

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
 21 to read:

22 395.051 Short title.--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

HB 1533

2008

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 that 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 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.
147 Establishing staffing standards for registered nurses does not
148 justify providing an insufficient level of staffing by other
149 critical health care workers, including licensed practical
150 nurses, social workers, and other licensed or unlicensed
151 assistive personnel. The availability of licensed practical
152 nurses, social workers, and other licensed or unlicensed
153 assistive personnel enables registered nurses to focus on the
154 nursing care functions that only registered nurses, by law, are
155 permitted to perform and thereby helps to ensure adequate
156 staffing levels.

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

169 to-patient ratio. This section does not prohibit a registered
170 nurse from providing care within the scope of his or her
171 practice to a patient assigned to another nurse.

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

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

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

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

194 (e) In a hospital that provides basic emergency medical
195 services or comprehensive emergency medical services, no more
196 than three patients who are receiving emergency services may be

197 assigned to each registered nurse, so that the registered nurse-
198 to-patient ratio in an emergency department is 1 to 3 or fewer
199 at any time patients are receiving treatment. No fewer than two
200 registered nurses must be physically present in the emergency
201 department when a patient is present.

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

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

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

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

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

224 3. "Technical support" means specialized equipment or

225 personnel, or both, that provide for invasive monitoring,
226 telemetry, and mechanical ventilation, for the immediate
227 amelioration or remediation of severe pathology for those
228 patients who require less care than intensive care but more care
229 than can be provided in a medical surgical unit.

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

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

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

HB 1533

2008

253 patient population, is more comprehensive for the specific
254 condition or disease process than can be provided in a medical
255 surgical unit, and is not otherwise covered in this section.

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

260

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

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

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

277 (2);

278 (b) Meet any additional requirements provided by other
279 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 that require increased staffing levels
283 above the minimums set forth in the plan;

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

288 (e) Identify the assessment tool used to validate the
289 acuity system used 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 based on actual staffing needs;

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

297 (i) Be developed in consultation with the direct care
298 nursing staff in each department or unit or, if such staff is
299 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 that are required by licensing law or
 310 rules or accepted standards of practice to be performed by a
 311 licensed nurse are to be performed by unlicensed assistant
 312 personnel.

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

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

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

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

331 395.055 Mandatory overtime.--

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

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

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

342 (a) Because of an unforeseeable emergent circumstance;

343 (b) During prescheduled on-call time if, as of July 1,

344 2008, such prescheduled on-call time was a customary and
 345 longstanding practice in the unit or department of the health
 346 care facility; or

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

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

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

358 395.056 Employee rights.--

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

363 (2) A health care facility may not penalize, discriminate
 364 against, or retaliate in any manner against an employee with

365 respect to compensation for, or terms, conditions, or privileges
 366 of, employment if such an employee in good faith, individually
 367 or in conjunction with another person or persons:

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

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

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

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

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

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

387 395.057 Implementation and enforcement.--

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

392 (a) Unannounced, random compliance site visits to licensed

393 health care facilities subject to this act;

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

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

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

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

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

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