

110TH CONGRESS  
1ST SESSION

# H. R. 4138

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

NOVEMBER 9, 2007

Mrs. CAPPES (for herself, Ms. GINNY BROWN-WAITE of Florida, Mr. LATOURETTE, Mr. GRIJALVA, Mrs. McCARTHY of New York, Ms. SCHWARTZ, Mr. HINCHEY, Ms. SCHAKOWSKY, Mr. BISHOP of New York, Mr. ABERCROMBIE, Mr. BISHOP of Georgia, Ms. HIRONO, Ms. BALDWIN, Mr. SPRATT, Mr. PERLMUTTER, Mr. COHEN, and Mr. DEFAZIO) 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 “Registered Nurse Safe
- 5        Staffing Act of 2007”.

1 **SEC. 2. FINDINGS.**

2 The Congress makes the following findings:

3 (1) There are hospitals throughout the United  
4 States that have inadequate staffing of registered  
5 nurses to protect the well-being and health of the  
6 patients.7 (2) Studies show that the health of patients in  
8 hospitals is directly proportionate to the number of  
9 registered nurses working in the hospital.10 (3) There is a critical shortage of registered  
11 nurses in the United States.12 (4) The effect of that shortage is revealed in  
13 unsafe staffing levels in hospitals.14 (5) Patient safety is adversely affected by these  
15 unsafe staffing levels, creating a public health crisis.16 (6) Registered nurses are being required to per-  
17 form professional services under conditions that do  
18 not support quality health care or a healthful work  
19 environment for registered nurses.20 (7) As a payer for inpatient and outpatient hos-  
21 pital services for individuals entitled to benefits  
22 under the program established under title XVIII of  
23 the Social Security Act, the Federal Government has  
24 a compelling interest in promoting the safety of such  
25 individuals by requiring any hospital participating in

1       such program to establish minimum safe staffing  
2       levels for registered nurses.

3       **SEC. 3. ESTABLISHMENT OF MINIMUM STAFFING RATIOS**

4                   **BY MEDICARE PARTICIPATING HOSPITALS.**

5        (a) REQUIREMENT OF MEDICARE PROVIDER AGREEMENT.—Section 1866(a)(1) of the Social Security Act (42  
6        U.S.C. 1395cc(a)(1)) is amended—

8                   (1) by striking “and” at the end of subparagraph (U);

10                  (2) by striking the period at the end of subparagraph (V) and inserting “, and”; and

12                  (3) by inserting after subparagraph (V) and before the end matter the following:

14                   “(W) in the case of a hospital—

15                    “(i) to adopt and implement a staffing system that meets the requirements of section 1898;

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

20                    “(I) records maintenance;

21                    “(II) data collection; and

22                    “(III) data submission; and

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

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

4           “STAFFING REQUIREMENTS FOR MEDICARE

5                   PARTICIPATING HOSPITALS

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

11 A staffing system adopted and implemented under this  
12 section shall—

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

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

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

1           “(4) reflect the level of preparation and experience of those providing care;

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

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

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

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

18           “(9) be based on methods that assure validity  
19           and reliability.

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

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

24           “(2) utilize any minimum registered nurse-to-  
25           patient ratio established pursuant to subsection

1       (a)(7) as an upper limit on the staffing of the hos-  
2       pital to which such ratio applies.

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

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

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

14               “(B) upon request, make available to the  
15       public—

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

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

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

1                   “(2) SECRETARIAL RESPONSIBILITIES.—The  
2                   Secretary shall—

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

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

12                   “(d) RECORD-KEEPING; DATA COLLECTION; EVAL-  
13                   UATION.—

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

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

1       tween the staffing system established pursuant to  
2       subsection (a) and—

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

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

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

16               “(D) patient complaints related to staffing  
17       levels.

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

1 with the involvement of the applicable recognized or  
2 certified collective bargaining representatives of the  
3 registered nurses.

4 “(e) ENFORCEMENT.—

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

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

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

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

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

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

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

24 “(4) CIVIL MONEY PENALTIES.—

1                         “(A) IN GENERAL.—In addition to any  
2 other penalties prescribed by law, the Secretary  
3 may impose a civil money penalty of not more  
4 than \$10,000 for each knowing violation of a  
5 requirement of this section, except that the Sec-  
6 retary shall impose a civil money penalty of  
7 more than \$10,000 for each such violation in  
8 the case of a participating hospital that the  
9 Secretary determines has a pattern or practice  
10 of such violations (with the amount of such ad-  
11 dditional penalties being determined in accord-  
12 ance with a schedule or methodology specified  
13 in regulations).

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

20                         “(C) PUBLIC NOTICE OF VIOLATIONS.—

21                         “(i) INTERNET SITE.—The Secretary  
22 shall publish on the Internet site of the  
23 Department of Health and Human Serv-  
24 ices the names of participating hospitals on  
25 which civil money penalties have been im-

14        "(f) WHISTLE-BLOWER PROTECTIONS.—

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

24                   “(2) RELIEF FOR PREVAILING EMPLOYEES.—  
25                   An employee of a participating hospital who has

1       been discriminated or retaliated against in employ-  
2       ment in violation of this subsection may initiate judi-  
3       cial action in a United States District Court and  
4       shall be entitled to reinstatement, reimbursement for  
5       lost wages and work benefits caused by the unlawful  
6       acts of the employing hospital. Prevailing employees  
7       are entitled to reasonable attorney's fees and costs  
8       associated with pursuing the case.

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

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

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

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

3               “(B) an adverse employment action in-  
4               cludes—

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

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

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

15               “(g) RULES OF CONSTRUCTION.—

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

24               “(2) RELATIONSHIP TO CONDUCT PROHIBITED  
25               UNDER THE NATIONAL LABOR RELATIONS ACT.—

1 Nothing in this section shall be construed as permitting  
2 conduct prohibited under the National Labor  
3 Relations Act or under any other Federal, State, or  
4 local collective bargaining law.

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

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

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

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

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

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

1           “(5) a ‘person’ includes one or more individuals,  
2           associations, corporations, unincorporated organizations or  
3           labor unions.”.

4           (c) EFFECTIVE DATE.—The amendments made by  
5           this section shall become effective on January 1, 2008.

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