

116TH CONGRESS
2D SESSION

S. 4541

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.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 8, 2020

Mr. MERKLEY introduced the following bill; which was read twice and referred to the Committee on Finance

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 “Nurse Overtime and
5 Patient Safety Act of 2020”.

6 **SEC. 2. FINDINGS.**

7 Congress finds as follows:

1 (1) The Federal Government has a substantial
2 interest in assuring that the delivery of health care
3 services to patients in health care facilities is ade-
4 quate and safe.

5 (2) Research, including a study published in the
6 Health Services Research in October 2014 and a
7 2019 study from New York University, document
8 the following:

9 (A) Limits on work hours have long been
10 found in high-risk occupational settings where
11 long work hours can adversely affect safety and
12 performance as well as job satisfaction and
13 quality of life.

14 (B) Regulations limiting work hours were
15 first instituted in the 1930s.

16 (C) Adoption of work hour regulations has
17 been slower in the health care sector.

18 (D) A review of the current literature indi-
19 cates that despite potential pitfalls of disconti-
20 nuity in care, regulated work hours for nurses
21 improve occupational and patient safety.

22 (E) The work year for registered nurses is
23 substantially longer than the national average
24 by 200 work hours.

1 (F) When nurses with more than one posi-
2 tion of employment are taken into account,
3 total nurse work hours may be greater than the
4 estimate above.

5 (G) Furthermore, because nurses fre-
6 quently work under a 12-hour shift schedule,
7 they not only work extended hours but also re-
8 turn to work often without sufficient time for
9 rest.

10 (H) Newly licensed nurses work an average
11 of 39.4 hours a week, predominantly in 12-hour
12 shifts.

13 (I) More than 13 percent of newly licensed
14 nurses report having a second paid job.

15 (J) New nurses prefer working the day
16 shift, and the preferred shift length is 12 hours.

17 (K) Twelve percent of nurses report work-
18 ing mandatory overtime, and nearly half work
19 voluntary overtime at an average of three hours
20 in a workweek.

21 (3) Nurses working long hours often experience
22 fatigue, poor sleep quality, impaired vigilance, and
23 lack of alertness, which contributes to medical errors
24 and results in other consequences that compromise

1 patient safety, even after controlling for staffing lev-
 2 els and hospital characteristics.

3 (4) Eighteen States have passed legislation or
 4 promulgated regulations restricting mandatory over-
 5 time for nurses.

6 **SEC. 3. LIMITATIONS ON MANDATORY OVERTIME FOR**
 7 **NURSES.**

8 (a) PROVIDER AGREEMENTS.—Section 1866 of the
 9 Social Security Act (42 U.S.C. 1395ee) is amended—

10 (1) in subsection (a)(1)—

11 (A) in subparagraph (X), by striking
 12 “and” at the end;

13 (B) in subparagraph (Y), by striking the
 14 period and inserting “, and”; and

15 (C) by inserting after subparagraph (Y)
 16 the following new subparagraph:

17 “(Z) to comply with the requirements of sub-
 18 section (1) (relating to limitations on mandatory
 19 overtime for nurses).”; and

20 (2) by adding at the end the following new sub-
 21 section:

22 “(1) LIMITATIONS ON MANDATORY OVERTIME FOR
 23 NURSES.—For purposes of subsection (a)(1)(Z), the re-
 24 quirements of this subsection are the following:

1 “(1) PROHIBITION ON MANDATORY OVER-
2 TIME.—

3 “(A) IN GENERAL.—Except as provided in
4 this subsection, a provider of services shall not,
5 directly or indirectly, require a nurse to work—

6 “(i) in excess of—

7 “(I) a previously scheduled work
8 shift or duty period of the nurse, re-
9 gardless of the length of the shift;

10 “(II) 48 hours in any workweek
11 (as defined in section 778.105 of title
12 29, Code of Federal Regulations, or
13 any successor regulation); or

14 “(III) 12 consecutive hours in a
15 24-hour period; or

16 “(ii) during the 10-hour period imme-
17 diately following the 12th hour worked in
18 a shift or duty period during a 24-hour pe-
19 riod.

20 “(B) HOURS WORKED.—For purposes of
21 subparagraph (A), time spent by a nurse in the
22 following shall be included as hours worked:

23 “(i) Required meetings or while re-
24 ceiving education or training.

1 “(ii) On call or on standby when the
2 nurse is required to be at the provider of
3 services.

4 “(iii) On call or on standby when the
5 nurse is not required to be at the provider
6 of services.

7 “(C) CLARIFICATION REGARDING VOL-
8 UNTARY OVERTIME.—Nothing in this sub-
9 section shall be construed to preclude a nurse
10 from volunteering to work overtime.

11 “(2) EXCEPTIONS.—

12 “(A) IN GENERAL.—Subject to subpara-
13 graph (B), the requirements of paragraph (1)
14 shall not apply to a provider of services during
15 a declared emergency or disaster (as defined in
16 paragraph (9)(E)) if the provider is requested,
17 or otherwise is expected, to provide an excep-
18 tional level of emergency or other medical serv-
19 ices to the community.

20 “(B) LIMITATIONS.—With respect to a
21 provider of services to which subparagraph (A)
22 applies, a nurse may only be required to work
23 for periods in excess of the periods described in
24 paragraph (1) if—

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

4 “(ii) the duration of the work require-
 5 ment does not extend past the earlier of—

6 “(I) the date on which the de-
 7 clared emergency or disaster ends; or

8 “(II) the date on which the pro-
 9 vider’s direct role in responding to the
 10 medical needs resulting from the de-
 11 clared emergency or disaster ends;

12 “(iii) a staff vacancy for the next shift
 13 becomes known at the end of the current
 14 shift; and

15 “(iv) there is potential harm to an as-
 16 signed patient if the nursing staff member
 17 leaves the assignment or transfers care to
 18 another nursing staff member.

19 “(3) WHISTLEBLOWER PROTECTIONS FOR
 20 NURSES.—

21 “(A) RIGHT TO REPORT.—

22 “(i) IN GENERAL.—A nurse may file a
 23 complaint with the Secretary against a
 24 provider of services who violates the provi-
 25 sions of this subsection.

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

5 “(B) INVESTIGATION OF COMPLAINT.—
6 The Secretary shall investigate complaints of
7 violations filed by a nurse under subparagraph
8 (A).

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

16 “(4) NURSE NONDISCRIMINATION PROTEC-
17 TIONS.—

18 “(A) IN GENERAL.—A provider of services
19 shall not terminate or propose to terminate, pe-
20 nalize, discriminate, or retaliate in any manner
21 with respect to any aspect of employment, in-
22 cluding discharge, promotion, compensation, or
23 terms, conditions, or privileges of employment,
24 against a nurse who refuses to work mandatory

1 overtime or who in good faith, individually or in
2 conjunction with another person or persons—

3 “(i) reports a violation or suspected
4 violation of this subsection to a public reg-
5 ulatory agency, a private accreditation
6 body, or the management personnel of the
7 provider of services;

8 “(ii) initiates, cooperates, or otherwise
9 participates in an investigation or pro-
10 ceeding brought by a regulatory agency or
11 private accreditation body concerning mat-
12 ters covered by this subsection; or

13 “(iii) informs or discusses with other
14 employees, with representatives of those
15 employees, or with representatives of asso-
16 ciations of health care professionals, viola-
17 tions or suspected violations of this sub-
18 section.

19 “(B) RETALIATORY REPORTING.—A pro-
20 vider of services may not file a complaint or a
21 report against a nurse with the appropriate
22 State professional disciplinary agency because
23 the nurse refused to comply with a request to
24 work mandatory overtime.

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

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

6 “(ii) that a violation has occurred or
7 may occur.

8 “(5) NOTICE POLICY AND REQUIREMENTS.—

9 “(A) REQUIREMENT TO DEVELOP A POL-
10 ICY AND PROCEDURE.—Each provider of serv-
11 ices shall develop a policy and have in place
12 procedures to ensure, at a minimum, that—

13 “(i) mandatory overtime, when re-
14 quired as described in paragraph (2)(B), is
15 documented in writing; and

16 “(ii) mandatory overtime policies and
17 procedures are clearly written, provided to
18 all new nursing staff and readily available
19 to all nursing staff.

20 “(B) REQUIREMENT TO POST NOTICE.—

21 Each provider of services shall post conspicu-
22 ously in an appropriate location a sign (in a
23 form specified by the Secretary) specifying
24 rights of nurses under this subsection.

1 “(C) RIGHT TO FILE COMPLAINT.—Such
2 sign shall include a statement that a nurse may
3 file a complaint with the Secretary against a
4 provider of services who violates the provisions
5 of this subsection and information with respect
6 to the manner of filing such a complaint.

7 “(6) POSTING OF NURSE SCHEDULES.—A pro-
8 vider of services shall regularly post in a conspicuous
9 manner the nurse schedules (for such periods of
10 time that the Secretary determines appropriate by
11 type or class of provider of services) for the depart-
12 ment or unit involved, and shall make available upon
13 request to nurses assigned to the department or unit
14 the daily nurse schedule for such department or
15 unit.

16 “(7) CIVIL MONEY PENALTY.—

17 “(A) IN GENERAL.—The Secretary may
18 impose a civil money penalty of not more than
19 \$10,000 for each knowing violation of the provi-
20 sions of this subsection committed by a provider
21 of services.

22 “(B) PATTERNS OF VIOLATIONS.—Not-
23 withstanding subparagraph (A), the Secretary
24 shall provide for the imposition of more severe
25 civil money penalties under this paragraph for

1 providers of services that establish patterns of
2 repeated violations of such provisions.

3 “(C) ADMINISTRATION OF PENALTIES.—

4 The provisions of section 1128A (other than
5 subsections (a) and (b)) shall apply to a civil
6 money penalty under this paragraph in the
7 same manner as such provisions apply to a pen-
8 alty or proceeding under section 1128A(a).

9 The Secretary shall publish on the internet site of
10 the Department of Health and Human Services the
11 names of providers of services against which civil
12 money penalties have been imposed under this para-
13 graph, the violation for which the penalty was im-
14 posed, and such additional information as the Sec-
15 retary determines appropriate. With respect to a
16 provider of services that has had a change in owner-
17 ship, as determined by the Secretary, penalties im-
18 posed on the provider of services while under pre-
19 vious ownership shall no longer be published by the
20 Secretary on such internet site after the 1-year pe-
21 riod beginning on the date of change in ownership.

22 “(8) RULE OF CONSTRUCTION REGARDING
23 OTHER RIGHTS, REMEDIES, AND PROCEDURES.—

24 Nothing in this subsection shall be construed to alter
25 or otherwise affect the rights, remedies, and proce-

1 dures affords to nurses under Federal, State, or
2 local laws or under the terms of collective bargaining
3 agreements, memorandums of understanding, or
4 other agreements between such employees and their
5 employers.

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

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

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

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

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

1 “(i) a hospital (as defined in section
2 1861(e));

3 “(ii) a psychiatric hospital (as defined
4 in section 1861(f));

5 “(iii) a hospital outpatient depart-
6 ment;

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

9 “(v) an ambulatory surgical center;

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

12 “(vii) a rehabilitation agency;

13 “(viii) a clinic, including a rural
14 health clinic (as defined in section
15 1861(aa)(2)); or

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

18 “(E) DECLARED EMERGENCY OR DIS-
19 ASTER.—The term ‘declared emergency or dis-
20 aster’ means a major disaster or an emergency
21 (as those terms are defined in section 102 of
22 the Robert T. Stafford Disaster Relief and
23 Emergency Assistance Act (42 U.S.C. 5122)),
24 or an emergency or disaster as declared by a
25 Governor of any State or Indian Tribal govern-

1 ment, but does not include an emergency that
2 results from a labor dispute in the health care
3 industry or consistent understaffing.

4 “(F) STANDARDS OF SAFE PATIENT
5 CARE.—The term ‘standards of safe patient
6 care’ means the recognized professional stand-
7 ards governing the profession of the nurse in-
8 volved.

9 “(10) RELATIONSHIP TO STATE LAW.—Nothing
10 in this subsection shall be construed to preempt any
11 State law that provides greater protections with re-
12 spect to mandatory overtime for nurses.”.

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

16 **SEC. 4. REPORTS.**

17 (a) STANDARDS ON SAFE WORKING HOURS FOR
18 NURSES.—

19 (1) STUDY.—The Secretary of Health and
20 Human Services, acting through the Director of the
21 Agency for Healthcare Research and Quality, shall
22 conduct a study to establish appropriate standards
23 for the maximum number of hours that a nurse who
24 furnishes health care to patients may work without
25 compromising the safety of such patients. Such

1 standards may vary by provider of service and by de-
2 partment within a provider of services, by duties or
3 functions carried out by nurses, by shift, and by
4 other factors that the Director determines appro-
5 priate. The Director may contract with an eligible
6 entity or organization to carry out the study under
7 this paragraph.

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

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

16 (1) STUDY.—

17 (A) IN GENERAL.—The Director of the Of-
18 fice of Management and Budget shall conduct
19 a study to determine the extent to which feder-
20 ally operated medical facilities have in effect
21 practices and policies with respect to overtime
22 requirements for nurses that are inconsistent
23 with the provisions of section 1866(l) of the So-
24 cial Security Act, as added by section 3.

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

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

○