

By Senator Hill

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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.; creating the Safe  
4 Staffing for Quality Care Act; providing a short title;  
5 providing legislative findings; defining terms;  
6 prescribing safe staffing standards for health care  
7 facilities; requiring licensed facilities to submit an  
8 annual staffing plan to the Agency for Health Care  
9 Administration; providing standards for the required skill  
10 mix; requiring compliance with the staffing plan;  
11 requiring recordkeeping; prohibiting mandatory overtime;  
12 providing applicability; permitting employees to refuse  
13 certain assignments and to report suspected violations of  
14 safe staffing standards; providing for the agency to  
15 enforce compliance with the act; requiring the agency to  
16 develop rules; providing an effective date.

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

19  
20 Section 1. Section 395.051, Florida Statutes, is created to  
21 read:

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

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

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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 registered  
39 nurse staffing in hospitals can result in increased patient death  
40 rates, dangerous medical errors, and increased length of stay.

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

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

48 395.053 Definitions.--As used in this act, the term:

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

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

57 (b) Details the amount of nursing care needed, both in the  
58 number of registered nurses and in the skill mix of nursing

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59 personnel required daily for each patient in a nursing department  
60 or unit; and

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

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

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

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

81 (5) "Documented staffing plan" means a detailed written  
82 plan that sets forth the minimum number, skill mix, and  
83 classification of licensed nurses required in each nursing  
84 department or unit in the health care facility for a given year,  
85 based on reasonable projections derived from the patient census  
86 and average acuity level within each department or unit during  
87 the previous year, the department or unit size and geography, the

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88 nature of services provided, and any foreseeable changes in  
89 department or unit size or function during the current year.

90 (6) "Health care facility" means an acute care hospital; an  
91 emergency care, ambulatory, or outpatient surgery facility  
92 licensed under s. 395.003; or a psychiatric facility licensed  
93 under chapter 394.

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

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

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

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

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

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

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

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

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

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

116 (a) Sought, from among all available qualified staff who

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117 are working, individuals who would volunteer to work extra time;

118 (b) Contacted employees who have made themselves available  
119 to work extra time;

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

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

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

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

128 (14) "Unforeseeable emergent circumstance" means:

129 (a) An unforeseen declared national, state, or municipal  
130 emergency;

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

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

136 Section 4. Section 395.054, Florida Statutes, is created to  
137 read:

138 395.054 Facility staffing standards.--

139 (1) STAFFING PRINCIPLES.--The basic principles of staffing  
140 in health care facilities should be focused on patient health  
141 care needs and based on consideration of patient acuity levels  
142 and services that need to be provided to ensure optimal outcomes.  
143 Safe staffing practices recognize the importance of all health  
144 care workers in providing quality patient care. Establishing  
145 staffing standards for registered nurses does not justify

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146 providing an insufficient level of staffing by other critical  
147 health care workers, including licensed practical nurses, social  
148 workers, and other licensed or unlicensed assistive personnel.  
149 The availability of licensed practical nurses, social workers,  
150 and other licensed or unlicensed assistive personnel enables  
151 registered nurses to focus on the nursing care functions that  
152 only registered nurses, by law, are permitted to perform and  
153 thereby helps to ensure adequate staffing levels.

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

169 (a) No more than two patients may be assigned to each  
170 registered nurse, so that the minimum registered nurse-to-patient  
171 ratio in a critical care unit is 1 to 2 or fewer at any time. As  
172 used in this paragraph, the term "critical care unit" means a  
173 nursing unit of a general acute care hospital that provides one  
174 of the following services: an intensive care service, a

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175 postanesthesia recovery service, a burn center service, a  
176 coronary care service, or an acute respiratory service. In the  
177 intensive care newborn nursery service, no more than two patients  
178 may be assigned to each nurse.

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

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

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

191 (e) In a hospital that provides basic emergency medical  
192 services or comprehensive emergency medical services, no more  
193 than three patients who are receiving emergency services may be  
194 assigned to each registered nurse, so that the registered nurse-  
195 to-patient ratio in an emergency department is 1 to 3 or fewer at  
196 any time patients are receiving treatment. No fewer than two  
197 registered nurses must be physically present in the emergency  
198 department when a patient is present.

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

203 (g) When nursing staff are attending critical care patients

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

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

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

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

220 3. "Technical support" means specialized equipment or  
221 personnel, or both, that provide for invasive monitoring,  
222 telemetry, and mechanical ventilation, for the immediate  
223 amelioration or remediation of severe pathology for those  
224 patients who require less care than intensive care but more care  
225 than can be provided in a medical surgical unit.

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

232 (j) No more than four patients may be assigned to each



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233 registered nurse, so that the minimum registered nurse-to-patient  
234 ratio in medical surgical care units is 1 to 4 or fewer at any  
235 time. As used in this paragraph, the term "medical surgical unit"  
236 means a unit that has beds classified as medical surgical in  
237 which patients who require less care than can be provided in  
238 intensive care units or step-down units receive 24-hour inpatient  
239 general medical services, post-surgical services, or both general  
240 medical and post-surgical services. These units may include mixed  
241 patient populations of diverse diagnoses and diverse age groups.

242 (k) No more than four patients may be assigned to each  
243 registered nurse, so that the minimum registered nurse-to-patient  
244 ratio in a specialty care unit is 1 to 4 or fewer at any time. As  
245 used in this paragraph, the term "specialty care unit" means a  
246 unit that is organized, operated, and maintained to provide care  
247 for a specific medical condition or a specific patient  
248 population, is more comprehensive for the specific condition or  
249 disease process than can be provided in a medical surgical unit,  
250 and is not otherwise covered in this section.

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

255  
256 Identifying a unit by a name or term other than those used in  
257 this subsection does not affect the requirement to provide staff  
258 for the unit at the ratio required for the level or type of care  
259 provided in the unit, as set forth in this subsection.

260 (3) STAFFING PLAN.--Each facility licensed under this  
261 chapter shall ensure that it provides sufficient, appropriately

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262 qualified nursing staff of each classification in each department  
263 or unit within the facility in order to meet the individualized  
264 care needs of the patients. To accomplish this goal, each health  
265 care facility licensed under this chapter shall submit annually  
266 to the agency a documented staffing plan together with a written  
267 certification that the staffing plan is sufficient to provide  
268 adequate and appropriate delivery of health care services to  
269 patients for the ensuing year. The staffing plan must:

270 (a) Meet the minimum requirements set forth in subsection  
271 (2);

272 (b) Meet any additional requirements provided by other laws  
273 or rules;

274 (c) Employ and identify an approved acuity system for  
275 addressing fluctuations in actual patient acuity levels and  
276 nursing care requirements that require increased staffing levels  
277 above the minimums set forth in the plan;

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

282 (e) Identify the assessment tool used to validate the  
283 acuity system used in the plan;

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

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

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

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291 (i) Be developed in consultation with the direct-care  
292 nursing staff in each department or unit or, if such staff is  
293 covered by a collective bargaining agreement, with the applicable  
294 recognized or certified collective bargaining representatives of  
295 the direct-care nursing staff.

296 (4) MINIMUM SKILL MIX.--The skill mix reflected in a  
297 documented staffing plan must ensure that all of the following  
298 elements of the nursing process are performed in the planning and  
299 delivery of care for each patient: assessment, nursing diagnosis,  
300 planning, intervention, evaluation, and patient advocacy.

301 (a) The skill mix may not incorporate or assume that  
302 nursing care functions that are required by licensing law or  
303 rules or accepted standards of practice to be performed by a  
304 licensed nurse are to be performed by unlicensed assistant  
305 personnel.

306 (b) A nurse may not be assigned to or included in the count  
307 of assigned nursing staff for purposes of compliance with minimum  
308 staffing requirements in a nursing department or unit or a  
309 clinical area within the health care facility unless the nurse is  
310 qualified in the area of practice to which the nurse is assigned.

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

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

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320 unit.

321 Section 5. Section 395.055, Florida Statutes, is created to  
322 read:

323 395.055 Mandatory overtime.--

324 (1) An employee of a health care facility may not be  
325 required to work overtime as defined in s. 395.053. Compelling or  
326 attempting to compel an employee to work overtime is contrary to  
327 public policy and is a violation of this section. The acceptance  
328 by any employee of overtime work is strictly voluntary, and the  
329 refusal of an employee to accept such overtime work may not be  
330 grounds for discrimination, dismissal, discharge, or any other  
331 penalty; threats of reports for discipline; or employment  
332 decisions adverse to the employee.

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

334 (a) Because of an unforeseeable emergent circumstance;

335 (b) During prescheduled on-call time if, as of July 1,  
336 2008, such prescheduled on-call time was a customary and  
337 longstanding practice in the unit or department of the health  
338 care facility; or

339 (c) Because of unpredictable and unavoidable occurrences  
340 relating to health care delivery that occur at unscheduled  
341 intervals and require immediate action, if the employer shows  
342 that the employer has exhausted reasonable efforts to comply with  
343 the documented staffing plan. An employer has not used reasonable  
344 efforts if overtime work is used to fill vacancies resulting from  
345 chronic staff shortages.

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

348 Section 6. Section 395.056, Florida Statutes, is created to

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349 read:

350 395.056 Employee rights.--

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

355 (2) A health care facility may not penalize, discriminate  
356 against, or retaliate in any manner against an employee with  
357 respect to compensation for, or terms, conditions, or privileges  
358 of, employment if such an employee in good faith, individually or  
359 in conjunction with another person or persons:

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

363 (b) Initiates, cooperates in, or otherwise participates in  
364 an investigation or proceeding brought by a regulatory agency or  
365 private accreditation body concerning matters covered by this  
366 act;

367 (c) Informs or discusses with any other employee, any  
368 representative of the employee, a patient or a patient's  
369 representative, or with the public violations or suspected  
370 violations of this act; or

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

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

377 Section 7. Section 395.057, Florida Statutes, is created to

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378 read:

379 395.057 Implementation and enforcement.--

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

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

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

389 (c) A systematic means of investigating and correcting  
390 violations of this act;

391 (d) A graduated system of penalties, including fines,  
392 withholding of reimbursement, suspension of admission to specific  
393 units, and other appropriate measures, if violations are not  
394 corrected; and

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

397 (2) The agency shall develop rules for administering this  
398 act which require compliance with staffing standards for critical  
399 care units by July 1, 2009, and compliance with all provisions of  
400 this act by July 1, 2011.

401 Section 8. This act shall take effect July 1, 2008.