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LEGISLATIVE ACTION

Senate	.	House
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The Committee on Health Regulation (Lawson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

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



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13 delivery of health care services to patients in health care
14 facilities located in this state is adequate and safe and that
15 health care facilities retain sufficient nursing staff so as to
16 promote optimal health care outcomes.

17 (2) Recent changes in our health care delivery system are
18 resulting in a higher acuity level among patients in health care
19 facilities.

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

23 (4) Extensive research indicates that inadequate registered
24 nurse staffing in hospitals can result in increased patient
25 death rates, dangerous medical errors, and increased length of
26 stay.

27 (5) To ensure adequate protection and care for patients in
28 health care facilities, it is essential that qualified
29 registered nurses who are trained and authorized to deliver
30 nursing services be accessible and available to meet the nursing
31 needs of patients.

32 Section 3. Section 395.053, Florida Statutes, is created to
33 read:

34 395.053 Definitions.—As used in this act, the term:

35 (1) "Acuity system" means an established measurement
36 instrument that:

37 (a) Predicts nursing care requirements for individual
38 patients based on the severity of patient illness, the need for
39 specialized equipment and technology, the intensity of nursing
40 interventions required, and the complexity of clinical nursing
41 judgment needed to design, implement, and evaluate the patient's



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42 nursing care plan;

43 (b) Details the amount of nursing care needed, both in the
44 number of registered nurses and in the skill mix of nursing
45 personnel required daily for each patient in a nursing
46 department or unit; and

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

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

53 (3) "Declared state of emergency" means an officially
54 designated state of emergency which has been declared by a
55 federal, state, or local government official who has the
56 authority to declare that the state, county, municipality, or
57 locality is in a state of emergency. The term does not include a
58 state of emergency that results from a labor dispute in the
59 health care industry.

60 (4) "Direct care nurse" or "direct care nursing staff"
61 means any registered nurse who has direct responsibility to
62 oversee or carry out medical regimens or nursing care for one or
63 more patients. A nurse administrator, nurse supervisor, nurse
64 educator, charge nurse, or other registered nurse who does not
65 have a specific patient assignment may not be included in the
66 calculation of the registered nurse-to-patient ratio.

67 (5) "Documented staffing plan" means a detailed written
68 plan that sets forth the minimum number, skill mix, and
69 classification of licensed nurses required in each nursing
70 department or unit in the health care facility for a given year,



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71 based on reasonable projections derived from the patient census
72 and average acuity level within each department or unit during
73 the previous year, the department or unit size and geography,
74 the nature of services provided, and any foreseeable changes in
75 department or unit size or function during the current year.

76 (6) "Health care facility" means an acute care hospital; an
77 emergency care, ambulatory, or outpatient surgery facility
78 licensed under s. 395.003; or a psychiatric facility licensed
79 under chapter 394.

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

81 (8) "Nursing care" means care that falls within the scope
82 of practice set forth in chapter 464 and other laws and rules or
83 care that is otherwise encompassed within recognized
84 professional standards of nursing practice, including
85 assessment, nursing diagnosis, planning, intervention,
86 evaluation, and patient advocacy.

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

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

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

93 (10) "Overtime" means the hours worked in excess of any of
94 the following:

95 (a) An agreed-upon, predetermined, regularly scheduled
96 shift;

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

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

99 (11) "Reasonable efforts," in reference to the prohibition



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100 on mandatory overtime, means that the employer is unable to
101 obtain staff coverage even though the employer has:

102 (a) Sought, from among all available qualified staff who
103 are working, individuals who would volunteer to work extra time;

104 (b) Contacted employees who have made themselves available
105 to work extra time;

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

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

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

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

114 (14) "Unforeseeable emergent circumstance" means:

115 (a) An unforeseen declared national, state, or municipal
116 emergency;

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

119 (c) An unforeseen disaster or other catastrophic event that
120 substantially affects or increases the need for health care
121 services.

122 Section 4. Section 395.054, Florida Statutes, is created to
123 read:

124 395.054 Facility staffing standards.-

125 (1) STAFFING PRINCIPLES.-The basic principles of staffing
126 in health care facilities should be focused on patient health
127 care needs and based on consideration of patient acuity levels
128 and services that need to be provided to ensure optimal



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129 outcomes. Safe staffing practices recognize the importance of
130 all health care workers in providing quality patient care.
131 Establishing staffing standards for registered nurses does not
132 justify providing an insufficient level of staffing by other
133 critical health care workers, including licensed practical
134 nurses, social workers, and other licensed or unlicensed
135 assistive personnel. The availability of licensed practical
136 nurses, social workers, and other licensed or unlicensed
137 assistive personnel enables registered nurses to focus on the
138 nursing care functions that only registered nurses, by law, are
139 permitted to perform and thereby helps to ensure adequate
140 staffing levels.

141 (2) SPECIFIC STANDARDS.—Health care facilities shall
142 provide staffing by registered nurses in accordance with the
143 minimum nurse-to-patient ratios that are set forth in this
144 subsection. Staffing for care that does not require a registered
145 nurse is not included within these ratios and must be determined
146 pursuant to the patient classification system. Nurse-to-patient
147 ratios represent the maximum number of patients that are
148 assigned to one registered nurse during one shift. Only nurses
149 providing direct patient care shall be included in the ratios.
150 Nurse administrators, nurse supervisors, charge nurses, and
151 other licensed nurses that do not have a specific patient care
152 assignment may not be included in the calculation of the nurse-
153 to-patient ratio. This section does not prohibit a registered
154 nurse from providing care within the scope of his or her
155 practice to a patient assigned to another nurse.

156 (a) No more than two patients may be assigned to each
157 registered nurse, so that the minimum registered nurse-to-



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158 patient ratio in a critical care unit is 1 to 2 or fewer at any
159 time. As used in this paragraph, the term "critical care unit"
160 means a nursing unit of a general acute care hospital that
161 provides one of the following services: an intensive care
162 service, a postanesthesia recovery service, a burn center
163 service, a coronary care service, or an acute respiratory
164 service. In the intensive care newborn nursery service, no more
165 than two patients may be assigned to each nurse.

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

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

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

178 (e) In a hospital that provides basic emergency medical
179 services or comprehensive emergency medical services, no more
180 than three patients who are receiving emergency services may be
181 assigned to each registered nurse, so that the registered nurse-
182 to-patient ratio in an emergency department is 1 to 3 or fewer
183 at any time patients are receiving treatment. No fewer than two
184 registered nurses must be physically present in the emergency
185 department when a patient is present.

186 (f) The nurse assigned to triage patients may not have a



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187 patient assignment, may not be assigned the responsibility for
188 the base ratio, and may not be counted in the registered nurse-
189 to-patient ratio.

190 (g) When nursing staff are attending critical care patients
191 in the emergency department, no more than two patients may be
192 assigned to each registered nurse. When nursing staff in the
193 emergency department are attending trauma patients, no more than
194 one patient may be assigned to each registered nurse at any
195 time.

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

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

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

208 3. "Technical support" means specialized equipment or
209 personnel, or both, that provide for invasive monitoring,
210 telemetry, and mechanical ventilation, for the immediate
211 amelioration or remediation of severe pathology for those
212 patients who require less care than intensive care but more care
213 than can be provided in a medical surgical unit.

214 (i) No more than three patients may be assigned to each
215 registered nurse, so that the minimum registered nurse-to-



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216 patient ratio in a telemetry unit is 1 to 3 or fewer at any
217 time. As used in this paragraph, the term "telemetry unit" means
218 a unit designated for the electronic monitoring, recording,
219 retrieval, and display of cardiac electrical signals.

220 (j) No more than four patients may be assigned to each
221 registered nurse, so that the minimum registered nurse-to-
222 patient ratio in medical surgical care units is 1 to 4 or fewer
223 at any time. As used in this paragraph, the term "medical
224 surgical unit" means a unit that has beds classified as medical
225 surgical in which patients who require less care than can be
226 provided in intensive care units or step-down units receive 24-
227 hour inpatient general medical services, postsurgical services,
228 or both general medical and postsurgical services. These units
229 may include mixed patient populations of diverse diagnoses and
230 diverse age groups.

231 (k) No more than four patients may be assigned to each
232 registered nurse, so that the minimum registered nurse-to-
233 patient ratio in a specialty care unit is 1 to 4 or fewer at any
234 time. As used in this paragraph, the term "specialty care unit"
235 means a unit that is organized, operated, and maintained to
236 provide care for a specific medical condition or a specific
237 patient population, is more comprehensive for the specific
238 condition or disease process than can be provided in a medical
239 surgical unit, and is not otherwise covered in this section.

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

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

249 (3) STAFFING PLAN.—Each facility licensed under this
250 chapter shall ensure that it provides sufficient, appropriately
251 qualified nursing staff of each classification in each
252 department or unit within the facility in order to meet the
253 individualized care needs of the patients. To accomplish this
254 goal, each health care facility licensed under this chapter
255 shall submit annually to the agency a documented staffing plan
256 together with a written certification that the staffing plan is
257 sufficient to provide adequate and appropriate delivery of
258 health care services to patients for the ensuing year. The
259 staffing plan must:

260 (a) Meet the minimum requirements set forth in subsection
261 (2);

262 (b) Meet any additional requirements provided by other laws
263 or rules;

264 (c) Employ and identify an approved acuity system for
265 addressing fluctuations in actual patient acuity levels and
266 nursing care requirements that require increased staffing levels
267 above the minimums set forth in the plan;

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

272 (e) Identify the assessment tool used to validate the
273 acuity system used in the plan;



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

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

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

281 (i) Be developed in consultation with the direct care
282 nursing staff in each department or unit or, if such staff is
283 covered by a collective bargaining agreement, with the
284 applicable recognized or certified collective bargaining
285 representatives of the direct care nursing staff.

286 (4) MINIMUM SKILL MIX.—The skill mix reflected in a
287 documented staffing plan must ensure that all of the following
288 elements of the nursing process are performed in the planning
289 and delivery of care for each patient: assessment, nursing
290 diagnosis, planning, intervention, evaluation, and patient
291 advocacy.

292 (a) The skill mix may not incorporate or assume that
293 nursing care functions that are required by licensing law or
294 rules or accepted standards of practice to be performed by a
295 licensed nurse are to be performed by unlicensed assistant
296 personnel.

297 (b) A nurse may not be assigned to or included in the count
298 of assigned nursing staff for purposes of compliance with
299 minimum staffing requirements in a nursing department or unit or
300 a clinical area within the health care facility unless the nurse
301 is qualified in the area of practice to which the nurse is
302 assigned.



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303 (5) COMPLIANCE WITH PLAN.—As a condition of licensing, a
304 health care facility must at all times provide staff in
305 accordance with its documented staffing plan and the staffing
306 standards set forth in this section; however, this section does
307 not preclude a health care facility from implementing higher
308 direct care, nurse-to-patient staffing levels.

309 (6) RECORDKEEPING.—The facility shall maintain records
310 sufficient to allow the agency to determine the daily staffing
311 ratios and skill mixes that the facility has maintained on each
312 unit.

313 Section 5. Section 395.055, Florida Statutes, is created to
314 read:

315 395.055 Mandatory overtime.—

316 (1) An employee of a health care facility may not be
317 required to work overtime as defined in s. 395.053. Compelling
318 or attempting to compel an employee to work overtime is contrary
319 to public policy and is a violation of this section. The
320 acceptance by any employee of overtime work is strictly
321 voluntary, and the refusal of an employee to accept such
322 overtime work may not be grounds for discrimination, dismissal,
323 discharge, or any other penalty; threats of reports for
324 discipline; or employment decisions adverse to the employee.

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

326 (a) Because of an unforeseeable emergent circumstance;

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

328 2009, such prescheduled on-call time was a customary and
329 longstanding practice in the unit or department of the health
330 care facility; or

331 (c) Because of unpredictable and unavoidable occurrences



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332 relating to health care delivery that occur at unscheduled
333 intervals and require immediate action, if the employer shows
334 that the employer has exhausted reasonable efforts to comply
335 with the documented staffing plan. An employer has not used
336 reasonable efforts if overtime work is used to fill vacancies
337 resulting from chronic staff shortages.

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

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

342 395.056 Employee rights.-

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

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

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

355 (b) Initiates, cooperates in, or otherwise participates in
356 an investigation or proceeding brought by a regulatory agency or
357 private accreditation body concerning matters covered by this
358 act;

359 (c) Informs or discusses with any other employee, any
360 representative of the employee, a patient or a patient's



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361 representative, or with the public violations or suspected
362 violations of this act; or

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

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

369 Section 7. Section 395.057, Florida Statutes, is created to
370 read:

371 395.057 Implementation and enforcement.-

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

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

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

381 (c) A systematic means of investigating and correcting
382 violations of this act;

383 (d) A graduated system of penalties, including fines,
384 withholding of reimbursement, suspension of admission to
385 specific units, and other appropriate measures, if violations
386 are not corrected; and

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

389 (2) The agency shall develop rules for administering this



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390 act which require compliance with staffing standards for
391 critical care units by July 1, 2010, and compliance with all
392 provisions of this act by July 1, 2012.

393 Section 8. This act shall take effect July 1, 2009.

394

395 ===== T I T L E A M E N D M E N T =====

396 And the title is amended as follows:

397 Delete everything before the enacting clause
398 and insert:

399 A bill to be entitled
400 An act relating to the staffing of health care
401 facilities; creating ss. 395.051-395.057, F.S.;
402 creating the "Safe Staffing for Quality Care Act";
403 providing a short title; providing legislative
404 findings; defining terms; prescribing safe staffing
405 standards for health care facilities; requiring
406 licensed facilities to submit an annual staffing plan
407 to the Agency for Health Care Administration;
408 providing standards for the required skill mix;
409 requiring compliance with the staffing plan; requiring
410 recordkeeping; prohibiting mandatory overtime;
411 providing applicability; permitting employees to
412 refuse certain assignments and to report suspected
413 violations of safe staffing standards; providing for
414 the agency to enforce compliance with the act;
415 requiring the agency to develop rules; providing an
416 effective date.