

117TH CONGRESS
1ST SESSION

H. R. 3165

To amend the Public Health Service Act to establish direct care registered nurse-to-patient staffing ratio requirements in hospitals, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 12, 2021

Ms. SCHAKOWSKY (for herself, Mr. RUSH, Mr. KHANNA, Mr. COHEN, Mr. TAKANO, Ms. MOORE of Wisconsin, Ms. LEE of California, Ms. VELÁZQUEZ, Mr. BLUMENAUER, Mr. SHERMAN, Ms. JAYAPAL, and Ms. LOFGREN) 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

A BILL

To amend the Public Health Service Act to establish direct care registered nurse-to-patient staffing ratio requirements in 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; TABLE OF CONTENTS; FINDINGS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Nurse Staffing Standards for Hospital Patient Safety
6 and Quality Care Act of 2021”.

1 (b) TABLE OF CONTENTS.—The table of contents for
2 this Act is as follows:

- Sec. 1. Short title; table of contents; findings.
- Sec. 2. Minimum direct care registered nurse staffing requirement.
- Sec. 3. Enforcement of requirements through Federal programs.
- Sec. 4. Nurse workforce initiative.

3 (c) FINDINGS.—Congress finds the following:

4 (1) The Federal Government has a substantial
5 interest in promoting quality care and improving the
6 delivery of health care services to patients in health
7 care facilities in the United States.

8 (2) Recent changes in health care delivery sys-
9 tems that have resulted in higher acuity levels
10 among patients in health care facilities increase the
11 need for improved quality measures in order to pro-
12 tect patient care and reduce the incidence of medical
13 errors.

14 (3) Inadequate and poorly monitored registered
15 nurse staffing practices that result in too few reg-
16 istered nurses providing direct care jeopardize the
17 delivery of quality health care services.

18 (4) Numerous studies have shown that patient
19 outcomes are directly correlated to direct care reg-
20 istered nurse staffing levels, including a 2010
21 Health Services Research study that concluded that
22 implementation of minimum nurse-to-patient staff-
23 ing ratios in California has led to improved patient

1 outcomes and nurse retention and a 2014 Agency
2 for Healthcare Research and Quality study that con-
3 cluded increases in nurse staffing and skill mix lead
4 to improved quality and reduced length of stay at no
5 additional cost.

6 (5) Requirements for direct care registered
7 nurse staffing ratios will help address the registered
8 nurse shortage in the United States by aiding in re-
9 cruitment of new registered nurses and improving
10 retention of registered nurses who are considering
11 leaving direct patient care because of demands cre-
12 ated by inadequate staffing.

13 (6) Establishing adequate minimum direct care
14 registered nurse-to-patient ratios that take into ac-
15 count patient acuity measures will improve the deliv-
16 ery of quality health care services and guarantee pa-
17 tient safety.

18 (7) Establishing safe staffing standards for di-
19 rect care registered nurses is a critical component of
20 assuring that there is adequate hospital staffing at
21 all levels to improve the delivery of quality care and
22 protect patient safety.

1 **SEC. 2. MINIMUM DIRECT CARE REGISTERED NURSE**
2 **STAFFING REQUIREMENT.**

3 (a) MINIMUM DIRECT CARE REGISTERED NURSE
4 STAFFING REQUIREMENTS.—The Public Health Service
5 Act (42 U.S.C. 201 et seq.) is amended by adding at the
6 end the following new title:

7 **“TITLE XXXIV—MINIMUM DI-**
8 **RECT CARE REGISTERED**
9 **NURSE STAFFING REQUIRE-**
10 **MENT**

11 **“SEC. 3401. MINIMUM NURSE STAFFING REQUIREMENT.**

12 “(a) STAFFING PLAN.—

13 “(1) IN GENERAL.—A hospital shall implement
14 a staffing plan that—

15 “(A) provides adequate, appropriate, and
16 quality delivery of health care services and pro-
17 tects patient safety; and

18 “(B) is consistent with the requirements of
19 this title.

20 “(2) EFFECTIVE DATES.—

21 “(A) IMPLEMENTATION OF STAFFING
22 PLAN.—Subject to subparagraph (B), the re-
23 quirements under paragraph (1) shall take ef-
24 fect on a date to be determined by the Sec-
25 retary, but not later than 1 year after the date
26 of the enactment of this title.

1 “(B) APPLICATION OF MINIMUM DIRECT
2 CARE REGISTERED NURSE-TO-PATIENT RA-
3 TIOS.—The requirements under subsection (b)
4 shall take effect as soon as practicable, as de-
5 termined by the Secretary, but not later than—

6 “(i) 2 years after the date of enact-
7 ment of this title; and

8 “(ii) in the case of a hospital in a
9 rural area (as defined in section
10 1886(d)(2)(D) of the Social Security Act),
11 4 years after the date of enactment of this
12 title.

13 “(b) MINIMUM DIRECT CARE REGISTERED NURSE-
14 TO-PATIENT RATIOS.—

15 “(1) IN GENERAL.—Except as provided in para-
16 graph (4) and other provisions of this section, a hos-
17 pital’s staffing plan shall provide that, at all times
18 during each shift within a unit of the hospital, and
19 with a full complement of ancillary and support
20 staff, a direct care registered nurse may be assigned
21 to not more than the following number of patients
22 in that unit:

23 “(A) One patient in trauma emergency
24 units.

1 “(B) One patient in operating room units,
2 provided that a minimum of 1 additional person
3 serves as a scrub assistant in such unit.

4 “(C) Two patients in critical care units, in-
5 cluding neonatal intensive care units, emer-
6 gency critical care and intensive care units,
7 labor and delivery units, coronary care units,
8 acute respiratory care units, postanesthesia
9 units, and burn units.

10 “(D) Three patients in emergency room
11 units, pediatrics units, stepdown units, telem-
12 etry units, antepartum units, and combined
13 labor, deliver, and postpartum units.

14 “(E) Four patients in medical-surgical
15 units, intermediate care nursery units, acute
16 care psychiatric units, and other specialty care
17 units.

18 “(F) Five patients in rehabilitation units
19 and skilled nursing units.

20 “(G) Six patients in postpartum (3 cou-
21 plets) units and well-baby nursery units.

22 “(2) SIMILAR UNITS WITH DIFFERENT
23 NAMES.—The Secretary may apply minimum direct
24 care registered nurse-to-patient ratios established in
25 paragraph (1) for a hospital unit referred to in such

1 paragraph to a type of hospital unit not referred to
2 in such paragraph if such type of hospital unit pro-
3 vides a level of care to patients whose needs are
4 similar to the needs of patients cared for in the hos-
5 pital unit referred to in such paragraph.

6 “(3) APPLICATION OF RATIOS TO HOSPITAL
7 NURSING PRACTICE STANDARDS.—

8 “(A) IN GENERAL.—A patient assignment
9 may be included in the calculation of the direct
10 care registered nurse-to-patient ratios required
11 in this subsection only if care is provided by a
12 direct care registered nurse and the provision of
13 care to the particular patient is within that di-
14 rect care registered nurse’s competence.

15 “(B) DEMONSTRATION OF UNIT-SPECIFIC
16 COMPETENCE.—A hospital shall not assign a di-
17 rect care registered nurse to a hospital unit un-
18 less that hospital determines that the direct
19 care registered nurse has demonstrated current
20 competence in providing care in that unit, and
21 has also received orientation to that hospital’s
22 unit sufficient to provide competent care to pa-
23 tients in that unit.

24 “(C) DUTIES OF THE ASSIGNED DIRECT
25 CARE REGISTERED NURSE.—Each patient shall

1 be assigned to a direct care registered nurse
2 who shall directly provide the assessment, plan-
3 ning, supervision, implementation, and evalua-
4 tion of the nursing care provided to the patient
5 at least every shift and has the responsibility
6 for the provision of care to a particular patient
7 within his or her scope of practice.

8 “(D) NURSE ADMINISTRATORS AND SU-
9 PERVISORS.—A registered nurse who is a nurse
10 administrator, nurse supervisor, nurse manager,
11 charge nurse, case manager, or any other hos-
12 pital administrator or supervisor, shall not be
13 included in the calculation of the direct care
14 registered nurse-to-patient ratio unless that
15 nurse has a current and active direct patient
16 care assignment and provides direct patient
17 care in compliance with the requirements of this
18 section, including competency requirements.
19 The exemption in this subsection shall apply
20 only during the hours in which the individual
21 registered nurse has the principal responsibility
22 of providing direct patient care and has no ad-
23 ditional job duties as would a direct care reg-
24 istered nurse.

1 “(E) OTHER PERSONNEL.—Other per-
2 sonnel may perform patient care tasks based on
3 their training and demonstrated skill but may
4 not perform or assist in direct care registered
5 nurse functions unless authorized to do in ac-
6 cordance with State scope of practice laws and
7 regulations.

8 “(F) TEMPORARY NURSING PERSONNEL.—
9 A hospital shall not assign any nursing per-
10 sonnel from temporary nursing agencies patient
11 care to any hospital unit without such personnel
12 having demonstrated competence on the as-
13 signed unit and received orientation to that hos-
14 pital’s unit sufficient to provide competent care
15 to patients in that unit.

16 “(G) ANCILLARY AND ADDITIONAL STAFF-
17 ING.—The need for additional staffing of direct
18 care registered nurses, licensed vocational or
19 practical nurses, licensed psychiatric techni-
20 cians, certified nursing or patient care assist-
21 ants, or other licensed or unlicensed ancillary
22 staff above the minimum registered nurse-to-pa-
23 tient ratios shall be based on the assessment of
24 the individual patient’s nursing care require-

1 ment, the individual patient’s nursing care plan,
2 and acuity level.

3 “(4) RESTRICTIONS.—

4 “(A) PROHIBITION AGAINST AVERAGING.—

5 A hospital shall not average the number of pa-
6 tients and the total number of direct care reg-
7 istered nurses assigned to patients in a hospital
8 unit during any 1 shift or over any period of
9 time for purposes of meeting the requirements
10 under this subsection.

11 “(B) PROHIBITION AGAINST IMPOSITION

12 OF MANDATORY OVERTIME REQUIREMENTS.—A
13 hospital shall not impose mandatory overtime
14 requirements to meet the hospital unit direct
15 care registered nurse-to-patient ratios required
16 under this subsection.

17 “(C) RELIEF DURING ROUTINE AB-

18 SENCES.—A hospital shall ensure that only a
19 direct care registered nurse who has dem-
20 onstrated current competence to the hospital in
21 providing care on a particular unit and has also
22 received orientation to that hospital’s unit suffi-
23 cient to provide competent care to patients in
24 that unit may relieve another direct care reg-

1 istered nurse during breaks, meals, and other
2 routine, expected absences from a hospital unit.

3 “(D) APPLICATION OF DIRECT CARE REG-
4 ISTERED NURSE-TO-PATIENT RATIOS IN PA-
5 TIENT-ACUITY ADJUSTABLE UNITS.—Patients
6 shall be cared for only on units or patient care
7 areas where the direct care registered nurse-to-
8 patient ratios meet the level of intensity, type
9 of care, and the individual requirements and
10 needs of each patient. Notwithstanding para-
11 graph (2), hospitals that provide patient care in
12 units or patient care areas that are acuity
13 adaptable or acuity adjustable shall apply the
14 direct care registered nurse-to-patient ratio re-
15 quired in this section for the highest patient
16 acuity level or level of care in that unit or pa-
17 tient care area, and shall comply with all other
18 requirements of this section.

19 “(E) USE OF VIDEO MONITORS.—A hos-
20 pital shall not employ video monitors or any
21 form of electronic visualization of a patient as
22 a substitute for the direct observation required
23 for patient assessment by the direct care reg-
24 istered nurse or required for patient protection.
25 Video monitors or any form of electronic visual-

1 ization of a patient shall not be included in the
2 calculation of the direct care registered nurse-
3 to-patient ratio required in this subsection and
4 shall not replace the requirement of paragraph
5 (3)(D) that each patient shall be assigned to a
6 direct care registered nurse who shall directly
7 provide the assessment, planning, supervision,
8 implementation, and evaluation of the nursing
9 care provided to the patient at least every shift
10 and have the responsibility for the provision of
11 care to a particular patient within his or her
12 scope of practice.

13 “(F) USE OF OTHER TECHNOLOGY.—A
14 hospital shall not employ technology that sub-
15 stitutes for the assigned registered nurse’s pro-
16 fessional judgment in assessment, planning, im-
17 plementation, and evaluation of care.

18 “(5) ADJUSTMENT OF RATIOS.—

19 “(A) IN GENERAL.—If necessary to protect
20 patient safety, the Secretary may prescribe reg-
21 ulations that—

22 “(i) increase minimum direct care reg-
23 istered nurse-to-patient ratios under this
24 subsection to reduce the number of pa-

1 tients that may be assigned to each direct
2 care nurse; or

3 “(ii) add minimum direct care reg-
4 istered nurse-to-patient ratios for units not
5 referred to in paragraphs (1) and (2).

6 “(B) CONSULTATION.—Such regulations
7 shall be prescribed after consultation with af-
8 fected hospitals and registered nurses.

9 “(6) ANCILLARY AND ADDITIONAL STAFFING.—

10 “(A) IN GENERAL.—The Secretary may
11 prescribe regulations requiring additional staff-
12 ing of direct care registered nurses, licensed vo-
13 cational or practice nurses, licensed psychiatric
14 technicians, certified nursing or patient care as-
15 sistants, or other licensed or unlicensed ancil-
16 lary staff above the minimum registered nurse-
17 to-patient ratios that is based on the assess-
18 ment of the individual patient’s nursing care
19 needs, the individual patient’s nursing care
20 plan, and acuity level.

21 “(B) CONSULTATION.—Such regulations
22 shall be prescribed after consultation with af-
23 fected hospitals, registered nurses, and ancillary
24 staff.

1 “(7) RELATIONSHIP TO STATE-IMPOSED RA-
2 TIOS.—Nothing in this title shall preempt State
3 standards that the Secretary determines to be as
4 stringent as Federal requirements for a staffing plan
5 established under this title. Minimum direct care
6 registered nurse-to-patient ratios established under
7 this subsection shall not preempt State requirements
8 that the Secretary determines are as stringent as to
9 Federal requirements for direct care registered
10 nurse-to-patient ratios established under this title.

11 “(8) EXEMPTION IN EMERGENCIES.—The re-
12 quirements established under this subsection shall
13 not apply during a state of emergency if a hospital
14 is requested or expected to provide an exceptional
15 level of emergency or other medical services. If a
16 hospital seeks to apply the exemption under this
17 paragraph in response to a complaint filed against
18 the hospital for a violation of the provisions of this
19 title, the hospital must demonstrate that prompt and
20 diligent efforts were made to maintain required
21 staffing levels. The Secretary shall issue guidance to
22 hospitals that describes situations that constitute a
23 state of emergency for purposes of the exemption
24 under this paragraph and shall establish necessary

1 penalties for violations of this paragraph consistent
2 with section 3406.

3 “(c) DEVELOPMENT AND REEVALUATION OF STAFF-
4 ING PLAN.—

5 “(1) CONSIDERATIONS IN DEVELOPMENT OF
6 PLAN.—In developing the staffing plan, a hospital
7 shall provide for direct care registered nurse-to-pa-
8 tient ratios above the minimum direct care reg-
9 istered nurse-to-patient ratios required under sub-
10 section (b) if appropriate based upon consideration
11 of, at minimum, the following factors:

12 “(A) The number of patients on a par-
13 ticular unit on a shift-by-shift basis.

14 “(B) The acuity level and nursing care
15 plan of patients on a particular unit on a shift-
16 by-shift basis.

17 “(C) The anticipated admissions, dis-
18 charges, and transfers of patients during each
19 shift that impacts direct patient care.

20 “(D) Specialized experience required of di-
21 rect care registered nurses on a particular unit.

22 “(E) Staffing levels and services provided
23 by licensed vocational or practical nurses, li-
24 censed psychiatric technicians, certified nurse
25 assistants, or other ancillary staff in meeting

1 direct patient care needs not required by a di-
2 rect care registered nurse.

3 “(F) The level of familiarity with hospital
4 practices, policies, and procedures by temporary
5 agency direct care registered nurses used dur-
6 ing a shift.

7 “(G) Obstacles to efficiency in the delivery
8 of patient care presented by physical layout.

9 “(2) DOCUMENTATION OF STAFFING.—A hos-
10 pital shall specify the system used to document ac-
11 tual staffing in each unit for each shift.

12 “(3) ANNUAL REEVALUATION OF PLAN.—

13 “(A) IN GENERAL.—A hospital shall annu-
14 ally evaluate its staffing plan in each unit in re-
15 lation to actual patient care requirements.

16 “(B) UPDATE.—A hospital shall update its
17 staffing plan to the extent appropriate based on
18 such evaluation.

19 “(4) TRANSPARENCY.—

20 “(A) IN GENERAL.—Any staffing plan or
21 method used to create and evaluate acuity-level
22 and adopted by a hospital under this section
23 shall be transparent in all respects, including
24 disclosure of detailed documentation of the
25 methodology used to determine nursing staff-

1 ing, identifying each factor, assumption, and
2 value used in applying such methodology.

3 “(B) PUBLIC AVAILABILITY.—The Sec-
4 retary shall establish procedures to provide that
5 the documentation submitted under subsection
6 (d) is available for public inspection in its en-
7 tirety.

8 “(5) REGISTERED NURSE PARTICIPATION.—A
9 staffing plan of a hospital—

10 “(A) shall be developed and subsequent re-
11 evaluations shall be conducted under this sub-
12 section on the basis of input from direct care
13 registered nurses at the hospital from each unit
14 or patient care area; and

15 “(B) where such nurses are represented
16 through collective bargaining, shall require bar-
17 gaining with the applicable recognized or cer-
18 tified collective bargaining representative of
19 such nurses.

20 Nothing in this title shall be construed to permit
21 conduct prohibited under the National Labor Rela-
22 tions Act (29 U.S.C. 151 et seq.) or chapter 71 of
23 title 5, United States Code.

24 “(6) STAFFING COMMITTEES.—If a hospital
25 maintains a staffing committee, then the committee

1 shall include at least one registered nurse from each
 2 hospital unit and shall be composed of at least 50
 3 percent direct care registered nurses. The staffing
 4 committee shall include meaningful representation of
 5 other direct care nonmanagement staff. Direct care
 6 registered nurses who serve on the committee shall
 7 be selected by other direct care registered nurses
 8 from their unit. Other direct care nonmanagement
 9 staff shall be selected by other direct care non-
 10 management staff. Participation on staffing commit-
 11 tees shall be considered a part of the employee’s reg-
 12 ularly scheduled workweek.

13 “(d) SUBMISSION OF PLAN TO SECRETARY.—A hos-
 14 pital shall submit to the Secretary its staffing plan and
 15 any annual updates under subsection (c)(3)(B). A feder-
 16 ally operated hospital may submit its staffing plan
 17 through the department or agency operating the hospital.

18 **“SEC. 3402. POSTING, RECORDS, AND AUDITS.**

19 “(a) POSTING REQUIREMENTS.—In each unit, a hos-
 20 pital shall post a uniform notice in a form specified by
 21 the Secretary in regulation that—

22 “(1) explains requirements imposed under sec-
 23 tion 3401;

24 “(2) includes actual direct care registered
 25 nurse-to-patient ratios during each shift;

1 “(3) includes the actual number and titles of di-
2 rect care registered nurses assigned during each
3 shift; and

4 “(4) is visible, conspicuous, and accessible to
5 staff, patients, and the public.

6 “(b) RECORDS.—

7 “(1) MAINTENANCE OF RECORDS.—Each hos-
8 pital shall maintain accurate records of actual direct
9 care registered nurse-to-patient ratios in each unit
10 for each shift for no less than 3 years. Such records
11 shall include—

12 “(A) the number of patients in each unit;

13 “(B) the identity and duty hours of—

14 “(i) each direct care registered nurse
15 assigned to each patient in each unit in
16 each shift; and

17 “(ii) ancillary staff who are under the
18 coordination of the direct care registered
19 nurse;

20 “(C) certification that each nurse received
21 rest and meal breaks and the identity and duty
22 hours of each direct care registered nurse who
23 provided such relief; and

24 “(D) a copy of each notice posted under
25 subsection (a).

1 “(2) AVAILABILITY OF RECORDS.—Each hos-
 2 pital shall make its records maintained under para-
 3 graph (1) available to—

4 “(A) the Secretary;

5 “(B) registered nurses and their collective
 6 bargaining representatives (if any); and

7 “(C) the public under regulations estab-
 8 lished by the Secretary, or in the case of a fed-
 9 erally operated hospital, under section 552 of
 10 title 5, United States Code (commonly known
 11 as the Freedom of Information Act).

12 “(c) AUDITS.—The Secretary shall conduct periodic
 13 audits to ensure—

14 “(1) implementation of the staffing plan in ac-
 15 cordance with this title; and

16 “(2) accuracy in records maintained under this
 17 section.

18 **“SEC. 3403. MINIMUM DIRECT CARE LICENSED PRACTICAL**
 19 **NURSE STAFFING REQUIREMENTS.**

20 “(a) ESTABLISHMENT.—A hospital’s staffing plan
 21 shall comply with minimum direct care licensed practical
 22 nurse staffing requirements that the Secretary establishes
 23 for units in hospitals. Such staffing requirements shall be
 24 established not later than 18 months after the date of the

1 enactment of this title, and shall be based on the study
2 conducted under subsection (b).

3 “(b) STUDY.—Not later than 1 year after the date
4 of the enactment of this title, the Secretary, acting
5 through the Director of the Agency for Healthcare Re-
6 search and Quality, shall complete a study of licensed
7 practical nurse staffing and its effects on patient care in
8 hospitals. The Director may contract with a qualified enti-
9 ty or organization to carry out such study under this para-
10 graph. The Director shall consult with licensed practical
11 nurses and organizations representing licensed practical
12 nurses regarding the design and conduct of the study.

13 “(c) APPLICATION OF REGISTERED NURSE PROVI-
14 SIONS TO LICENSED PRACTICAL NURSE STAFFING RE-
15 QUIREMENTS.—Paragraphs (2), (4)(A), (4)(B), (4)(C),
16 and (6) of section 3401(b), paragraphs (1), (2), (3), and
17 (4) of section 3401(c), and section 3402 shall apply to
18 the establishment and application of direct care licensed
19 practical nurse staffing requirements under this section
20 pursuant to the additional staffing requirements under
21 subsection (b)(3)(G) of section 3401 and in the same man-
22 ner that they apply to the establishment and application
23 of direct care registered nurse-to-patient ratios under sec-
24 tions 3401 and 3402.

1 “(d) EFFECTIVE DATE.—The requirements of this
2 section shall take effect as soon as practicable, as deter-
3 mined by the Secretary, but not later than—

4 “(1) 2 years after the date of the enactment of
5 this title; and

6 “(2) in the case of a hospital in a rural area
7 (as defined in section 1886(d)(2)(D) of the Social
8 Security Act), 4 years after the date of the enact-
9 ment of this title.

10 “(e) STUDY.—Not later than 1 year after the date
11 of the enactment of this title, the Secretary, acting
12 through the Director of the Agency for Healthcare Re-
13 search and Quality shall complete a study of registered
14 and practical nurse staffing requirements in clinics and
15 other outpatient settings, and its effects on patient care
16 in outpatient settings. The Director may contract with a
17 qualified entity or organization to carry out such study
18 under this subsection. The Director shall consult with reg-
19 istered nurses and licensed practice nurses working in out-
20 patient settings, including professional nursing associa-
21 tions and labor organizations representing both registered
22 and practice nurses working in outpatient settings regard-
23 ing the design and conduct of the study.

1 **“SEC. 3404. ADJUSTMENT IN REIMBURSEMENT.**

2 “(a) **MEDICARE REIMBURSEMENT.**—The Secretary
3 shall adjust payments made to hospitals (other than feder-
4 ally operated hospitals) under title XVIII of the Social Se-
5 curity Act in an amount equal to the net amount of addi-
6 tional costs incurred in providing services to Medicare
7 beneficiaries that are attributable to compliance with re-
8 quirements imposed under sections 3401 through 3403.
9 The amount of such payment adjustments shall take into
10 account recommendations contained in the report sub-
11 mitted by the Medicare Payment Advisory Commission
12 under subsection (c).

13 “(b) **AUTHORIZATION OF APPROPRIATION FOR FED-**
14 **ERALLY OPERATED HOSPITALS.**—There are authorized to
15 be appropriated such additional sums as are required for
16 federally operated hospitals to comply with the additional
17 requirements established under sections 3401 through
18 3403.

19 “(c) **MEDPAC REPORT.**—Not later than 2 years
20 after the date of the enactment of this title, the Medicare
21 Payment Advisory Commission (established under section
22 1805 of the Social Security Act) shall submit to Congress
23 and the Secretary a report estimating total costs and sav-
24 ings attributable to compliance with requirements imposed
25 under sections 3401 through 3403. Such report shall in-

1 clude recommendations on the need, if any, to adjust reim-
2 bursement for Medicare payments under subsection (a).

3 **“SEC. 3405. WHISTLEBLOWER AND PATIENT PROTECTIONS.**

4 “(a) PROFESSIONAL OBLIGATION AND RIGHTS.—All
5 nurses have a duty and right to act based on their profes-
6 sional judgment in accordance with State nursing laws
7 and regulations of the State in which the direct nursing
8 care is being performed and to provide care in the exclu-
9 sive interests of the patients and to act as the patient’s
10 advocate.

11 “(b) ACCEPTANCE OF PATIENT CARE ASSIGN-
12 MENTS.—The nurse is responsible for providing com-
13 petent, safe, therapeutic, and effective nursing care to as-
14 signed patients. Before accepting a patient assignment, a
15 nurse shall—

16 “(1) have the necessary professional knowledge,
17 judgment, skills, and ability to provide the required
18 care;

19 “(2) determine using professional judgment in
20 accordance with State nursing laws and regulations
21 of the State in which the direct nursing care is being
22 performed whether the nurse is competent to per-
23 form the nursing care required; and

1 “(3) determine whether acceptance of a patient
2 assignment would expose the patient or nurse to risk
3 of harm.

4 “(c) OBJECTION TO OR REFUSAL OF ASSIGNMENT.—

5 A nurse may object to, or refuse to participate in, any
6 activity, policy, practice, assignment, or task if in good
7 faith—

8 “(1) the nurse reasonably believes it to be in
9 violation of section 3401 or 3403; or

10 “(2) the nurse is not prepared by education,
11 training, or experience to fulfill the assignment with-
12 out compromising the safety of any patient or jeop-
13 ardizing the license of the nurse.

14 “(d) RETALIATION FOR OBJECTION TO OR REFUSAL
15 OF ASSIGNMENT BARRED.—

16 “(1) NO DISCHARGE, DISCRIMINATION, OR RE-
17 TALIATION.—No hospital shall discharge, retaliate,
18 discriminate, or otherwise take adverse action in any
19 manner with respect to any aspect of a nurse’s em-
20 ployment (as defined in section 3407), including dis-
21 charge, promotion, compensation, or terms, condi-
22 tions, or privileges of employment, based on the
23 nurse’s refusal of a work assignment under sub-
24 section (c).

1 “(2) NO FILING OF COMPLAINT.—No hospital
2 shall file a complaint or a report against a nurse
3 with a State professional disciplinary agency because
4 of the nurse’s refusal of a work assignment under
5 subsection (c).

6 “(e) CAUSE OF ACTION.—Any nurse, collective bar-
7 gaining representative, or legal representative of any nurse
8 who has been discharged, discriminated against, or retali-
9 ated against in violation of subsection (d)(1) or against
10 whom a complaint or report has been filed in violation of
11 subsection (d)(2) may (without regard to whether a com-
12 plaint has been filed under subsection (f) of this section
13 or subsection (b) of section 3406) bring a cause of action
14 in a United States district court. A nurse who prevails
15 on the cause of action shall be entitled to one or more
16 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) COMPLAINT TO SECRETARY.—A nurse, patient,
24 collective bargaining representative, or other individual
25 may file a complaint with the Secretary against a hospital

1 that violates the provisions of this title. For any complaint
2 filed, the Secretary shall—

3 “(1) receive and investigate the complaint;

4 “(2) determine whether a violation of this title
5 as alleged in the complaint has occurred; and

6 “(3) if such a violation has occurred, issue an
7 order that the complaining nurse or individual shall
8 not suffer any discharge, retaliation, discrimination,
9 or other adverse action prohibited by subsection (d)
10 or subsection (h).

11 “(g) TOLL-FREE TELEPHONE NUMBER.—

12 “(1) IN GENERAL.—The Secretary shall provide
13 for the establishment of a toll-free telephone hotline
14 to provide information regarding the requirements
15 under section 3401 through 3403 and to receive re-
16 ports of violations of such section.

17 “(2) NOTICE TO PATIENTS.—A hospital shall
18 provide each patient admitted to the hospital for in-
19 patient care with the hotline described in paragraph
20 (1), and shall give notice to each patient that such
21 hotline may be used to report inadequate staffing or
22 care.

23 “(h) PROTECTION FOR REPORTING.—

24 “(1) PROHIBITION ON RETALIATION OR DIS-
25 CRIMINATION.—A hospital shall not discriminate or

1 retaliate in any manner against any patient, em-
 2 ployee, or contract employee of the hospital, or any
 3 other individual, on the basis that such individual, in
 4 good faith, individually or in conjunction with an-
 5 other person or persons, has presented a grievance
 6 or complaint, or has initiated or cooperated in any
 7 investigation or proceeding of any governmental en-
 8 tity, regulatory agency, or private accreditation
 9 body, made a civil claim or demand, or filed an ac-
 10 tion relating to the care, services, or conditions of
 11 the hospital or of any affiliated or related facilities.

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

16 “(A) the information reported or disclosed
 17 is true; and

18 “(B) a violation of this title has occurred
 19 or may occur.

20 “(i) PROHIBITION ON INTERFERENCE WITH
 21 RIGHTS.—

22 “(1) EXERCISE OF RIGHTS.—It shall be unlaw-
 23 ful for any hospital to—

24 “(A) interfere with, restrain, or deny the
 25 exercise, or attempt to exercise, by any person

1 of any right provided or protected under this
2 title; or

3 “(B) coerce or intimidate any person re-
4 garding the exercise or attempt to exercise such
5 right.

6 “(2) OPPOSITION TO UNLAWFUL POLICIES OR
7 PRACTICES.—It shall be unlawful for any hospital to
8 discriminate or retaliate against any person for op-
9 posing any hospital policy, practice, or actions which
10 are alleged to violate, breach, or fail to comply with
11 any provision of this title.

12 “(3) PROHIBITION ON INTERFERENCE WITH
13 PROTECTED COMMUNICATIONS.—A hospital (or an
14 individual representing a hospital) shall not make,
15 adopt, or enforce any rule, regulation, policy, or
16 practice which in any manner directly or indirectly
17 prohibits, impedes, or discourages a direct care
18 nurse from, or intimidates, coerces, or induces a di-
19 rect care nurse regarding, engaging in free speech
20 activities or disclosing information as provided under
21 this title.

22 “(4) PROHIBITION ON INTERFERENCE WITH
23 COLLECTIVE ACTION.—A hospital (or an individual
24 representing a hospital) shall not in any way inter-
25 fere with the rights of nurses to organize, bargain

1 collectively, and engage in concerted activity under
2 section 7 of the National Labor Relations Act (29
3 U.S.C. 157).

4 “(j) NOTICE.—A hospital shall post in an appropriate
5 location in each unit a conspicuous notice in a form speci-
6 fied by the Secretary that—

7 “(1) explains the rights of nurses, patients, and
8 other individuals under this section;

9 “(2) includes a statement that a nurse, patient,
10 or other individual may file a complaint with the
11 Secretary against a hospital that violates the provi-
12 sions of this title; and

13 “(3) provides instructions on how to file such a
14 complaint.

15 “(k) EFFECTIVE DATE.—

16 “(1) REFUSAL; RETALIATION; CAUSE OF AC-
17 TION.—

18 “(A) IN GENERAL.—Subsections (c)
19 through (e) shall apply to objections and refus-
20 als occurring on or after the effective date of
21 the provision of this title to which the objection
22 or refusal relates.

23 “(B) EXCEPTION.—Subsection (c)(2) shall
24 not apply to objections or refusals in any hos-
25 pital before the requirements of section 3401(a)

1 or 3403(a), as applicable, apply to that hos-
2 pital.

3 “(2) PROTECTIONS FOR REPORTING.—Sub-
4 section (h)(1) shall apply to actions occurring on or
5 after the effective date of the provision to which the
6 violation relates, except that such subsection shall
7 apply to initiation, cooperation, or participation in
8 an investigation or proceeding on or after the date
9 of enactment of this title.

10 “(3) NOTICE.—Subsection (j) shall take effect
11 18 months after the date of enactment of this title.

12 **“SEC. 3406. ENFORCEMENT.**

13 “(a) IN GENERAL.—The Secretary shall enforce the
14 requirements and prohibitions of this title in accordance
15 with this section.

16 “(b) PROCEDURES FOR RECEIVING AND INVES-
17 TIGATING COMPLAINTS.—The Secretary shall establish
18 procedures under which—

19 “(1) any person may file a complaint alleging
20 that a hospital has violated a requirement or a pro-
21 hibition of this title; and

22 “(2) such complaints shall be investigated by
23 the Secretary.

1 “(c) REMEDIES.—If the Secretary determines that a
2 hospital has violated a requirement of this title, the Sec-
3 retary—

4 “(1) shall require the facility to establish a cor-
5 rective action plan to prevent the recurrence of such
6 violation; and

7 “(2) may impose civil money penalties, as de-
8 scribed in subsection (d).

9 “(d) CIVIL PENALTIES.—

10 “(1) IN GENERAL.—In addition to any other
11 penalties prescribed by law, the Secretary may im-
12 pose civil penalties as follows:

13 “(A) HOSPITAL LIABILITY.—The Secretary
14 may impose on a hospital found to be in viola-
15 tion of this title a civil money penalty of—

16 “(i) not more than \$25,000 for the
17 first knowing violation of this title by such
18 hospital; and

19 “(ii) not more than \$50,000 for any
20 subsequent knowing violation of this title
21 by such hospital.

22 “(B) INDIVIDUAL LIABILITY.—The Sec-
23 retary may impose on an individual who—

1 “(i) is employed by a hospital found
2 by the Secretary to have violated this title;
3 and

4 “(ii) knowingly violates this title,
5 a civil money penalty of not more than \$20,000
6 for each such violation by the individual.

7 “(2) PROCEDURES.—The provisions of section
8 1128A of the Social Security Act (other than sub-
9 sections (a) and (b)) shall apply with respect to a
10 civil money penalty or proceeding under this sub-
11 section in the same manner as such provisions apply
12 with respect to a civil money penalty or proceeding
13 under such section 1128A.

14 “(e) PUBLIC NOTICE OF VIOLATIONS.—

15 “(1) INTERNET WEBSITE.—The Secretary shall
16 publish on the internet website of the Department of
17 Health and Human Services the names of hospitals
18 on which a civil money penalty has been imposed
19 under this section, the violation for which such pen-
20 alty was imposed, and such additional information
21 as the Secretary determines appropriate.

22 “(2) CHANGE OF OWNERSHIP.—With respect to
23 a hospital that had a change of ownership, as deter-
24 mined by the Secretary, penalties imposed on the
25 hospital while under previous ownership shall no

1 longer be published by the Secretary pursuant to
2 paragraph (1) after the 1-year period beginning on
3 the date of change of ownership.

4 “(f) USE OF FUNDS.—Funds collected by the Sec-
5 retary pursuant to this section are authorized to be appro-
6 priated to carry out this title.

7 **“SEC. 3407. DEFINITIONS.**

8 “For purposes of this title:

9 “(1) ACUITY LEVEL.—The term ‘acuity level’
10 means the determination, using a hospital acuity
11 measurement tool that has been developed and es-
12 tablished in coordination with direct care registered
13 nurses and made transparent pursuant to section
14 3401(c)(4), of nursing care requirements, based on
15 the assigned direct care registered nurse’s profes-
16 sional judgment of—

17 “(A) the severity and complexity of an in-
18 dividual patient’s illness or injury;

19 “(B) the need for specialized equipment;
20 and

21 “(C) the intensity of nursing interventions
22 required.

23 “(2) COMPETENCE.—The term ‘competence’ or
24 ‘competent’ means the satisfactory application of the
25 duties and responsibilities of a registered nurse in

1 providing nursing care to specific patient popu-
2 lations and for acuity levels for each patient care
3 unit or area pursuant to the State nursing laws and
4 regulations of the State in which the direct nursing
5 care is being performed.

6 “(3) DIRECT CARE LICENSED PRACTICAL
7 NURSE.—The term ‘direct care licensed practical
8 nurse’ means an individual who has been granted a
9 license by at least one State to practice as a licensed
10 practical nurse or a licensed vocational nurse and
11 who provides bedside care for one or more patients.

12 “(4) DIRECT CARE REGISTERED NURSE.—The
13 term ‘direct care registered nurse’ means an indi-
14 vidual who has been granted a license by at least
15 one State to practice as a registered nurse and who
16 provides bedside care for one or more patients.

17 “(5) EMPLOYMENT.—The term ‘employment’
18 includes the provision of services under a contract or
19 other arrangement.

20 “(6) HOSPITAL.—The term ‘hospital’ has the
21 meaning given that term in section 1861(e) of the
22 Social Security Act, and includes a hospital that is
23 operated by the Department of Veterans Affairs, the
24 Department of Defense, the Indian Health Services

1 Program, or any other department or agency of the
2 United States.

3 “(7) NURSE.—The term ‘nurse’ means any di-
4 rect care registered nurse or direct care licensed
5 practice nurse (as the case may be), regardless of
6 whether or not the nurse is an employee.

7 “(8) NURSING CARE PLAN.—The term ‘nursing
8 care plan’ means a plan developed by the assigned
9 direct care registered nurse (in accordance with
10 nursing law in the State in which the nursing care
11 is performed) that indicates the nursing care to be
12 given to individual patients that—

13 “(A) considers the acuity level of the pa-
14 tient;

15 “(B) is developed in coordination with the
16 patient, the patient’s family, or other represent-
17 atives when appropriate, and staff of other dis-
18 ciplines involved in the care of the patient;

19 “(C) reflects all elements of the nursing
20 process; and

21 “(D) recommends the number and skill
22 mix of additional licensed and unlicensed direct
23 care staff needed to fully implement the nursing
24 care plan.

1 “(9) PROFESSIONAL JUDGMENT.—The term
 2 ‘professional judgment’ means, in accordance with
 3 State nursing laws and regulations of the State in
 4 which the direct nursing care is being performed, the
 5 direct care registered nurse’s application of knowl-
 6 edge, expertise, and experience in conducting a com-
 7 prehensive nursing assessment of each patient and
 8 in making independent decisions about patient care
 9 including the need for additional staff.

10 “(10) STAFFING PLAN.—The term ‘staffing
 11 plan’ means a staffing plan required under section
 12 3401.

13 “(11) STATE OF EMERGENCY.—The term ‘state
 14 of emergency’—

15 “(A) means a state of emergency that is
 16 an unpredictable or unavoidable occurrence at
 17 an unscheduled or unpredictable interval, relat-
 18 ing to health care delivery and requiring imme-
 19 diate medical interventions and care; and

20 “(B) does not include a state of emergency
 21 that results from a labor dispute in the health
 22 care industry or consistent understaffing.

23 **“SEC. 3408. RULE OF CONSTRUCTION.**

24 “Nothing in this title shall be construed to authorize
 25 disclosure of private and confidential patient information,

1 if such disclosure is not authorized or required by other
2 applicable law.”.

3 (b) RECOMMENDATIONS TO CONGRESS.—Not later
4 than 1 year after the date of enactment of this Act, the
5 Secretary of Health and Human Services shall submit to
6 Congress a report containing recommendations for ensur-
7 ing that sufficient numbers of nurses are available to meet
8 the requirements imposed by title XXXIV of the Public
9 Health Service Act, as added by subsection (a).

10 (c) REPORT BY HRSA.—

11 (1) IN GENERAL.—Not later than 2 years after
12 the date of enactment of this Act, the Administrator
13 of the Health Resources and Services Administra-
14 tion, in consultation with the National Health Care
15 Workforce Commission, shall submit to Congress a
16 report regarding the relationship between nurse
17 staffing levels and nurse retention in hospitals.

18 (2) UPDATED REPORT.—Not later than 5 years
19 after the date of enactment of this Act, the Adminis-
20 trator of the Health Resources and Services Admin-
21 istration, in consultation with the National Health
22 Care Workforce Commission, shall submit to Con-
23 gress an update of the report submitted under para-
24 graph (1).

1 **SEC. 3. ENFORCEMENT OF REQUIREMENTS THROUGH FED-**
2 **ERAL PROGRAMS.**

3 (a) **MEDICARE PROGRAM.**—Section 1866(a)(1) of the
4 Social Security Act (42 U.S.C. 1395cc(a)(1)) is amend-
5 ed—

6 (1) in subparagraph (X), by striking “, and”
7 and inserting a comma;

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

10 (3) by inserting after the subparagraph (Y) the
11 following new subparagraph:

12 “(Z) in the case of a hospital, to comply with
13 the provisions of title XXXIV of the Public Health
14 Service Act.”.

15 (b) **MEDICAID PROGRAM.**—Section 1902(a) of the
16 Social Security Act (42 U.S.C. 1396a(a)) is amended—

17 (1) by striking “and” at the end of paragraph
18 (86);

19 (2) by striking the period at the end of para-
20 graph (87)(D) and inserting “; and”; and

21 (3) by inserting after paragraph (87) the fol-
22 lowing new paragraph:

23 “(88) provide that any hospital that receives a
24 payment under such plan comply with the provisions
25 of title XXXIV of the Public Health Service Act (re-

1 lating to minimum direct care registered nurse staff-
2 ing requirements).”.

3 (c) HEALTH BENEFITS PROGRAM OF THE DEPART-
4 MENT OF VETERANS AFFAIRS.—Section 8110(a) of title
5 38, United States Code, is amended by adding at the end
6 the following new paragraphs:

7 “(7) In the case of a Department medical facility that
8 is a hospital, the hospital shall comply with the provisions
9 of title XXXIV of the Public Health Service Act.

10 “(8) Nothing either in chapter 74 of this title or in
11 section 7106 of title 5 shall preclude enforcement of the
12 provisions of title XXXIV of the Public Health Service Act
13 with respect to a Department hospital through grievance
14 procedures negotiated in accordance with chapter 71 of
15 title 5.”.

16 (d) HEALTH BENEFITS PROGRAM OF THE DEPART-
17 MENT OF DEFENSE.—

18 (1) IN GENERAL.—Chapter 55 of title 10,
19 United States Code, is amended by adding at the
20 end the following new section:

21 **“§ 1110c. Staffing requirements**

22 “‘In the case of a facility of the uniformed services
23 that is a hospital, the hospital shall comply with the provi-
24 sions of title XXXIV of the Public Health Service Act.”.

1 (2) CLERICAL AMENDMENT.—The table of sec-
 2 tions at the beginning of such chapter is amended
 3 by inserting after the item relating to section 1110b
 4 the following new item:

“1110c. Staffing requirements.”.

5 (e) INDIAN HEALTH SERVICES PROGRAM.—Title
 6 VIII of the Indian Health Care Improvement Act (25
 7 U.S.C. 1671 et seq.) is amended by adding at the end
 8 the following new section:

9 **“SEC. 833. STAFFING REQUIREMENTS.**

10 “All hospitals of the Service shall comply with the
 11 provisions of title XXXIV of the Public Health Service Act
 12 (relating to minimum direct care registered nurse staffing
 13 requirements).”.

14 (f) FEDERAL LABOR-MANAGEMENT RELATIONS.—

15 (1) IN GENERAL.—Section 7106 of title 5,
 16 United States Code, is amended by adding at the
 17 end the following:

18 “(c) Nothing in this section shall preclude enforce-
 19 ment of the provisions of title XXXIV of the Public Health
 20 Service Act through grievance procedures negotiated in ac-
 21 cordance with section 7121.”.

22 (2) CONFORMING AMENDMENT.—Section
 23 7106(a) of title 5, United States Code, is amended
 24 by striking “Subject to subsection (b) of this sec-

1 tion,” and inserting “Subject to subsections (b) and
2 (c),”.

3 **SEC. 4. NURSE WORKFORCE INITIATIVE.**

4 (a) SCHOLARSHIP AND STIPEND PROGRAM.—Sub-
5 section (d) of section 846 of the Public Health Service
6 Act (42 U.S.C. 297n) is amended—

7 (1) in the subsection heading, by inserting
8 “AND STIPEND” after “SCHOLARSHIP”; and

9 (2) in paragraph (1), by inserting “or stipends”
10 after “scholarships”.

11 (b) NURSE RETENTION GRANTS.—Section 831(c)(1)
12 of the Public Health Service Act (42 U.S.C. 296p(c)(1))
13 is amended—

14 (1) by striking “GRANTS FOR CAREER LADDER
15 PROGRAMS” and inserting “GRANTS FOR NURSE RE-
16 TENTION”;

17 (2) in subparagraph (B), by striking “; and”
18 and inserting a semicolon;

19 (3) in subparagraph (C), by striking the period
20 at the end and inserting a semicolon; and

21 (4) by adding at the end the following:

22 “(D) to provide additional support to
23 nurses entering the workforce by implementing
24 nursing preceptorship projects that establish a
25 period of practical and clinical experiences and

1 training for nursing students, newly hired
2 nurses, and recent graduates of a direct care
3 degree program for registered nurses; and

4 “(E) to implement mentorship projects
5 that assist new or transitional direct care reg-
6 istered nurses in adapting to the hospital set-
7 ting.”.

○