection may initiate judi-  
22 cial action in a United States district court and shall  
23 be entitled to reinstatement, reimbursement for lost  
24 wages, and work benefits caused by the unlawful  
25 acts of the employing hospital. Prevailing employees

1 are entitled to reasonable attorney’s fees and costs  
2 associated with pursuing the case.

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

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

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

19 “(A) an adverse employment action shall  
20 be treated as retaliation or discrimination; and

21 “(B) the term ‘adverse employment action’  
22 includes—

23 “(i) the failure to promote an indi-  
24 vidual or provide any other employment-re-

1                   lated benefit for which the individual would  
2                   otherwise be eligible;

3                   “(ii) an adverse evaluation or decision  
4                   made in relation to accreditation, certifi-  
5                   cation, credentialing, or licensing of the in-  
6                   dividual; and

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

9                   “(f) RELATIONSHIP TO STATE LAWS.—Nothing in  
10 this section shall be construed as exempting or relieving  
11 any person from any liability, duty, penalty, or punish-  
12 ment provided by any present or future law of any State  
13 or political subdivision of a State, other than any such  
14 law which purports to require or permit the doing of any  
15 act which would be an unlawful practice under this title.

16                   “(g) RELATIONSHIP TO CONDUCT PROHIBITED  
17 UNDER THE NATIONAL LABOR RELATIONS ACT OR  
18 OTHER COLLECTIVE BARGAINING LAWS.—Nothing in  
19 this section shall be construed as permitting conduct pro-  
20 hibited under the National Labor Relations Act or under  
21 any other Federal, State, or local collective bargaining law.

22                   “(h) REGULATIONS.—The Secretary shall promul-  
23 gate such regulations as are appropriate and necessary to  
24 implement this section.

25                   “(i) DEFINITIONS.—In this section:

1           “(1) PARTICIPATING HOSPITAL.—The term  
2           ‘participating hospital’ means a hospital that has en-  
3           tered into a provider agreement under section 1866.

4           “(2) REGISTERED NURSE.—The term ‘reg-  
5           istered nurse’ means an individual who has been  
6           granted a license to practice as a registered nurse in  
7           at least 1 State.

8           “(3) UNIT.—The term ‘unit’ of a hospital is an  
9           organizational department or separate geographic  
10          area of a hospital, such as a burn unit, a labor and  
11          delivery room, a post-anesthesia service area, an  
12          emergency department, an operating room, a pedi-  
13          atric unit, a stepdown or intermediate care unit, a  
14          specialty care unit, a telemetry unit, a general med-  
15          ical care unit, a subacute care unit, and a transi-  
16          tional inpatient care unit.

17          “(4) SHIFT.—The term ‘shift’ means a sched-  
18          uled set of hours or duty period to be worked at a  
19          participating hospital.

20          “(5) PERSON.—The term ‘person’ means 1 or  
21          more individuals, associations, corporations, unincor-  
22          porated organizations, or labor unions.”.

23          (c) EFFECTIVE DATE.—The amendments made by  
24          this section shall take effect on January 1, 2006.

○