

Nursing Home Minimum Staffing Bill Planned; NEED Act Talks Progressing

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Nursing homes would be required to maintain minimum nurse staffing levels of 4.1 to 4.85 hours per patient per day under legislation to be introduced by Rep. Henry Waxman (D-Calif.) May 9.

The 'Nursing Home Staffing Improvement Act of 2002' would establish the first-ever federal mandate for nursing home staffing levels. The specific standards are based on a Centers for Medicare and Medicaid Services report on nurse-patient ratios that was presented to Congress in March. The agency determined that approximately 90% of nursing homes are understaffed, according to the bill's sponsors. A CMS spokesperson said the agency is in the process of posting the report on its web site.

HHS Secretary Tommy Thompson explained the Administration's rationale for declining to implement the findings of the study in a March 19 letter to House and Senate leaders. The letter notes that 'the department has concluded that these studies are insufficient for determining the appropriateness of staffing ratios.' Thompson explained that available nursing home staffing data are not reliable, that the study does not adequately account for the current shortage of nurses and that factors such as the relative experience of nurses were not considered. To launch the new bill, Democratic Reps. Janice Schakowksy (Ill.), Brad Carson (Okla.) and Eleanor Holmes-Norton (D.C.) will hold a press conference May 9 along with representatives of the National Committee to Preserve Social Security and Medicare and the National Citizens Coalition for Nursing Home Reform.

The measure breaks down the staffing requirements by type of caregiver. Patients would be entitled to 0.55 to 0.75 hours per day with a registered nurse, 1.15 to 1.3 hours per day either with an RN, licensed practical nurse or licensed vocational nurse and 2.4 to 2.8 hours per day with a certified nurse aide. Different standards would be set for day, evening and night shifts.

To account for the staffing minimums, Medicaid reimbursements would be adjusted under the bill. In addition to a 1.5% increase in the federal medical assistance percentage for health care services beginning in fiscal year 2003, the legislation proposes to reinstate the 'Boren Amendment' that guaranteed 'reasonable and adequate' Medicaid payments to nursing homes until its repeal in 1997.

HHS would be obliged to devise case-mix-adjusted staffing ratios within one year of enactment of the bill. The ratios then would be applied to nursing homes within two years, but the department could choose to postpone compliance via five-year phase-in period if necessary. Waxman's bill has yet to garner any Republican support or a Senate sponsor, but a spokesperson for the NCPSSM said supporters were '?% sure' that a Senate sponsor soon would be found.

Bipartisan efforts on another nursing bill have recently have ramped up, with staff-level pre-conference talks on the 'Nurse Reinvestment Act' (HR 3487, S 1864) beginning May 6. Both houses passed versions of the bill on Dec. 20, but a wide gulf between the bills exists. The Senate version includes provisions of the Nursing Employment and Education Development Act (S 721) and measures sponsored by Sens. Hilary Clinton (D-N.Y.) and Joseph Lieberman (D-Conn.) to establish 'magnet' facilities for nursing.

NEED Act author Sens. Tim Hutchinson (R-Ark.) and Reinvestment Act author Sen. Barbara Mikulski (D-Md.) are expecting passage of a conference report before Congress breaks for July 4 recess. A Hutchinson aide conceded that House-Senate negotiations are at 'a nascent stage' but said that the Arkansas Republican is confident they will be fruitful.

Conferees have not been named, but Hutchinson's aide noted that Mikulski, Clinton and Rep. Lois Capps (D-Calif.) have been represented during staff discussions. Other key members involved include Sens. Edward Kennedy (D-Mass.), John Kerry (D-Mass.), Jim Jeffords (I-Vt.), Judd Gregg (R-N.H.) and Bill Frist (R-Tenn.), as well as Rep. Michael Bilirakis (R-Fla.).

Kerry and Reps. Pete Stark (D-Calif.), John Conyers (D-Mich.) and Steven LaTourette (R-Ohio) launched a re-invigorated campaign to push the 'Safe Nursing and Patient Care Act' (HR 3238, S 1686) at a rally held by the Nurse Alliance of the Service Employees International Union May 8. The bill seeks to forbid mandatory overtime for nurses except during emergencies.

A Kerry spokesperson said there likely will be a hearing on the bill before mid-July and that Kerry and Kennedy have begun pressing for action. A Stark aide commented that 'momentum is definitely building behind this bill' but acknowledged that Democrats 'haven't received any sort of a commitment' from the Republican leadership to begin processing the measure in the House.