

110TH CONGRESS
1ST SESSION

H. R. 378

To direct the Secretary of Labor to issue an occupational safety and health standard to reduce injuries to patients, direct-care registered nurses, and other health care providers by establishing a safe patient handling standard.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 10, 2007

Mr. CONYERS introduced the following bill; which was referred to the Committee on Education and Labor, and in addition to the Committee on Energy and Commerce, 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

A BILL

To direct the Secretary of Labor to issue an occupational safety and health standard to reduce injuries to patients, direct-care registered nurses, and other health care providers by establishing a safe patient handling standard.

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; FINDINGS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Nurse and Patient Safety & Protection Act of 2007”.

6 (b) FINDINGS.—Congress finds the following:

1 (1) Direct-care registered nurses rank 10th
2 among all occupations for musculoskeletal disorders,
3 sustaining injuries at a higher rate than laborers,
4 movers, and truck drivers. In 2004, nurses sustained
5 8,800 musculoskeletal disorders, most of which (over
6 7,000) were back injuries. The leading cause of
7 these injuries in health care are the result of patient
8 lifting, transferring, and repositioning injuries.

9 (2) The physical demands of the nursing pro-
10 fession lead many nurses to leave the profession.
11 Fifty-two percent of nurses complain of chronic back
12 pain and 38 percent suffer from pain severe enough
13 to require leave from work. Many nurses and other
14 health care providers suffering back injury do not
15 return to work.

16 (3) Patients are not at optimum levels of safety
17 while being lifted, transferred, or repositioned manu-
18 ally. Mechanical lift programs can substantially re-
19 duce skin tears suffered by patients, allowing pa-
20 tients a safer means to progress through their care.

21 (4) The development of assistive patient han-
22 dling equipment and devices has essentially rendered
23 the act of strict manual patient handling unneces-
24 sary as a function of nursing care.

1 (5) Application of assistive patient handling
2 technology fulfills an ergonomic approach within the
3 nursing practice by designing and fitting the job or
4 workplace to match the capabilities and limitations
5 of the human body.

6 (6) A growing number of health care facilities
7 have incorporated patient handling technology and
8 have reported positive results. Injuries among nurs-
9 ing staff have dramatically declined since imple-
10 menting patient handling equipment and devices. As
11 a result, the number of lost work days due to injury
12 and staff turnover has declined. Cost-benefit anal-
13 yses have also shown that assistive patient handling
14 technology successfully reduces workers' compensa-
15 tion costs for musculoskeletal disorders.

16 (7) Establishing a safe patient handling stand-
17 ard for direct-care registered nurses and other
18 health care providers is a critical component in in-
19 creasing patient safety, protecting nurses, and ad-
20 dressing the nursing shortage.

21 **SEC. 2. FEDERAL SAFE PATIENT HANDLING STANDARD.**

22 Not later than 1 year after the date of the enactment
23 of this Act, the Secretary of Labor, acting through the
24 Director of Occupational Safety and Health Administra-
25 tion, shall establish a Federal Safe Patient Handling

1 Standard under section 6 of the Occupational Safety and
2 Health Act of 1970 (29 U.S.C. 655) to prevent musculo-
3 skeletal disorders for direct-care registered nurses and
4 other health care providers working in health care facili-
5 ties. This standard shall require the elimination of manual
6 lifting of patients by direct-care registered nurses and
7 other health care providers, through the use of mechanical
8 devices, except during a declared state of emergency. The
9 standard shall include a musculoskeletal injury prevention
10 plan, which will include hazard identification and risk as-
11 sessments in relation to patient care duties and patient
12 handling. The standard shall require:

13 (1) all health care facilities comply with the
14 standard;

15 (2) health care facilities to purchase, use, and
16 maintain safe lift mechanical devices;

17 (3) input from direct-care registered nurses and
18 organizations representing direct-care registered
19 nurses in implementing the standard;

20 (4) a program to identify problems and solu-
21 tions regarding safe patient handling;

22 (5) a system to report, track, and analyze
23 trends in injuries, as well as make injury data avail-
24 able to the public;

1 (6) training for staff on safe patient handling
2 policies, equipment, and devices at least on an an-
3 nual basis. Training will also include hazard identi-
4 fication, assessment, and control of musculoskeletal
5 hazards in patient care areas, which would include
6 interactive classroom-based and hands-on training
7 by a knowledgeable person or staff; and

8 (7) annual evaluations of safe patient handling
9 efforts, as well as new technology, handling proce-
10 dures, and engineering controls. Documentation of
11 this process shall include equipment selection and
12 evaluation.

13 **SEC. 3. REQUIREMENT FOR HEALTH CARE FACILITIES.**

14 (a) **SAFE PATIENT HANDLING PLAN.**—In accordance
15 with the standard required under section 2, and not later
16 than 6 months after such standard is published, health
17 care facilities shall develop and implement a safe patient
18 handling plan that—

19 (1) provides adequate, appropriate, and quality
20 delivery of health care services that protects patient
21 safety and prevents musculoskeletal disorders for di-
22 rect-care registered nurses and other health care
23 providers;

1 (2) is consistent with the requirements of the
2 Federal Safe Patient Handling Standard (as estab-
3 lished in section 2);

4 (3) provides for input by direct-care registered
5 nurses and organizations representing direct-care
6 registered nurses in implementing the plan; and

7 (4) ensures that safe lifting mechanical devices
8 shall only be used by direct care registered nurses
9 and other health care providers.

10 (b) POSTING, RECORDS, AND AUDITING.—

11 (1) POSTING REQUIREMENTS.—Not later than
12 6 months after the standard required under section
13 2 is published, a health care facility shall post, in
14 each unit of the facility, a uniform notice in a form
15 specified by the Secretary in regulation that—

16 (A) explains the Federal Safe Patient
17 Handling Standard issued under section 2;

18 (B) includes information regarding safe
19 patient handling polices and training; and

20 (c) explains procedure to report patient
21 handling-related injuries.

22 (2) AUDITS.—The Secretary of Labor shall re-
23 quire the Occupational Safety and Health Adminis-
24 tration to conduct unscheduled audits to ensure—

1 (A) implementation of the safe patient
2 handling plan in accordance with this Act and
3 the standard established under section 2; and

4 (B) compliance with reporting and review-
5 ing findings for continual improvements to the
6 safe patient handling plan.

7 **SEC. 4. PROTECTION OF DIRECT-CARE REGISTERED**
8 **NURSES AND OTHER INDIVIDUALS.**

9 (a) REFUSAL OF ASSIGNMENT.—A direct-care reg-
10 istered nurse or other health care provider may refuse to
11 accept an assignment in a health care facility if—

12 (1) the assignment would violate the standard
13 establish under section 2; or

14 (2) the direct-care registered nurse or other
15 health care provider is not prepared by education,
16 training, or experience to fulfill the assignment with-
17 out compromising the safety of any patient or jeop-
18 ardizing the license of the nurse.

19 (b) RETALIATION FOR REFUSAL OF ASSIGNMENT
20 BARRED.—

21 (1) NO DISCHARGE, DISCRIMINATION, OR RE-
22 TALIACTION.—No health care facility shall discharge,
23 discriminate, or retaliate in any manner with respect
24 to any aspect of employment, including discharge,
25 promotion, compensation, or terms, conditions, or

1 privileges of employment, against a direct-care reg-
2 istered nurse or other health care provider based on
3 his or her refusal of a work assignment under sub-
4 section (a).

5 (2) NO FILING OF COMPLAINT.—No health care
6 facility shall file a complaint or a report against a
7 direct-care registered nurse or other health care pro-
8 vider with the appropriate State professional discipli-
9 nary agency because of his or her refusal of a work
10 assignment under subsection (a).

11 (c) COMPLAINT TO SECRETARY.—A direct-care reg-
12 istered nurse, health care provider, or other individual
13 may file a complaint with the Secretary of Labor against
14 a health care facility that violates this Act or a standard
15 established under this Act. For any complaint filed, the
16 Secretary shall—

17 (1) receive and investigate the complaint;

18 (2) determine whether a violation of this Act as
19 alleged in the complaint has occurred; and

20 (3) if such a violation has occurred, issue an
21 order that the complaining direct-care registered
22 nurse, health care provider, or other individual shall
23 not suffer any retaliation under subsection (b) or
24 under subsection (d).

25 (d) WHISTLEBLOWER PROTECTION.—

1 (1) RETALIATION BARRED.—A health care fa-
2 cility shall not discriminate or retaliate in any man-
3 ner with respect to any aspect of employment, in-
4 cluding hiring, discharge, promotion, compensation,
5 or terms, conditions, or privileges of employment
6 against any individual who in good faith, individually
7 or in conjunction with another person or persons—

8 (A) reports a violation or a suspected viola-
9 tion of this Act or the standard established
10 under this Act to the Secretary of Labor, a
11 public regulatory agency, a private accreditation
12 body, or the management personnel of the
13 health care facility;

14 (B) initiates, cooperates, or otherwise par-
15 ticipates in an investigation or proceeding
16 brought by the Secretary, a public regulatory
17 agency, or a private accreditation body con-
18 cerning matters covered by this Act; or

19 (C) informs or discusses with other individ-
20 uals or with representatives of health care facil-
21 ity employees a violation or suspected violation
22 of this Act.

23 (2) GOOD FAITH DEFINED.—For purposes of
24 this subsection, an individual shall be deemed to be

1 acting in good faith if the individual reasonably be-
2 lieves—

3 (A) the information reported or disclosed is
4 true; and

5 (B) a violation of this Act or the standard
6 established under this Act has occurred or may
7 occur.

8 (e) CAUSE OF ACTION.—Any direct-care registered
9 nurse or other health care provider who has been dis-
10 charged, discriminated, or retaliated against in violation
11 of subsection (b)(1) or (d), or against whom a complaint
12 has been filed in violation of subsection (b)(2), may bring
13 a cause of action in a United States district court. A di-
14 rect-care registered nurse or other health care provider
15 who prevails on the cause of action shall be entitled to
16 one or more of the following:

17 (1) Reinstatement.

18 (2) Reimbursement of lost wages, compensa-
19 tion, and benefits.

20 (3) Attorneys' fees.

21 (4) Court costs.

22 (5) Other damages.

23 (f) NOTICE.—A health care facility shall include in
24 the notice required under section 3(b) an explanation of
25 the rights of direct-care registered nurses, health care pro-

1 viders, and other individuals under this section and a
2 statement that a direct-care registered nurse, health care
3 provider, or other individual may file a complaint with the
4 Secretary against a health care facility that violates the
5 standard issued under section 2, including instructions for
6 how to file such a complaint.

7 **SEC. 5. DEFINITIONS.**

8 For purposes of this Act:

9 (1) **DIRECT-CARE REGISTERED NURSE.**—The
10 term “direct care registered nurse” means an indi-
11 vidual who has been granted a license by at least 1
12 State to practice as a registered nurse and who pro-
13 vides bedside care or outpatient services for 1 or
14 more patients.

15 (2) **HEALTH CARE PROVIDER.**—The term
16 “health care provider” means any person required
17 by State or Federal laws or regulations to be li-
18 censed, registered, or certified to provide health care
19 services, and being either so licensed, registered, or
20 certified, or exempted from such requirement by
21 other statute or regulation.

22 (3) **EMPLOYMENT.**—The term “employment”
23 includes the provision of services under a contract or
24 other arrangement.

1 (3) HEALTH CARE FACILITY.—The term
 2 “health care facility” means an outpatient health
 3 care facility, hospital, nursing home, home health
 4 care agency, hospice, federally qualified health cen-
 5 ter, nurse managed health center, rural health clinic,
 6 or any similar healthcare facility that employs di-
 7 rect-care registered nurses.

8 (4) DECLARED STATE OF EMERGENCY.—The
 9 term “declared state of emergency” means an offi-
 10 cially designated state of emergency that has been
 11 declared by the Federal Government or the head of
 12 the appropriate State or local governmental agency
 13 having authority to declare that the State, county,
 14 municipality, or locality is in a state of emergency,
 15 but does not include a state of emergency that re-
 16 sults from a labor dispute in the health care indus-
 17 try or consistent under staffing.

18 **SEC. 6. FINANCIAL ASSISTANCE TO NEEDY HEALTH CARE**
 19 **FACILITIES IN THE PURCHASE OF SAFE PA-**
 20 **TIENT HANDLING EQUIPMENT.**

21 (a) IN GENERAL.—The Secretary of Health and
 22 Human Services shall establish a grant program that pro-
 23 vides financial assistance to cover some or all of the costs
 24 of purchasing safe patient handling equipment for health

1 care facilities, such as hospitals, nursing facilities, and
2 outpatient facilities, that—

3 (1) require the use of such equipment in order
4 to comply with the standards established under sec-
5 tion 2; but

6 (2) demonstrate the financial inability to other-
7 wise afford the purchase of such equipment are pro-
8 vided grants for some or all of the cost of pur-
9 chasing such equipment.

10 (b) APPLICATION.—No financial assistance shall be
11 provided under this section except pursuant to an applica-
12 tion made to the Secretary of Health and Human Services
13 in such form and manner as the Secretary shall specify.
14 The Secretary shall establish a fair standard whereby the
15 facility must clearly demonstrate true financial need in
16 order to establish eligibility for the grant program.

17 (c) AUTHORIZATION OF APPROPRIATIONS.—There
18 are authorized to be appropriated for financial assistance
19 under this section \$50,000,000, which shall remain avail-
20 able until expended.

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