

By Senator Dawson

30-1146-02

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 in order to ensure the
6 safety of patients; providing definitions;
7 providing staffing requirements for health care
8 facilities licensed under ch. 395, F.S., and
9 psychiatric facilities licensed under ch. 394,
10 F.S.; requiring that each facility subject to
11 the act submit a staffing plan to the Agency
12 for Health Care Administration; providing
13 requirements for the plan; specifying
14 nurse-to-patient ratios; providing that the act
15 does not preclude a facility from implementing
16 higher staffing ratios than those required by
17 the act; requiring each facility maintain
18 records of staffing levels; requiring that the
19 records be available to the Agency for Health
20 Care Administration and to the public;
21 prohibiting a facility from requiring that
22 health care employees work more than specified
23 periods of overtime; providing an exception
24 during a declared state of emergency;
25 authorizing a collective bargaining agreement
26 that provides for mandatory hours in excess of
27 that permitted under the act; specifying
28 circumstances under which a direct-care nurse
29 may refuse a work assignment; requiring each
30 health care facility to adopt a work-assignment
31 policy; prohibiting a facility from penalizing

1 or retaliating against an employee who reports
2 certain violations or participates in
3 investigations or proceedings; providing that
4 an employee may obtain legal or equitable
5 relief against a health care facility for
6 certain violations of the act; providing for
7 attorney's fees and costs; requiring health
8 care facilities to post a notice of the
9 requirements of the act and the daily staffing
10 levels of the facility; authorizing the Agency
11 for Health Care Administration to adopt rules
12 with respect to enforcement of staffing
13 requirements; authorizing the agency to revoke
14 the license of a facility in violation of the
15 act; providing for fines for certain
16 violations; providing for the agency to require
17 that a facility take corrective action;
18 providing for additional sanctions against a
19 facility that fails to take corrective action;
20 providing that certain violations of the act
21 are a third-degree misdemeanor; providing for a
22 facility to be terminated from the Medicaid
23 program following a violation of the act;
24 providing an effective date.

25
26 Be It Enacted by the Legislature of the State of Florida:

27
28 Section 1. Short title.--This act may be cited as the
29 "Safe Staffing for Quality Care Act."

30 Section 2. Legislative findings.--The Legislature
31 finds that:

1 (1) The state has a substantial interest in assuring
2 that the delivery of health care services to patients in
3 health care facilities located within this state is adequate
4 and safe and that health care facilities retain sufficient
5 nursing staff in order to promote optimal health-care
6 outcomes.

7 (2) Recent changes in our health-care-delivery system
8 are resulting in a higher acuity level among patients in
9 health care facilities.

10 (3) Inadequate hospital staffing results in dangerous
11 medical errors and patient infections.

12 (4) To ensure the adequate protection and care for
13 patients in health care facilities it is essential that
14 qualified licensed nurses be accessible and available to meet
15 the nursing needs of patients.

16 (5) Inadequate and poorly monitored nurse-staffing
17 practices jeopardize delivery of quality health care services
18 and adversely impact the health of patients who enter
19 hospitals and outpatient emergency and surgical centers.

20 (6) The basic principles of staffing in health care
21 facilities should be focused on the health care needs of
22 patients and based on consideration of patient acuity levels
23 and services that need to be provided to ensure optimal
24 outcomes.

25 (7) A substantial number of nurses indicate that
26 hospital patient acuity measurements are inadequate and that
27 many hospitals rarely, if ever, staff according to an acuity
28 measurement tool.

29 (8) Establishing staffing standards will ensure that
30 health care facilities throughout the state operate in a
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1 manner that guarantees the public safety and the delivery of
2 quality health care services.

3 (9) Polling indicates that hospital nurses work
4 substantial overtime hours and that nurses working 12-hour
5 shifts work the most additional overtime hours per week.

6 (10) Mandatory overtime and lengthy work hours for
7 direct-care nurses constitute a threat to the health and
8 safety of patients, adversely impact the general well-being of
9 nurses and their families, and result in greater turnover,
10 which increases long-term shortages of nursing personnel.

11 Section 3. Definitions.--As used in this act, the
12 term:

13 (1) "Acuity system" means an established measurement
14 instrument that:

15 (a) Predicts the requirements for nursing care for
16 individual patients and based on severity of patient illness;
17 need for specialized equipment and technology; intensity of
18 nursing interventions required; and the complexity of clinical
19 nursing judgment needed to design, implement, and evaluate the
20 patient's nursing care plan;

21 (b) Details the amount of nursing care needed, both in
22 number of nurses and in skill mix of nursing personnel
23 required, on a daily basis, for each patient in a nursing
24 department or unit; and

25 (c) Is stated in terms that readily can be used and
26 understood by direct-care nursing staff.

27 (2) "Assessment tool" means a measurement system that
28 compares the staffing level in each nursing department or unit
29 against actual patient requirements for nursing care in order
30 to review the accuracy of an acuity system.

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1 (3) "Documented staffing plan" means a detailed
2 written plan setting forth the minimum number, skill mix, and
3 classification of licensed nurses required in each nursing
4 department or unit in the health care facility for a given
5 year, based on reasonable projections derived from the patient
6 census and average acuity level within each department or unit
7 during the prior year, the department or unit size and
8 geography, the nature of services provided, and any foreseeable
9 changes in department or unit size or function during the
10 current year.

11 (4) "Critical care unit" means a unit of a hospital
12 which is established to safeguard and protect patients whose
13 severity of medical conditions require continuous monitoring
14 and complex nursing intervention.

15 (5) "Declared state of emergency" means an officially
16 designated state of emergency that has been declared by a
17 federal, state, or local government official having authority
18 to declare that the state, county, municipality, or locality
19 is in a state of emergency, but does not include a state of
20 emergency that results from a labor dispute in the health care
21 industry.

22 (6) "Direct-care nurse" or "direct-care nursing staff"
23 means any nurse who has direct responsibility to oversee or
24 carry out medical regimens or nursing care for one or more
25 patients.

26 (7) "Health care facility" means an acute care
27 hospital; an emergency care, ambulatory, or outpatient surgery
28 facility licensed under section 395.003, Florida Statutes; or
29 a psychiatric facility licensed under chapter 394, Florida
30 Statutes.

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1 (8) "Nurse" means a registered nurse or a licensed
2 practical nurse.

3 (9) "Nursing care" means care that falls within the
4 scope of practice set forth in the applicable state nurse
5 practice act or that is otherwise encompassed within
6 recognized professional standards of nursing practice,
7 including assessment, nursing diagnosis, planning,
8 intervention, evaluation, and patient advocacy.

9 (10) "Off-duty" means that the individual has no
10 restrictions placed on his or her whereabouts and is free of
11 all restraint or duty on behalf of the health care facility.

12 (11) "On-duty" means that the individual is required
13 to be available and ready to perform services on request
14 within or on behalf of the health care facility and includes
15 any rest periods or breaks during which the individual's
16 ability to leave the health care facility is restricted,
17 either expressly or by work-related circumstances beyond the
18 individual's control.

19 (12) "Skill mix" means the differences in licensing,
20 specialty, and experience among direct-care nurses.

21 (13) "Staffing level" means the actual numerical
22 nurse-to-patient ratio by licensed nurse classification within
23 a nursing department or unit.

24 Section 4. Facility staffing standards.--

25 (1) Each health care facility shall ensure that it is
26 staffed in a manner that provides sufficient, appropriately
27 qualified nursing staff of each classification in each
28 department or unit within the facility in order to meet the
29 individualized care needs of the patients in the facility and
30 to meet the requirements set forth in this section.

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1 (2) As a condition of licensing, each health care
2 facility shall annually submit to the Agency for Health Care
3 Administration a documented staffing plan, together with a
4 written certification that the staffing plan is sufficient to
5 provide adequate and appropriate delivery of health care
6 services to patients for the ensuing year. The staffing plan
7 must:

8 (a) Meet the minimum requirements set forth in
9 subsection (3);

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

12 (c) Employ and identify an approved acuity system for
13 addressing fluctuations in actual patient acuity levels and
14 nursing-care requirements requiring increased staffing levels
15 above the minimums set forth in the plan;

16 (d) Factor in other unit or department activity, such
17 as discharges, transfers, and admissions of patients and
18 administrative and support tasks, which is expected to be done
19 by direct-care nurses and is in addition to direct nursing
20 care;

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

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

26 (g) Include a written assessment of the accuracy of
27 the prior year's staffing plan in light of actual staffing
28 needs;

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

1 (i) Be developed in consultation with the direct-care
2 nursing staff within each department or unit or, if such staff
3 is represented, with the applicable recognized or certified
4 collective bargaining representative of the direct-care
5 nursing staff.

6 (3)(a) The health care facility's staffing plan must
7 incorporate, at a minimum, the following direct-care
8 nurse-to-patient ratios:

9 1. One nurse to one patient - operating rooms and
10 trauma or emergency units;

11 2. One nurse to two patients - All critical care
12 areas, including emergency critical care and all intensive
13 care units, labor and delivery units, and postanesthesia
14 units;

15 3. One nurse to three patients - antepartum, emergency
16 room, pediatrics, psychiatry, step-down, and telemetry units;

17 4. One nurse to four patients - intermediate-care
18 nursery and medical or surgical floors;

19 5. One nurse to five patients - skilled nursing
20 facilities and rehabilitation; and

21 6. One nurse to six patients - postpartum (three
22 couplets) and well-baby nursery.

23 (b) The minimum number of direct-care nurse-to-patient
24 staff set forth in paragraph (a) constitutes the minimum
25 number of direct-care nursing staff which must be assigned to
26 and present within a nursing department or unit. If the
27 approved acuity system adopted by the facility indicates that
28 additional staff are required, the health care facility must
29 assign staff at the higher staffing level.

30 (c) The Agency for Health Care Administration shall
31 adopt rules prescribing the method by which it will approve a

1 health care facility's acuity system, such rules may include a
2 system for class approval of acuity systems.

3 (d)1. The skill mix reflected in a staffing plan must
4 assure that all of the following elements of the nursing
5 process are performed in the planning and delivery of care for
6 each patient: assessment, nursing diagnosis, planning,
7 intervention, evaluation, and patient advocacy.

8 2. Registered nurses must constitute at least 80
9 percent of the direct-care nurses included in the staffing
10 plan.

11 3. The skill mix may not incorporate or assume that
12 nursing-care functions that are required by licensing law,
13 rules, or accepted standards of practice to be performed by a
14 licensed nurse are to be performed by unlicensed assistive
15 personnel.

16 (4)(a) As a condition of licensing, a health care
17 facility must at all times assign staff in accordance with its
18 staffing plan and the staffing standards set forth in this
19 section. However, this section does not preclude a health care
20 facility from implementing higher direct-care nurse-to-patient
21 staffing levels.

22 (b) A nurse may not be assigned, or included in the
23 count of assigned nursing staff for purposes of compliance
24 with minimum staffing requirements, to a nursing department or
25 unit or a clinical area within the health facility without
26 appropriate licensing, prior orientation, and verification
27 that the nurse is capable of providing competent nursing care
28 to the patients in the facility.

29 (5)(a) As a condition of licensure, each health care
30 facility must maintain accurate daily records showing:
31

1 1. The number of patients admitted, released, and
2 present in each nursing department or unit within the
3 facility;

4 2. The individual acuity level of each patient present
5 in each nursing department or unit within the facility; and

6 3. The identity and duty hours of each direct-care
7 nurse in each nursing department or unit within the facility.

8 (b) As a condition of licensure, each health care
9 facility shall maintain daily statistics, by nursing
10 department and unit, of mortality, morbidity, infection,
11 accident, injury, and medical errors.

12 (c) All records required to be kept under this
13 subsection must be maintained for 7 years.

14 (d) All records required to be kept under this
15 subsection shall be made available upon request to the Agency
16 for Healthcare Administration and to the public, provided,
17 however, that information released to the public may not
18 contain the name or other personal identifying information,
19 apart from acuity level, about any individual patient.

20 Section 5. Mandatory overtime and excessive-duty
21 hours.--

22 (1)(a)1. Notwithstanding any other law to the contrary
23 and subject only to the exceptions included in this section, a
24 health care facility may not mandate or otherwise require,
25 directly or indirectly, a health care employee to work or be
26 on duty in excess of any one of the following:

27 a. The scheduled workshift or duty period;

28 b. Twelve hours in a 24-hour period; or

29 c. Eighty hours in a 14-consecutive-day period.

30 2. As used in this section, the term "mandatory" or
31 "mandate" means a request that, if refused or declined by the

1 health care employee, may result in discharge, discipline,
2 loss of promotion, or other adverse employment consequence.

3 3. This subsection does not prohibit a health care
4 employee from voluntarily working overtime.

5 (b)1. A health care employee may not work or be on
6 duty more than 16 hours in any 24-hour period.

7 2. A health care employee working 16 hours in any
8 24-hour period must have at least 8 consecutive hours off duty
9 before being required to return to duty.

10 3. A health care employee may not be required to work
11 or be on duty more than 7 consecutive days without at least
12 one consecutive 24-hour period off duty within that time.

13 (2)(a)1. During a declared state of emergency in which
14 a health care facility is requested or otherwise reasonably
15 may be expected to provide an exceptional level of emergency
16 or other medical services to the community, the mandatory
17 overtime prohibition in paragraph (1)(a) shall be lifted to
18 the following extent:

19 a. Health care employees may be required to work or be
20 on duty up to the maximum hour limitations set forth in
21 paragraph (1)(b) if the health care facility has taken the
22 steps set forth in sub-subparagraph b.

23 b. Prior to requiring any health care employee to work
24 mandatory overtime, the health care facility must make
25 reasonable efforts to fill its immediate staffing needs
26 through alternative efforts, including requesting off-duty
27 staff to voluntarily report to work, requesting on-duty staff
28 to volunteer for overtime hours, and recruiting per diem and
29 registry staff to report to work.

30 c. This exemption applies only during the duration of
31 the declared state of emergency or while the health care

1 facility has a direct role in responding to medical needs
2 resulting from the declared state of emergency, whichever
3 period is less.

4 2. During a declared state of emergency during which a
5 health care facility is requested or otherwise reasonably may
6 be expected to provide an exceptional level of emergency or
7 other medical services to the community, the limitation on
8 maximum hours provided in paragraph (1)(b) shall be lifted if:

9 a. The decision to work the additional time is
10 voluntarily made by the individual health care employee
11 affected;

12 b. The health care employee is given at least one
13 uninterrupted 4-hour rest period before the completion of the
14 first 16 hours of duty and an uninterrupted 8-hour rest period
15 at the completion of 24 hours of duty.

16 c. A health care employee does not work or remain on
17 duty for more than 28 consecutive hours in a 72-hour period.

18 d. A health care employee who has been on duty for
19 more than 16 hours in a 24-hour period who informs the health
20 care facility that he or she needs immediate rest must be
21 relieved from duty as soon thereafter as possible, consistent
22 with patient safety needs, and given at least 8 hours
23 uninterrupted hours off duty before being required to return
24 for duty.

25 3. As used in this paragraph, the term "rest period"
26 means a period in which an individual may be required to
27 remain on the premises of the health care facility but is free
28 of all restraint or duty or responsibility for work or duty if
29 the occasion arises.

30 4. This exemption does not exceed the duration of the
31 declared state of emergency or the health care facility's

1 direct role in responding to medical needs resulting from the
2 declared state of emergency, whichever period is less.

3 (b) A workshift schedule or overtime program
4 established pursuant to a collective bargaining agreement
5 negotiated on behalf of the health care employees by a bona
6 fide labor organization may provide for mandatory on-duty
7 hours in excess of that permitted under paragraph (a) if
8 adequate measures are included in the agreement to ensure
9 against excessive fatigue on the part of the affected
10 employees.

11 Section 6. Employee rights.--

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

17 (b) The work-assignment policy must permit a
18 direct-care nurse to refuse an assignment for which:

19 1. The nurse is not prepared by education, training,
20 or experience to safely fulfill the assignment without
21 compromising or jeopardizing patient safety, the nurse's
22 ability to meet foreseeable patient needs, or the nurse's
23 license;

24 2. The nurse has volunteered to work overtime but
25 determines that his or her level of fatigue or decreased
26 alertness would compromise or jeopardize patient safety, the
27 nurse's ability to meet foreseeable patient needs, or the
28 nurse's license; or

29 3. The assignment would otherwise violate requirements
30 set forth in this act.

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1 (c) At a minimum, the work-assignment policy must
2 provide:

3 1. Reasonable requirements for prior notice to the
4 nurse's supervisor regarding the nurse's request and
5 supporting reasons for being relieved of the assignment or
6 continued duty.

7 2. Where feasible, an opportunity for the supervisor
8 to review the specific conditions supporting the nurse's
9 request, and to decide whether to remedy the conditions, to
10 relieve the nurse of the assignment, or to deny the nurse's
11 request to be relieved of the assignment or continued duty.

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

15 a. The supervisor rejects the request without
16 proposing a remedy or the proposed remedy would be inadequate
17 or untimely;

18 b. A complaint and investigation process with a
19 regulatory agency would be untimely to address the concern;
20 and

21 c. The employee in good faith believes that the
22 assignment meets conditions that justify the refusal.

23 (2)(a) A health care facility may not penalize,
24 discriminate, or retaliate in any manner against an employee
25 with respect to compensation, terms, conditions, or privileges
26 of employment, who, in good faith, individually or in
27 conjunction with another person or persons:

28 1. Reports a violation or suspected violation of this
29 act to a public regulatory agency, a private accreditation
30 body, or management personnel of the health care facility;
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1 2. Initiates, cooperates, or otherwise participates in
2 an investigation or proceeding brought by a regulatory agency
3 or private accreditation body concerning matters covered by
4 this act;

5 3. Informs or discusses with other employees,
6 representatives of employees, patients, patient
7 representatives, or the public violations or suspected
8 violations of this act; or

9 4. Otherwise avails himself or herself of the rights
10 set forth in this act.

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

14 1. That the information reported or disclosed is true;
15 and

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

17 Section 7. Private right of action.--

18 (1) A health care facility that violates section 5 or
19 section 6 may be held liable to the employee affected in an
20 action brought in a court of competent jurisdiction for such
21 legal or equitable relief as is appropriate to effectuate the
22 purposes of this act, including, but not limited to,
23 reinstatement, promotion, lost wages and benefits, and
24 compensatory and consequential damages resulting from the
25 violation, together with an equal amount in liquidated
26 damages. The court in such action shall, in addition to any
27 judgment awarded to the plaintiff, award reasonable attorney's
28 fees and costs of action to be paid by the defendant.

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

1 Section 8. Enforcement.--
2 (1)(a)1. Each health care facility must post in a
3 conspicuous place that is readily accessible to the general
4 public, a notice prepared by the Agency for Health Care
5 Administration setting forth in summary form the mandatory
6 provisions of this act.
7 2. The mandatory and actual nurse staffing levels in
8 each nursing department or unit must be posted daily in a
9 conspicuous place that is readily accessible to the public.
10 (b)1. Each health care facility must make copies of
11 its staffing plan filed with the Agency for Health Care
12 Administration available to the public upon request.
13 2. Each nursing department or unit within a facility
14 must post or otherwise make readily available to the nursing
15 staff, during each work shift:
16 a. A copy of the current staffing plan for that
17 department or unit;
18 b. Documentation of the number of direct-care nursing
19 staff members required to be present during the shift, based
20 on the approved adopted acuity system; and
21 c. Documentation of the actual number of direct-care
22 nursing staff members who are present during the shift.
23 (2)(a) The Agency for Health Care Administration shall
24 ensure general compliance with section 3, relating to staffing
25 plans and standards, and may adopt rules to administer this
26 act. At a minimum, the rules must provide for:
27 1. Unannounced, random compliance site visits of
28 health care facilities;
29 2. An accessible and confidential system for the
30 public and nursing staff to report a health facility's failure
31 to comply with the requirements of the act;

1 3. A systematic means for investigating and correcting
2 violations of the act;

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

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

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

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

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

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

21 3. A health care facility that violates section 4 or
22 section 5 is subject to a fine of \$15,000 per violation.

23 4. A person or health care facility that fails to
24 report or falsifies information or that coerces, threatens,
25 intimidates, or otherwise influences another person to fail to
26 report or to falsify information required to be reported under
27 this act is subject to a fine of up to \$15,000 for each such
28 incident.

29 (c)1. Upon investigation, the Agency for Health Care
30 Administration shall notify the health care facility of all
31 deficiencies in its compliance with this act and the rules

1 adopted under this act. The notice may include an order to
2 take corrective action within a time specific, including, but
3 not limited to:
4 a. Revising the facility staffing plan;
5 b. Reducing the number of patients within a nursing
6 department or unit;
7 c. Temporarily closing a nursing department or unit to
8 any further patient admissions until corrections are made; or
9 d. Temporarily transferring patients to another
10 nursing department or unit within the facility until
11 corrections are made.
12 2. The agency may issue an order of correction:
13 a. On an emergency basis, without prior notice or
14 opportunity for a hearing, if the investigation shows that
15 patient care is being compromised in a manner that poses an
16 immediate jeopardy to the health or safety of patients.
17 b. In accordance with chapter 395, Florida Statutes.
18 3. The order of correction must be in writing and
19 contain a statement of the reasons for the order.
20 4. Upon the failure of a health care facility to
21 comply with an order of correction in a timely manner, the
22 Agency for Health Care Administration may take any action it
23 deems appropriate, including, but not limited to:
24 a. Appointing an administrative overseer for the
25 health care facility;
26 b. Closing the health care facility or a department or
27 unit within the facility to patient admissions;
28 c. Placing the health care facility's emergency room
29 on bypass status; or
30 d. Revoking the health care facility's license.
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