

A bill to be entitled

An act relating to the staffing of health care facilities; creating ss. 395.051-395.057, F.S.; creating the Safe Staffing for Quality Care Act; providing legislative findings; defining terms; prescribing safe staffing standards for health care facilities; requiring licensed facilities to submit an annual staffing plan to the Agency for Health Care Administration; providing standards for the required skill mix; requiring compliance with the staffing plan; requiring recordkeeping; prohibiting mandatory overtime; providing applicability; providing to employees the right to refuse certain assignments and the right to report suspected violations of safe staffing standards; providing for the agency to enforce compliance with the act; requiring the agency to develop rules; providing an effective date.

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

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

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

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

395.052 Legislative findings.--The Legislature finds that:  
(1) The state has a substantial interest in ensuring that delivery of health care services to patients in health care

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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 our health care delivery system are  
33 resulting in a higher acuity level among patients in health care  
34 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; and

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

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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 an emergency care, ambulatory, or outpatient surgery facility  
93 licensed under s. 395.003; or a psychiatric facility licensed  
94 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 extra time;  
 119        (b) Contacted employees who have made themselves available  
 120 to work extra time;  
 121        (c) Sought the use of per diem staff; and  
 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 that 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

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169 practice to a patient assigned to another nurse.

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

180 (b) In the surgical service operating room, no more than  
181 one 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 the 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 the  
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 in a step-down unit is 1 to 3  
 213 or fewer at any time. As used in this paragraph, 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, so that the minimum registered nurse-to-  
230 patient ratio in a telemetry unit 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, so that the minimum registered nurse-to-  
236 patient ratio in medical/surgical care units is 1 to 4 or fewer  
237 at any time. As used in this paragraph, the term  
238 "medical/surgical 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, post-  
242 surgical services, or both general medical and post-surgical  
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, so that the minimum registered nurse-to-  
247 patient ratio in a specialty care unit 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 on

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

255 (1) No more than four patients may be assigned to each  
256 registered nurse, so that the minimum registered nurse-to-  
257 patient ratio in an acute care psychiatric unit is 1 to 4 or  
258 fewer at 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 a documented staffing plan  
271 together with a written certification that the staffing plan is  
272 sufficient to provide adequate and appropriate delivery of  
273 health care services to patients for the ensuing year. The  
274 staffing plan must:

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

276 (2);

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

279 (c) Employ and identify an approved acuity system for  
280 addressing fluctuations in actual patient acuity levels and

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281 nursing care requirements requiring increased staffing levels  
282 above the minimums set forth in the plan;

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

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

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

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

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

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

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

307 (a) The skill mix may not incorporate or assume that  
308 nursing care functions that are required by licensing law or

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309 rules or accepted standards of practice to be performed by a  
310 licensed nurse are to be performed by unlicensed assistant  
311 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

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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 2006, such prescheduled on-call time was a customary and

344 longstanding practice in the unit or department of the health

345 care 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 used

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

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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 accreditation body concerning matters covered by this  
 373 act;

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

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

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

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

386 395.057 Implementation and enforcement.--

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

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

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

396        (c) A systematic means of investigating and correcting  
 397 violations of this act;

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

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

404        (2) The agency shall develop rules for administering this  
 405 act which require compliance with staffing standards for  
 406 critical care units by July 1, 2007, and compliance with all  
 407 provisions of this act by July 1, 2009.

408        Section 8. This act shall take effect July 1, 2006.