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September 26, 2006

To amend the **Occupational Safety** and Health Act of 1970 to reduce injuries to patients, direct-care registered nurses, and other health care providers by establishing a safe patient handling standard.

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To amend the **Occupational Safety** and Health Act of 1970 to reduce injuries to patients, direct-care registered nurses, and other health care providers by establishing a safe patient handling standard.

IN THE HOUSE OF REPRESENTATIVES

September 26, 2006

Mr. CONYERS introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committee on Energy and Commerce, 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

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A BILL

To amend the **Occupational Safety** and Health Act of 1970 to reduce injuries to patients, direct-care registered nurses, and other health care providers by establishing a safe patient handling standard.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; FINDINGS.

(a) Short Title-

This Act may be cited as the 'Nurse And Patient Safety & Protection Act of 2006'.

(b) Findings- Congress finds the following:

(1) Direct-care registered nurses rank 10th among all occupations for musculoskeletal disorders, sustaining injuries at a higher rate than laborers, movers, and truck drivers. In 2004, nurses sustained 8,800 musculoskeletal disorders, most of which (over 7,000) were back injuries. The leading cause of these injuries in health care are the result of patient lifting, transferring, and repositioning injuries.

(2) The physical demands of the nursing profession lead many nurses to leave the profession. Fifty two percent of nurses complain of chronic back pain and 38 percent suffer from pain severe enough to require leave from work. Many nurses and other health care providers suffering back injury do not return to work.

(3) Patients are not at optimum levels of safety while being lifted, transferred, or repositioned manually. Mechanical lift programs can substantially reduce skin tears suffered by patients, allowing patients a safer means to progress through their care.

(4) The development of assistive patient handling equipment and devices has essentially rendered the act of strict manual patient handling unnecessary as a function of nursing care.

(5) Application of assistive patient handling technology fulfills an ergonomic approach within the nursing practice by designing and fitting the job or workplace to match the capabilities and limitations of the human body.

(6) A growing number of health care facilities have incorporated patient handling technology and have reported positive results. Injuries among nursing staff have dramatically declined since implementing patient handling equipment and devices. As a result, the number of lost work days due to injury and staff turnover has declined. Cost-benefit analyses have also shown that assistive patient handling technology successfully reduces workers' compensation costs for musculoskeletal disorders.

(7) Establishing a safe patient handling standard for direct-care registered nurses and other health care providers is a critical component in increasing patient safety, protecting nurses, and addressing the nursing shortage.

SEC. 2. FEDERAL SAFE PATIENT HANDLING STANDARD.

Not later than 1 year after the date of the enactment of this title, the Secretary of Labor, acting through the Director of **Occupational Safety and Health Administration**, shall establish a Federal Safe Patient Handling Standard to prevent musculoskeletal disorders for direct-care registered nurses and other health care providers working in health care facilities. This standard shall require the elimination of manual lifting of patients by direct-care registered nurses and other health care providers, through the use of mechanical devices, except during a declared state of emergency. The standard shall include a musculoskeletal injury prevention plan, which will include hazard identification and risk assessments in relation to patient care duties and patient handling. The standard shall require:

(1) all health care facilities comply with the standard;

(2) health care facilities to purchase, use, and maintain safe lift mechanical devices;

(3) input from direct-care registered nurses and organizations representing direct-care registered nurses in implementing the standard;

(4) a program to identify problems and solutions regarding safe patient handling;

(5) a system to report, track, and analyze trends in injuries, as well as make injury data available to the public;

(6) training for staff on safe patient handling policies, equipment and devices at least on an annual basis. Training will also include hazard identification, assessment and control of musculoskeletal hazards in patient care areas, this would include interactive classroom based and hands on training by a knowledgeable person or staff; and

(7) annual evaluations of safe patient handling efforts, as well as new technology, handling procedures, and engineering controls. Documentation of this process shall include equipment selection and evaluation.

SEC. 3. REQUIREMENT FOR HEALTH CARE FACILITIES.

(a) Safe Patient Handling Plan-

In accordance with the standard required under section 2, and not later than 6 months after such standard is published, health care facilities shall develop and implement a safe patient handling plan that--

(1) provides adequate, appropriate, and quality delivery of health care services that protects patient safety and prevents musculoskeletal disorders for direct-care registered nurses and other health care providers;

(2) is consistent with the requirements of the Federal Safe Patient Handling Standard (as established in section 2);

(3) provides for input by direct-care registered nurses and organizations representing direct-care registered nurses in implementing the plan; and

(4) ensures that safe lifting mechanical devices shall only be used by direct care registered nurses and other health care providers.

(b) Posting, Records, and Auditing-

(1) POSTING REQUIREMENTS-

Not later than 6 months after the standard required under section 2 is published, a health care facility shall post, in each unit of the facility, a uniform notice in a form specified by the Secretary in regulation that--

(A) explains the Federal Safe Patient Handling Standard issued under section 2;

(B) includes information regarding safe patient handling policies and training; and

(C) explains procedure to report patient handling-related injuries.

(2) AUDITS-

The Secretary shall require the **Occupational Safety and Health Administration** to conduct unscheduled audits to ensure--

(A) implementation of the safe patient handling plan in accordance with this title; and

(B) compliance with reporting and reviewing findings for continual improvements to the safe patient handling plan.

SEC. 4. PROTECTION OF DIRECT-CARE REGISTERED NURSES AND OTHER INDIVIDUALS.

(a) Refusal of Assignment- A direct-care registered nurse or other health care provider may refuse to accept an assignment in a health care facility if--

(1) the assignment would violate the standard established under section 2; or

(2) the direct-care registered nurse or other health care provider is not prepared by education, training, or experience to fulfill the assignment without compromising the safety of any patient or jeopardizing the license of the nurse.

(b) Retaliation for Refusal of Assignment Barred-

(1) NO DISCHARGE, DISCRIMINATION, OR RETALIATION- No health care facility shall discharge, discriminate, or retaliate in any manner with respect to any aspect of employment, including discharge, promotion, compensation, or terms, conditions, or privileges of employment, against a direct-care registered nurse or other health care provider based on his or her refusal of a work assignment under subsection (a).

(2) NO FILING OF COMPLAINT- No health care facility shall file a complaint or a report against a direct-care registered nurse or other health care provider with the appropriate State professional disciplinary agency because of his or her refusal of a work assignment under subsection (a).

(c) Complaint to Secretary- A direct-care registered nurse, health care provider, or other individual may file a complaint with the Secretary against a health care facility that violates this Act or a standard established under this Act. For any complaint filed, the Secretary shall--

(1) receive and investigate the complaint;

(2) determine whether a violation of this Act as alleged in the complaint has occurred; and

(3) if such a violation has occurred, issue an order that the complaining direct-care registered nurse, health care provider, or other individual shall not suffer any retaliation under subsection (b) or under subsection (d).

(d) Whistleblower Protection-

(1) RETALIATION BARRED- A health care facility shall not discriminate or retaliate in any manner with respect to any aspect of employment, including hiring,

discharge, promotion, compensation, or terms, conditions, or privileges of employment against any individual who in good faith, individually or in conjunction with another person or persons--

(A) reports a violation or a suspected violation of this Act or the standard established under this Act to the Secretary, a public regulatory agency, a private accreditation body, or the management personnel of the health care facility;

(B) initiates, cooperates, or otherwise participates in an investigation or proceeding brought by the Secretary, a public regulatory agency, or a private accreditation body concerning matters covered by this Act; or

(C) informs or discusses with other individuals or with representatives of health care facility employees a violation or suspected violation of this Act.

(2) GOOD FAITH DEFINED-

For purposes of this subsection, an individual shall be deemed to be acting in good faith if the individual reasonably believes--

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

(B) a violation of this Act or the standard established under this Act has occurred or may occur.

(e) Cause of Action- Any direct-care registered nurse or other health care provider who has been discharged, discriminated, or retaliated against in violation of subsection (b)(1) or (d), or against whom a complaint has been filed in violation of subsection (b)(2), may bring a cause of action in a United States district court. A direct-care registered nurse or other health care provider who prevails on the cause of action shall be entitled to one or more of the following:

(1) Reinstatement.

(2) Reimbursement of lost wages, compensation, and benefits.

(3) Attorneys' fees.

(4) Court costs.

(5) Other damages.

(f) Notice-

A health care facility shall include in the notice required under section 3(b) an explanation of the rights of direct-care registered nurses, health care providers, and other individuals under this section and a statement that a direct-care registered nurse, health care provider, or other individual may file a complaint with the Secretary against a health care facility that violates the standard issued under section 2, including instructions for how to file such a complaint.

SEC. 5. DEFINITIONS.

For purposes of this Act:

(1) DIRECT-CARE REGISTERED NURSE-

The term 'direct care registered nurse' means an individual who has been granted a license by at least 1 State to practice as a registered nurse and who provides bedside care or outpatient services for

r 1 or more patients.

(2) HEALTH CARE PROVIDER-

The term 'health care provider' means any person required by State or Federal laws or regulations to be licensed, registered, or certified to provide health care services, and being either so licensed, registered, or certified, or exempted from such requirement by other statute or regulation.

(3) EMPLOYMENT-

The term 'employment' includes the provision of services under a contract or other arrangement.

(4) HEALTH CARE FACILITY-

The term 'health care facility' means an outpatient health care facility, hospital, nursing home, home health care agency, hospice, federally qualified health center, nurse managed health center, rural health clinic, or any similar healthcare facility that employs direct-care registered nurses.

(5) DECLARED STATE OF EMERGENCY-

The term 'declared state of emergency' means an officially designated state of emergency that has been declared by the Federal Government or the head of the appropriate State or local governmental agency having authority to declare that the State, county, municipality, or locality is in a state of emergency, but does not include a state of emergency that results from a labor dispute in the health care industry or consistent under staffing.

SEC. 6. FINANCIAL ASSISTANCE TO NEEDY HEALTH CARE FACILITIES IN THE PURCHASE OF SAFE PATIENT HANDLING EQUIPMENT.

(a) In General-

The Secretary of Health and Human Services shall establish a grant program that provides financial assistance to cover some or all of the costs of purchasing safe patient handling equipment for health care facilities, outpatient facilities, and that--

(1) require the use of such equipment in order to comply with the standards established under section 2; but

(2) demonstrate the financial inability to otherwise afford the purchase of such equipment are provided grants for some or all of the cost of purchasing such equipment.

(b) Application-

No financial assistance shall be provided under this section except pursuant to an application made to the Secretary in such form and manner as the Secretary shall specify. The Secretary shall establish a fair standard whereby the facility must clearly demonstrate true financial need in order to establish eligibility for the grant program.

(c) Authorization of Appropriations-

There are authorized to be appropriated for financial assistance under this section \$50,000,000, which shall remain