

By Senator Dawson

29-931A-04

1 A bill to be entitled
 2 An act relating to the staffing of health care
 3 facilities; creating ss. 395.051-395.057, F.S.;
 4 providing a short title; providing legislative
 5 findings; defining terms; prescribing safe
 6 staffing standards for health care facilities;
 7 requiring licensed facilities to submit an
 8 annual staffing plan to the Agency for Health
 9 Care Administration; providing standards for
 10 the required skill mix; requiring compliance
 11 with the staffing plan; requiring
 12 recordkeeping; prohibiting mandatory overtime;
 13 providing applicability; providing to employees
 14 the right to refuse certain assignments and the
 15 right to report suspected violations of safe
 16 staffing standards; providing for the agency to
 17 enforce compliance with the act; requiring the
 18 agency to develop rules; providing an effective
 19 date.

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

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 23 Section 1. Section 395.051, Florida Statutes, is
 24 created to read:

25 395.051 Short title.--Sections 395.051-395.057 may be
 26 cited as the "Safe Staffing for Quality Care Act."

27 Section 2. Section 395.052, Florida Statutes, is
 28 created to read:

29 395.052 Legislative findings.--The Legislature finds
 30 that:

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

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

9 (3) Registered nurses constitute the highest
10 percentage of direct health care staff in acute care
11 facilities and have a central role in delivering health care.

12 (4) Extensive research indicates that inadequate
13 registered nurse staffing in hospitals can result in increased
14 patient death rates, dangerous medical errors, and increased
15 length of stay.

16 (5) To ensure adequate protection and care for
17 patients in health care facilities, it is essential that
18 qualified registered nurses who are trained and authorized to
19 deliver nursing services be accessible and available to meet
20 the nursing needs of patients.

21 Section 3. Section 395.053, Florida Statutes, is
22 created to read:

23 395.053 Definitions.--As used in this act, the term:

24 (1) "Acuity system" means an established measurement
25 instrument that:

26 (a) Predicts nursing care requirements for individual
27 patients based on the severity of patient illness, the need
28 for specialized equipment and technology, the intensity of
29 nursing interventions required, and the complexity of clinical
30 nursing judgment needed to design, implement, and evaluate the
31 patient's nursing care plan;

1 (b) Details the amount of nursing care needed, both in
2 the number of registered nurses and in the skill mix of
3 nursing personnel required daily for each patient in a nursing
4 department or unit; and

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

7 (2) "Assessment tool" means a measurement system that
8 compares the staffing level in each nursing department or unit
9 against actual patient nursing care requirements in order to
10 review the accuracy of an acuity system.

11 (3) "Declared state of emergency" means an officially
12 designated state of emergency which has been declared by a
13 federal, state, or local government official who has the
14 authority to declare that the state, county, municipality, or
15 locality is in a state of emergency. The term does not include
16 a state of emergency which results from a labor dispute in the
17 health care industry.

18 (4) "Direct-care nurse" or "direct-care nursing staff"
19 means any registered nurse who has direct responsibility to
20 oversee or carry out medical regimens or nursing care for one
21 or more patients. A nurse administrator, nurse supervisor,
22 nurse educator, charge nurse, or other registered nurse who
23 does not have a specific patient assignment may not be
24 included in the calculation of the registered nurse-to-patient
25 ratio.

26 (5) "Documented staffing plan" means a detailed
27 written plan that sets forth the minimum number, skill mix,
28 and classification of licensed nurses required in each nursing
29 department or unit in the health care facility for a given
30 year, based on reasonable projections derived from the patient
31 census and average acuity level within each department or unit

1 during the previous year, the department or unit size and
2 geography, the nature of services provided, and any
3 foreseeable changes in department or unit size or function
4 during the current year.

5 (6) "Health care facility" means an acute care
6 hospital; an emergency care, ambulatory, or outpatient surgery
7 facility licensed under s. 395.003; or a psychiatric facility
8 licensed under chapter 394.

9 (7) "Nurse" means a registered nurse.

10 (8) "Nursing care" means care that falls within the
11 scope of practice set forth in chapter 464 and other laws and
12 rules or care that is otherwise encompassed within recognized
13 professional standards of nursing practice, including
14 assessment, nursing diagnosis, planning, intervention,
15 evaluation, and patient advocacy.

16 (9) "On-call time" means time spent by an employee
17 who:

18 (a) Is not working on the premises of the place of
19 employment but who is compensated for availability; or

20 (b) As a condition of employment, has agreed to be
21 available to return to the premises of the place of employment
22 on short notice if the need arises.

23 (10) "Overtime" means the hours worked in excess of
24 any of the following:

25 (a) An agreed-upon, predetermined, regularly scheduled
26 shift;

27 (b) Twelve hours in a 24-hour period; or

28 (c) Eighty hours in a consecutive 14-day period.

29 (11) "Reasonable efforts," in reference to the
30 prohibition on mandatory overtime, means that the employer is
31 unable to obtain staff coverage even though the employer has:

1 (a) Sought, from among all available qualified staff
2 who are working, individuals who would volunteer to work extra
3 time;

4 (b) Contacted employees who have made themselves
5 available to work extra time;

6 (c) Sought the use of per diem staff; and

7 (d) Sought personnel from a contracted temporary
8 agency if such staffing is permitted by law or an applicable
9 collective bargaining agreement.

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

12 (13) "Staffing level" means the actual numerical
13 registered nurse-to-patient ratio within a nursing department
14 or unit.

15 (14) "Unforeseeable emergent circumstance" means:

16 (a) An unforeseen declared national, state, or
17 municipal emergency;

18 (b) A situation in which a health care disaster plan
19 is activated; or

20 (c) An unforeseen disaster or other catastrophic event
21 that substantially affects or increases the need for health
22 care services.

23 Section 4. Section 395.054, Florida Statutes, is
24 created to read:

25 395.054 Facility staffing standards.--

26 (1) STAFFING PRINCIPLES.--The basic principles of
27 staffing in health care facilities should be focused on
28 patient health care needs and based on consideration of
29 patient acuity levels and services that need to be provided to
30 ensure optimal outcomes. Safe staffing practices recognize the
31 importance of all health care workers in providing quality

1 patient care. The setting of staffing standards for registered
2 nurses is not to be interpreted as justifying the
3 understaffing of other critical health care workers, including
4 licensed practical nurses, social workers, and other licensed
5 or unlicensed assistive personnel. Indeed, the availability of
6 these other health care workers enables registered nurses to
7 focus on the nursing care functions that only registered
8 nurses, by law, are permitted to perform and thereby helps to
9 ensure adequate staffing levels.

10 (2) SPECIFIC STANDARDS.--Health care facilities shall
11 provide staffing by registered nurses in accordance with the
12 minimum nurse-to-patient ratios that are set forth in this
13 subsection. Staffing for care that does not require a
14 registered nurse is not included within these ratios and must
15 be determined pursuant to the patient classification system.
16 Nurse-to-patient ratios represent the maximum number of
17 patients which shall be assigned to one registered nurse
18 during one shift. Only nurses providing direct patient care
19 shall be included in the ratios. Nurse administrators, nurse
20 supervisors, charge nurses, and other licensed nurses that do
21 not have a specific patient care assignment may not be
22 included in the calculation of the nurse-to-patient ratio.
23 This section does not prohibit a registered nurse from
24 providing care within the scope of his or her practice to a
25 patient assigned to another nurse.

26 (a) No more than two patients may be assigned to each
27 registered nurse, so that the minimum registered
28 nurse-to-patient ratio in a critical care unit is 1:2 or fewer
29 at any time. As used in this paragraph, the term "critical
30 care unit" means a nursing unit of a general acute care
31 hospital which provides one of the following services: an

1 intensive care service, a post-anesthesia recovery service, a
2 burn center service, a coronary care service, or an acute
3 respiratory service. In the intensive care newborn nursery
4 service, no more than two patients may be assigned to each
5 nurse.

6 (b) In the surgical service operating room, no more
7 than one patient-occupied operating room may be assigned to
8 each registered nurse.

9 (c) No more than two patients may be assigned to each
10 registered nurse in a labor/delivery unit of the perinatal
11 service, so that the registered nurse-to-patient ratio is 1:2
12 or fewer at any time.

13 (d) No more than three mother-baby couplets may be
14 assigned to each registered nurse in a postpartum area of the
15 perinatal unit at any time. If multiple births have occurred,
16 the total number of mothers plus infants which are assigned to
17 a single registered nurse may not exceed six.

18 (e) In a hospital that provides basic emergency
19 medical services or comprehensive emergency medical services,
20 no more than three patients who are receiving emergency
21 services may be assigned to each registered nurse, so that the
22 registered nurse-to-patient ratio in an emergency department
23 is 1:3 or fewer at any time patients are receiving treatment.
24 No fewer than two registered nurses must be physically present
25 in the emergency department when a patient is present.

26 (f) The nurse assigned to triage patients may not have
27 a patient assignment, may not be assigned the responsibility
28 for the base ratio, and may not be counted in the registered
29 nurse-to-patient ratio.

30 (g) When nursing staff are attending critical care
31 patients in the emergency department, no more than two

1 patients may be assigned to each registered nurse. When
2 nursing staff in the emergency department are attending trauma
3 patients, no more than one patient may be assigned to each
4 registered nurse at any time.

5 (h) No more than three patients may be assigned to
6 each registered nurse in a step-down unit, so that the minimum
7 registered nurse-to-patient ratio in a step-down unit is 1:3
8 or fewer at any time. As used in this paragraph, the term:

9 1. "Artificial life support" means a system that uses
10 medical technology to aid, support, or replace a vital
11 function of the body which has been seriously damaged.

12 2. "Step-down unit" means a unit that is organized,
13 operated, and maintained to provide for the monitoring and
14 care of patients who have moderate or potentially severe
15 physiologic instability that requires technical support but
16 not necessarily artificial life support.

17 3. "Technical support" means specialized equipment or
18 personnel, or both, that provides for invasive monitoring,
19 telemetry, and mechanical ventilation, for the immediate
20 amelioration or remediation of severe pathology for those
21 patients who require less care than intensive care but more
22 than that which is available from medical/surgical care.

23 (i) No more than three patients may be assigned to
24 each registered nurse, so that the minimum registered
25 nurse-to-patient ratio in a telemetry unit is 1:3 or fewer at
26 any time. As used in this paragraph, the term "telemetry unit"
27 means a unit designated for the electronic monitoring,
28 recording, retrieval, and display of cardiac electrical
29 signals.

30 (j) No more than four patients may be assigned to each
31 registered nurse, so that the minimum registered

1 nurse-to-patient ratio in medical/surgical care units is 1:4
2 or fewer at any time. As used in this paragraph, the term
3 "medical/surgical unit" means a unit that has beds classified
4 as medical/surgical in which patients who require less care
5 than that which is available in intensive care units or
6 step-down units receive 24-hour inpatient general medical
7 services, post-surgical services, or both general medical and
8 post-surgical services. These units may include mixed patient
9 populations of diverse diagnoses and diverse age groups.

10 (k) No more than four patients may be assigned to each
11 registered nurse, so that the minimum registered
12 nurse-to-patient ratio in a specialty care unit is 1:4 or
13 fewer at any time. As used in this paragraph, the term
14 "specialty care unit" means a unit that is organized,
15 operated, and maintained to provide care for a specific
16 medical condition or a specific patient population, is more
17 comprehensive for the specific condition or disease process
18 than the care that is available on medical/surgical units, and
19 is not otherwise covered in this section.

20 (l) No more than four patients may be assigned to each
21 registered nurse, so that the minimum registered
22 nurse-to-patient ratio in an acute care psychiatric unit is
23 1:4 or fewer at any time.

24
25 Identifying a unit by a name or term other than those used in
26 this subsection does not affect the requirement to provide
27 staff for the unit at the ratio required for the level or type
28 of care provided in the unit, as set forth in this subsection.

29 (3) STAFFING PLAN.--Each facility licensed under this
30 chapter shall ensure that it provides sufficient,
31 appropriately qualified nursing staff of each classification

1 in each department or unit within the facility in order to
2 meet the individualized care needs of the patients. To
3 accomplish this goal, each health care facility licensed under
4 this chapter shall submit annually to the Agency for Health
5 Care Administration a documented staffing plan together with a
6 written certification that the staffing plan is sufficient to
7 provide adequate and appropriate delivery of health care
8 services to patients for the ensuing year. The staffing plan
9 must:

10 (a) Meet the minimum requirements set forth in
11 subsection (2);

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

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

18 (d) Factor in other unit or department activity, such
19 as discharges, transfers and admissions, and administrative
20 support tasks, which direct-care nurses are expected to do in
21 addition to performing direct nursing care;

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

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

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

29 (h) Identify each nurse staff classification
30 referenced in the staffing plan, together with a statement
31

1 setting forth minimum qualifications for each such
2 classification; and

3 (i) Be developed in consultation with the direct-care
4 nursing staff within each department or unit or, if such staff
5 is covered by a collective bargaining agreement, with the
6 applicable recognized or certified collective bargaining
7 representatives of the direct-care nursing staff.

8 (4) MINIMUM SKILL MIX.--The skill mix reflected in a
9 documented staffing plan must assure that all of the following
10 elements of the nursing process are performed in the planning
11 and delivery of care for each patient: assessment, nursing
12 diagnosis, planning, intervention, evaluation, and patient
13 advocacy.

14 (a) The skill mix may not incorporate or assume that
15 nursing care functions required by licensing law or rules or
16 accepted standards of practice to be performed by a licensed
17 nurse are to be performed by unlicensed assistant personnel.

18 (b) A nurse may not be assigned or included in the
19 count of assigned nursing staff for purposes of compliance
20 with minimum staffing requirements in a nursing department or
21 unit or a clinical area within the health care facility unless
22 the nurse is qualified in the area of practice to which the
23 nurse is assigned.

24 (5) COMPLIANCE WITH PLAN.--As a condition of licensing,
25 a health care facility must at all times provide staff in
26 accordance with its documented staffing plan and the staffing
27 standards set forth in this section; however, this section
28 does not preclude a health care facility from implementing
29 higher direct-care, nurse-to-patient staffing levels.

30 (6) RECORDKEEPING.--The facility shall maintain
31 records sufficient to allow the agency to determine the daily

1 staffing ratios and skill mixes that the facility maintained
2 on each unit.

3 Section 5. Section 395.055, Florida Statutes, is
4 created to read:

5 395.055 Mandatory overtime.--

6 (1) An employee of a health care facility may not be
7 required to work overtime as defined in s. 395.053. Compelling
8 or attempting to compel an employee to work overtime is
9 contrary to public policy and is a violation of this section.
10 The acceptance by any employee of overtime work is strictly
11 voluntary, and the refusal of an employee to accept such
12 overtime work may not be grounds for discrimination,
13 dismissal, discharge, or any other penalty; threats of reports
14 for discipline; or employment decisions adverse to the
15 employee.

16 (2) This section does not apply to work that occurs:

17 (a) Because of an unforeseeable emergent circumstance;

18 (b) During prescheduled on-call time if, as of July 1,
19 2004, such prescheduled on-call time was a customary and
20 longstanding practice in the unit or department of the health
21 care facility; or

22 (c) Because of unpredictable and unavoidable
23 occurrences relating to health care delivery which occur at
24 unscheduled intervals and require immediate action, if the
25 employer shows that the employer has exhausted reasonable
26 efforts to comply with the documented staffing plan. An
27 employer has not used reasonable efforts if overtime work is
28 used to fill vacancies resulting from chronic staff shortages.

29 (3) This section does not prohibit a health care
30 employee from voluntarily working overtime.

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1 Section 6. Section 395.056, Florida Statutes, is
2 created to read:

3 395.056 Employee rights.--

4 (1) A health care facility may not penalize,
5 discriminate against, or retaliate in any manner against a
6 direct-care registered nurse for refusing an assignment that
7 would violate requirements set forth in this act.

8 (2) A health care facility may not penalize,
9 discriminate against, or retaliate in any manner against an
10 employee with respect to compensation for, or terms,
11 conditions, or privileges of, employment if such an employee
12 in good faith, individually or in conjunction with another
13 person or persons:

14 (a) Reports a violation or suspected violation of this
15 act to a regulatory agency, a private accreditation body, or
16 management personnel of the health care facility;

17 (b) Initiates, cooperates in, or otherwise
18 participates in an investigation or proceeding brought by a
19 regulatory agency or private accreditation body concerning
20 matters covered by this act;

21 (c) Informs or discusses with any other employee, with
22 any representative of the employees, with a patient or patient
23 representative, or with the public violations or suspected
24 violations of this act; or

25 (d) Otherwise avails himself or herself of the rights
26 set forth in this act.

27 (3) For purposes of this section, an employee is
28 acting in good faith if the employee reasonably believes that
29 the information reported or disclosed is true and that a
30 violation has occurred or may occur.

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1 Section 7. Section 395.057, Florida Statutes, is
2 created to read:

3 395.057 Implementation and enforcement.--

4 (1) The Agency for Health Care Administration shall
5 enforce compliance with the staffing plans and standards set
6 forth in this act. The agency may adopt rules necessary to
7 administer this act. At a minimum, the rules must provide for:

8 (a) Unannounced, random compliance site visits to
9 licensed health care facilities subject to this act;

10 (b) An accessible and confidential system by which the
11 public and nursing staff can report a health care facility's
12 failure to comply with this act;

13 (c) A systematic means of investigating and correcting
14 violations of this act;

15 (d) A graduated system of penalties, including fines,
16 withholding of reimbursement, suspension of admission to
17 specific units, and other appropriate measures, if violations
18 are not corrected; and

19 (e) Public access to information regarding reports of
20 inspections, results, deficiencies, and corrections.

21 (3) The agency shall develop rules for administering
22 this act which require compliance with staffing standards for
23 critical care units by July 1, 2005, and compliance with all
24 provisions of this act by July 1, 2007.

25 Section 8. This act shall take effect July 1, 2004.

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SENATE SUMMARY

Creates the "Safe Staffing for Quality Care Act."
Provides legislative findings. Defines terms. Prescribes
safe staffing standards for health care facilities.
Requires licensed facilities to submit an annual staffing
plan to the Agency for Health Care Administration.
Provides standards for the required skill mix. Requires
compliance with the staffing plan. Requires
recordkeeping. Prohibits mandatory overtime. Provides
applicability. Provides to employees the right to refuse
certain assignments and the right to report suspected
violations of safe staffing standards without incurring a
penalty. Provides for the agency to enforce compliance
with the act. Requires the agency to develop rules.