

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

17
 18 Be It Enacted by the Legislature of the State of Florida:

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 20 Section 1. Section 395.051, Florida Statutes, is created
 21 to read:

22 395.051 Popular name.--Sections 395.051-395.057 may be
 23 cited as the "Safe Staffing for Quality Care Act."

24 Section 2. Section 395.052, Florida Statutes, is created
 25 to read:

26 395.052 Legislative findings.--The Legislature finds that:

27 (1) The state has a substantial interest in ensuring that
 28 delivery of health care services to patients in health care

29 facilities located in this state is adequate and safe and that
 30 health care facilities retain sufficient nursing staff so as to
 31 promote optimal health care outcomes.

32 (2) Recent changes in the state's health care delivery
 33 system are resulting in a higher acuity level among patients in
 34 health care facilities.

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

38 (4) Extensive research indicates that inadequate
 39 registered nurse staffing in hospitals can result in increased
 40 patient death rates, dangerous medical errors, and increased
 41 length of stay.

42 (5) To ensure adequate protection and care for patients in
 43 health care facilities, it is essential that qualified
 44 registered nurses who are trained and authorized to deliver
 45 nursing services be accessible and available to meet the nursing
 46 needs of patients.

47 Section 3. Section 395.053, Florida Statutes, is created
 48 to read:

49 395.053 Definitions.--As used in this act, the term:

50 (1) "Acuity system" means an established measurement
 51 instrument that:

52 (a) Predicts nursing care requirements for individual
 53 patients based on the severity of patient illness, the need for
 54 specialized equipment and technology, the intensity of nursing
 55 interventions required, and the complexity of clinical nursing
 56 judgment needed to design, implement, and evaluate the patient's

57 nursing care plan.

58 (b) Details the amount of nursing care needed, both in the
 59 number of registered nurses and in the skill mix of nursing
 60 personnel required daily for each patient in a nursing
 61 department or unit.

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

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

68 (3) "Declared state of emergency" means an officially
 69 designated state of emergency which has been declared by a
 70 federal, state, or local government official who has the
 71 authority to declare that the state, county, municipality, or
 72 locality is in a state of emergency. The term does not include a
 73 state of emergency which results from a labor dispute in the
 74 health care industry.

75 (4) "Direct-care nurse" or "direct-care nursing staff"
 76 means any registered nurse who has direct responsibility to
 77 oversee or carry out medical regimens or nursing care for one or
 78 more patients. A nurse administrator, nurse supervisor, nurse
 79 educator, charge nurse, or other registered nurse who does not
 80 have a specific patient assignment may not be included in the
 81 calculation of the registered nurse-to-patient ratio.

82 (5) "Documented staffing plan" means a detailed written
 83 plan that sets forth the minimum number, skill mix, and
 84 classification of licensed nurses required in each nursing

85 department or unit in the health care facility for a given year,
 86 based on reasonable projections derived from the patient census
 87 and average acuity level within each department or unit during
 88 the previous year, the department or unit size and geography,
 89 the nature of services provided, and any foreseeable changes in
 90 department or unit size or function during the current year.

91 (6) "Health care facility" means an acute care hospital,
 92 emergency care hospital, or ambulatory surgical center licensed
 93 under chapter 395, an outpatient surgical facility, or a
 94 psychiatric treatment facility licensed under chapter 394.

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

96 (8) "Nursing care" means care that falls within the scope
 97 of practice set forth in chapter 464 and other laws and rules or
 98 care that is otherwise encompassed within recognized
 99 professional standards of nursing practice, including
 100 assessment, nursing diagnosis, planning, intervention,
 101 evaluation, and patient advocacy.

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

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

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

108 (10) "Overtime" means the hours worked in excess of any of
 109 the following:

110 (a) An agreed-upon, predetermined, regularly scheduled
 111 shift;

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

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

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

117 (a) Sought, from among all available qualified staff who
 118 are working, individuals who would volunteer to work overtime.

119 (b) Contacted employees who have made themselves available
 120 to work overtime.

121 (c) Sought the use of per diem staff.

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

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

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

130 (14) "Unforeseeable emergent circumstance" means:

131 (a) An unforeseen declared national, state, or municipal
 132 emergency;

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

135 (c) An unforeseen disaster or other catastrophic event
 136 that substantially affects or increases the need for health care
 137 services.

138 Section 4. Section 395.054, Florida Statutes, is created
 139 to read:

140 395.054 Facility staffing standards.--

141 (1) STAFFING PRINCIPLES.--The basic principles of staffing
142 in health care facilities should be focused on patient health
143 care needs and based on consideration of patient acuity levels
144 and services that need to be provided to ensure optimal
145 outcomes. Safe staffing practices recognize the importance of
146 all health care workers in providing quality patient care. The
147 setting of staffing standards for registered nurses is not to be
148 interpreted as justifying the understaffing of other critical
149 health care workers, including licensed practical nurses, social
150 workers, and other licensed or unlicensed assistive personnel.
151 Indeed, the availability of these other health care workers
152 enables registered nurses to focus on the nursing care functions
153 that only registered nurses, by law, are permitted to perform
154 and thereby helps to ensure adequate staffing levels.

155 (2) SPECIFIC STANDARDS.--Health care facilities shall
156 provide staffing by registered nurses in accordance with the
157 minimum nurse-to-patient ratios that are set forth in this
158 subsection. Staffing for care that does not require a registered
159 nurse is not included within these ratios and must be determined
160 pursuant to the patient classification system. Nurse-to-patient
161 ratios represent the maximum number of patients which are
162 assigned to one registered nurse during one shift. Only nurses
163 providing direct patient care shall be included in the ratios.
164 Nurse administrators, nurse supervisors, charge nurses, and
165 other licensed nurses who do not have a specific patient care
166 assignment may not be included in the calculation of the nurse-
167 to-patient ratio. This section does not prohibit a registered
168 nurse from providing care within the scope of his or her

169 practice to a patient assigned to another nurse.

170 (a) No more than two patients may be assigned to each
171 registered nurse in a critical care unit, so that the minimum
172 registered nurse-to-patient ratio is 1 to 2 or fewer at any
173 time. As used in this act, the term "critical care unit" means a
174 nursing unit of a general acute care hospital that provides one
175 of the following services: an intensive care service, a
176 postanesthesia recovery service, a burn center service, a
177 coronary care service, or an acute respiratory service. In a
178 neonatal intensive care service, no more than two patients may
179 be assigned to each nurse.

180 (b) In a surgical service operating room, no more than one
181 patient-occupied operating room may be assigned to each
182 registered nurse.

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

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

192 (e) In a hospital that provides basic emergency medical
193 services or comprehensive emergency medical services, no more
194 than three patients who are receiving emergency services may be
195 assigned to each registered nurse, so that the registered nurse-
196 to-patient ratio in an emergency department is 1 to 3 or fewer

197 at any time patients are receiving treatment. No fewer than two
198 registered nurses must be physically present in the emergency
199 department when a patient is present.

200 (f) The nurse assigned to triage patients may not have a
201 patient assignment, may not be assigned the responsibility for
202 the base ratio, and may not be counted in the registered nurse-
203 to-patient ratio.

204 (g) When nursing staff are attending critical care
205 patients in the emergency department, no more than two patients
206 may be assigned to each registered nurse. When nursing staff in
207 the emergency department are attending trauma patients, no more
208 than one patient may be assigned to each registered nurse at any
209 time.

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

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

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

222 3. "Technical support" means specialized equipment or
223 personnel, or both, that provides for invasive monitoring,
224 telemetry, and mechanical ventilation for the immediate

225 amelioration or remediation of severe pathology for those
226 patients who require less care than intensive care but more than
227 that which is available from medical/surgical care.

228 (i) No more than three patients may be assigned to each
229 registered nurse in a telemetry unit, so that the minimum
230 registered nurse-to-patient ratio is 1 to 3 or fewer at any
231 time. As used in this paragraph, the term "telemetry unit" means
232 a unit designated for the electronic monitoring, recording,
233 retrieval, and display of cardiac electrical signals.

234 (j) No more than four patients may be assigned to each
235 registered nurse in a medical/surgical care unit, so that the
236 minimum registered nurse-to-patient ratio is 1 to 4 or fewer at
237 any time. As used in this subsection, the term "medical/surgical
238 care unit" means a unit that has beds classified as
239 medical/surgical in which patients who require less care than
240 that which is available in intensive care units or step-down
241 units receive 24-hour inpatient general medical services,
242 postsurgical services, or both general medical and postsurgical
243 services. These units may include mixed patient populations of
244 diverse diagnoses and diverse age groups.

245 (k) No more than four patients may be assigned to each
246 registered nurse in a specialty care unit, so that the minimum
247 registered nurse-to-patient ratio is 1 to 4 or fewer at any
248 time. As used in this paragraph, the term "specialty care unit"
249 means a unit that is organized, operated, and maintained to
250 provide care for a specific medical condition or a specific
251 patient population, is more comprehensive for the specific
252 condition or disease process than the care that is available in

253 medical/surgical care units, and is not otherwise covered in
 254 this section.

255 (1) No more than four patients may be assigned to each
 256 registered nurse in an acute care psychiatric unit, so that the
 257 minimum registered nurse-to-patient ratio is 1 to 4 or fewer at
 258 any time.

259
 260 Identifying a unit by a name or term other than those used in
 261 this subsection does not affect the requirement to provide staff
 262 for the unit at the ratio required for the level or type of care
 263 provided in the unit, as set forth in this subsection.

264 (3) STAFFING PLAN.--Each facility licensed under this
 265 chapter shall ensure that it provides sufficient, appropriately
 266 qualified nursing staff of each classification in each
 267 department or unit within the facility in order to meet the
 268 individualized care needs of the patients. To accomplish this
 269 goal, each health care facility licensed under this chapter
 270 shall submit annually to the Agency for Health Care
 271 Administration a documented staffing plan together with a
 272 written certification that the staffing plan is sufficient to
 273 provide adequate and appropriate delivery of health care
 274 services to patients for the ensuing year. The staffing plan
 275 must:

276 (a) Meet the minimum requirements set forth in subsection

277 (2).

278 (b) Be adequate to meet any additional requirements
 279 provided by other laws or rules.

280 (c) Employ and identify an approved acuity system for

281 addressing fluctuations in actual patient acuity levels and
282 nursing care requirements necessitating increased staffing
283 levels above the minimums set forth in the plan.

284 (d) Factor in other unit or department activities, such as
285 discharges, transfers and admissions, and administrative support
286 tasks, which direct-care nurses are expected to perform in
287 addition to direct nursing care.

288 (e) Identify the assessment tool used to validate the
289 acuity system relied on in the plan.

290 (f) Identify the system that will be used to document
291 actual daily staffing levels within each department or unit.

292 (g) Include a written assessment of the accuracy of the
293 previous year's staffing plan in light of actual staffing needs.

294 (h) Identify each nurse staff classification referenced in
295 the staffing plan, together with a statement setting forth
296 minimum qualifications for each such classification.

297 (i) Be developed in consultation with the direct-care
298 nursing staff within each department or unit or, if such staff
299 is covered by a collective bargaining agreement, with the
300 applicable recognized or certified collective bargaining
301 representatives of the direct-care nursing staff.

302 (4) MINIMUM SKILL MIX.--The skill mix reflected in a
303 documented staffing plan must ensure that all of the following
304 elements of the nursing process are performed in the planning
305 and delivery of care for each patient: assessment, nursing
306 diagnosis, planning, intervention, evaluation, and patient
307 advocacy.

308 (a) The skill mix may not incorporate or assume that

309 nursing care functions required by licensing law or rules or
 310 accepted standards of practice to be performed by a licensed
 311 nurse are to be performed by unlicensed personnel.

312 (b) A nurse may not be assigned or included in the count
 313 of assigned nursing staff for purposes of compliance with
 314 minimum staffing requirements in a nursing department or unit or
 315 a clinical area within the health care facility unless the nurse
 316 is qualified in the area of practice to which the nurse is
 317 assigned.

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

324 (6) RECORDKEEPING.--The facility shall maintain records
 325 sufficient to allow the agency to determine the daily staffing
 326 ratios and skill mixes that the facility has maintained on each
 327 unit.

328 Section 5. Section 395.055, Florida Statutes, is created
 329 to read:

330 395.055 Mandatory overtime.--

331 (1) An employee of a health care facility may not be
 332 required to work overtime as defined in s. 395.053. Compelling
 333 or attempting to compel an employee to work overtime is contrary
 334 to public policy and is a violation of this section. The
 335 acceptance by any employee of overtime work is strictly
 336 voluntary, and the refusal of an employee to accept such

337 overtime work may not be grounds for discrimination, dismissal,
 338 discharge, or any other penalty; threats of reports for
 339 discipline; or employment decisions adverse to the employee.

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

341 (a) Because of an unforeseeable emergent circumstance;

342 (b) During prescheduled on-call time if, as of July 1,
 343 2005, such prescheduled on-call time was a customary and long-
 344 standing practice in the unit or department of the health care
 345 facility; or

346 (c) Because of unpredictable and unavoidable occurrences
 347 relating to health care delivery which occur at unscheduled
 348 intervals and require immediate action, if the employer shows
 349 that the employer has exhausted reasonable efforts to comply
 350 with the documented staffing plan. An employer has not made
 351 reasonable efforts if overtime work is used to fill vacancies
 352 resulting from chronic staff shortages.

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

355 Section 6. Section 395.056, Florida Statutes, is created
 356 to read:

357 395.056 Employee rights.--

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

362 (2) A health care facility may not penalize, discriminate
 363 against, or retaliate in any manner against an employee with
 364 respect to compensation for, or terms, conditions, or privileges

365 of, employment if such an employee in good faith, individually
 366 or in conjunction with another person or persons:

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

370 (b) Initiates, cooperates in, or otherwise participates in
 371 an investigation or proceeding brought by a regulatory agency or
 372 private accrediting body concerning matters covered by this act;

373 (c) Informs or discusses with any other employee, with any
 374 representative of an employee, with a patient or patient
 375 representative, or with the public violations or suspected
 376 violations of this act; or

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

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

383 Section 7. Section 395.057, Florida Statutes, is created
 384 to read:

385 395.057 Implementation and enforcement.--

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

390 (a) Unannounced, random compliance site visits to licensed
 391 health care facilities subject to this act.

392 (b) An accessible and confidential system by which the

393 public and nursing staff can report a health care facility's
394 failure to comply with this act.

395 (c) A systematic means of investigating and correcting
396 violations of this act.

397 (d) A graduated system of penalties, including fines,
398 withholding of reimbursement, suspension of admission to
399 specific units, and other appropriate measures, if violations
400 are not corrected.

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

403 (2) The agency shall develop rules for administering this
404 act which require compliance with staffing standards for
405 critical care units by July 1, 2006, and compliance with all
406 provisions of this act by July 1, 2008.

407 Section 8. This act shall take effect July 1, 2005.