

By Senator Meek

36-1442-02

1 A bill to be entitled
2 An act relating to health care facilities;
3 providing a short title; providing legislative
4 findings with respect to standards for staffing
5 health care facilities and intensive care units
6 in order to ensure the safety of patients;
7 providing staffing requirements for health care
8 facilities licensed under ch. 395, F.S.;
9 requiring that each facility subject to the act
10 submit a staffing plan to the Agency for Health
11 Care Administration; providing requirements for
12 the plan; specifying nurse-to-patient ratios;
13 specifying circumstances under which a
14 direct-care nurse may refuse a work assignment;
15 requiring each health care facility to adopt a
16 work-assignment policy; prohibiting a facility
17 from penalizing or retaliating against an
18 employee who reports certain violations or
19 participates in investigations or proceedings;
20 providing that an employee may obtain legal or
21 equitable relief against a health care facility
22 for certain violations of the act; providing
23 for attorney's fees and costs; requiring health
24 care facilities to post a notice of the
25 requirements of the act and the daily staffing
26 levels of the facility; authorizing the Agency
27 for Health Care Administration to adopt rules
28 with respect to enforcement of staffing
29 requirements; authorizing the agency to revoke
30 the license of a facility in violation of the
31 act; providing for fines for certain

1 violations; providing for the agency to require
2 that a facility take corrective action;
3 providing for additional sanctions against a
4 facility that fails to take corrective action;
5 providing that certain violations of the act
6 are a third-degree misdemeanor; providing for a
7 facility to be terminated from the Medicaid
8 program following a violation of the act;
9 providing an effective date.

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11 Be It Enacted by the Legislature of the State of Florida:

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13 Section 1. Short title.--This act may be cited as the
14 "Safe Staffing for Intensive Care and Life-Preserving
15 Monitored Care."

16 Section 2. Legislative findings.--The Legislature
17 finds that:

18 (1) The state has a substantial interest in assuring
19 that the delivery of health care services to patients in
20 health care facilities located within this state is adequate
21 and safe and that health care facilities retain sufficient
22 nursing staff in intensive care units and other situations in
23 which continuous cardiac monitors are used in order to ensure
24 an adequate response to life-threatening incidents.

25 (2) Recent changes in our health-care-delivery system
26 are resulting in a higher acuity level among patients in
27 health care facilities.

28 (3) Inadequate hospital staffing results in dangerous
29 medical errors and patient infections and in intensive care
30 units and other situations in which cardiac monitors are used,
31 an inadequate number of nursing personnel results in death.

1 (4) To ensure the adequate protection and care for
2 patients in health care facilities it is essential that
3 qualified licensed and adequately trained registered nurses be
4 accessible and available to meet the nursing needs of
5 patients, particularly in intensive care units and other
6 situations in which cardiac monitors are used.

7 Section 3. Facility staffing standards.--

8 (1) As a condition of licensing, each health care
9 facility licensed under chapter 395, Florida Statutes, shall
10 annually submit to the Agency for Health Care Administration a
11 documented staffing plan, together with a written
12 certification that the staffing plan is sufficient to provide
13 adequate and appropriate delivery of health care services to
14 patients for the ensuing year. The staffing plan must:

15 (a) Meet the minimum requirements set forth in
16 subsection (2);

17 (b) Be adequate to meet any additional requirements
18 provided by other laws or rules;

19 (c) Employ and identify an approved acuity system for
20 addressing fluctuations in actual patient acuity levels and
21 nursing-care requirements requiring increased staffing levels
22 above the minimums set forth in the plan;

23 (d) Factor in other unit or department activity, such
24 as discharges, transfers, and admissions of patients and
25 administrative and support tasks, which is expected to be done
26 by direct-care nurses and is in addition to direct nursing
27 care;

28 (e) Identify the assessment tool used to validate the
29 acuity system relied on in the plan;

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1 (f) Identify the system that will be used to document
2 actual staffing on a daily basis within each department or
3 unit;

4 (g) Include a written assessment of the accuracy of
5 the prior year's staffing plan in light of actual staffing
6 needs;

7 (h) Identify each nurse-staff classification
8 referenced in the plan, together with a statement setting
9 forth minimum qualifications for each such classification; and

10 (i) Be developed in consultation with the direct-care
11 nursing staff within each department or unit or, if such staff
12 is represented, with the applicable recognized or certified
13 collective bargaining representative of the direct-care
14 nursing staff.

15 (2)(a) The health care facility's staffing plan must
16 incorporate, at a minimum, the following direct-care
17 registered nurse-to-patient ratios:

18 1. One registered nurse to one patient - operating
19 rooms and trauma or emergency units;

20 2. One registered nurse to two patients - all
21 intensive care units and critical care areas in which patients
22 are at serious risk of immediate loss of life or loss of a
23 major bodily function, including emergency critical care,
24 labor and delivery units, and postanesthesia units;

25 3. One nurse to three patients - step-down units from
26 intensive care units in which continuous cardiac monitoring is
27 used to ensure immediate response to life-threatening
28 incidents and telemetry units; and

29 4. One nurse to four patients - any other units in
30 which continuous cardiac monitoring is used to ensure
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1 immediate response to life-threatening incidents, including
2 intermediate-care nursery and medical or surgical floors.

3 Section 4. Employee rights.--

4 (1)(a) As a condition of licensure, each health care
5 facility shall adopt and disseminate to direct-care nursing
6 staff a written policy that complies with paragraphs (b) and
7 (c) and that details the circumstances under which a
8 direct-care nurse may refuse a work assignment.

9 (b) At a minimum, the work-assignment policy must
10 permit a direct-care nurse to refuse an assignment for which:

11 1. The nurse is not prepared by education, training,
12 or experience to safely fulfill the assignment without
13 compromising or jeopardizing patient safety, the nurse's
14 ability to meet foreseeable patient needs, or the nurse's
15 license;

16 2. The nurse has volunteered to work overtime but
17 determines that his or her level of fatigue or decreased
18 alertness would compromise or jeopardize patient safety, the
19 nurse's ability to meet foreseeable patient needs, or the
20 nurse's license; or

21 3. The assignment would otherwise violate requirements
22 set forth in this act.

23 (c) At a minimum, the work-assignment policy must
24 provide:

25 1. Reasonable requirements for prior notice to the
26 nurse's supervisor regarding the nurse's request and
27 supporting reasons for being relieved of the assignment or
28 continued duty.

29 2. Where feasible, an opportunity for the supervisor
30 to review the specific conditions supporting the nurse's
31 request, and to decide whether to remedy the conditions, to

1 relieve the nurse of the assignment, or to deny the nurse's
2 request to be relieved of the assignment or continued duty.

3 3. A process that permits the nurse to exercise the
4 right to refuse the assignment or continued on-duty status
5 when the supervisor denies the request to be relieved if:

6 a. The supervisor rejects the request without
7 proposing a remedy or the proposed remedy would be inadequate
8 or untimely;

9 b. A complaint and investigation process with a
10 regulatory agency would be untimely to address the concern;
11 and

12 c. The employee in good faith believes that the
13 assignment meets conditions that justify the refusal.

14 (2)(a) A health care facility may not penalize,
15 discriminate, or retaliate in any manner against an employee
16 with respect to compensation, terms, conditions, or privileges
17 of employment, who, in good faith, individually or in
18 conjunction with another person or persons:

19 1. Reports a violation or suspected violation of this
20 act to a public regulatory agency, a private accreditation
21 body, or management personnel of the health care facility;

22 2. Initiates, cooperates, or otherwise participates in
23 an investigation or proceeding brought by a regulatory agency
24 or private accreditation body concerning matters covered by
25 this act;

26 3. Informs or discusses with other employees,
27 representatives of employees, patients, patient
28 representatives, or the public violations or suspected
29 violations of this act; or

30 4. Otherwise avails himself or herself of the rights
31 set forth in this act.

1 (b) For purposes of this section, an employee is
2 deemed to have acted in good faith if the employee reasonably
3 believes:

4 1. That the information reported or disclosed is true;
5 and

6 2. That a violation has occurred or may occur.

7 Section 5. Private right of action.--

8 (1) A health care facility that violates section 2 or
9 section 3 may be held liable to the employee affected in an
10 action brought in a court of competent jurisdiction for such
11 legal or equitable relief as is appropriate to effectuate the
12 purposes of this act, including, but not limited to,
13 reinstatement, promotion, lost wages and benefits, and
14 compensatory and consequential damages resulting from the
15 violation, together with an equal amount in liquidated
16 damages. The court in such action shall, in addition to any
17 judgment awarded to the plaintiff, award reasonable attorney's
18 fees and costs of action to be paid by the defendant.

19 (2) The employee's right to institute a private action
20 under this section is not limited by any other rights granted
21 under this act.

22 Section 6. Enforcement.--

23 (1)(a)1. Each health care facility must post in a
24 conspicuous place that is readily accessible to the general
25 public, a notice prepared by the Agency for Health Care
26 Administration setting forth in summary form the mandatory
27 provisions of this act.

28 2. The mandatory and actual nurse staffing levels in
29 each nursing department or unit must be posted daily in a
30 conspicuous place that is readily accessible to the public.

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1 (b)1. Each health care facility must make copies of
2 its staffing plan filed with the Agency for Health Care
3 Administration available to the public upon request.

4 2. Each nursing department or unit within a facility
5 must post or otherwise make readily available to the nursing
6 staff, during each work shift:

7 a. A copy of the current staffing plan for that
8 department or unit;

9 b. Documentation of the number of direct-care nursing
10 staff members required to be present during the shift, based
11 on the approved adopted acuity system; and

12 c. Documentation of the actual number of direct-care
13 nursing staff members who are present during the shift.

14 (2)(a) The Agency for Health Care Administration shall
15 ensure general compliance with section 3, relating to staffing
16 plans and standards, and may adopt rules to administer this
17 act. At a minimum, the rules must provide for:

18 1. Unannounced, random compliance site visits of
19 health care facilities;

20 2. An accessible and confidential system for the
21 public and nursing staff to report a health facility's failure
22 to comply with the requirements of the act;

23 3. A systematic means for investigating and correcting
24 violations of the act;

25 4. Public access to information regarding reports of
26 inspections, results, deficiencies, and corrections; and

27 5. Imposing the penalties for violations of the
28 staffing requirements of this act.

29 (b) The Agency for Health Care Administration has
30 jurisdiction to ensure compliance with this act and to
31 administer rules necessary to carry out this function.

1 (3)(a) If the Agency for Health Care Administration
2 determines that a health care facility has violated this act,
3 the agency may revoke the facility's license as provided under
4 section 395.003, Florida Statutes.

5 (b)1. A health care facility that violates any
6 staffing requirements set forth in section 3 shall be punished
7 by a fine of not less than \$15,000 per violation for each day
8 that the violation occurs or continues.

9 2. A health care facility that fails to post a notice
10 required under this act is subject to a fine of \$1,000 per day
11 for each day that the required notice is not posted.

12 3. A person or health care facility that fails to
13 report or falsifies information or that coerces, threatens,
14 intimidates, or otherwise influences another person to fail to
15 report or to falsify information required to be reported under
16 this act is subject to a fine of up to \$15,000 for each such
17 incident.

18 (c)1. Upon investigation, the Agency for Health Care
19 Administration shall notify the health care facility of all
20 deficiencies in its compliance with this act and the rules
21 adopted under this act. The notice may include an order to
22 take corrective action within a time specific, including, but
23 not limited to:

24 a. Revising the facility staffing plan;

25 b. Reducing the number of patients within a nursing
26 department or unit;

27 c. Temporarily closing a nursing department or unit to
28 any further patient admissions until corrections are made; or

29 d. Temporarily transferring patients to another
30 nursing department or unit within the facility until
31 corrections are made.

1 2. The agency may issue an order of correction:
2 a. On an emergency basis, without prior notice or
3 opportunity for a hearing, if the investigation shows that
4 patient care is being compromised in a manner that poses an
5 immediate jeopardy to the health or safety of patients.
6 b. In accordance with chapter 395, Florida Statutes.
7 3. The order of correction must be in writing and
8 contain a statement of the reasons for the order.
9 4. Upon the failure of a health care facility to
10 comply with an order of correction in a timely manner, the
11 Agency for Health Care Administration may take any action it
12 deems appropriate, including, but not limited to:
13 a. Appointing an administrative overseer for the
14 health care facility;
15 b. Closing the health care facility or a department or
16 unit within the facility to patient admissions;
17 c. Placing the health care facility's emergency room
18 on bypass status; or
19 d. Revoking the health care facility's license.
20 (4) Any person who willfully violates this act in a
21 manner that evidences a pattern or practice of violations and
22 that is likely to have serious and adverse impact on patient
23 care or the potential for serious injury or death for patients
24 or employees commits a misdemeanor of the first degree,
25 punishable as provided in section 775.082 or section 775.083,
26 Florida Statutes.
27 (5)(a) A determination that a health care facility has
28 violated this act shall result in an order of reimbursement to
29 the Medicaid program or in termination from participation in
30 the Medicaid program for a period of time determined by the
31 Agency for Health Care Administration.

1 (b) Any health care facility that falsifies or causes
2 to be falsified documentation required by this act may not
3 receive any Medicaid reimbursement for 6 months.

4 Section 7. This act shall take effect October 1, 2002.
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7 SENATE SUMMARY

8 Creates an act entitled "Safe Staffing for Intensive Care
9 and Life-Preserving Monitored Care." Requires that health
10 care facilities licensed under ch. 395, F.S., maintain
11 specified ratios of nurses to patients. Requires that
12 each facility report its staffing levels to the Agency
13 for Health Care Administration and make the information
14 available to the public. Provides that an employee may
15 seek legal and equitable relief against a health care
16 facility for certain violations. Requires that the Agency
17 for Health Care Administration adopt rules to enforce and
18 administer the act. (See bill for details.)