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HOW THE EDUCATIONAL FUNDING PROVISIONS OF THE PATIENT PROTECTION AND AFFORDABLE CARE ACT WILL AFFECT THE NURSING SHORTAGE IN THE UNITED STATES

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I. INTRODUCTION

The United States spends more on health care than any other industrialized nation in the world.¹ From 1969 to 2006, total U.S. health care spending rose from \$900 billion to \$2 trillion;² in 2010, it accounted for 17.9% of the nation's gross domestic product (GDP).³ This increase in health care spending reflects the U.S. population's overall growth, collective health, and rapid rate of aging,⁴ as well as advancements in medical technology, individual income gains, and improved health insurance coverage.⁵

Despite this increase in health care spending, the United States has fallen short of meeting its citizens' health care needs. As a stark example, even though the United States spent more than \$2.5 billion on health care in 2010,⁶ as many as forty-eight million Americans—comprising 18.2% of the population—were uninsured at that time.⁷ Substantial systemic changes are needed to solve these health care problems, and soon; economists agree that the current rate of growth in U.S. health care spending cannot be sustained.⁸

¹ PETER I. BUERHAUS ET AL., *THE FUTURE OF THE NURSING WORKFORCE IN THE UNITED STATES: DATA, TRENDS, AND IMPLICATIONS* 25 (2009). Using available data from 2012, the Organization for Economic Co-operation and Development (OECD) found that the United States spent 16.9% of its GDP on health care. By contrast, its peer countries—including Japan, Belgium, Canada, Denmark, Austria, Germany, Switzerland, and France—spent between 10.3% and 11.6% of their GDPs on health care. *See Health Resources*, OECD DATA, <https://data.oecd.org/healthres/health-spending.htm> (last visited Apr. 23, 2015).

² BUERHAUS ET AL., *supra* note 1, at 26.

³ NAT'L CTR. FOR HEALTH STATISTICS, *HEALTH, UNITED STATES, 2012* 320 (2012) [hereinafter HUS 2012], available at <http://www.cdc.gov/nchs/data/hus/hus12.pdf>. In 2010, health care expenditures in the United States amounted to more than \$2,593 billion. *Id.*

⁴ BUERHAUS ET AL., *supra* note 1, at 59.

⁵ Julie Topoleski, *Federal Spending on the Government's Major Health Care Programs Is Projected to Rise Substantially Relative to GDP*, CONG. BUDGET OFFICE BLOG (Sept. 18, 2013), <http://www.cbo.gov/publication/44582>.

⁶ HUS 2012, *supra* note 3, at 320.

⁷ *See id.* at 351.

⁸ Topoleski, *supra* note 5 (noting that “[t]he growth of health care spending cannot exceed economic growth indefinitely, because if it did, total spending on health care would eventually account for all of the country's economic output—an impossible outcome.”).

On March 23, 2010, Congress passed the Patient Protection and Affordable Care Act (the Affordable Care Act, or Act) to address systemic problems with the U.S. health care system.⁹ Commonly referred to as “Obamacare,”¹⁰ the Act was intended to “achieve universal medical insurance coverage for all Americans and lower[] the costs of health care nationally.”¹¹ The Act is extensive and consists of “10 titles [that] stretch over 900 pages and contain hundreds of provisions.”¹² Some of the Act’s provisions were well-publicized, such as the controversial “individual mandate” that requires all U.S. citizens to purchase health insurance or pay a penalty.¹³ Other provisions, like the individual and institutional grants for nursing education and workforce development,¹⁴ passed with much less fanfare.¹⁵

The legal, social, and political implications of the Affordable Care Act are large in number and wide in scope, but this Comment will focus on one of its smaller sections: the funding provisions for nursing education and workforce development. Regardless of the need to reduce health care spending, investing in nursing education now will be worth the future dividends. The demand for health care and nursing services will continue to increase nationwide as the Baby Boomer generation ages,¹⁶ and as health insurance coverage is extended to more Americans under the Affordable Care Act.¹⁷ Meanwhile, the nationwide shortage of registered nurses is projected to grow in the next decade.¹⁸ Coupled with the limited capacity of nursing institutions to produce future nurses and nursing educators, serious concerns exist that the United States will soon have too few nurses to meet its citizens’ needs.

⁹ See Patient Protection and Affordable Care Act, Pub. L. No. 111–148, 124 Stat. 119 (2010) (codified as amended at 42 U.S.C. §§ 296–98 (2012)).

¹⁰ See, e.g., *ObamaCare Facts: Facts on the Affordable Care Act*, OBAMACARE FACTS, <http://obamacarefacts.com/obamacare-facts/> (last visited Apr. 23, 2015).

¹¹ Douglas A. Bass, *Validity of the Minimum Essential Medical Insurance Coverage, or “Individual Mandate,” Provision of § 1501 of the Patient Protection and Affordable Care Act of 2010*, Pub. L. No. 111–148, 124 Stat. 119, 60 A.L.R. FED. 2d 1 (2011). The extension of health insurance will be achieved through “new mandates for individuals and employers, subsidies for people who can’t afford coverage on their own, consumer-friendly rules clamped on insurers, tax breaks and marketplaces to shop for health plans.” Marcia Frellick, *Health Care Reform Bill: What Nurses Need to Know*, NURSE.COM (Mar. 30, 2010), <http://news.nurse.com/article/20100330/NATIONAL01/104050041/0/frontpage#.UoQb3Cgf-5c>.

¹² Nat’l Fed’n of Indep. Bus. v. Sebelius, 132 S. Ct. 2566, 2580 (2012).

¹³ 26 U.S.C. § 5000A(a)–(b) (2012).

¹⁴ Patient Protection and Affordable Care Act §§ 5202–5206, 5308–5312, 5404 (codified as amended at 42 U.S.C. §§ 296–98 (2012)).

¹⁵ Michelle Andrews, *In All Those Pages, a Surprise or Two*, N.Y. TIMES (Mar. 29, 2010), <http://www.nytimes.com/2010/03/30/health/30fine.html>.

¹⁶ See BUERHAUS ET AL., *supra* note 1, at 57 (noting that “[i]t is society’s demand for health care that creates the demand for healthcare institutions and the people they employ, including [nurses], who possess unique knowledge and skills that can satisfy this demand.”).

¹⁷ According to a report from the U.S. Department of Health and Human Services, approximately 16.4 million adults have become insured following the passage of the Affordable Care Act. U.S. DEPT. OF HEALTH & HUMAN SERVS., *Health Insurance Coverage and the Affordable Care Act*, May 5, 2015, available at <https://aspe.hhs.gov/pdf-report/health-insurance-coverage-and-affordable-care-act>. However, the Act had been expected to extend insurance coverage to approximately twenty-six million Americans. CONG. BUDGET OFFICE, *THE BUDGET AND ECONOMIC OUTLOOK: FISCAL YEARS 2013 TO 2023* 61 (2013), available at <http://www.cbo.gov/sites/default/files/cbofiles/attachments/43907-BudgetOutlook.pdf>.

¹⁸ See, e.g., *Nursing Shortage*, AM. ASS’N OF COLLEGES OF NURSING (Apr. 24, 2014), <http://www.aacn.nche.edu/media-relations/fact-sheets/nursing-shortage>.

By increasing funding for nursing students and educational institutions now, however, the federal government may be able to help relieve the nursing shortage while also protecting patients. Through its long-standing legislative funding efforts for nursing education, the federal government has recognized that nurses are essential players in the U.S. health care system.¹⁹ Having a sufficient number of nurses to care for Americans is critical for the health of the nation. Because of the increased demand for nurses in the near future and the need to expand nursing education to fill those jobs, this Comment seeks to analyze how the Affordable Care Act's funding provisions for nursing education and workforce development will impact the U.S. nursing shortage.²⁰

II. BACKGROUND

A. *The Nursing Workforce in the United States*

With 2.8 million members,²¹ the nursing profession represents the largest group of health care providers in the United States.²² While members of the nursing profession share one general title, the word “nurse” does not accurately describe the complex and varied roles these men and women occupy in the U.S. health care system. Even experienced nursing researchers have noted the challenges inherent in “providing a comprehensive depiction of the vital importance of these health care providers.”²³ Moreover, nurses throughout the United States care for patients from all walks of life, and in “thousands of settings,” by “promot[ing] the[ir] well-being . . . and protect[ing] them from unintended harm when the [health care] system falters or breaks down.”²⁴

Capturing nurses' exact job duties on paper can be difficult, but other attributes of the profession and its workforce can be easily described. For example, nurses predominantly work in hospitals, long-term care centers, physicians' offices, clinics, institutes of nursing education, and schools. They also serve in public health, home

¹⁹ See Charles Alexandre & Greer Glazer, *Legislative: The American Recovery and Reinvestment Act of 2009: What's in it for Nursing?*, 14 ONLINE J. OF ISSUES IN NURSING 1 (2009) (writing that “[t]he value of nursing to the overall success of the U.S. health care system has long been recognized by the federal government” and describing legislative funding initiatives for nursing education dating as far back as World War II.).

²⁰ In discussing the Affordable Care Act's impact on nursing education and workforce development, this Comment also refers to the Health Care and Education Reconciliation Act (HCERA), Pub. L. No. 111-152, 124 Stat. 1029 (2010). HCERA reconciled provisions in the Affordable Care Act, including some of the federal government's funding programs for nursing education and workforce development. Both the Affordable Care Act and HCERA amended existing funding for nursing which had been authorized under Title VIII of the Public Health Service Act, and that is currently administered by the Bureau of Health and Human Services under the authority of the U.S. Department of Health and Human Services. *Id.*

²¹ Nat'l Ctr. For Health Workforce Analysis, *The U.S. Nursing Workforce: Trends in Supply and Education* vii (2013) [hereinafter U.S. Nursing Workforce].

²² Mary Jo Kreitzer et al., *Health Professions Education and Integrative Health Care*, 5 EXPLORE 212, 214 (2009).

²³ BUERHAUS ET AL., *supra* note 1, at 15 (noting that “[s]o much of what [nurses] do and accomplish is very difficult to measure, let alone describe”).

²⁴ *Id.*

health, and community health roles.²⁵ Nearly 85% of nurses are employed in urban or non-rural areas,²⁶ with the greatest per capita distributions of nurses existing in the Midwest and Northeast regions of the United States.²⁷

Moreover, the nursing workforce is predominantly white and female,²⁸ and the median age of nurses is forty-six.²⁹ The demographic breakdown of nurses in the United States has changed in recent years as men and racial and ethnic minorities elect to become nurses in greater numbers than those in previous years.³⁰ However, continued efforts to improve diversity, including the federal government's Nursing Workforce Diversity Grants,³¹ are necessary to ensure the profession adequately reflects the population that it serves, both now and in the future.³²

B. The Evolution of Nursing Education in the United States

In addition to changes in the racial and gender composition of its workforce, the nursing profession has seen substantial shifts in the educational composition of its members in recent decades.³³ During that time, the profession has rapidly evolved from a predominantly technical or vocational occupation—one in which students were trained in hospitals—to a professional discipline in which students may be trained at associate, baccalaureate, or graduate levels before entering practice.³⁴ While hospital-based training

²⁵ *Id.* at 26. HEALTH RES. & SERVS. ADMIN., THE REGISTERED NURSE POPULATION: FINDINGS FROM THE 2008 NATIONAL SAMPLE SURVEY OF REGISTERED NURSES 8-6 (2010), available at <http://bhpr.hrsa.gov/healthworkforce/rnsurveys/rnsurveyfinal.pdf> [hereinafter Registered Nurse Population].

²⁶ See U.S. NURSING WORKFORCE, *supra* note 21, at vii.

²⁷ *Id.* at 10. As the report noted, with regard to the discrepancies between regions with the highest and lowest per capita values of nurses, “national-level information masks substantial local-level differences.” *Id.* Other researchers have also noted that areas in the Southern and Western regions of the United States are likely to be most affected by the nursing shortage. See Steven P. Jurascheck et al., *United States Registered Nurse Workforce Report Card and Shortage Forecast*, 27 AM. J. MED. QUALITY 244, 241-49 (2012).

²⁸ BUERHAUS ET AL., *supra* note 1, at 33.

²⁹ REGISTERED NURSE POPULATION, *supra* note 25, at A-1. In 2008, 45% of nurses working were older than age fifty. See *id.*

³⁰ *Id.* at 9-7; MARIANNE R. JEFFREYS, TEACHING CULTURAL COMPETENCE IN NURSING AND HEALTH CARE 10-11 (2006).

³¹ 42 U.S.C. § 296(m) (2012); see also Health Res. & Servs. Admin., *Scholarships for Disadvantaged Students*, U.S. DEP'T OF HEALTH AND HUMAN SERVS., <http://bhpr.hrsa.gov/scholarshipsloans/programs/sds.html> (last visited Apr. 19, 2015).

³² See JEFFREYS, *supra* note 30, at 10. “The projected increase in immigration, globalization, and minority population [] has the potential to enrich the diversity of the nursing profession and to help meet the needs of an expanding culturally diverse society.” *Id.* at 13 (advocating for the implementation of “intensive recruitment efforts . . . partnered with concentrated efforts aimed at enhancing academic achievement, professional integration, satisfaction, retention, graduation” to effectively recruit students from diverse, nontraditional populations, and to assist them in completing the education required to become a nursing professional.); see also PATRICIA BENNER ET AL., EDUCATING NURSES: A CALL FOR RADICAL TRANSFORMATION 217-18 (2010) (describing the nursing profession's lack of diversity and its concurrent need to serve an increasingly diverse population with varied “concerns, attitudes, and values that patients and their families bring to bear on their health.”).

³³ See Linda H. Aiken et al., *Education Policy Initiatives to Address the Nurse Shortage in the United States*, 28 HEALTH AFF. 646 (2009).

³⁴ *Id.* at 646–56, 647–48. In the past, most nurses were trained in diploma programs; hospital-sponsored programs now account for less than five percent of new graduates. Close to two-thirds of nurses now

programs called “diploma programs” are still an available educational option for nursing students, the vast majority of nurses entering practice today are educated at the associate or baccalaureate level.³⁵

Associate’s degree programs, which are offered by community colleges across the country, currently produce approximately 60% of graduates from nursing schools,³⁶ and have been producing more graduates than any other type of program since 1970.³⁷ Associate’s degree programs typically are popular because, at least in theory, they allow nursing students to enter practice more quickly and for less money than it would cost to pursue a bachelor’s or master’s level program.³⁸ In reality, however, nursing students seeking associate’s degrees need to take prerequisite courses before enrolling in nursing courses; as a result, nurses with associate’s degrees often spend a similar amount of time obtaining their educations as nurses with bachelor’s degrees.³⁹ As a result, associate’s level nursing students often spend the same, or even more, time and money as their bachelor’s level counterparts to obtain their degrees.⁴⁰

Research demonstrates that greater educational achievement among nurses is correlated with improved levels of patient safety and better health outcomes.⁴¹ Also, because many nursing students spend the same amount of time to receive less education than others, many nursing leaders, quality control advocates, and health care stakeholders⁴² support making a bachelor’s degree the minimum requirement for entry

receive their initial nursing education in associate degree programs . . . a little over 30 percent of nurses receive their . . . bachelor of science in nursing (BSN) degree. *Id.* at 647-48.

³⁵ BUERHAUS ET AL., *supra* note 1, at 40–41 (noting that as of 2004, associate-prepared nurses constituted 58% of the nursing workforce, baccalaureate-prepared nurses constituted 39% of the nursing workforce, and diploma-prepared nurses accounted for “just over 2%” of new nurses entering the workforce). Of the small number of diploma and practical training programs that still exist, the number of such programs are located in Missouri, New Jersey, New York, Ohio, and Pennsylvania. Aiken et al., *supra* note 33, at 653. Moreover, regardless of the pathway a person takes to become a nurse, he or she must pass a national competency exam (the NCLEX-RN) before entering practice. *See, e.g., The Impact of Education on Nursing Practice*, AM. ASS’N OF COLLEGES OF NURSING (last updated Jan. 21, 2014), <http://www.aacn.nche.edu/media-relations/fact-sheets/impact-of-education> [hereinafter Impact of Education].

³⁶ BENNER ET AL., *supra* note 32, at 34–35.

³⁷ BUERHAUS ET AL., *supra* note 1, at 126.

³⁸ *See* BENNER ET AL., *supra* note 32, at 35; *see also* BUERHAUS ET AL., *supra* note 1, at 144–45.

³⁹ *See* BENNER ET AL., *supra* note 32, at 35 (noting that associate’s degree candidates “reported spending on average nineteen to twenty-four months in [associate’s degree] programs, exclusive of the time they might spend on school or program prerequisites,” and in another recent study, associate’s degree nursing students reported spending “an average of 3.69 years in an [associate’s degree] program.”).

⁴⁰ *Id.* (writing that “[some] programs are so constrained by [instructor] shortages . . . that students may need as many as four to six years to earn [an associate’s] degree.”).

⁴¹ *Creating a More Highly Qualified Nursing Workforce*, AM. ASS’N OF COLLEGES OF NURSING (last updated Sept. 17, 2014), <http://www.aacn.nche.edu/media-relations/fact-sheets/nursing-workforce> [hereinafter Qualified Nursing Workforce] (collecting research supporting the connection between greater educational preparation for nurses and improved patient safety and outcomes). The traditionally four-year Bachelor of Science in Nursing combines “courses in the social sciences and liberal arts in addition to clinical coursework and skill development.” BUERHAUS ET AL., *supra* note 1, at 124.

⁴² The National Advisory Council on Nurse Education and Practice (NACNEP), the Institute of Medicine (IOM), the Robert Wood Johnson Foundation, and the Carnegie Foundation for the Advancement of Teaching have all endorsed and supported increased levels education for nurses. *See Impact of Education*, *supra* note 35.

into nursing practice.⁴³ While the drive for more comprehensive education for new nurses makes sense—particularly because of the substantial benefits it provides for patients⁴⁴—the movement conflicts with the immediately impending need for more nurses across the country. Moreover, patients cannot benefit from the advantages that better-educated nurses would bring to the health care system if, as it is now, an educational framework to prepare those nurses does not exist.

C. *The U.S. Nursing Shortage*

Since 1998, the current nursing shortage in the United States has created significant obstacles to the provision of safe and effective health care services for patients across the country.⁴⁵ Specific estimates of how many nurses will be needed to mitigate the shortage are difficult to calculate,⁴⁶ but nursing leaders, policymakers, health care stakeholders, and the general public have already devoted significant attention to the problem.⁴⁷ The shortage is expected to worsen drastically by 2020, with the number of nurses falling 36% short of the health care system’s total demand.⁴⁸ Major causes of the shortage include: (1) a deficit of nursing faculty, classrooms, and clinical space in graduate and undergraduate nursing programs,⁴⁹ (2) the retirement of nurses in the “Baby Boom” generation,⁵⁰ (3) low job satisfaction that causes nurses to leave the profession

⁴³ BENNER ET AL., *supra* note 32, at 216–17; *Qualified Nursing Workforce*, *supra* note 41 (collecting research indicating greater support for more extensive nursing education from both public and private sources).

⁴⁴ See, e.g., Ann Kutney-Lee, Douglas M. Sloane, & Linda H. Aiken, *An Increase in the Number of Nurses with Baccalaureate Degrees is Linked to Lower Rates of Postsurgery Mortality*, 32 HEALTH AFF. 5, 579–86, 583 (2013) (finding that “increases in a hospital’s percentage of nurses who held a baccalaureate degree in nursing were significantly associated with improvements . . . in rates of surgical patient mortality and failure to rescue.”). As patients’ medical conditions become more complicated in the future, greater nursing education and professional preparation will become even more important. See THE INSTITUTE OF MEDICINE, THE FUTURE OF NURSING: LEADING CHANGE, ADVANCING HEALTH I-55 (2011) (reporting that “[d]emands for a new kind of nurse have been . . . fueled, in part, by . . . a tremendous increase in the complexity and acuity of patient care in the hospital setting . . .”).

⁴⁵ Peter I. Buerhaus, *Current and Future State of the U.S. Nursing Workforce*, 30 J. AM. MED. ASS’N. 2422, 2422–24 (2008) (writing that “the nursing profession and others concerned with the health care delivery system face formidable challenges in overcoming the implications of ominous workforce projections.”); see also BUERHAUS ET AL., *supra* note 1 at 219 (noting how the rise of quality-based evaluation measures raised policymakers’ view of the nursing shortage from “a problem for the nurse labor market and hospitals to sort out . . .” to “a serious threat to the quality and safety of patient care provided in hospitals.”).

⁴⁶ BUERHAUS ET AL., *supra* note 1, at 188 (noting that “forecasts are uncertain” in light of potential future mitigating factors, including expansion of nursing schools’ capacities for greater enrollments).

⁴⁷ See *id.* at 219.

⁴⁸ NAT’L ADVISORY COUNCIL ON NURSING EDUC. AND PRACTICE, *The Impact of the Nursing Faculty Shortage On Nurse Education and Practice 2* (2010), <http://www.hrsa.gov/advisorycommittees/bhpradvisory/nacnep/reports/ninthreport.pdf> [hereinafter *Impact of Faculty Shortage*]. NACNEP reported that:

In 2000, the supply of registered nurses (RNs) fell short of the demand by 6%. That demand shortfall is expected to increase to 36% by 2020. In this time of massive health care need and efforts to reform the system of health care significantly, this critical reduction in frontline health professionals is exceedingly problematic. *Id.*

⁴⁹ *Nursing Shortage*, *supra* note 18; BUERHAUS ET AL., *supra* note 1, at 136–40.

⁵⁰ BUERHAUS ET AL., *supra* note 1, at 184 (noting that “[t]he growth in the total [nursing] workforce is projected to pause around 2019 . . . when [nurses] born in the 1950s who are retiring in great numbers will offset new entry into the workforce.”); Jurascheck et al., *supra* note 27, at 246.

prematurely,⁵¹ (4) the increased demand for health care services related to the rapid aging of the United States' population,⁵² (5) the Affordable Care Act's expansion of access to health care to many currently uninsured Americans,⁵³ and (6) economic pressures faced by nursing employers.⁵⁴

Although the nursing shortage is a reality, enrollment in U.S. nursing schools, which totaled more than 290,000 students in 2005, is at a historic high,⁵⁵ and the number of graduate nursing degrees awarded annually increased by 67.4% from 2007 to 2011.⁵⁶ Many students report choosing nursing as a career because of a personal desire to help others and promote social good.⁵⁷ Increasing interest in the profession also may be due to the relatively low time and educational commitment required to become a nurse relative to large numbers of available nursing jobs.⁵⁸ In any case, the Bureau of Labor Statistics estimates that during the next decade, nursing will continue to grow by 19%; the nursing profession is projected to add 526,800 jobs between 2012 and 2022,⁵⁹ faster than all other occupations.⁶⁰

Despite great potential for more individuals to become nurses in this burgeoning job market, multiple experts predict that the number of nurses available to fill open positions will decrease between 2020 and 2030 and leave hundreds of thousands of nursing jobs unfilled.⁶¹ Peter I. Buerhaus, a leading nursing researcher and economist, estimates that between 2020 and 2025, the United States will have an unfulfilled need for 300,000–500,000 nurses nationwide.⁶² Even if the shortage is within experts' more conservative estimates, it will be almost three times larger than all previous nursing shortages.⁶³

Given the magnitude of the potential impact of this shortage on the U.S. health care system, researchers have given the issue significant attention.⁶⁴ Many suggestions have

⁵¹ See *Nursing Shortage*, *supra* note 18 (noting inadequate staffing, high job stress, and high nurse turnover as major factors contributing to the nursing shortage); see also BUERHAUS ET AL., *supra* note 1, at 77 (writing that “[nurses] in hospitals frequently work overtime and night and weekend shifts and also treat seriously ill and injured patients, all of which can contribute to job stress and burnout.”).

⁵² Jurascheck et al., *supra* note 27, at 244–46 (noting that 40% of the current nursing workforce consists of nurses born in the “Baby Boom” generation who will likely retire in the next two decades); *Nursing Shortage*, *supra* note 18 (noting the increasing age of the U.S. population as a contributing factor to the nursing shortage).

⁵³ Jurascheck et al., *supra* note 27, at 246.

⁵⁴ *Id.*

⁵⁵ Aiken et al., *supra* note 33, at 647 (citing NAT'L LEAGUE FOR NURSING, NURSING DATA REVIEW: ACADEMIC YEAR 2004-2005 (New York: NLN, 2006)).

⁵⁶ U.S. NURSING WORKFORCE, *supra* note 21, at 49 (reporting that from 2007-2011, the number of master's degrees awarded annually grew from 15,182 to 24,311 and the number of doctoral degrees awarded increased from 653 to 2,196).

⁵⁷ See BUERHAUS ET AL., *supra* note 1, at 129–30 (citations omitted).

⁵⁸ See *id.* at 144–46.

⁵⁹ *Occupational Outlook Handbook*, BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR (Jan. 8, 2014), <http://www.bls.gov/ooh/healthcare/registered-nurses.htm>.

⁶⁰ *Id.*

⁶¹ Jurascheck et al., *supra* note 27 at 244–45.

⁶² BUERHAUS ET AL., *supra* note 1, at 188.

⁶³ Buerhaus, *supra* note 45, at 2423.

⁶⁴ See *Nursing Shortage*, *supra* note 18 (listing efforts and strategies taken or recommended by academic institutions, private companies, and state and federal governments to address the shortage).

been made on how to best address the shortage,⁶⁵ but no unified strategy has emerged to effectively deal with the problem.⁶⁶ Now, the nursing profession, the health care industry, and the U.S. government are all grappling with how to best address the shortage,⁶⁷ and concerns about the negative effects a worsening shortage would have on our health care system remain high.⁶⁸ Namely, without an adequate number of nurses, patients will face delays in gaining access to health care and a greater risk of potential harm caused by an inadequate number of nursing staff.⁶⁹

A successful approach to mitigating the current nursing shortage would preserve the number of readily available jobs for individuals who successfully complete their nursing educational requirements and also benefit patients across the nation.⁷⁰ Without an effective plan, it would be extremely difficult to increase the number of new nursing graduates by 40% (the number of additional nurses required to offset the negative effects of the nursing shortage for patients).⁷¹ Meeting such a high target seems impossible at this point. But for that reason, any effective strategy must include funding incentives that encourage potential nursing students to enroll in undergraduate programs while also encouraging practicing nurses to enroll in graduate programs and serve as teachers for new nursing students.

To its credit, the federal government has acknowledged the seriousness of the problem and committed additional funds to nursing workforce development under the Affordable Care Act.⁷² Specifically, the Act expands and improves undergraduate and graduate nursing students' access to individual and institutional loan programs.⁷³ Given the serious risks facing the nation's health care system as a result of the nursing

⁶⁵ *Id.*

⁶⁶ Aiken et al., *supra* note 33, at 654 (reporting that experts in “[n]ursing education and workforce planning lack a unified strategy to create a nursing workforce that is sufficient in numbers and educational mix to meet national health care needs.”); *see also* Jurascheck et al., *supra* note 27, at 248 (encouraging “[p]olicy makers and [health care] stakeholders . . . to move forward with the development of concrete national strategies to reduce shortages in regions of greatest need.”); *see also* Michael R. Bleich et al., *Analysis of the Nursing Workforce Crisis: A Call to Action*, 103 AM. J. OF NURSING 4, 66 (2003) (writing that “[l]ike forecasters interrupting television programming to warn of impending storms, national organizations, philanthropic foundations, labor and economics specialists, and the federal government have issued reports on the shortage of [nurses] in recent years.”). Bleich called for the development of a “collaborative solution by the federal government; national trade, professional, and regulatory associations; philanthropic organizations; and private-sector industries.” *Id.* at 73.

⁶⁷ *See Nursing Shortage*, *supra* note 18.

⁶⁸ *See Buerhaus*, *supra* note 45, at 2423 (writing that “the nursing profession and others concerned with the health care delivery system face formidable challenges in overcoming the implications of ominous workforce projections.”); *Nursing Shortage*, *supra* note 18.

⁶⁹ *E.g.*, Buerhaus, *supra* note 45, at 2423 (writing that “[f]or patients, the large and prolonged shortage has the potential to delay receiving care and [produce] an increased risk of experiencing adverse outcomes.”).

⁷⁰ *See Aiken et al.*, *supra* note 34, at 654 (writing that “[i]n these economic times, when jobs are scarce, it is shortsighted to allow attractive nursing jobs to go vacant when scores of prospective students are being turned away from nursing schools.”).

⁷¹ BUERHAUS ET AL., *supra* note 1, at 186.

⁷² *See Patient Protection and Affordable Care Act*, Pub. L. No. 111–148, 124 Stat. 119, §§ 5202–06, 5308–12, 5404 (2010) (codified as amended at 42 U.S.C. §§ 296–98 (2012)); Mary K. Wakefield, *Nurses and the Affordable Care Act*, 110 AM. J. OF NURSING 11, 11 (2010).

⁷³ *See Gloria J. McNeal*, *The Healthcare Reform Bill and its Impact on the Nursing Profession*, 21 ABNF J. 2, 38 (2010); Wakefield, *supra* note 72, at 11.

shortage,⁷⁴ this Comment seeks to evaluate the Affordable Care Act's funding provisions for nursing workforce development.⁷⁵ In doing so, this Comment recognizes the current tension between increasing nursing education requirements and meeting patients' need for more practicing nurses in the United States.

D. Important Considerations Regarding the U.S. Nursing Shortage

i. The Nursing Faculty Shortage Limits the Ability of the Nursing Profession to Generate More Practicing Nurses

Nursing educators are in high demand and limited supply, creating a nursing faculty shortage.⁷⁶ Among current nursing faculty members, Baby Boomer nurses will be the most difficult and most important to replace, both in number and experience.⁷⁷ When all of these nurses retire, the U.S. health care system will face not only the undercompensated loss of one-third of its nursing workforce, but also the intangible and incalculable loss of the Baby Boomer nurses' "experiential knowledge and leadership."⁷⁸ The fact that approximately one million Baby Boomer nursing educators will retire in the next ten to fifteen years⁷⁹—including a vast majority of nursing faculty working today—is by far the most serious factor exacerbating the current nursing faculty shortage.

a. The Current Nursing Educational Framework is Insufficient to Replace Retiring Nursing Faculty

This shortage presents a serious concern because it negatively impacts educational institutions' ability to produce undergraduate and graduate-prepared nurses.⁸⁰ Faculty shortages cause educational institutions to turn away thousands of qualified applicants from nursing programs each year.⁸¹ These institutions' ongoing failure to produce adequate numbers of nursing graduates at every educational level seriously hinders the ability of the United States to maintain a viable nursing workforce to serve its health care

⁷⁴ See BUERHAUS ET AL., *supra* note 1, at 4 (writing that "the implications of doing nothing or [failing to adequately mitigate the nursing shortage] means that patients will have decreased access to health care, receive poorer quality of care, be at greater risk for unsafe care, and be called upon to finance more costly health care.").

⁷⁵ The relevant sections of the Affordable Care Act amended Title 42 of the United States Code, which devotes an entire subchapter to nursing workforce development, including funding for nursing education. 42 U.S.C. §§ 296-98 (2012).

⁷⁶ *Nursing Faculty Shortage*, AM. ASS'N OF COLLEGES OF NURSING (last updated Aug. 18, 2014), <http://www.aacn.nche.edu/media-relations/fact-sheets/nursing-faculty-shortage>.

⁷⁷ BUERHAUS ET AL., *supra* note 1, at 138 (noting that "[a]s the current supply of nursing faculty ages . . . all but 5000 of the estimated 32,000 faculty in 2008 are anticipated to have retired by 2023."). The average nursing professor is now between 51.2-61.3 years old. See *Nursing Faculty Shortage*, *supra* note 76 (citing facts, research, and policy actions related to the nursing faculty shortage).

⁷⁸ U.S. NURSING WORKFORCE, *supra* note 21, at 22.

⁷⁹ *Id.*

⁸⁰ IMPACT OF FACULTY SHORTAGE, *supra* note 48, at 2 (describing the nursing faculty shortage as "perhaps the single most important factor that limits the nation's ability to produce more nurses.").

⁸¹ Wakefield, *supra* note 72, at 11 ("faculty shortages are the primary reason that more than 50,000 qualified nursing applicants are turned away each year"). The AACN noted in a 2012 survey that, to meet student demand, schools of nursing reported they would need to fill all vacancies but and create new faculty positions. See *Nursing Faculty Shortage*, *supra* note 76.

system.⁸² Certainly, direct patient care will suffer without sufficient numbers of undergraduate-prepared nurses. But without adequate numbers of graduate-prepared nurses, the entire nursing educational structure could break down. Further, nursing education institutions need more qualified men and women to serve as nursing faculty so they can train more individuals to practice in the nursing profession.

The impending retirement of one-half of the current supply of nursing educators by 2020 gives significant cause for alarm,⁸³ but several other important issues also contribute to the nursing faculty shortage. Specifically, as the profession shifts toward more advanced educational preparation for new nurses,⁸⁴ a parallel shift has taken place among upper-level practitioners, who must now achieve master's or doctoral degrees before serving in clinical or faculty roles.⁸⁵ While a doctoral degree is not yet required to work as a member of nursing faculty, it is strongly encouraged by leading educational and professional organizations.⁸⁶

Despite the profession's encouragement for doctoral degrees, the number of doctoral-prepared nurses remains low, particularly among educators teaching in associate's degree programs.⁸⁷ Further, the existing educational framework is ill-equipped to produce a sufficient number of nursing educators to compensate for the current deficit. As a result, it is unlikely that the percentage of nurses who achieve doctoral degrees will drastically increase in the future.⁸⁸ Further, researchers have posited that the nursing profession's current educational framework renders impossible the hope that sufficient numbers of nurses in practice today will be able to fill the roles of retiring nursing faculty in the future.⁸⁹

Under the nursing profession's current educational framework, associate's-prepared nurses comprise 59.2% of all nursing graduates⁹⁰ and outnumber bachelor's-prepared nurses entering the profession each year.⁹¹ While nurses in each group are equally likely

⁸² *Nursing Faculty Shortage*, *supra* note 76.

⁸³ See NAT'L LEAGUE FOR NURSING, 2010 NLN NURSE EDUCATOR SHORTAGE FACT SHEET 2 (2010), available at <http://www.nln.org/advocacy-public-policy/issues/faculty-shortage>.

⁸⁴ See BUEHHAUS ET AL., *supra* note 1, at 39–41. There is significant support in the nursing community to make the Bachelor of Science in Nursing degree the minimum educational standard for entry into the profession but the concerns and challenges relevant to this movement are beyond the scope of this Comment. See, e.g., BENNER ET AL., *supra* note 32, at 216–17.

⁸⁵ See Aiken et al., *supra* note 33, at 647-48. Nurses pursuing graduate education may obtain either a master's or doctoral degree: A master's degree in nursing prepares the professional to be an advanced practice nurse. An advanced nurse may provide care as a nurse practitioner, clinical nurse specialist (cardiology or oncology), certified nurse midwife, or nurse anesthetist. Nurses may obtain doctoral degrees to work in higher education or research. Advanced practice nurses prepare for the doctoral degree by fulfilling educational and research requirements established by the university. Bernice Reyes-Akinbileje & Sharon Kearney Coleman, Cong. Research Serv., Nursing Workforce Programs in Title VIII of the Public Health Service Act 12 (2005)) [hereinafter Nursing Workforce Programs].

⁸⁶ See NAT'L LEAGUE FOR NURSING, *supra* note 83, at 4. In addition, faculty who are hired on a part-time basis when doctorally-prepared faculty are unavailable may not have appropriate training or preparation to serve in faculty roles. See *id.*

⁸⁷ NAT'L LEAGUE FOR NURSING, *supra* note 83, at 4.

⁸⁸ See *Nursing Faculty Shortage*, *supra* note 76.

⁸⁹ See Aiken et al., *supra* note 33, at 650.

⁹⁰ *Id.*

⁹¹ See, e.g., *id.* at 649-50.

to pursue additional degrees,⁹² the highest level of education achieved by nurses in each group during their careers varies significantly. Approximately 20% of bachelor's-prepared nurses achieve the master's or doctorate degree necessary to work as a nursing educator; by comparison, only 5.8% of associate's-prepared nurses achieve a master's or doctoral degree.⁹³ Both groups represent untapped human resources that, if enabled or encouraged to achieve higher levels of education, could bolster nursing's educational framework and mitigate the future nursing shortage.

In addition to time and effort, nurses returning to education from professional clinical practice also pay in the form of tuition and lost wages as they pursue an additional degree.⁹⁴ Moreover, because associate-prepared nurses must first achieve a bachelor's degree, their costs to pursue an advanced degree are typically higher than bachelor's-prepared nurses. As a result, bachelor's-prepared nurses are more likely than associate's-prepared nurses to achieve advanced degrees or serve in faculty positions.⁹⁵

In light of this disparity, requiring a bachelor's degree to enter the nursing profession could help alleviate the nursing faculty shortage and improve the amount and quality of nursing research conducted in U.S. institutions. In turn, increasing the number of nursing faculty, and the volume and quality of nursing research, could provide significant benefits to the profession and the health care community at large. For example, with greater overall educational preparation, nursing researchers would be better positioned to make recommendations and participate in policy discussions regarding challenges facing the U.S. health care system. Having a stronger, larger pool of nursing researchers would provide clinical practitioners with additional research and evidence to improve clinical best practices and positively impact direct patient care.

b. Educational Institutions Have Difficulty Attracting Quality Candidates to Fill Vacant Nursing Faculty Positions

In addition to the challenges educational institutions face in training a sufficient number of nursing educators, those institutions also struggle to attract qualified candidates to fill their own vacant faculty positions.⁹⁶ It is challenging for educational institutions to compete with hospitals and other health care employers for nurses with master's or doctoral degrees⁹⁷ because clinical nurses are often paid more than nursing educators.⁹⁸ In addition, unlike the hiring process for clinical positions, educational institutions may consider personal factors such as research interests and personality when evaluating nursing faculty candidates. Often, that means the hiring process for nursing

⁹² *Id.* at 650.

⁹³ *Id.* at 649-50. However, as previously noted, the number of nurses with doctoral degrees remains low. See U.S. NURSING WORKFORCE, *supra* note 21, at 21, 49.

⁹⁴ See, e.g., IMPACT OF FACULTY SHORTAGE, *supra* note 48, at 3.

⁹⁵ Aiken et al., *supra* note 33, at 649-50.

⁹⁶ Susan Trossman, *Today's Assignment: Find More Nurse Educators*, AM. NURSE, Sept.–Oct. 2009, at 12-13.

⁹⁷ BENNER ET AL., *supra* note 32, at 227 (writing that “[nursing] faculty salaries are considerably lower than salaries for clinical positions or for teaching in other disciplines.”).

⁹⁸ See *id.* (citing a 2009 report which found “that master’s prepared faculty on average earned just shy of \$69,500, while [] the average annual salary of a nurse practitioner, across settings and specialties, is \$81,000.”).

faculty is more exacting and less predictable than the hiring process for a clinical position⁹⁹—which is another possible deterrent to potential nursing faculty candidates. Still, as long as nursing faculty salaries remain below those for comparable clinical positions, educational institutions will find it difficult to attract more highly-qualified faculty candidates.¹⁰⁰

* * *

In sum, the future of higher education in nursing appears grim: “having enough faculty a . . . is a mathematical improbability.”¹⁰¹ Other researchers state that the number of nurses who graduate with master’s degrees each year could address the current faculty shortage, but also concede that the odds of a sufficient number of nurses choosing to work as nursing educators in the future remain low. Moreover, while experts have proposed educational pathways to help associate’s-prepared nurses eventually achieve master’s degrees,¹⁰² no comprehensive solution has emerged to address the current nursing faculty shortage. As such, the current educational framework of the nursing professions remains ill-suited to effectively address the current U.S. nursing shortage.

ii. A Conflict Exists Between the Benefits of Increased Educational Requirements for Nurses and the Risks of Severe Understaffing Being Caused by the Current Nursing Shortage

Although increasing levels of nursing education would increase patient safety,¹⁰³ the serious risk of negative outcomes and increased mortality that patients face as a result of inadequate numbers of nursing staff¹⁰⁴ counsels against erecting additional hurdles that

⁹⁹ *Id.* (noting one educator’s position “that private educational institutions also have other issues that impact hiring, such as whether the faculty candidate is a good match with the program’s overall mission and research agenda.”).

¹⁰⁰ See BENNER ET AL., *supra* note 32, at 227 (writing that “[e]fforts to recruit students into graduate programs that could lead to teaching positions will be futile unless faculty salaries are increased and brought into line with clinical salaries and those for teaching positions in other disciplines.”). Nursing may be unique in this regard; unlike many other science disciplines, including medicine, nursing is still in the process of developing a strong educational framework for clinical and academic research. Accordingly, as nursing scholarship gains momentum and prestige, there may be more nurses entering the profession intending to conduct research and serve as full-time academic faculty than there are today.

¹⁰¹ Aiken et al., *supra* note 33, at 650.

¹⁰² See BENNER ET AL., *supra* note 32, at 217 (noting that increasing the number of nursing education programs that offer an associate’s to master’s degree pathway would improve “growth of the applicant pool for doctoral study and enlargement of the faculty pipeline.”).

¹⁰³ See, e.g., *Qualified Nursing Workforce*, *supra* note 41 (noting that “[q]uality patient care hinges on having a well educated nursing workforce. Research has shown that lower mortality rates, fewer medication errors, and positive outcomes are all linked to nurses prepared at the baccalaureate and graduate degree levels.”).

¹⁰⁴ See Mark W. Stanton, *Hospital Nurse Staffing and Quality of Care*, 14 RESEARCH IN ACTION 1, 8 (2004), available at

<http://archive.ahrq.gov/research/findings/factsheets/services/nursestaffing/nursestaff.html> (synthesizing and summarizing previous research which demonstrated that lower nurse staffing levels were linked to negative patient outcomes, including “higher rates of pneumonia, upper gastrointestinal bleeding, shock/cardiac arrest, urinary tract infections, and failure to rescue.”); see also Jack Needleman et al., *Nurse Staffing and Inpatient Hospital Mortality*, 364 NEW ENGLAND J. MED. 1037, 1037 (2011) (concluding that “staffing of [nurses] below target levels was associated with increased [patient] mortality, which reinforces the need to match staffing with patients’ needs for nursing care.”). Needleman also concluded that high patient

may discourage or prevent individuals from becoming nurses in the immediate future. Hospitals and other health care organizations will need substantial help as the demand for health care services continues to increase in the next decade.¹⁰⁵ Thus, it would be counterintuitive at this point to increase the amount of time or tuition necessary to become a nurse by requiring individuals to obtain a bachelor's degree before entering nursing practice.¹⁰⁶ Similarly, calls for all nursing faculty to achieve doctoral degrees—however admirable, and consistent with current evidence on patient safety they may be—conflict with the acute need for nursing educators to fill empty positions, educate new nurses, and help mitigate the current nursing shortage.

Accordingly, those who want to impose higher education standards on nursing students may have to wait until the acute period of the nursing shortage comes to an end. Similarly, having more educators available now, even if they do not have doctorate degrees, would enable nursing educational institutions to produce more nurses—thereby reducing the potential harm and injury to patients caused by understaffing in hospitals and other care settings. Moreover, increasing nurses' education requirements now may increase the likelihood that nurses working today will choose to forego spending even more time and money to become a nursing educator. This is particularly true for nurses who have families and other financial commitments that limit the amount of time and money they have to spend in achieving an advanced degree.

While current criticisms directed at nursing education are legitimate,¹⁰⁷ the nation's need for more nurses to serve the U.S. population poses a more-significant short-term threat to the U.S. health care system.¹⁰⁸ Accordingly, a short-term solution to the problem should bolster the nursing profession's educational capacity and produce more nurses to address the nursing shortage. They will be needed as the Baby Boomer generation retires, both to replace those nurses and care for the aging U.S. population.

At the same time, a long-term solution should focus on the substantial safety benefits for patients that would flow from increasing nursing's professional educational requirements. First, a solution must be found to eliminate the pipeline shortage for nursing faculty. As nursing schools increase their capacities and promote higher degrees to students, it is likely that many will choose to continue their education, particularly if they have access to tuition assistance programs. Once the general nursing shortage is sufficiently stabilized, nursing stakeholders should continue to advocate for increased education requirements for nurses entering professional practice.¹⁰⁹ Greater education

turnover (*i.e.*, the number of patient admissions, discharges, and transfers overseen by nurses during a given shift) “was also significantly associated with an increased risk of death.” *Id.* at 1042.

¹⁰⁵ See BUERHAUS ET AL., *supra* note 1, at 71 (noting that “the demand for nurses . . . is *derived* from society's overall demand for health care.”).

¹⁰⁶ *Id.* at 133-34 (reporting that individuals are more likely to become nurses if the tuition and time costs required to complete their education are relatively low).

¹⁰⁷ BENNER ET AL., *supra* note 32, at 228 (writing that “[n]urses in all programs are currently under-educated for current nursing practice demands.”).

¹⁰⁸ See Buerhaus, *supra* note 45, at 2423 (writing that “the nursing profession and others concerned with the health care delivery system face formidable challenges in overcoming the implications of ominous workforce projections.”).

¹⁰⁹ See, e.g., *Qualified Nursing Workforce*, *supra* note 41 (writing that “[q]uality patient care hinges on having a well educated nursing workforce. Research has shown that lower mortality rates, fewer medication errors, and positive [patient] outcomes are all linked to nurses prepared at the baccalaureate and graduate degree levels.”).

will improve the knowledge of practicing nurses and positively impact patient care and safety. It will also increase nurses' capabilities in professional practice, thereby maximizing their impact on patient care and increasing their value to interdisciplinary health care teams.

iii. The Limited Resources of Existing Nursing Programs Prevents Many Interested Students from Pursuing Nursing Careers

Nonetheless, increasing educational requirements would place additional strain on the resources of nursing students¹¹⁰ and the nursing profession's already-weak educational framework.¹¹¹ Colleges of nursing across the country report turning away many qualified candidates from associate's, bachelor's, master's, and doctoral programs due to resource restraints such as "shortages of faculty, clinical placement sites, and classroom space."¹¹² Moreover, the number of students being turned away annually is significant. The American Association of Colleges of Nursing estimates that, in 2013 alone, 78,089 qualified applicants were denied entry into undergraduate and graduate nursing programs.¹¹³

Rejecting students due to faculty and resource constraints means that nursing schools are not only turning away potential bedside nurses; they also turning away potential nursing faculty members. Still, the federal advisory body that oversees the nursing profession—the National Advisory Council on Nurse Education and Practice, or NACNEP—has acknowledged that attracting more nursing educators is crucial to preserving the pipeline of nurses entering the U.S. health care workforce. NACNEP has even recommended that preserving such a pipeline become the government's top funding priority under Title VIII nursing workforce grants.¹¹⁴

iv. Increasing Market Demand for Health Care Services Exacerbates the Current U.S. Nursing Shortage

In contrast to other industrialized countries with nationalized health care systems, market forces typically dictate the job market for nurses in the United States.¹¹⁵ The number of nursing jobs created by employers directly depends on how the health care system responds to "constantly shifting pressures arising from patients, employers (who provide the majority of health insurance in the United States), and state and federal

¹¹⁰ See *id.*

¹¹¹ See generally *Nursing Shortage*, *supra* note 18. The findings of an earlier organizational report, summarized here, were as follows:

U.S. nursing schools turned away 79,659 qualified applicants from baccalaureate and graduate nursing programs in 2012 due to insufficient number[s] of faculty, clinical sites, classroom space, clinical preceptors, and budget constraints. Almost two-thirds of the nursing schools responding to the survey pointed to faculty shortages as a reason for not accepting all qualified applicants into their programs. *Id.*

¹¹² BUERHAUS ET AL., *supra* note 1, at 140 (discussing the results of surveys of colleges of nursing conducted by the American Association of Colleges of Nursing and the National League for Nursing); see also Aiken et al., *supra* note 33, at 654 (noting that "the educational trajectory of pre-licensure education for nurses that has evolved without the benefit of workforce planning is contributing to the challenges and costs of solving an evolving nurse faculty shortage that threatens to derail the needed expansion of the nurse supply.").

¹¹³ *Nursing Faculty Shortage*, *supra* note 766.

¹¹⁴ *Nursing Workforce Programs*, *supra* note 85, at 1.

¹¹⁵ See BUERHAUS ET AL., *supra* note 1, at 26.

governments.”¹¹⁶ Ongoing increases in the demand for health care services, and greater access to health insurance under the Affordable Care Act,¹¹⁷ show that the U.S. health care system will need to grow significantly in the near future. In turn, health care employers will soon need more nurses than will be available to satisfy these ongoing increases in market demand.¹¹⁸

III. WHY THE FEDERAL GOVERNMENT SHOULD SUPPLY THE EDUCATIONAL FUNDING NECESSARY TO COMBAT THE CURRENT NURSING SHORTAGE

A. Congress’s Prior Investments in Nursing Workforce Development and Education Have Successfully Alleviated Other Shortages

The United States’ current nursing shortage, which began in 1998,¹¹⁹ is only one in a long line of U.S. nursing shortages that have negatively affected health care delivery.¹²⁰ Indeed, “the frequency of hospital [nursing] shortages has led many people to accept [them] as an inevitable part of the way the health care system functions in the United States.”¹²¹ Yet the outcry to address the current nursing shortage reflects its increased potential to create serious challenges for providers and patients, and to negatively impact the entire U.S. health care industry.¹²²

While the public may have accepted previous nursing shortages as a fact of life, the U.S. government did not. The U.S. government has long-since recognized the importance of nursing to the U.S. health care system through funding efforts that support nursing workforce development and education.¹²³ So, while it is important, the Affordable Care Act is not the first legislative effort made by Congress to address the nation’s demand for nurses.¹²⁴ Moreover, these prior efforts have helped fix supply problems caused by the educational framework of the nursing profession and assisted nurses in meeting the demand for safe and effective health care.¹²⁵

¹¹⁶ *Id.* (noting that “[h]ealthcare organizations hire labor and earn salaries based on what the market will allow, maximizing profits or revenues.”).

¹¹⁷ *See, e.g., id.* at 62.

¹¹⁸ *See id.* at 70–71.

¹¹⁹ *Id.* at 193.

¹²⁰ *Id.* at 200–04 (describing U.S. nursing shortages in the 1960s, 1970s, 1980s, and 1990s).

¹²¹ *Id.* at 193.

¹²² *See Buerhaus, supra* note 45, at 2423 (noting that “the nursing profession and others concerned with the health care delivery system face formidable challenges in overcoming the implications of ominous workforce projections.”).

¹²³ *See Alexandre & Glazer, supra* note 19, at 1 (noting that “[t]he value of nursing to the overall success of the U.S. health care system has long been recognized by the federal government,” and describing legislative funding initiatives for nursing education dating back to World War II).

¹²⁴ *See BUERHAUS ET AL., supra* note 1, at 133 (discussing previous congressional efforts “[t]o lower tuition costs and thereby increase demand for a nursing education,” such as the Nurse Training Act of 1964, P.L. 88–581, and the Nursing Shortage Reduction and Education Extension Act of 1988, P.L. 100–607.). The Nurse Training Act of 1964 was important because it initiated a stream of funding into the nursing profession; in the two decades after it passed, state and federal funds were increasingly allocated to “nurs[ing] education, teaching facilities, student loans, projects for strengthening nurs[ing] education programs . . . and training.” BENNER ET AL., *supra* note 32, at 34.

¹²⁵ *See Aiken et al., supra* note 33, at 651 (writing that “[t]he supply of nurses per capita increased 100 percent between 1972 and 1983 following large increases in federal spending”). However, Aiken and her colleagues acknowledge that Congress’s spending efforts cannot be isolated from other factors during that

Congressional funding and support for nursing institutions and individual students is rooted in the Nursing Workforce Development provisions of Title VIII of the Public Health Service Act,¹²⁶ which was first enacted in 1964.¹²⁷ In the following decades, Congress refined the structure of its funding provisions for nursing education and workforce development multiple times.¹²⁸ Nonetheless, for nearly fifty years, Title VIII's Nursing Workforce Development provisions have provided grant support to nursing schools, and individual grants and loans to nursing students.¹²⁹ Among the two, funding for nursing institutions is more important because such funding helps generate greater numbers of nursing educators, which means fewer qualified applicants get rejected from nursing programs due to resource constraints. Congress's funding for individual student loans also is critical, however, because the loans' conditions attract potential nursing students and help students complete their education.¹³⁰

In recent decades, Title VIII's Nursing Workforce Development programs have played an important role in addressing the country's intermittent nursing shortages.¹³¹ During the 1970s, for example, health care demand increased significantly for reasons strikingly similar to today: the United States' population expanded, technology improved, and access to health insurance increased for many Americans.¹³² As a result, demand for nurses increased, so Congress allocated substantial funding for Title VIII's nursing education and workforce development programs.¹³³ By 1981, the nursing shortage had subsided, and Congress had adjusted its continued funding and support for nursing education accordingly.¹³⁴ Ultimately, the success of this approach provides support for why funds for nursing education under the Affordable Care Act are so important.

timeframe—including a diminished economy affected by high inflation that likely increased the number of people joining the nursing profession. Still, they maintain that Congress's actions were critical in expanding the educational and profession opportunities available in nursing, and attracting candidates who may not have chosen to work in the profession otherwise. *Id.* at 651-52.

¹²⁶ Nursing Workforce Programs, *supra* note 85, at 2 (describing how the Nurse Training Act of 1964 was “consolidated in Title VIII previously established programs supporting grants and traineeships for basic and advanced nurse education.”).

¹²⁷ Nurse Training Act of 1964, P.L. 88–581 (1964) (codified as amended at 42 U.S.C. §§ 296–98 (2012)). The Nurse Training Act provided “the first comprehensive federal support for programs to develop the nursing workforce. Nursing Workforce Programs, *supra* note 85, at i.

¹²⁸ Nursing Workforce Programs, *supra* note 85, at 2–3 (noting that Title VIII was amended eleven times between 1965 and 1998). Congress has both increased funding in times of need and decreased funding when nursing shortages have subsided. *Id.*

¹²⁹ Alexandre & Glazer, *supra* note 19, at 1 (citing Nursing Workforce Programs, *supra* note 85, at 2-3).

¹³⁰ See AM. ASS'N OF COLLEGES OF NURSING, TITLE VIII STUDENT RECIPIENT SURVEY: SUMMARY REPORT 2012-2013 (2013), available at <http://www.aacn.nche.edu/government-affairs/archives/2013/archives> [hereinafter Title VIII Student Recipient Survey] (noting that of the students AACN surveyed, “[n]early 65 % . . . said Title VIII assistance affected their decision to enter into nursing school. [74%] of respondents reported that Title VIII influenced their decision to pursue their degree full-time, allowing them to enter the nursing profession without delay.”).

¹³¹ See NURSING COMMUNITY, NURSING WORKFORCE DEVELOPMENT PROGRAMS 3 (Apr. 2013) (describing Congress's increase in funding for Nursing Workforce Development Programs to address a nursing shortage for the last fifty years).

¹³² BUERHAUS ET AL., *supra* note 1, at 200.

¹³³ NURSING COMMUNITY, *supra* note 131, at 4 (reporting that “Congress provided \$160.61 million to the Title VIII programs in 1973. Adjusting for inflation[,] . . . [that] would be over one billion in current dollars.”).

¹³⁴ Nursing Workforce Programs, *supra* note 85, at 2–3.

In addressing the nation's current nursing shortage, Congress first acted by passing the Nursing Education and Practice Improvement Act of 1998 (NEPIA), as part of the Health Professions Education Partnerships Act of 1998 (HPEPA).¹³⁵ HPEPA reauthorized Title VIII's support for nursing and "increased support of activities for basic and advanced nursing education through scholarship and grants programs."¹³⁶ In passing HPEPA, Congress took a significant step to address the current nursing shortage by directly involving nurses in its planning process: it created the National Advisory Council on Nurse Education and Practice (NACNEP),¹³⁷ an advisory body comprised of nursing professionals.¹³⁸ NACNEP advises Congress and the Secretary of Health and Human Services on policy issues related to Title VIII's programs for nursing education, professional practice, and workforce development.¹³⁹

Recognizing the crucial role nurses play in the national health care system was a critical step forward, but Congress should do more to help nurses keep patients safe by delivering efficient and effective health care services. Moreover, because the transition for nursing to become a standardized profession at all levels is only beginning, now is the perfect time for Congress to take action and serve as a catalyst for its formation. For example, Congress could help students achieve their goals while also helping fill critical positions in the nation's health care system by providing funding for individual nursing students—particularly those from diverse backgrounds. Congress could also help nurses overcome the challenges of the current nursing shortage and prevent widespread breakdown within the U.S. health care system by providing additional funding for nursing educational institutions.

B. The Affordable Care Act Builds on Congress's Past Funding for Nursing Education by Expanding Funding for Title VIII's Workforce Development Programs

i. Overview of the Current Nursing Funding Structure

Title VIII Nursing Workforce Development programs¹⁴⁰ are the primary source of federal support for nursing education.¹⁴¹ These Title VIII programs support both undergraduate and graduate nursing education by authorizing the provision of grants to educational institutions, and loans and scholarships to individual students.¹⁴² The provision of federal loans remains crucial for nursing students at all educational levels; according to a survey conducted by the American Association of Colleges of Nursing, a

¹³⁵ Health Professions Education Partnerships Act of 1998, Pub. L. No. 105-392, 112 Stat. 3524, 3562-3575 (1998) (codified as amended at 42 U.S.C. §§ 296-98 (2012)).

¹³⁶ Nursing Workforce Programs, *supra* note 85, at 3.

¹³⁷ *Id.* (noting that NACNEP replaced the National Advisory Council on Nurse Education (NACNE), which was established by the Health Omnibus Program Extension of 1988, Pub. L. No. 100-607, for the purpose of "evaluat[ing] the effectiveness of projects supported through Title VIII."). NACNEP is authorized under § 851 of the Public Health Service Act which is codified at 42 U.S.C. § 297(t) (2012)).

¹³⁸ See generally Health Res. & Servs. Admin., *Members of NACNEP*, U.S. DEP'T OF HEALTH & HUMAN SERVS. (Jan. 22, 2015), <http://www.hrsa.gov/advisorycommittees/bhpradvisory/nacnep/About/members.pdf>. NACNEP's members include nurses who work in both academic and professional roles. See *id.*

¹³⁹ IMPACT OF FACULTY SHORTAGE, *supra* note 48.

¹⁴⁰ 42 U.S.C. § 296-98 (2012).

¹⁴¹ See McNeal, *supra* note 73, at 38; Wakefield, *supra* note 72, at 11.

¹⁴² See 42 U.S.C. § 296-98.

majority of students reported relying on Title VIII programs to finance their nursing education.¹⁴³ Title VIII is most important, however, because it supports the development of new nursing faculty and mitigates the impact of the current nursing faculty shortage.

Title VIII nursing funds are distributed in a focused manner to ensure program dollars are directed to the areas of greatest need within the U.S. health care system.¹⁴⁴ The Bureau of Health Workforce (BHW) is the federal agency responsible for administering these funds;¹⁴⁵ it is part of the Health Resources and Services Administration (HRSA),¹⁴⁶ which is the division of the U.S. Department of Health and Human Services that is ultimately responsible for administering federal funds to support nursing education.¹⁴⁷ During the distribution process, HRSA conducts research to identify shortage areas that face the greatest potential for harm, and then administers its grant, loan, and scholarship programs accordingly.¹⁴⁸ Still, the total amount of loans for nursing students and grants for nursing educational institutions depends on the federal government's willingness to fund Title VIII Nursing Workforce Development programs.

Congress demonstrated its willingness to increase funding for nursing under the Affordable Care Act, which represents an important, albeit incomplete, step forward in addressing the U.S. nursing shortage. Between fiscal year 2005 and 2010, Congressional funding for Title VIII's Nursing Workforce Development programs grew from \$150.67 million to \$171.03 million.¹⁴⁹ Since the passage of the Affordable Care Act, Congressional funding for these programs has significantly increased; starting in fiscal year 2010, Title VIII's funding for nursing workforce development has ranged from \$217.50 million to \$243.87 million annually.¹⁵⁰ This funding is divided between several federal programs: Advanced Education Nursing, Nursing Workforce Diversity, Nurse Education, Practice, Quality, and Retention, NURSE Corps Loan Repayment and Scholarship Program, Nurse Faculty Loan Program, and the Comprehensive Geriatric

¹⁴³ TITLE VIII STUDENT RECIPIENT SURVEY, *supra* note 130 (reporting that “78% of undergraduate students, 64% of master’s students, and 58% of doctoral students reported relying on federal loans to pay for at least part of the overall cost [of their nursing education].”). On average, undergraduates borrowed \$39,610 in federal loans, and master’s students borrowed \$35,509. *Id.*

¹⁴⁴ See *Health Professions*, U.S. DEP’T OF HEALTH AND HUMAN SERVS. (Sept. 17, 2009), <http://bhpr.hrsa.gov/about/bhprfactsheet.pdf> (stating that “HRSA closely tracks trends in the national health care workforce, and issues targeted grants to colleges and universities for scholarship, and student loan and debt repayment programs designed to stimulate interest in clinical specialties in which shortages are expected.”). Furthermore, the agency is “responsible for collecting data, and certifying communities as Health Professional Shortage Areas . . . [t]he HPSA designation determines eligibility for numerous federal and state aid programs,” including the nursing loan programs. *Id.*

¹⁴⁵ Nursing Workforce Programs, *supra* note 85, at 8; see *Health Professions*, *supra* note 144 (describing HRSA’s research mission, listing its administrative programs, and stating that “[w]ith a national workforce shortage of 1 million nurses projected by 2025, HRSA supports academic and continuing education projects designed to recruit and retain a strong nursing workforce.”).

¹⁴⁶ See HEALTH RES. AND SERVS. ADMIN., U.S. DEP’T OF HEALTH AND HUMAN SERVS., *available at* <http://www.hrsa.gov/about/organization/hrsaorgchart.pdf> (last visited May 2, 2015).

¹⁴⁷ Wakefield, *supra* note 72, at 11.

¹⁴⁸ *Health Professions*, *supra* note 144.

¹⁴⁹ See *Historic Nursing Appropriations, Fiscal Years (FY) 2005-2015*, AM. ASS’N OF COLLEGES OF NURSING, <http://www.aacn.nche.edu/government-affairs/Historic-FY-Funding.pdf> (last visited May 11, 2015).

¹⁵⁰ *Id.*

Education program.¹⁵¹ Congress likely will wait to evaluate the effect of this increased funding for nursing before granting any additional funds to support nursing education and workforce development. Even so, the time-sensitive nature of the funding distribution process renders such caution inadvisable: money will be needed now to attract and train the nurses needed to combat the shortage in the near future.

ii. Funding for Nursing under the Affordable Care Act

One of Congress' major goals in passing the Affordable Care Act,¹⁵² and the related Health Care Education and Reconciliation Act,¹⁵³ was to expand individual access to health care services to persons in underserved, uninsured, and minority populations.¹⁵⁴ To accomplish this goal, Congress not only increased and expanded funding for its Title VIII loan programs,¹⁵⁵ but also changed some of the terms and conditions of those loans on behalf of borrowing students. Congress sought to increase the likelihood that students would take advantage of those loans by "easing the [qualification] criteria for students and schools, shortening the payback periods on loans, and making the primary care student loan program more attractive."¹⁵⁶ In total, the Affordable Care Act authorized appropriations for Title VIII programs in the amount of "\$338,000,000 for fiscal year 2010, and such sums as may be necessary for each of the fiscal years 2011 through 2016."¹⁵⁷

The changes Congress made to Title VIII programs primarily affected funding for the Nurse Faculty Loan Program, the Nursing Student Loan Program, the Nursing Workforce Diversity Program, and the Nurse Education, Practice, and Retention Grant Program¹⁵⁸ (none of which had been reauthorized for at least five years before the changes took effect¹⁵⁹). Congress's willingness to re-fund these previously successful initiatives shows its recognition of nursing's importance to the U.S. health care system, and its understanding of the risks inherent in the current nursing shortage. However, more time is needed to determine whether these funding initiatives will attract more individual students to the nursing profession than before, or provide educational institutions with increased resources to produce more nurses.

The Nurse Faculty Loan Program¹⁶⁰ provides funds to accredited schools of nursing that are subsequently disbursed to eligible students.¹⁶¹ The program is designed to aid graduate nursing students in becoming nurse educators by providing financial incentives for loan recipients who meet certain criteria. The Nurse Faculty Loan Program also

¹⁵¹ *Id.*

¹⁵² Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010) (codified as amended at 42 U.S.C. §§ 296-98 (2012)).

¹⁵³ Health Care and Education Reconciliation Act, Pub. L. 111-152, 124 Stat. 1029 (2010).

¹⁵⁴ Patient Protection and Affordable Care Act § 5001.

¹⁵⁵ *Id.* at §§ 5202, 5309-12 (codified at 42 U.S.C. § 297).

¹⁵⁶ 5 West's Fed. Admin. Prac. § 6172 (2013).

¹⁵⁷ P.L. 111-148, §§ 5312 (2010).

¹⁵⁸ P.L. 111-148, §§ 5309-12; Wakefield, *supra* note 72, at 11.

¹⁵⁹ Nursing Workforce Programs, *supra* note 85, at 4 (noting that while funding for NACNEP has been continuously authorized since its reincarnation in 1998, other Title VIII programs had not been reauthorized in several years.).

¹⁶⁰ See *Nurse Faculty Loan Program*, U.S. DEP'T OF HEALTH AND HUMAN SERVS., <http://bhpr.hrsa.gov/nursing/grants/nflp.html> (last visited Apr. 23, 2015).

¹⁶¹ See *id.*

encourages students to achieve doctoral degrees by prioritizing funding for schools that offer doctoral programs.¹⁶² Further, students who subsequently serve as full-time faculty members for at least four years at an accredited school of nursing are then eligible to cancel up to 85% of loans obtained through the Nurse Faculty Loan Program, including interest.¹⁶³

The Affordable Care Act authorized additional funding to expand the Nurse Faculty Loan Program,¹⁶⁴ which is one piece of good news despite overwhelmingly negative projections concerning nursing's educational framework in the near future. By seeking to attract and retain nursing faculty through the Nurse Faculty Loan Program, Congress directly addressed the most critical factor contributing to the nursing shortage.¹⁶⁵ But again, the efficacy of the Nurse Faculty Loan program in combatting the unique challenges presented by the current nursing shortage has yet to be evaluated.

Congress also funded the Nursing Student Loan Program¹⁶⁶ and Nursing Workforce Diversity Program,¹⁶⁷ programs that are intended to enable minority and disadvantaged students¹⁶⁸ to pursue a career in nursing¹⁶⁹ by providing long-term, low-interest rate loans for both part-time and full-time students on the basis of need.¹⁷⁰ These programs also allow nursing educational institutions to administer scholarships,¹⁷¹ and institutions with particular goals and programs may compete to receive funding priority for those purposes.¹⁷² Both programs are important because they directly enable the nursing profession to attract more diverse candidates, which helps bring nursing

¹⁶² *See id.*

¹⁶³ *Id.* A loan recipient may cancel up to 85% of his loan over the course of four years by serving as a faculty member at any accredited nursing school. *See id.*

¹⁶⁴ P.L. 111-148, § 5311 (as codified at 42 U.S.C. 297n; Wakefield, *supra* note 72, at 11. Congress also granted additional funding for the Nurse Faculty Loan program through its passage of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, 123 Stat. 115 (2009). *Id.* The American Recovery and Reinvestment Act provided \$500 million to combat resource shortages in the health care industry. American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, 123 Stat. 115 (2009).

¹⁶⁵ Joyce Routson, *Healthcare Reform and Nursing: How the New Legislation Affects the Profession*, HEALTHCAREERS.COM (Nov. 2, 2010), <http://www.healthcareers.com/article/healthcare-reform-and-nursing-how-the-new-legislation-affects-the-profession/158418>.

¹⁶⁶ *See* 42 U.S.C. § 297o (2012).

¹⁶⁷ *Id.* at § 296m.

¹⁶⁸ The Health Resources and Services Administration defines a disadvantaged student as follows: A student who comes from "an environment that has inhibited the individual from obtaining the knowledge, skill, and abilities required to enroll in and graduate from a health professions school. . . or comes from comes from a family with an annual income below a level based on low income thresholds according to family size published by the U.S. Bureau of Census, adjusted annually for changes in the Consumer Price Index, and adjusted by the Secretary, HHS, for use in health professions and nursing programs." Scholarships for Disadvantaged Students, *supra* note 31.

¹⁶⁹ *See* Wakefield, *supra* note 72, at 11.

¹⁷⁰ *Nursing Student Loans*, U.S. DEP'T OF HEALTH AND HUMAN SERVS., <http://www.hrsa.gov/loanscholarships/loans/nursing.html> (last visited Apr. 23, 2015).

¹⁷¹ *See Scholarships for Disadvantaged Students*, *supra* note 31.

¹⁷² *Id.* Institutions may receive funding priority if 15% or more students are either part of an under-represented minority group, if 15% or more graduates from that institution intend to work in primary care, or if 10% or more of that institution's graduates intend to work in underserved communities.

demographics more in line with the general public,¹⁷³ and broadens the scope of individuals who may become interested in joining the nursing workforce.¹⁷⁴

Moreover, patients stand to benefit directly from the increasingly diverse and culturally competent nursing workforce contemplated by the Nursing Student Loan and Nursing Workforce Diversity Programs. By enhancing diverse students' access to nursing education through federal grants and loans, the federal government has created more opportunity for a diverse nursing workforce to develop, which would better serve the nation's increasingly diverse general population.¹⁷⁵ These programs also authorize "partial loan cancellation for nurses who choose to work in parts of the country where there is a shortage of health professionals."¹⁷⁶ These economic incentives may encourage some nursing students to seek out areas of need, and may also encourage students from those areas to stay and work in their home state. Moreover, given that 83% of nursing students who receive federal assistance under Title VIII do choose to work in their home states after graduation, these programs directly support both the attraction and retention of more nurses in areas of need.¹⁷⁷

Currently, approximately 50% of students who receive funds under Title VIII are awarded \$1,001-\$5,000 annually, and approximately 25% of those students receive \$5,001-\$13,000 annually.¹⁷⁸ However, this aid is not enough to create the kind of lasting, positive growth that will be necessary for the nursing profession to satisfy market demand for its services, or to ensure nursing graduates are qualified to safely meet patients' needs. Nursing school can be expensive, and according to the American Association of Colleges of Nursing's 2012-2013 survey of students who receive Title XIII funding, most need financial help for tuition and related educational expenses:

When asked how they would finance their education, 78% of undergraduate students, 64% of master's students, and 58% of doctoral students reported relying on federal loans to pay for at least part of the overall cost. When asked how much loans were required, the undergraduate student population averaged \$39,610 in loans, and the master's student population averaged \$35,509. Some master's and

¹⁷³ See *Enhancing Diversity in the Workforce*, AM. ASS'N OF COLLEGES OF NURSING (Jan. 21, 2014), <http://www.aacn.nche.edu/media-relations/fact-sheets/enhancing-diversity> (asserting that "[n]ursing's leaders recognize a strong connection between a culturally diverse nursing workforce and the ability to provide quality, culturally competent patient care.").

¹⁷⁴ *Id.* (noting that "[t]he need to attract students from under-represented groups in nursing—specifically men and individuals from African American, Hispanic, Asian, American Indian, and Alaskan native backgrounds—is gaining in importance given the Bureau of Labor Statistics' projected need for more than a million new and replacement registered nurses by 2020.").

¹⁷⁵ See JEFFREYS, *supra* note 30, at 10–12 (describing how the nursing school applicant pool has become more diverse due to "the dramatic shift in demographics, the restructured workforce, and a less academically prepared college application pool," and noting that "[t]oday's student profile characteristics can be examined to predict the potential future impact on the nursing profession") (citation omitted).

¹⁷⁶ Wakefield, *supra* note 72, at 11.

¹⁷⁷ See TITLE VIII STUDENT RECIPIENT SURVEY, *supra* note 130.

¹⁷⁸ See *id.*

doctoral students reported as high as \$175,000 in student loans.¹⁷⁹

In fact, nearly one-third of Title XIII funding recipients surveyed by the American Association of Colleges of Nursing reported that the Title XIII funds they received covered only one year of tuition; nearly 60% reported that the funds they received covered only a portion of their annual tuition.¹⁸⁰ Moreover, 24.7% of those surveyed said their Title VIII loans covered only the costs of books and other educational supplies.¹⁸¹

These amounts do not provide the substantial financial support most nursing students need to enter the nursing profession at the undergraduate level, or to pursue a graduate degree in nursing. Few students or their families have enough money to pay for a nursing education up front. Given their myriad benefits, federal loans are an attractive option, but they provide limited help. As such, many students are forced to take out private loans with higher interest rates than federal loans. Increased availability and amounts of federal loans for individual nursing students would attract more people to the profession; in fact, nearly two-thirds of nursing students surveyed said the availability of federal funding influenced their decision to attend nursing school.¹⁸² If our collective goals are to attract and educate enough potential nurses to reduce the nursing shortage, providing financial resources for them would be a great start.

These nursing students' responses should send a message to Congress that more funds are necessary to expand Title XIII nursing programs under the Affordable Care Act. It is true that "[t]he Affordable Care Act increase[d] the amount [that nursing] students may borrow by almost 25%—to a maximum of \$17,000."¹⁸³ That amount may cover a significant portion of the cost to achieve an associate's degree at a community college, and may even cover one semester of tuition at a traditional four-year college. It may also cover a significant portion of tuition for associate's-prepared nurses pursuing bachelor's degrees. Nonetheless, achieving a nursing degree generally costs significantly more than \$17,000,¹⁸⁴ and Congress should ensure additional funds are made available that reflect the actual total cost of a nursing degree. Given the extent to which time and financial commitments influence students' decisions to become nurses, providing additional financial assistance through these programs would likely provide the impetus many individuals need to make such a commitment.

Finally, the Affordable Care Act increased funding for the Nurse Education, Practice, and Retention Grant Program (NEPQR),¹⁸⁵ which is the Title VIII program designed to support nursing workforce development.¹⁸⁶ The NEPQR supports accredited nursing educational institutions and health care facilities by allocating funds to academic,

¹⁷⁹ *Id.*

¹⁸⁰ *See id.*

¹⁸¹ *See id.*

¹⁸² *Id.*

¹⁸³ Wakefield, *supra* note 72, at 11.

¹⁸⁴ *See* TITLE VIII STUDENT RECIPIENT SURVEY, *supra* note 130.

¹⁸⁵ P.L. 111-148 § 5312 (providing funding for Title VIII Nursing Workforce Development); *see also* 42 U.S.C. § 297t(g) (providing that "Amounts appropriated under this [Nursing Workforce Development] subchapter may be utilized by the Secretary to support the nurse education and practice activities of the council.") (2012).

¹⁸⁶ *Nurse Education, Practice, Quality and Retention (NEPQR)*, U.S. DEP'T OF HEALTH AND HUMAN SERVS., <http://bhpr.hrsa.gov/nursing/grants/nepqr.html> (last visited Apr. 23, 2015).

professional, and continuing education projects or activities.¹⁸⁷ In 2013, NEPQR's grant competition sought applications designed to expand enrollment in nursing educational programs, improve nursing practice and quality, and promote retention and career development.¹⁸⁸ In 2014, NEPQR's grants sought to reward efforts designed to improve nurses' collaborative practice with other health care professionals.¹⁸⁹ For FY 2014, NEPQR will receive only \$7 million in funding.¹⁹⁰ This funding through the NEPQR further demonstrates Congress' recognition that improving the quality of nursing education and practices is a critical endeavor, but more funding would maximize the chances that NEPQR's various goals are realized before the nursing shortage hits its lowest point in the next several years.¹⁹¹

IV. CONCLUSION

The Affordable Care Act's funding for Title VIII is not the sole answer to the nursing shortage, but its support for nursing education and workforce development will likely have a positive effect on the current U.S. nursing shortage. The Act's funding provisions for nursing workforce development under Title VIII are crucial to support the nursing profession, and their drafting was well-guided by recommendations from the nursing leaders who comprise the NACNEP. Most important are those provisions of the Act that make additional funds available to nursing educational institutions because they allow institutions to attract and hire more nursing faculty. Without such support, nursing educational institutions would be forced to turn away increasing numbers of potential nursing students and would fall further behind in supplying adequate numbers of nurses to meet rising demands for health care services.

The Act also provides tuition assistance and loan forgiveness funding for nursing students through Title VIII programs designed to reduce the cost of becoming a nursing professional. As a result, more qualified students are likely to attend nursing educational institutions in pursuit of both undergraduate and graduate degrees. For that reason, the additional funding provided by the Affordable Care Act will play a critical role in generating more practicing nurses nationwide. But the individual funding provisions fall far short of allowing individual nursing students to borrow for the full educations from federal loans, and the government could use its resources to stimulate individuals' entry into the profession by providing higher funding amounts for nursing education.

¹⁸⁷ *Id.* (noting that projects or activities funded through the NEPQR must "enhance nursing education, improve the quality of patient care, increase nurse retention and strengthen the nursing workforce.").

¹⁸⁸ *Id.* The fiscal year 2013 grant competition:

"[F]ocused on expansion (enrollment in baccalaureate nursing programs; internship and residency programs; and education in new technologies), practice (nursing practice arrangements in non-institutional settings; care for underserved populations and other high-risk groups; managed care, quality improvement, and other skills; or cultural competencies) and retention (career ladder bridge programs or enhanced patient care delivery systems)." *Id.*

¹⁸⁹ *Id.* (writing that the fiscal year 2014 grant competition is "focused on expanding Interprofessional Collaborative Practice environments where nurses and other professional disciplines work together to provide comprehensive health care services for patients and their families.").

¹⁹⁰ HRSA-14-070: Nurse Education, Practice, Quality and Retention (NEPQR) Program - Interprofessional Collaborative Practice, U.S. DEP'T OF HEALTH AND HUMAN SERVS., <http://www.grants.gov/view-opportunity.html?oppId=248734> (estimating total FY 2014 program funding).

¹⁹¹ See Wakefield, *supra* note 72, at 11.

The net positive effect of these funding provisions for educational institutions and individuals should not end the discussion regarding the current U.S. nursing shortage. Congress can and should provide increased funding for nursing education and workforce development to help prevent the devastating impact it could have on patients, and the overall U.S. health care system. Congress should also continually re-assess the amount of funding being allocated to Title VIII nursing workforce development programs throughout the next decade. The U.S. government's response to nursing shortages in the past has been largely effective, but Congress needs to commit far more resources to prevent the current nursing shortage from becoming even worse. Moreover, given the impending retirement of a significant number of nurses and nurse faculty members, Congress must play a leading role in both uniting health care stakeholders, and incentivizing the continued education and development of qualified nursing professionals to serve the new generation.