

114TH CONGRESS
1ST SESSION

H. R. 4266

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

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 16, 2015

Mr. CONYERS (for himself, Mr. SCOTT of Virginia, Ms. WILSON of Florida, Mr. CLAY, Mr. BRENDAN F. BOYLE of Pennsylvania, Mr. DANNY K. DAVIS of Illinois, Mrs. BEATTY, and Ms. GRAHAM) introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committees on Energy and Commerce and 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 direct the Secretary of Labor to issue an occupational safety and health standard to reduce injuries to patients, nurses, and all other health care workers by establishing a safe patient handling, mobility, 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,*

1 **SECTION 1. SHORT TITLE; FINDINGS; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Nurse and Health Care Worker Protection Act of 2015”.

4 (b) FINDINGS.—Congress finds the following:

5 (1) In 2014, registered nurses ranked sixth
6 among all occupations for the number of cases of
7 musculoskeletal disorders resulting in days away
8 from work, with 11,360 total cases. Nursing assist-
9 ants reported 20,020 cases in 2014, the second high-
10 est of any profession. The leading cause of these
11 health care employees’ injuries is patient lifting,
12 transferring, and repositioning injuries, which con-
13 stitute a significant risk to the health and welfare of
14 those employees under the Occupational Safety and
15 Health Act of 1970.

16 (2) The physical demands of the nursing pro-
17 fession lead many nurses to leave the profession.
18 Fifty-two percent of nurses complain of chronic back
19 pain and 38 percent suffer from pain severe enough
20 to require leave from work. Many nurses and other
21 health care workers suffering back injury do not re-
22 turn to work. These consequences constitute a mate-
23 rial impairment of health for these employees under
24 the Occupational Safety and Health Act of 1970.

25 (3) Patients are not at optimum levels of safety
26 while being lifted, transferred, or repositioned manu-

1 ally. Appropriate mechanical lifts can substantially
2 reduce skin tears and pressure ulcers suffered by pa-
3 tients and the frequency of patients being dropped,
4 thus allowing patients a safer means to progress
5 through their care and avoid disabling injuries due
6 to unsafe practices.

7 (4) The development of assistive patient han-
8 dling technology, equipment, and devices has essen-
9 tially rendered the act of strict manual patient han-
10 dling outdated and typically unnecessary as a func-
11 tion of nursing care.

12 (5) A growing number of health care facilities
13 that have incorporated patient handling technology
14 and practices have reported positive results. Injuries
15 among nursing staff and health care workers have
16 dramatically declined at health care facilities imple-
17 menting safe patient handling technology, equip-
18 ment, devices, and practices. As a result, the number
19 of lost work days due to injury and staff turnover
20 has declined. Studies have also shown that assistive
21 patient handling technology successfully reduces
22 workers' compensation costs for musculoskeletal dis-
23 orders.

24 (6) A number of States have implemented safe
25 patient handling, mobility and injury prevention

1 standards. The success of these programs at the fa-
 2 cility and State level demonstrates the technological
 3 and economical feasibility of such standards.

4 (7) Establishing a safe patient handling, mobil-
 5 ity, and injury prevention standard for direct-care
 6 registered nurses and other health care workers is a
 7 critical component reasonably necessary for pro-
 8 tecting the health and safety of nurses and other
 9 health care workers, addressing the nursing short-
 10 age, and increasing patient safety.

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

Sec. 1. Short title; findings; table of contents.

Sec. 2. Safe patient handling, mobility, and injury prevention standard.

Sec. 3. Application of safe patient handling, mobility, and injury prevention
 standard to facilities receiving Medicare and Medicaid funds.

Sec. 4. Nonpreemption.

Sec. 5. Definitions.

13 **SEC. 2. SAFE PATIENT HANDLING, MOBILITY, AND INJURY**
 14 **PREVENTION STANDARD.**

15 (a) RULEMAKING.—Notwithstanding any other provi-
 16 sion of law, not later than 1 year after the date of enact-
 17 ment of this Act, the Secretary of Labor shall, pursuant
 18 to section 6 of the Occupational Safety and Health Act
 19 of 1970 (29 U.S.C. 655), promulgate an interim final
 20 standard on safe patient handling, mobility, and injury
 21 prevention (in this section such standard is referred to as
 22 the “safe patient handling, mobility, and injury prevention

1 standard”) to prevent musculoskeletal disorders for direct-
2 care registered nurses and all other health care workers
3 handling patients. The interim final standard shall remain
4 in effect until it is replaced by a final safe patient han-
5 dling, mobility, and injury prevention standard.

6 (b) REQUIREMENTS.—The safe patient handling, mo-
7 bility, and injury prevention standard shall require the use
8 of engineering and safety controls to perform handling of
9 patients and to reduce the incidence of injuries from man-
10 ual handling of patients by direct-care registered nurses
11 and all other health care workers, through the develop-
12 ment of a comprehensive program, to include the use of
13 mechanical technology and devices to the greatest degree
14 feasible. Where the use of mechanical technology and de-
15 vices is not feasible, the standards shall require the use
16 of alternative controls and measures to minimize the risk
17 of injury to nurses and health care workers resulting from
18 the manual handling of patients. The standard shall apply
19 to all health care employers, shall generally align with
20 interprofessional national safe patient handling, mobility,
21 and injury prevention standards, and shall include the fol-
22 lowing:

23 (1) PROGRAM DEVELOPMENT.—A requirement
24 that each health care employer shall develop and im-
25 plement a safe patient handling, mobility, and injury

1 prevention program within 6 months of the date of
2 promulgation of the interim final standard, which
3 program shall include hazard identification, risk as-
4 sements, and control measures in relation to pa-
5 tient care duties and patient handling.

6 (2) TECHNOLOGY AND EQUIPMENT PURCHASE
7 AND MANAGEMENT.—A requirement that, within 2
8 years of the date of issuance by the Secretary of an
9 interim final standard, each health care employer
10 shall purchase, use, maintain, and make accessible
11 to health care workers, such safe patient handling
12 equipment, technology, and accessories as the Sec-
13 retary determines appropriate.

14 (3) HEALTH CARE WORKER PARTICIPATION.—A
15 requirement that each health care employer shall ob-
16 tain input from health care workers, to include di-
17 rect care registered nurses, health care workers,
18 their representatives, and their collective bargaining
19 agents, in developing and implementing the safe pa-
20 tient handling, mobility, and injury prevention pro-
21 gram, including training and education and the pur-
22 chase of technology and equipment and necessary
23 accessories.

24 (4) DATA TRACKING AND REVIEW.—A require-
25 ment that each health care employer shall establish

1 a review program to analyze data relevant to the im-
2 plementation of the employers' safe patient handling,
3 mobility, and injury prevention program, and shall
4 account for circumstances where safe patient han-
5 dling technology or equipment were not utilized in
6 accordance with the health care employers' safe pa-
7 tient handling, mobility, and injury prevention
8 standard. Each health care employer shall upon re-
9 quest, make available their findings and data used
10 in such review, to health care workers, their rep-
11 resentatives, their collective bargaining agents, and
12 the Secretary or other Federal agency. Each health
13 care employer shall maintain the data and findings
14 from their review for at least 5 years

15 (5) INCORPORATION OF TECHNOLOGY INTO FA-
16 CILITIES.—A requirement that each health care em-
17 ployer shall consider the feasibility of incorporating
18 safe patient handling technology as part of process
19 of new facility design and construction, or facility re-
20 modeling.

21 (6) EDUCATION AND TRAINING.—A require-
22 ment that each health care employer shall train
23 health care workers on safe patient handling, mobil-
24 ity, and injury prevention policies, technology, equip-
25 ment, and devices, initially, and on a continuing an-

1 nual basis, and as necessary. Such training shall
2 prepare health care workers, to identify, assess, and
3 control musculoskeletal hazards of a general nature,
4 and those specific to particular patient care areas,
5 and shall be conducted by an individual with knowl-
6 edge in the subject matter, and delivered, at least in
7 part, in an interactive simulated point-of-care train-
8 ing and hands-on format that reflects the specific
9 demands of a health care workers' duties.

10 (7) NOTICE OF SAFE PATIENT HANDLING AND
11 RIGHTS UNDER THIS ACT.—A requirement that each
12 health care employer shall post a uniform notice in
13 a form specified by the Secretary that—

14 (A) explains the safe patient handling, mo-
15 bility, and injury prevention standard;

16 (B) includes information regarding safe
17 patient handling, mobility, and injury preven-
18 tion policies and training;

19 (C) explains procedures to report patient
20 handling-related injuries; and

21 (D) explains health care workers' rights
22 under this Act, including any whistleblower pro-
23 tections.

24 (8) ANNUAL EVALUATION.—A requirement that
25 each health care employer shall conduct an annual

1 written evaluation of the implementation of the safe
2 patient handling, mobility, and injury prevention
3 program, including handling procedures, selection of
4 technology, equipment, and engineering controls, as-
5 sessment of injuries, and new safe patient handling,
6 mobility, and injury prevention technology and de-
7 vices that have been developed. The evaluation shall
8 be conducted with the involvement of nurses, other
9 health care workers, their representatives, and their
10 collective bargaining agents, and their input shall be
11 documented in the evaluation. Health care employers
12 shall take corrective action as recommended in the
13 written evaluation.

14 (9) RIGHT TO REFUSE UNSAFE ASSIGNMENT.—
15 A requirement that each health care employer shall
16 provide procedures under which a health care worker
17 or employee may refuse to perform the employee's
18 duties if the employee has a reasonable apprehension
19 that performing such duties would violate the safe
20 patient handling, mobility, and injury prevention
21 standard, and would result in injury or impairment
22 of health to the health care worker, other health
23 care workers, or patients. Where practicable, the
24 health care worker must have communicated the
25 health or safety concern to the health care employer

1 and have not been able to obtain a correction of the
2 violation.

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

9 **SEC. 3. APPLICATION OF SAFE PATIENT HANDLING, MOBIL-**
10 **ITY, AND INJURY PREVENTION STANDARD TO**
11 **FACILITIES RECEIVING MEDICARE AND MED-**
12 **ICAID FUNDS.**

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

15 (1) in subsection (a)(1)(V), by inserting “and
16 safe patient handling, mobility, and injury preven-
17 tion standard (as initially promulgated under section
18 2 of the Nurse and Health Care Worker Protection
19 Act of 2015)” before the period at the end; and

20 (2) in subsection (b)(4)—

21 (A) in subparagraph (A), by inserting
22 “and the safe patient handling, mobility, and
23 injury prevention standard” after “Bloodborne
24 Pathogens standard”; and

1 (B) in subparagraph (B), inserting “or the
2 safe patient handling, mobility, and injury pre-
3 vention standard” after “Bloodborne Pathogens
4 standard”.

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

10 **SEC. 4. NONPREEMPTION.**

11 (a) EFFECT ON OTHER LAWS.—Nothing in this Act
12 shall be construed to—

13 (1) preempt any law, rule, or regulation of a
14 State or political subdivision of a State, unless such
15 law, rule, or regulation is in conflict with this Act
16 or a regulation or order issued under this Act;

17 (2) impair or diminish in any way the authority
18 of any State to enact and enforce any law which pro-
19 vides equivalent or greater protections for employees
20 engaging in conduct protected under this Act;

21 (3) curtail or limit in any way the right of peo-
22 ple with disabilities under the Americans with Dis-
23 abilities Act (42 12101 et seq.) or section 504 of the
24 Rehabilitation Act of 1973 (29 U.S.C. 794) to those
25 reasonable modifications needed to receive equal ac-

1 cess to health care, including the requirement that
2 health care employees give priority consideration to
3 the lifting, movement, or transfer needs and pref-
4 erences of people with disabilities; or

5 (4) curtail or limit in any way consideration as
6 an expenditure to acquire or modify equipment for
7 use by or to benefit individuals with disabilities that
8 is specified in section 44 of the Internal Revenue
9 Code of 1986, which is available to eligible small
10 businesses.

11 (b) RIGHTS RETAINED BY HEALTH CARE WORK-
12 ERS.—Nothing in this Act shall be construed to diminish
13 the rights, privileges, or remedies of any health care work-
14 er or employee under any Federal or State law, or under
15 any collective bargaining agreement.

16 **SEC. 5. DEFINITIONS.**

17 For purposes of this Act:

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

24 (2) EMPLOYEE.—The term “employee” means
25 any individual employed by a health care employer,

1 to include health care workers, as well as employees
2 who do not qualify as health care workers, including
3 independent contractors.

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

7 (4) HANDLING.—The term “handling” includes
8 actions such as lifting, transferring, repositioning,
9 mobilizing, moving, or any other action involving the
10 physical movement, manipulation, or support of a
11 patient by a health care worker, or any direct pa-
12 tient care action which presents a risk of musculo-
13 skeletal injury.

14 (5) HEALTH CARE EMPLOYER.—The term
15 “health care employer” means an outpatient health
16 care facility, hospital, nursing home, home health
17 care agency, social assistance facility or program,
18 hospice, federally qualified health center, nurse man-
19 aged health center, rural health clinic or rehabilita-
20 tive center, or any similar health care facility that
21 employs direct-care registered nurses or other health
22 care workers.

23 (6) HEALTH CARE WORKER.—The term “health
24 care worker” means an individual who has been as-
25 signed by a health care employer to engage in pa-

1 tient handling, including direct-care registered
2 nurses, independent contractors, or individuals who
3 perform the duties of health care workers.

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