

111TH CONGRESS  
1ST SESSION

# S. 1788

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

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## IN THE SENATE OF THE UNITED STATES

OCTOBER 15, 2009

Mr. FRANKEN introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## 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 all other health care workers by establishing a safe patient handling and injury prevention standard, 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; FINDINGS; TABLE OF CONTENTS.**

4       (a) **SHORT TITLE.**—This Act may be cited as the  
5       “Nurse and Health Care Worker Protection Act of 2009”.

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

1           (1) In 2007, direct-care registered nurses  
2 ranked seventh among all occupations for the num-  
3 ber of cases of musculoskeletal disorders resulting in  
4 days away from work—8,580 total cases. Nursing  
5 aides, orderlies, and attendants sustained 24,340  
6 musculoskeletal disorders in 2007, the second high-  
7 est of any occupation. The leading cause of these in-  
8 juries in health care are the result of patient lifting,  
9 transferring, and repositioning injuries.

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

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

23          (4) The development of assistive patient han-  
24 dling equipment and devices has essentially rendered

1 the act of strict manual patient handling unneces-  
 2 sary as a function of nursing care.

3 (5) A growing number of health care facilities  
 4 have incorporated patient handling technology and  
 5 have reported positive results. Injuries among nurs-  
 6 ing staff have dramatically declined since imple-  
 7 menting patient handling equipment and devices. As  
 8 a result, the number of lost work days due to injury  
 9 and staff turnover has declined. Studies have also  
 10 shown that assistive patient handling technology suc-  
 11 cessfully reduces workers' compensation costs for  
 12 musculoskeletal disorders.

13 (6) Establishing a safe patient handling and in-  
 14 jury prevention standard for direct-care registered  
 15 nurses and other health care workers is a critical  
 16 component in protecting nurses and other health  
 17 care workers, addressing the nursing shortage, and  
 18 increasing patient safety.

19 (c) TABLE OF CONTENTS.—The table of contents of  
 20 this Act is as follows:

- Sec. 1. Short title; findings; table of contents.
- Sec. 2. Safe patient handling and injury prevention standard.
- Sec. 3. Protection of direct-care registered nurses and health care workers.
- Sec. 4. Application of safe patient handling and injury prevention standard to  
                   health care facilities not covered by OSHA.
- Sec. 5. Financial assistance to needy health care facilities in the purchase of  
                   safe patient handling and injury prevention equipment.
- Sec. 6. Definitions.

1 **SEC. 2. SAFE PATIENT HANDLING AND INJURY PREVEN-**  
2 **TION STANDARD.**

3 (a) RULEMAKING.—Not later than 1 year after the  
4 date of the enactment of this Act, the Secretary of Labor,  
5 shall, pursuant to section 6 of the Occupational Safety and  
6 Health Act of 1970 (29 U.S.C. 655), propose a standard  
7 on safe patient handling and injury prevention (in this sec-  
8 tion such standard referred to as the “safe patient han-  
9 dling and injury prevention standard”) under such section  
10 to prevent musculoskeletal disorders for direct-care reg-  
11 istered nurses and all other health care workers handling  
12 patients in health care facilities. A final safe patient han-  
13 dling and injury prevention standard shall be promulgated  
14 not later than 2 years after the date of the enactment of  
15 this Act.

16 (b) REQUIREMENTS.—The safe patient handling and  
17 injury prevention standard shall require the use of engi-  
18 neering controls to perform lifting, transferring, and repo-  
19 sitioning of patients and the elimination of manual lifting  
20 of patients by direct-care registered nurses and all other  
21 health care workers, through the use of mechanical devices  
22 to the greatest degree feasible except where the use of safe  
23 patient handling practices can be demonstrated to com-  
24 promise patient care. The standard shall apply to all  
25 health care employers and shall require at least the fol-  
26 lowing:

1           (1) Each health care employer to develop and  
2           implement a safe patient handling and injury pre-  
3           vention plan within 6 months of the date of promul-  
4           gation of the final standard, which plan shall include  
5           hazard identification, risk assessments, and control  
6           measures in relation to patient care duties and pa-  
7           tient handling.

8           (2) Each health care employer to purchase, use,  
9           maintain, and have accessible an adequate number  
10          of safe lift mechanical devices not later than 2 years  
11          after the date of issuance of a final regulation estab-  
12          lishing such standard.

13          (3) Each health care employer to obtain input  
14          from direct-care registered nurses, health care work-  
15          ers, and employee representatives of direct-care reg-  
16          istered nurses and health care workers in developing  
17          and implementing the safe patient handling and in-  
18          jury prevention plan, including the purchase of  
19          equipment.

20          (4) Each health care employer to establish and  
21          maintain a data system that tracks and analyzes  
22          trends in injuries relating to the application of the  
23          safe patient handling and injury prevention standard  
24          and to make such data and analyses available to em-  
25          ployees and employee representatives.

1           (5) Each health care employer to establish a  
2           system to document in each instance when safe pa-  
3           tient handling equipment was not utilized due to le-  
4           gitimate concerns about patient care and to generate  
5           a written report in each such instance. The report  
6           shall list the following:

7                   (A) The work task being performed.

8                   (B) The reason why safe patient handling  
9           equipment was not used.

10                  (C) The nature of the risk posed to the  
11           worker from manual lifting.

12                  (D) The steps taken by management to re-  
13           duce the likelihood of manual lifting and trans-  
14           ferring when performing similar work tasks in  
15           the future.

16           Such reports shall be made available to OSHA com-  
17           pliance officers, workers, and their representatives  
18           upon request within one business day.

19           (6) Each health care employer to train nurses  
20           and other health care workers on safe patient han-  
21           dling and injury prevention policies, equipment, and  
22           devices at least on an annual basis. Such training  
23           shall include providing information on hazard identi-  
24           fication, assessment, and control of musculoskeletal  
25           hazards in patient care areas and shall be conducted

1 by an individual with knowledge in the subject mat-  
2 ter, and delivered, at least in part, in an interactive  
3 classroom-based and hands-on format.

4 (7) Each health care employer to post a uni-  
5 form notice in a form specified by the Secretary  
6 that—

7 (A) explains the safe patient handling and  
8 injury prevention standard;

9 (B) includes information regarding safe  
10 patient handling and injury prevention policies  
11 and training; and

12 (C) explains procedures to report patient  
13 handling-related injuries.

14 (8) Each health care employer to conduct an  
15 annual written evaluation of the implementation of  
16 the safe patient handling and injury prevention plan,  
17 including handling procedures, selection of equip-  
18 ment and engineering controls, assessment of inju-  
19 ries, and new safe patient handling and injury pre-  
20 vention technology and devices that have been devel-  
21 oped. The evaluation shall be conducted with the in-  
22 volvement of nurses, other health care workers, and  
23 their representatives and shall be documented in  
24 writing. Health care employers shall take corrective  
25 action as recommended in the written evaluation.

1       (c) INSPECTIONS.—The Secretary of Labor shall con-  
 2       duct unscheduled inspections under section 8 of the Occu-  
 3       pational Safety and Health Act of 1970 (29 U.S.C. 657)  
 4       to ensure implementation of and compliance with the safe  
 5       patient handling and injury prevention standard.

6       **SEC. 3. PROTECTION OF DIRECT-CARE REGISTERED**  
 7                               **NURSES AND HEALTH CARE WORKERS.**

8       (a) REFUSAL OF ASSIGNMENT.—The Secretary shall  
 9       ensure that a direct-care registered nurse or other health  
 10      care worker may refuse to accept an assignment from a  
 11      health care employer if—

12               (1) the assignment would subject the worker to  
 13      conditions that would violate the safe patient han-  
 14      dling and injury prevention standard; or

15               (2) the nurse or worker has not received train-  
 16      ing described in section 2(a)(5) that meets such  
 17      standard.

18      (b) RETALIATION FOR REFUSAL OF LIFTING ASSIGN-  
 19      MENT BARRED.—

20               (1) NO DISCHARGE, DISCRIMINATION, OR RE-  
 21      TALIATION.—No health care employer shall dis-  
 22      charge, discriminate, or retaliate in any manner with  
 23      respect to any aspect of employment, including dis-  
 24      charge, promotion, compensation, or terms, condi-  
 25      tions, or privileges of employment, against a direct-



1 care registered nurse or other health care worker  
 2 based on the nurse's or worker's refusal of a lifting  
 3 assignment under subsection (a).

4 (2) NO FILING OF COMPLAINT.—No health care  
 5 employer shall file a complaint or a report against  
 6 a direct-care registered nurse or other health care  
 7 worker with the appropriate State professional dis-  
 8 ciplinary agency because of the nurse's or worker's  
 9 refusal of a lifting assignment under subsection (a).

10 (c) WHISTLEBLOWER PROTECTION.—

11 (1) RETALIATION BARRED.—A health care em-  
 12 ployer shall not discriminate or retaliate in any man-  
 13 ner with respect to any aspect of employment, in-  
 14 cluding hiring, discharge, promotion, compensation,  
 15 or terms, conditions, or privileges of employment  
 16 against any nurse or health care worker who in good  
 17 faith, individually or in conjunction with another  
 18 person or persons—

19 (A) reports a violation or a suspected viola-  
 20 tion of this Act or the safe patient handling and  
 21 injury prevention standard to the Secretary of  
 22 Labor, a public regulatory agency, a private ac-  
 23 creditation body, or the management personnel  
 24 of the health care employer;

1 (B) initiates, cooperates, or otherwise par-  
 2 ticipates in an investigation or proceeding  
 3 brought by the Secretary, a public regulatory  
 4 agency, or a private accreditation body con-  
 5 cerning matters covered by this Act; or

6 (C) informs or discusses with other individ-  
 7 uals or with representatives of health care em-  
 8 ployees a violation or suspected violation of this  
 9 Act.

10 (2) GOOD FAITH DEFINED.—For purposes of  
 11 this subsection, an individual shall be deemed to be  
 12 acting in good faith if the individual reasonably be-  
 13 lieves—

14 (A) the information reported or disclosed is  
 15 true; and

16 (B) a violation of this Act or the safe pa-  
 17 tient handling and injury prevention standard  
 18 has occurred or may occur.

19 (d) COMPLAINT TO SECRETARY.—

20 (1) FILING.—A direct-care registered nurse,  
 21 health care worker, or other individual may file a  
 22 complaint with the Secretary of Labor against a  
 23 health care employer that violates this section within  
 24 180 days of the date of the violation.

1           (2) RESPONSE TO COMPLAINT.—For any com-  
2       plaint so filed, the Secretary shall—

3                   (A) receive and investigate the complaint;

4                   (B) determine whether a violation of this  
5       Act as alleged in the complaint has occurred;  
6       and

7                   (C) if such a violation has occurred, issue  
8       an order that sets forth the violation and the  
9       required remedy or remedies.

10          (3) REMEDIES.—The Secretary shall have the  
11       authority to order all appropriate remedies for such  
12       violations.

13          (e) CAUSE OF ACTION.—Any direct-care registered  
14       nurse or other health care worker who has been dis-  
15       charged, discriminated, or retaliated against in violation  
16       of this section may bring a cause of action in a United  
17       States district court. A direct-care registered nurse or  
18       other health care worker who prevails on the cause of ac-  
19       tion shall be entitled to the following:

20                   (1) Reinstatement, reimbursement of lost  
21       wages, compensation, and benefits.

22                   (2) Attorneys' fees.

23                   (3) Court costs.

24                   (4) Other damages.

1 (f) NOTICE.—A health care employer shall include in  
 2 the notice required under section 2(b)(7) an explanation  
 3 of the rights of direct-care registered nurses and health  
 4 care workers under this section and a statement that a  
 5 direct-care registered nurse or health care worker may file  
 6 a complaint with the Secretary against a health care em-  
 7 ployer that violates the safe patient handling and injury  
 8 prevention standard, including instructions for how to file  
 9 such a complaint.

10 (g) ADDITION TO CURRENT PROTECTIONS.—The  
 11 worker protections provided for under this section are in  
 12 addition to protections provided in section 11(c) of the Oc-  
 13 cupational Safety and Health Act of 1970 (29 U.S.C.  
 14 660(c)).

15 **SEC. 4. APPLICATION OF SAFE PATIENT HANDLING AND IN-**  
 16 **JURY PREVENTION STANDARD TO HEALTH**  
 17 **CARE FACILITIES NOT COVERED BY OSHA.**

18 (a) IN GENERAL.—Section 1866 of the Social Secu-  
 19 rity Act (42 U.S.C. 1395cc) is amended—

20 (1) in subsection (a)(1)(V), by inserting “and  
 21 safe patient handling and injury prevention standard  
 22 (as initially promulgated under section 2 of the  
 23 Nurse and Health Care Worker Protection Act of  
 24 2009)” before the period at the end; and

25 (2) in subsection (b)(4)—

1 (A) in subparagraph (A), inserting “and  
 2 the safe patient handling and injury prevention  
 3 standard” after “Bloodborne Pathogens stand-  
 4 ard”; and

5 (B) in subparagraph (B), inserting “or the  
 6 safe patient handling and injury prevention  
 7 standard” after “Bloodborne Pathogens stand-  
 8 ard”.

9 (b) EFFECTIVE DATE.—The amendments made by  
 10 subsection (a) shall apply to health care facilities 1 year  
 11 after date of issuance of the final safe patient handling  
 12 and injury prevention standard required under section 2.

13 **SEC. 5. FINANCIAL ASSISTANCE TO NEEDY HEALTH CARE**  
 14 **FACILITIES IN THE PURCHASE OF SAFE PA-**  
 15 **TIENT HANDLING AND INJURY PREVENTION**  
 16 **EQUIPMENT.**

17 (a) IN GENERAL.—The Secretary of Health and  
 18 Human Services shall establish a grant program that pro-  
 19 vides financial assistance to cover some or all of the costs  
 20 of purchasing safe patient handling and injury prevention  
 21 equipment for health care facilities, such as hospitals,  
 22 nursing facilities, home health care, and outpatient facili-  
 23 ties, that—

1           (1) require the use of such equipment in order  
2           to comply with the safe patient handling and injury  
3           prevention standard; but

4           (2) demonstrate the financial need for assist-  
5           ance for purchasing the equipment required under  
6           such standard.

7           (b) APPLICATION.—No financial assistance shall be  
8           provided under this section except pursuant to an applica-  
9           tion made to the Secretary of Health and Human Services  
10          in such form and manner as the Secretary shall specify.

11          (c) AUTHORIZATION OF APPROPRIATIONS.—There  
12          are authorized to be appropriated for financial assistance  
13          under this section \$200,000,000, of which \$50,000,000  
14          will be available specifically for home health agencies or  
15          entities. Funds appropriated under this subsection shall  
16          remain available until expended.

17   **SEC. 6. DEFINITIONS.**

18          For purposes of this Act:

19           (1) DIRECT-CARE REGISTERED NURSE.—The  
20           term “direct-care registered nurse” means an indi-  
21           vidual who has been granted a license by at least  
22           one State to practice as a registered nurse and who  
23           provides bedside care or outpatient services for one  
24           or more patients or residents.

1           (2) HEALTH CARE WORKER.—The term “health  
2       care worker” means an individual who has been as-  
3       signed to lift, reposition, or move patients or resi-  
4       dents in a health care facility.

5           (3) EMPLOYMENT.—The term “employment”  
6       includes the provision of services under a contract or  
7       other arrangement.

8           (4) HEALTH CARE EMPLOYER.—The term  
9       “health care employer” means an outpatient health  
10      care facility, hospital, nursing home, home health  
11      care agency, hospice, federally qualified health cen-  
12      ter, nurse managed health center, rural health clinic,  
13      or any similar health care facility that employs di-  
14      rect-care registered nurses or other health care  
15      workers.

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