

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:

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 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

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29 facilities located in this state is adequate and safe and that  
30 health care facilities retain sufficient nursing staff so as to  
31 promote optimal health care outcomes.

32 (2) Recent changes in our health care delivery system are  
33 resulting in a higher acuity level among patients in health care  
34 facilities.

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

38 (4) Extensive research indicates that inadequate  
39 registered nurse staffing in hospitals can result in increased  
40 patient death rates, dangerous medical errors, and increased  
41 length of stay.

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

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

49 395.053 Definitions.--As used in this act, the term:

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

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

57 nursing care plan;

58 (b) Details the amount of nursing care needed, both in the  
59 number of registered nurses and in the skill mix of nursing  
60 personnel required daily for each patient in a nursing  
61 department or unit; and

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

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

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

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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.--

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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-

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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

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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



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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

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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

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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

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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 2009, 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

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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, 2010, and compliance with all  
408 provisions of this act by July 1, 2012.

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