

By Senator Hill

1-1300-07

See HB 487

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 creating the Safe Staffing for Quality Care

5 Act; providing a short title; providing

6 legislative findings; defining terms;

7 prescribing safe staffing standards for health

8 care facilities; requiring licensed facilities

9 to submit an annual staffing plan to the Agency

10 for Health Care Administration; providing

11 standards for the required skill mix; requiring

12 compliance with the staffing plan; requiring

13 recordkeeping; prohibiting mandatory overtime;

14 providing applicability; permitting employees

15 to refuse certain assignments and to report

16 suspected violations of safe staffing

17 standards; providing for the agency to enforce

18 compliance with the act; requiring the agency

19 to develop rules; providing an effective date.

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 ensuring
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 that 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. Establishing staffing standards for registered
2 nurses does not justify providing an insufficient level of
3 staffing by other critical health care workers, including
4 licensed practical nurses, social workers, and other licensed
5 or unlicensed assistive personnel. The availability of
6 licensed practical nurses, social workers, and other licensed
7 or unlicensed assistive personnel enables registered nurses to
8 focus on the nursing care functions that only registered
9 nurses, by law, are permitted to perform and thereby helps to
10 ensure adequate staffing levels.

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

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

1 care hospital that provides one of the following services: an
2 intensive care service, a postanesthesia recovery service, a
3 burn center service, a coronary care service, or an acute
4 respiratory service. In the intensive care newborn nursery
5 service, no more than two patients may be assigned to each
6 nurse.

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

10 (c) No more than two patients may be assigned to each
11 registered nurse in a labor and delivery unit of the perinatal
12 service, so that the registered nurse-to-patient ratio is 1 to
13 2 or fewer at any time.

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

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

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

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

7 (h) No more than three patients may be assigned to
8 each registered nurse in a step-down unit, so that the minimum
9 registered nurse-to-patient ratio in a step-down unit is 1 to
10 3 or fewer at any time. As used in this paragraph, the term:

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

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

19 3. "Technical support" means specialized equipment or
20 personnel, or both, that provide for invasive monitoring,
21 telemetry, and mechanical ventilation, for the immediate
22 amelioration or remediation of severe pathology for those
23 patients who require less care than intensive care but more
24 care than can be provided in a medical surgical unit.

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

1 (j) No more than four patients may be assigned to each
2 registered nurse, so that the minimum registered
3 nurse-to-patient ratio in medical surgical care units is 1 to
4 4 or fewer at any time. As used in this paragraph, the term
5 "medical surgical unit" means a unit that has beds classified
6 as medical surgical in which patients who require less care
7 than can be provided in intensive care units or step-down
8 units receive 24-hour inpatient general medical services,
9 post-surgical services, or both general medical and
10 post-surgical services. These units may include mixed patient
11 populations of diverse diagnoses and diverse age groups.

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

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

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27 Identifying a unit by a name or term other than those used in
28 this subsection does not affect the requirement to provide
29 staff for the unit at the ratio required for the level or type
30 of care provided in the unit, as set forth in this subsection.
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1 (3) STAFFING PLAN.--Each facility licensed under this
2 chapter shall ensure that it provides sufficient,
3 appropriately qualified nursing staff of each classification
4 in each department or unit within the facility in order to
5 meet the individualized care needs of the patients. To
6 accomplish this goal, each health care facility licensed under
7 this chapter shall submit annually to the agency a documented
8 staffing plan together with a written certification that the
9 staffing plan is sufficient to provide adequate and
10 appropriate delivery of health care services to patients for
11 the ensuing year. The staffing plan must:

12 (a) Meet the minimum requirements set forth in
13 subsection (2);

14 (b) Meet any additional requirements provided by other
15 laws or rules;

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

20 (d) Factor in other unit or department activity, such
21 as discharges, transfers, and admissions and administrative
22 support tasks that direct-care nurses are expected to perform
23 in addition to providing direct nursing care;

24 (e) Identify the assessment tool used to validate the
25 acuity system used in the plan;

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

28 (g) Include a written assessment of the accuracy of
29 the previous year's staffing plan based on actual staffing
30 needs;

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1 (h) Identify each nurse staff classification referred
2 to in the staffing plan, together with a statement setting
3 forth minimum qualifications for each classification; and

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

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

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

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

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

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

7 Section 5. Section 395.055, Florida Statutes, is
8 created to read:

9 395.055 Mandatory overtime.--

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

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

21 (a) Because of an unforeseeable emergent circumstance;

22 (b) During prescheduled on-call time if, as of July 1,
23 2007, such prescheduled on-call time was a customary and
24 longstanding practice in the unit or department of the health
25 care facility; or

26 (c) Because of unpredictable and unavoidable
27 occurrences relating to health care delivery that occur at
28 unscheduled intervals and require immediate action, if the
29 employer shows that the employer has exhausted reasonable
30 efforts to comply with the documented staffing plan. An

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1 employer has not used reasonable efforts if overtime work is
2 used to fill vacancies resulting from chronic staff shortages.

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

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

7 395.056 Employee rights.--

8 (1) A health care facility may not penalize,
9 discriminate against, or retaliate in any manner against a
10 direct-care registered nurse for refusing an assignment that
11 would violate requirements of this act.

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

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

21 (b) Initiates, cooperates in, or otherwise
22 participates in an investigation or proceeding brought by a
23 regulatory agency or private accreditation body concerning
24 matters covered by this act;

25 (c) Informs or discusses with any other employee, any
26 representative of the employee, a patient or a patient's
27 representative, or with the public violations or suspected
28 violations of this act; or

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

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

5 Section 7. Section 395.057, Florida Statutes, is
6 created to read:

7 395.057 Implementation and enforcement.--

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

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

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

17 (c) A systematic means of investigating and correcting
18 violations of this act;

19 (d) A graduated system of penalties, including fines,
20 withholding of reimbursement, suspension of admission to
21 specific units, and other appropriate measures, if violations
22 are not corrected; and

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

25 (2) The agency shall develop rules for administering
26 this act which require compliance with staffing standards for
27 critical care units by July 1, 2008, and compliance with all
28 provisions of this act by July 1, 2010.

29 Section 8. This act shall take effect July 1, 2007.
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