

110TH CONGRESS  
1ST SESSION

# S. 1842

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.

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## IN THE SENATE OF THE UNITED STATES

JULY 20, 2007

Mr. KENNEDY (for himself, Mr. KERRY, Mr. DODD, Ms. MIKULSKI, Mrs. CLINTON, Mr. OBAMA, Mr. SANDERS, Mr. INOUE, Mr. LEVIN, Mr. AKAKA, Mr. FEINGOLD, Ms. CANTWELL, Mr. MENENDEZ, and Mr. WHITEHOUSE) 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 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 2007”.

1 **SEC. 2. FINDINGS.**

2 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, entitled “Keeping Pa-  
4       tients Safe: Transforming the Work Environment of  
5       Nurses”, concluded that limiting the number of  
6       hours worked per day and consecutive days of work  
7       by nursing staff, as is done in other safety-sensitive  
8       industries, is a fundamental safety precaution. The  
9       report went on to specifically recommend that work-  
10      ing more than 12 hours in any 24-hour period and  
11      more than 60 hours in any 7-day period be pre-  
12      vented except in case of an emergency, such as a  
13      natural disaster.

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

24           (7) The continuing research on the effects of  
25      mandatory overtime reinforces these findings. A

1 study published in the June 2007 issue of Medical  
2 Care, entitled “Nurse Working Conditions and Pa-  
3 tient Safety Outcomes”, found that patients in in-  
4 tensive care units were more likely to suffer from  
5 hospital-related infection the more overtime their  
6 nurses worked. The study concluded that improving  
7 nurse working conditions would promote patient  
8 safety.

9 (8) The 2004 Health Affairs Journal study de-  
10 scribed in paragraph (6) also illustrates how nurses  
11 are being forced to work more and more overtime.  
12 The majority of nurses surveyed reported working  
13 overtime ten or more times in a twenty-eight day pe-  
14 riod and one-sixth reported working sixteen or more  
15 consecutive hours at least once during the period.  
16 Nurses reported being mandated to work overtime  
17 on 360 shifts and on another 143 shifts they de-  
18 scribed being “coerced” into working voluntary over-  
19 time.

20 (9) While no Federal standards currently re-  
21 strict mandatory nurse overtime, many States are  
22 considering such laws and several States, including  
23 California, Connecticut, Illinois, Maine, Maryland,  
24 Minnesota, New Jersey, Oregon, Texas, Washington,

1 and West Virginia, have enacted laws or prescribed  
2 regulations.

3 (10) Federal limitations on mandatory nurse  
4 overtime will ensure that health care facilities  
5 throughout the United States operate in a manner  
6 that safeguards public safety by helping assure the  
7 delivery of quality nursing care and facilitating the  
8 retention and recruitment of nurses.

9 **SEC. 3. LIMITATIONS ON MANDATORY OVERTIME FOR**  
10 **NURSES.**

11 (a) PROVIDER AGREEMENTS.—Section 1866 of the  
12 Social Security Act (42 U.S.C. 1395cc) is amended—

13 (1) in subsection (a)(1)—

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

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

18 (C) by inserting after subparagraph (V)  
19 the following new subparagraph:

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

23 (2) by adding at the end the following new sub-  
24 section:

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

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

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

11           “(B) 12 hours in a 24-hour period.

12           “(C) 80 hours in a consecutive 14-day pe-  
 13 riod.

14           “(2) EXCEPTIONS.—

15           “(A) IN GENERAL.—Subject to subpara-  
 16 graph (B), the requirements of paragraph (1)  
 17 shall not apply to a provider of services during  
 18 a declared state of emergency if the provider is  
 19 requested, or otherwise is expected, to provide  
 20 an exceptional level of emergency or other med-  
 21 ical services to the community.

22           “(B) LIMITATIONS.—With respect to a  
 23 provider of services to which subparagraph (A)  
 24 applies, a nurse may only be required to work

for periods in excess of the periods described in paragraph (1) if—

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

“(ii) the duration of the work requirement does not extend past the earlier of—

“(I) the date on which the declared state of emergency ends; or

“(II) the date on which the provider’s direct role in responding to the medical needs resulting from the declared state of emergency ends.

“(3) REPORT OF VIOLATIONS.—

“(A) RIGHT TO REPORT.—

“(i) IN GENERAL.—A nurse may file a complaint with the Secretary against a provider of services who violates the provisions of this subsection.

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

1 “(B) INVESTIGATION OF COMPLAINT.—

2 The Secretary shall investigate complaints of  
3 violations filed by a nurse under subparagraph  
4 (A).

5 “(C) ACTIONS.—If the Secretary deter-  
6 mines that a provider of services has violated  
7 the provisions of this subsection, the Secretary  
8 shall require the provider to establish a plan of  
9 action to eliminate the occurrence of such viola-  
10 tion, and may seek civil money penalties under  
11 paragraph (7).

12 “(4) NURSE NONDISCRIMINATION PROTEC-  
13 TIONS.—

14 “(A) IN GENERAL.—A provider of services  
15 shall not penalize, discriminate, or retaliate in  
16 any manner with respect to any aspect of em-  
17 ployment, including discharge, promotion, com-  
18 pensation, or terms, conditions, or privileges of  
19 employment, against a nurse who refuses to  
20 work mandatory overtime or who in good faith,  
21 individually or in conjunction with another per-  
22 son or persons—

23 “(i) reports a violation or suspected  
24 violation of this subsection to a public reg-  
25 ulatory agency, a private accreditation



body, or the management personnel of the provider of services;

“(ii) initiates, cooperates, or otherwise participates in an investigation or proceeding brought by a regulatory agency or private accreditation body concerning matters covered by this subsection; or

“(iii) informs or discusses with other employees, with representatives of those employees, or with representatives of associations of health care professionals, violations or suspected violations of this subsection.

“(B) RETALIATORY REPORTING.—A provider of services may not file a complaint or a report against a nurse with the appropriate State professional disciplinary agency because the nurse refused to comply with a request to work mandatory overtime.

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

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

1                   “(ii) that a violation has occurred or  
2                   may occur.

3                   “(5) NOTICE.—

4                   “(A) REQUIREMENT TO POST NOTICE.—  
5                   Each provider of services shall post conspicu-  
6                   ously in an appropriate location a sign (in a  
7                   form specified by the Secretary) specifying  
8                   rights of nurses under this subsection.

9                   “(B) RIGHT TO FILE COMPLAINT.—Such  
10                  sign shall include a statement that a nurse may  
11                  file a complaint with the Secretary against a  
12                  provider of services who violates the provisions  
13                  of this subsection and information with respect  
14                  to the manner of filing such a complaint.

15                  “(6) POSTING OF NURSE SCHEDULES.—A pro-  
16                  vider of services shall regularly post in a conspicuous  
17                  manner the nurse schedules (for such periods of  
18                  time that the Secretary determines appropriate by  
19                  type or class of provider of services) for the depart-  
20                  ment or unit involved, and shall make available upon  
21                  request to nurses assigned to the department or unit  
22                  the daily nurse schedule for such department or  
23                  unit.

24                  “(7) CIVIL MONEY PENALTY.—

1           “(A) IN GENERAL.—The Secretary may  
2           impose a civil money penalty of not more than  
3           \$10,000 for each knowing violation of the provi-  
4           sions of this subsection committed by a provider  
5           of services.

6           “(B) PATTERNS OF VIOLATIONS.—Not-  
7           withstanding subparagraph (A), the Secretary  
8           shall provide for the imposition of more severe  
9           civil money penalties under this paragraph for  
10          providers of services that establish patterns of  
11          repeated violations of such provisions.

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

18          The Secretary shall publish on the Internet site of  
19          the Department of Health and Human Services the  
20          names of providers of services against which civil  
21          money penalties have been imposed under this para-  
22          graph, the violation for which the penalty was im-  
23          posed, and such additional information as the Sec-  
24          retary determines appropriate. With respect to a  
25          provider of services that has had a change in owner-

1 ship, as determined by the Secretary, penalties im-  
2 posed on the provider of services while under pre-  
3 vious ownership shall no longer be published by the  
4 Secretary on such Internet site after the 1-year pe-  
5 riod beginning on the date of change in ownership.

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

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

13 “(A) MANDATORY OVERTIME.—The term  
14 ‘mandatory overtime’ means hours worked in  
15 excess of the periods of time described in para-  
16 graph (1), except as provided in paragraph (2),  
17 pursuant to any request made by a provider of  
18 services to a nurse which, if refused or declined  
19 by the nurse involved, may result in an adverse  
20 employment consequence to the nurse, including  
21 discharge, discipline, loss of promotion, or retal-  
22 iatory reporting of the nurse to the State pro-  
23 fessional disciplinary agency involved.

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

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

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

8               “(i) a hospital (as defined in section  
9 1861(e));

10              “(ii) a psychiatric hospital (as defined  
11 in section 1861(f));

12              “(iii) a hospital outpatient depart-  
13 ment;

14              “(iv) a critical access hospital (as de-  
15 fined in section 1861(mm)(1));

16              “(v) an ambulatory surgical center;

17              “(vi) a home health agency (as de-  
18 fined in section 1861(o));

19              “(vii) a rehabilitation agency;

20              “(viii) a clinic, including a rural  
21 health clinic (as defined in section  
22 1861(aa)(2)); or

23              “(ix) a Federally qualified health cen-  
24 ter (as defined in section 1861(aa)(4)).

1 “(E) DECLARED STATE OF EMERGENCY.—

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

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

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

20 **SEC. 4. REPORTS.**

21 (a) STANDARDS ON SAFE WORKING HOURS FOR  
 22 NURSES.—

23 (1) STUDY.—The Secretary of Health and  
 24 Human Services, acting through the Director of the  
 25 Agency for Healthcare Research and Quality, shall

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

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

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

20           (1) STUDY.—

21           (A) IN GENERAL.—The Director of the Of-  
22      fice of Management and Budget shall conduct  
23      a study to determine the extent to which feder-  
24      ally operated medical facilities have in effect  
25      practices and policies with respect to overtime

1 requirements for nurses that are inconsistent  
2 with the provisions of section 1866(k) of the  
3 Social Security Act, as added by section 3.

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

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

○