

1 A bill to be entitled
2 An act relating to health care; creating the "Florida
3 Hospital Patient Protection Act"; providing legislative
4 findings; providing definitions; providing minimum
5 staffing level requirements for the ratio of direct care
6 registered nurses to patients in a health care facility;
7 requiring that each health care facility implement a
8 staffing plan; prohibiting the imposition of mandatory
9 overtime and certain other actions by a health care
10 facility; specifying the required nurse-to-patient ratios
11 for each type of care provided; prohibiting the use of
12 video cameras or monitors by a health care facility as a
13 substitute for the required level of care; requiring that
14 the chief nursing officer of a health care facility
15 prepare a written staffing plan that meets the staffing
16 levels required by the act; requiring that a health care
17 facility annually evaluate its actual staffing levels and
18 update the staffing plan based on the evaluation;
19 requiring that certain documentation be submitted to the
20 Agency for Health Care Administration and made available
21 for public inspection; requiring that the agency develop
22 uniform standards for use by health care facilities in
23 establishing nurse staffing requirements; providing
24 requirements for the committee members who are appointed
25 to develop the uniform standards; requiring health care
26 facilities to annually report certain information to the
27 agency and post a notice containing such information in
28 each unit of the facility; prohibiting a health care

29 facility from assigning unlicensed personnel to perform
30 functions or tasks that are performed by a licensed or
31 registered nurse; specifying those actions that constitute
32 professional practice by a direct care registered nurse;
33 requiring that patient assessment be performed only by a
34 direct care registered nurse; authorizing a direct care
35 registered nurse to assign certain specified activities to
36 other licensed or unlicensed nursing staff; prohibiting a
37 health care facility from deploying technology that limits
38 certain care provided by a direct care registered nurse;
39 providing that it is a duty and right of a direct care
40 registered nurse to act as the patient's advocate;
41 providing certain requirements with respect to such duty;
42 authorizing a direct care registered nurse to refuse to
43 perform certain activities if he or she determines that it
44 is not in the best interests of the patient; providing
45 that a direct care registered nurse may refuse to accept
46 an assignment under certain circumstances; prohibiting a
47 health care facility from discharging, discriminating, or
48 retaliating against a nurse based on such refusal;
49 providing that a direct care registered nurse has a right
50 of action against a health care facility that violates
51 certain provisions of the act; requiring that the Agency
52 for Health Care Administration establish a toll-free
53 telephone hotline to provide information and to receive
54 reports of violations of the act; requiring that certain
55 information be provided to each patient who is admitted to
56 a health care facility; prohibiting a health care facility

57 from interfering with the right of nurses to organize or
 58 bargain collectively; authorizing the agency to impose
 59 fines for violations of the act; requiring that the agency
 60 post in its website information regarding health care
 61 facilities that have violated the act; providing an
 62 effective date.

63
 64 Be It Enacted by the Legislature of the State of Florida:

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 66 Section 1. Short title.—Sections 1 through 8 may be cited
 67 as the "Florida Hospital Patient Protection Act."

68 Section 2. Legislative findings.—The Legislature finds
 69 that:

70 (1) The state has a substantial interest in ensuring that,
 71 in the delivery of health care services to patients, health care
 72 facilities retain sufficient nursing staff so as to promote
 73 optimal health care outcomes.

74 (2) Health care services are becoming more complex and it
 75 is increasingly difficult for patients to access integrated
 76 services. Competent, safe, therapeutic, and effective patient
 77 care is jeopardized because of staffing changes implemented in
 78 response to market-driven managed care. To ensure effective
 79 protection of patients in acute care settings, it is essential
 80 that qualified direct care registered nurses be accessible and
 81 available to meet the individual needs of the patient at all
 82 times. In order to ensure the health and welfare of state
 83 residents and to ensure that hospital nursing care is provided
 84 in the exclusive interests of patients, mandatory practice

85 standards and professional practice protections for professional
86 direct care registered nursing staff must be established. Direct
87 care registered nurses have a fiduciary duty to care for
88 assigned patients and a necessary duty of individual and
89 collective patient advocacy in order to satisfy professional
90 fiduciary obligations.

91 (3) The basic principles of staffing in hospital settings
92 should be based on the care needs of the individual patient, the
93 severity of the patient's condition, the services needed, and
94 the complexity surrounding those services. Current unsafe
95 practices by hospital direct care registered nursing staff have
96 resulted in adverse patient outcome. Mandating the adoption of
97 uniform, minimum, numerical, and specific registered nurse-to-
98 patient staffing ratios by licensed hospital facilities is
99 necessary for competent, safe, therapeutic, and effective
100 professional nursing care and for the retention and recruitment
101 of qualified direct care registered nurses.

102 (4) Direct care registered nurses must be able to advocate
103 for their patients without fear of retaliation from their
104 employer. Whistle-blower protections that encourage registered
105 nurses and patients to notify governmental and private
106 accreditation entities of suspected unsafe patient conditions,
107 including protection against retaliation for refusing unsafe
108 patient care assignments, will greatly enhance the health,
109 welfare, and safety of patients.

110 (5) Direct care registered nurses have an irrevocable duty
111 and right to advocate on behalf of their patients' interests,
112 and this duty and right may not be encumbered by cost-saving

113 schemes.

114 Section 3. Definitions.—As used in sections 1 through 8,
115 the term:

116 (1) "Acuity-based patient classification system," "acuity
117 system," or "patient classification system" means an established
118 measurement tool that:

119 (a) Predicts registered nursing care requirements for
120 individual patients based on the severity of patient illness,
121 the need for specialized equipment and technology, the intensity
122 of required nursing interventions, and the complexity of
123 clinical nursing judgment required to design, implement, and
124 evaluate the patient's nursing care plan consistent with
125 professional standards, the ability for self-care, including
126 motor, sensory, and cognitive deficits, and the need for
127 advocacy intervention;

128 (b) Details the amount of nursing care needed and the
129 additional number of direct care registered nurses and other
130 licensed and unlicensed nursing staff that the hospital must
131 assign, based on the independent professional judgment of the
132 direct care registered nurse, in order to meet the individual
133 patient needs at all times; and

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

136 (2) "Agency" means the Agency for Health Care
137 Administration.

138 (3) "Ancillary support staff" means the personnel assigned
139 to assist in providing nursing services in the delivery of safe,
140 therapeutic, and effective patient care, including unit or ward

141 clerks and secretaries, clinical technicians, respiratory
 142 therapists, and radiology, laboratory, housekeeping, and dietary
 143 personnel.

144 (4) "Clinical judgment" means the application of the
 145 direct care registered nurse's knowledge, skill, expertise, and
 146 experience in making independent decisions about patient care.

147 (5) "Clinical supervision" means the assignment and
 148 direction of patient care tasks required in the implementation
 149 of nursing care for patients to other licensed nursing staff or
 150 to unlicensed staff by a direct care registered nurse in the
 151 exclusive interests of the patients.

152 (6) "Competence" means the ability of the direct care
 153 registered nurse to act and integrate the knowledge, skills,
 154 abilities, and independent professional judgment that support
 155 safe, therapeutic, and effective patient care. Current
 156 documented, demonstrated, and validated competency is required
 157 for all direct care registered nurses and must be determined
 158 based on the satisfactory performance of:

159 (a) The statutorily recognized duties and responsibilities
 160 of registered nurses, as set forth in chapter 464, Florida
 161 Statutes, and rules adopted thereunder; and

162 (b) The standards required under sections 4 and 5, which
 163 are specific to each hospital unit.

164 (7) "Declared state of emergency" means an officially
 165 designated state of emergency that has been declared by a
 166 federal, state, or local government official who has the
 167 authority to declare the state of emergency. The term does not
 168 include a state of emergency that results from a labor dispute

169 in the health care industry.

170 (8) "Direct care registered nurse" means a licensed nurse
 171 who has documented clinical competence and who has accepted a
 172 direct, hands-on patient care assignment to implement medical
 173 and nursing regimens and provide related clinical supervision of
 174 patient care while exercising independent professional judgment
 175 at all times in the exclusive interest of the patient.

176 (9) "Health care facility" means an acute care hospital;
 177 an emergency care, ambulatory, or outpatient surgery facility
 178 licensed under chapter 395, Florida Statutes; or a psychiatric
 179 facility licensed under chapter 394, Florida Statutes, including
 180 a critical access and long-term acute care hospital.

181 (10) "Hospital unit" or "clinical patient care area" means
 182 an intensive care or critical care unit, burn unit, labor and
 183 delivery room, antepartum and postpartum unit, newborn nursery,
 184 postanesthesia service area, emergency department, operating
 185 room, pediatric unit, step-down or intermediate care unit,
 186 specialty care unit, telemetry unit, general medical or surgical
 187 care unit, psychiatric unit, rehabilitation unit, or skilled
 188 nursing facility unit, and as further defined in this
 189 subsection.

190 (a) "Critical care unit" or "intensive care unit" means a
 191 nursing unit of an acute care hospital which is established to
 192 safeguard and protect patients whose severity of medical
 193 conditions require continuous monitoring and complex
 194 interventions by direct care registered nurses and whose
 195 restorative measures and level of nursing intensity requires
 196 intensive care through direct observation by the direct care

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197 registered nurse, complex monitoring, intensive intricate
198 assessment, evaluation, specialized rapid intervention, and
199 education or teaching of the patient, the patient's family, or
200 other representatives by a competent and experienced direct care
201 registered nurse. The term includes an intensive care unit, a
202 burn center, a coronary care unit, or an acute respiratory unit.

203 (b) "Step-down unit" or "intermediate intensive care unit"
204 means a unit established to safeguard and protect patients whose
205 severity of illness, including all co-occurring morbidities,
206 restorative measures, and level of nursing intensity, requires
207 intermediate intensive care through direct observation by the
208 direct care registered nurse, monitoring, multiple assessments,
209 specialized interventions, evaluations, and education or
210 teaching of the patient's family or other representatives by a
211 competent and experienced direct care registered nurse. The term
212 includes units established to provide care to patients who have
213 moderate or potentially severe physiologic instability requiring
214 technical support but not necessarily artificial life support.
215 "Artificial life support" means a system that uses medical
216 technology to aid, support, or replace a vital function of the
217 body that has been seriously damaged. "Technical support" means
218 the use of specialized equipment by direct care registered
219 nurses in providing for invasive monitoring, telemetry, and
220 mechanical ventilation for the immediate amelioration or
221 remediation of severe pathology for those patients requiring
222 less care than intensive care, but more than that which is
223 required from medical or surgical care.

224 (c) "Medical or surgical unit" means a unit established to

225 safeguard and protect patients whose severity of illness,
226 including all co-occurring morbidities, restorative measures,
227 and level of nursing intensity requires continuous care through
228 direct observation by the direct care registered nurse,
229 monitoring, multiple assessments, specialized interventions,
230 evaluations, and education or teaching of the patient's family
231 or other representatives by a competent and experienced direct
232 care registered nurse. These units may include patients
233 requiring less than intensive care or step-down care; patients
234 receiving 24-hour inpatient general medical care, post-surgical
235 care, or both general medical and post-surgical care; and mixed
236 patient populations of diverse diagnoses and diverse age groups,
237 but excluding pediatric patients.

238 (d) "Telemetry unit" means a unit that is established to
239 safeguard and protect patients whose severity of illness,
240 including all co-occurring morbidities, restorative measures,
241 and level of nursing intensity requires intermediate intensive
242 care through direct observation by the direct registered nurse,
243 monitoring, multiple assessments, specialized interventions,
244 evaluations, and education or teaching of the patient's family
245 or other representatives by a competent and experienced direct
246 care registered nurse. A telemetry unit includes the equipment
247 used to provide for the electronic monitoring, recording,
248 retrieval, and display of cardiac electrical signals.

249 (e) "Specialty care unit" means a unit that is established
250 to safeguard and protect patients whose severity of illness,
251 including all co-occurring morbidities, restorative measures,
252 and level of nursing intensity requires continuous care through

253 direct observation by the direct care registered nurse,
 254 monitoring, multiple assessments, specialized interventions,
 255 evaluations, and education or teaching of the patient's family
 256 or other representatives by a competent and experienced direct
 257 care registered nurse. The term includes a unit established to
 258 provide the intensity of care required for a specific medical
 259 condition or a specific patient population or to provide more
 260 comprehensive care for a specific condition or disease process
 261 than that which is required on medical or surgical units, and
 262 includes those units not otherwise covered by the definitions in
 263 this section.

264 (f) "Rehabilitation unit" means a functional clinical unit
 265 for the provision of those rehabilitation services that restore
 266 an ill or injured patient to the highest level of self-
 267 sufficiency or gainful employment of which he or she is capable
 268 in the shortest possible time, compatible with the patient's
 269 physical, intellectual, and emotional or psychological
 270 capabilities, and in accord with planned goals and objectives.

271 (g) "Skilled nursing facility" means a functional clinical
 272 unit for the provision of skilled nursing care and supportive
 273 care to patients whose primary need is for the availability of
 274 skilled nursing care on a long-term basis and who are admitted
 275 after at least a 48-hour period of continuous inpatient care.
 276 The term includes, but need not be limited to, medical, nursing,
 277 dietary, and pharmaceutical services and activity programs.

278 (11) "Licensed nurse" means a registered nurse or a
 279 licensed practical nurse, as defined in s. 464.003, Florida
 280 Statutes, who is licensed by the Board of Nursing to engage in

281 the practice of professional nursing or the practice of
282 practical nursing, as defined in s. 464.003, Florida Statutes.

283 (12) "Long-term acute care hospital" means any hospital or
284 health care facility that specializes in providing long-term
285 acute care to medically complex patients. The term includes
286 freestanding and hospital-within-hospital models of long-term
287 acute care facilities.

288 (13) "Overtime" means the hours worked in excess of:

289 (a) An agreed-upon, predetermined, regularly scheduled
290 shift;

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

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

293 (14) "Patient assessment" means the use of critical
294 thinking by a direct care licensed nurse and is the
295 intellectually disciplined process of actively and skillfully
296 interpreting, applying, analyzing, synthesizing, or evaluating
297 data obtained through the direct observation and communication
298 with others.

299 (15) "Professional judgment" means the intellectual,
300 educated, informed, and experienced process that the direct care
301 registered nurse exercises in forming an opinion and reaching a
302 clinical decision that is in the patient's best interest and is
303 based upon analysis of data, information, and scientific
304 evidence.

305 (16) "Skill mix" means the differences in licensing,
306 specialty, and experience among direct care registered nurses.

307 (17) "Staffing level" means the actual numerical
308 registered nurse-to-patient ratio within a nursing department,

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309 unit, or clinical patient care area.

310 Section 4. Minimum direct care registered nurse-to-patient
311 staffing requirements.-

312 (1) Each health care facility shall implement a staffing
313 plan that provides for minimum staffing by direct care
314 registered nurses in accordance with the general requirements
315 set forth in this section and the clinical unit direct care
316 registered nurse-to-patient ratios specified in subsection (2).
317 Staffing for patient care tasks not requiring a direct care
318 registered nurse is not included within these ratios and shall
319 be determined pursuant to an acuity-based patient classification
320 system defined by agency rule.

321 (a) A health care facility may not assign a direct care
322 registered nurse to a nursing unit or clinical area unless that
323 health care facility and the direct care registered nurse
324 determine that she or he has demonstrated and validated current
325 competence in providing care in that area and has also received
326 orientation to that clinical area which is sufficient to provide
327 competent, safe, therapeutic, and effective care to patients in
328 that area. The policies and procedures of the health care
329 facility must contain the criteria for making this
330 determination.

331 (b) Direct care registered nurse-to-patient ratios
332 represent the maximum number of patients that shall be assigned
333 to one direct care registered nurse at all times.

334 (c) "Assigned" means the direct care registered nurse has
335 responsibility for the provision of care to a particular patient
336 within her or his validated competency.

337 (d)1. A health care facility may not average the number of
338 patients and the total number of direct care registered nurses
339 assigned to patients in a clinical unit during any one shift or
340 over any period of time for purposes of meeting the requirements
341 under this section.

342 2. A health care facility may not impose mandatory
343 overtime requirements in order to meet the hospital unit direct
344 care registered nurse-to-patient ratios required under this
345 section.

346 3. A health care facility shall ensure that only a direct
347 care registered nurse may relieve another direct care registered
348 nurse during breaks, meals, and routine absences from a clinical
349 unit.

350 4. A health care facility may not impose layoffs of
351 licensed practical nurses, licensed psychiatric technicians,
352 certified nursing assistants, or other ancillary support staff
353 in order to meet the clinical unit direct care registered nurse-
354 to-patient ratios required in this section.

355 (e) Only direct care registered nurses shall be assigned
356 to intensive care newborn nursery service units, which
357 specifically require one direct care registered nurse to two or
358 fewer infants at all times.

359 (f) Only direct care registered nurses shall be assigned
360 to triage patients and only direct care registered nurses shall
361 be assigned to critical trauma patients.

362 1. The direct care registered nurse-to-patient ratio for
363 critical care patients in the emergency department shall be 1 to
364 2 or fewer at all times.

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365 2. No fewer than two direct care registered nurses must be
366 physically present in the emergency department when a patient is
367 present.

368 3. Triage, radio, specialty, or flight-registered nurses
369 do not count in the calculation of direct care registered nurse-
370 to-patient ratio.

371 4. Triage-registered nurses may not be assigned the
372 responsibility of the base radio.

373 (g) In the labor and delivery unit, the direct care
374 registered nurse-to-patient ratio shall be one-to-one for active
375 labor patients and patients having medical or obstetrical
376 complications, during the initiation of epidural anesthesia, and
377 during circulation for cesarean delivery.

378 1. The direct care registered nurse-to-patient ratio for
379 antepartum patients who are not in active labor shall be one-to-
380 three or fewer at all times.

381 2. In the event of cesarean delivery, the total number of
382 mothers plus infants assigned to a single direct care registered
383 nurse may not exceed four.

384 3. In the event of multiple births, the total number of
385 mothers plus infants assigned to a single direct care registered
386 nurse may not exceed six.

387 4. For postpartum areas in which the direct care
388 registered nurse's assignment consists of mothers only, the
389 direct care registered nurse-to-patient ratio shall be one-to-
390 four or fewer at all times.

391 5. The direct care registered nurse-to-patient ratio for
392 postpartum women or postsurgical gynecological patients only

393 shall be one-to-four or fewer at all times.

394 6. The direct care registered nurse-to-patient ratio for
 395 the well-baby nursery shall be one-to-five at all times.

396 7. The direct care registered nurse-to-patient ratio for
 397 unstable newborns and those in the resuscitation period as
 398 assessed by the direct care registered nurse shall be one-to-one
 399 at all times.

400 8. The direct care registered nurse-to-patient ratio for
 401 recently born infants shall be one-to-four or fewer at all
 402 times.

403 (h) The direct care registered nurse-to-patient ratio for
 404 patients receiving conscious sedation shall be one-to-one or
 405 fewer at all times.

406 (2) A health care facility's staffing plan shall provide
 407 that, at all times during each shift within a unit of the
 408 facility, a direct care registered nurse is assigned to not more
 409 than the following number of patients in that unit:

410 (a) One patient in trauma emergency units.

411 (b) One patient in operating room units. The operating
 412 room shall have at least one direct care registered nurse
 413 assigned to the duties of the circulating registered nurse and a
 414 minimum of one additional person as a scrub assistant for each
 415 patient-occupied operating room.

416 (c) Two patients in critical care units, including
 417 neonatal intensive care units, emergency critical care and
 418 intensive care units, labor and delivery units, coronary care
 419 units, acute respiratory care units, postanesthesia units
 420 regardless of the type of anesthesia received, burn units, and

421 immediate postpartum patients, so that the direct-care
422 registered nurse-to-patient ratio is one-to-two at all times.

423 (d) Three patients in the emergency room units, step-down
424 or intermediate intensive care units, pediatrics units,
425 telemetry units, and combined labor, delivery, and postpartum
426 units, so that the direct care registered nurse-to-patient
427 ratios is one-to-three or fewer at all times.

428 (e) Four patients in medical-surgical units, antepartum
429 units, intermediate care nursery units, psychiatric units, and
430 presurgical and other specialty care units, so that the direct
431 care registered nurse-to-patient ratio is one-to-four or fewer
432 at all times.

433 (f) Five patients in rehabilitation units and skilled
434 nursing units, so that the direct care registered nurse-to-
435 patient ratio is one-to-five or fewer at all times.

436 (g) Six patients in well-baby nursery units, so that the
437 direct care registered nurse-to-patient ratio is one-to-six or
438 fewer at all times.

439 (h) Three couplets in postpartum units, so that the direct
440 care registered nurse-to-patient ratio is one-to-three couplets
441 or fewer at all times.

442 (3) (a) Identifying a unit or clinical patient care area by
443 a name or term other than those defined in section 3 does not
444 affect the requirement to provide for staff at the direct care
445 registered nurse-to-patient ratios identified for the level of
446 intensity or type of care described in subsections (1) and (2).

447 (b) Patients shall be cared for only on units or clinical
448 patient care areas where the level of intensity, type of care,

449 and direct care registered nurse-to-patients ratios meet the
450 individual requirements and needs of each patient. The use of
451 patient acuity-adjustable units is strictly prohibited.

452 (c) Video cameras or monitors or any form of electronic
453 visualization of a patient may not be substituted for the direct
454 observation required for patient assessment by the direct care
455 registered nurse and for patient protection required by an
456 attendant.

457 (4) The requirements established under this section do not
458 apply during a declared state of emergency if a health care
459 facility is requested or expected to provide an exceptional
460 level of emergency or other medical services.

461 (5) (a) A written staffing plan shall be developed by the
462 chief nursing officer or a designee, based on individual patient
463 care needs determined by the patient classification system. The
464 staffing plan shall be developed and implemented for each
465 patient care unit and must specify individual patient care
466 requirements and the staffing levels for direct care registered
467 nurses and other licensed and unlicensed personnel. In no case
468 shall the staffing level for direct care registered nurses on
469 any shift fall below the requirements of subsections (1) and
470 (2).

471 (b) In addition to the direct care registered nurse-ratio
472 requirements of subsections (1) and (2), each health care
473 facility shall assign additional nursing staff, such as licensed
474 practical nurses, licensed psychiatric technicians, and
475 certified nursing assistants, through the implementation of a
476 valid patient classification system for determining nursing care

477 needs of individual patients which reflects the assessment made
478 by the assigned direct care registered nurse of patient nursing
479 care requirements and which provides for shift-by-shift staffing
480 based on those requirements. The ratios specified in subsections
481 (1) and (2) constitute the minimum number of registered nurses
482 who shall be assigned to provide direct patient care.

483 (c) In developing the staffing plan, a health care
484 facility shall provide for direct care registered nurse-to-
485 patient ratios above the minimum ratios required under
486 subsections (1) and (2) based upon consideration of the
487 following factors:

488 1. The number of patients and acuity level of patients as
489 determined by the application of an acuity system on a shift-by-
490 shift basis.

491 2. The anticipated admissions, discharges, and transfers
492 of patients during each shift which effect direct patient care.

493 3. Specialized experience required of direct care
494 registered nurses on a particular unit.

495 4. Staffing levels and services provided by other health
496 care personnel in meeting direct patient care needs that do not
497 require care by a direct care registered nurse.

498 5. The efficacy of technology that is available and that
499 affects the delivery of direct patient care.

500 6. The level of familiarity with hospital practices,
501 policies, and procedures by temporary agency direct care
502 registered nurses who are assigned to provide care during a
503 shift.

504 7. Obstacles to efficiency in the delivery of patient care

505 which is caused by the physical layout of the health care
506 facility.

507 (d) A health care facility shall specify the system used
508 to document actual staffing in each unit for each shift.

509 (e) A health care facility shall annually evaluate:

510 1. The reliability of the patient classification system
511 for validating staffing requirements in order to determine
512 whether the system accurately measures individual patient care
513 needs and accurately predicts the staffing requirements for
514 direct care registered nurses, licensed practical nurses,
515 licensed psychiatric technicians, and certified nursing
516 assistants, based exclusively on individual patient needs.

517 2. The validity of the acuity-based patient classification
518 system.

519 (f) A health care facility shall update its staffing plan
520 and acuity system to the extent appropriate based on the annual
521 evaluation. If the review reveals that adjustments are necessary
522 in order to ensure accuracy in measuring patient care needs,
523 such adjustments must be implemented within 30 days after that
524 determination.

525 (g)1. Any acuity-based patient classification system
526 adopted by a health care facility under this section shall be
527 transparent in all respects, including disclosure of detailed
528 documentation of the methodology used to predict nursing
529 staffing; an identification of each factor, assumption, and
530 value used in applying such methodology; an explanation of the
531 scientific and empirical basis for each such assumption and
532 value; and certification by a knowledgeable and authorized

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533 representative of the health care facility that the disclosures
534 regarding methods used for testing and validating the accuracy
535 and reliability of the system are true and complete.

536 2. The documentation required by this section shall be
537 submitted in its entirety to the Agency of Health Care
538 Administration as a mandatory condition of licensure, with a
539 certification by the chief nurse officer for the health care
540 facility that it completely and accurately reflects
541 implementation of a valid acuity-based patient classification
542 system used to determine nursing service staffing by the
543 facility for every shift on every clinical unit in which
544 patients reside and receive care. The certification shall be
545 executed by the chief nurse officer under penalty of perjury and
546 must contain an express acknowledgement that any false statement
547 in the certification constitutes fraud and is subject to
548 criminal and civil prosecution and penalties.

549 3. Such documentation shall be available for public
550 inspection in its entirety in accordance with procedures
551 established by appropriate administrative rules adopted by the
552 Agency for Health Care Administration, consistent with the
553 purposes of this act.

554 (h)1. A staffing plan of a health care facility shall be
555 developed and evaluated by a committee. At least one-half of the
556 members of the committee shall be unit-specific competent direct
557 care registered nurses who provide direct patient care.

558 2. The members of the committee shall be appointed by the
559 chief nurse officer, except at a facility where direct care
560 registered nurses are represented for collective bargaining

561 purposes, all direct care registered nurses on the committee
562 shall be appointed by the authorized collective bargaining
563 agent. In case of a dispute, the direct care registered nurse
564 assessment shall prevail. This act does not authorize conduct
565 that is prohibited under the National Labor Relations Act or
566 under the Federal Labor Relations Act.

567 (i)1. By July 1, 2011, the Agency for Health Care
568 Administration shall develop uniform statewide standards for a
569 standardized acuity tool for use in health care facilities which
570 provides a method for establishing nurse staffing requirements
571 which exceed the hospital unit or clinical patient care area
572 direct care registered nurse-to-patient ratios required under
573 subsections (1) and (2).

574 2. Proposed standards shall be developed by a committee
575 composed of no more than 20 individuals, at least 11 of whom
576 must be currently licensed registered nurses who are employed as
577 direct care registered nurses, and the remaining 9 shall include
578 a sufficient number of technical or scientific experts in the
579 specialized fields involved in the design and development of a
580 patient classification system that meets the requirements of
581 this act.

582 3. A person who has any employment, commercial,
583 proprietary, financial, or other personal interest in the
584 development, marketing, or utilization of any private patient
585 classification system product or related methodology,
586 technology, or component system is not eligible to serve on the
587 development committee. A candidate for appointment to the
588 development committee may not be confirmed as a member until the

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589 individual files a disclosure-of-interest statement with the
590 agency, with signed certification of full disclosure and
591 complete accuracy under oath, which provides all necessary
592 information as determined by the agency to demonstrate the
593 absence of actual or potential conflict of interest. All such
594 filings are subject to public inspection.

595 4. Within 1 year after the official commencement of
596 committee operations, the development committee shall provide a
597 written report to the agency which proposes uniform standards
598 for a valid patient classification system, along with sufficient
599 explanation and justification to allow for competent review and
600 determination by the agency. The report shall be disclosed to
601 the public upon notice of public hearings and a public comment
602 period for proposed adoption of uniform standards for a patient
603 classification system by the agency.

604 (j) Each hospital shall adopt and implement the patient
605 classification system and provide staffing based on such tool.
606 Any additional direct care registered nursing staffing levels
607 that exceed the direct care registered nurse-to-patient ratios
608 described in subsections (1) and (2) shall be assigned in a
609 manner determined by such statewide tool.

610 (k) A health care facility shall submit to the agency its
611 staffing plan and annual update required under this section.

612 (6) (a) In each unit, a health care facility shall post a
613 uniform notice in a form specified by the agency by rule which:

- 614 1. Explains the requirements imposed under this section;
615 2. Includes actual direct care registered nurse-to-patient
616 ratios during each shift;

617 3. Is visible, conspicuous, and accessible to staff,
618 patients, and the public;

619 4. Identifies staffing requirements as determined by the
620 patient classification system for each unit, documented and
621 posted on the unit for public view on a day-to-day, shift-by-
622 shift basis;

623 5. Reports the actual number of staff and the staff mix,
624 documented and posted on the unit for public view on a day-to-
625 day, shift-by-shift basis; and

626 6. Reports the variance between the required and actual
627 staffing patterns, documented and posted on the unit for public
628 view on a day-to-day, shift-by-shift basis.

629 (b)1. Each acute care facility shall maintain accurate
630 records of actual direct care registered nurse-to-patient ratios
631 in each unit for each shift for at least 2 years. Such records
632 shall include:

633 a. The number of patients in each unit;

634 b. The identity and duty hours of each direct care
635 registered nurse, licensed practical nurse, licensed psychiatric
636 technician, and certified nursing assistant assigned to each
637 patient in each unit in each shift. The hospital shall retain
638 the record for 2 years; and

639 c. A copy of each posted notice.

640 2. Each hospital shall make its records maintained under
641 the requirements of this section available to:

642 a. The agency;

643 b. Registered nurses and their collective bargaining
644 representatives, if any; and

645 c. The public under rules adopted by the agency.
646 (c) The agency shall conduct periodic audits to ensure:
647 1. Implementation of the staffing plan in accordance with
648 this section; and
649 2. Accuracy in records maintained under this section.
650 (7) Acute care facilities shall plan for routine
651 fluctuations such as admissions, discharges, and transfers in
652 the patient census. If a declared health care emergency causes a
653 change in the number of patients on a unit, the hospital must
654 demonstrate that immediate and diligent efforts were made to
655 maintain required staffing levels.
656 (8) The following activities are prohibited:
657 (a) A health care facility may not directly assign any
658 unlicensed personnel to perform registered-nurse functions in
659 lieu of care being delivered by a licensed or registered nurse,
660 and may not assign unlicensed personnel to perform registered-
661 nurse functions under the clinical supervision of a direct care
662 registered nurse.
663 (b) Unlicensed personnel may not perform tasks that
664 require the clinical assessment, judgment, and skill of a
665 licensed registered nurse, including, without limitation,
666 nursing activities that require nursing assessment and judgment
667 during implementation; physical, psychological, or social
668 assessments that require nursing judgment, intervention,
669 referral, or followup; formulation of a plan of nursing care and
670 a evaluation of a patient's response to the care provided,
671 including administration of medication, venipuncture or
672 intravenous therapy, parenteral or tube feedings, invasive

673 procedures, including inserting nasogastric tubes, inserting
674 catheters, or tracheal suctioning, educating patients and their
675 families concerning the patient's health care problems,
676 including postdischarge care, with the exception that only
677 phlebotomists, emergency room technicians, and medical
678 technicians, under the general supervision of the clinical
679 laboratory director or designee or a physician, may perform
680 venipunctures in accordance with written hospital policies and
681 procedures.

682 Section 5. Professional practice standards for direct care
683 registered nurses working in a health care facility.-

684 (1) A direct care registered nurse, currently licensed to
685 practice as a registered nurse, employing scientific knowledge
686 and experience in the physical, social, and biological sciences,
687 and exercising independent judgment in applying the nursing
688 process, shall directly provide:

689 (a) Continuous and ongoing assessments of the patient's
690 condition based upon the independent professional judgment of
691 the direct care registered nurse.

692 (b) The planning, clinical supervision, implementation,
693 and evaluation of the nursing care provided to each patient.

694 (c) The assessment, planning, implementation, and
695 evaluation of patient education, including ongoing discharge
696 teaching of each patient.

697 (d) The planning and delivery of patient care, which shall
698 reflect all elements of the nursing process and shall include
699 assessment, nursing diagnosis, planning, intervention,
700 evaluation, and, as circumstances require, patient advocacy, and

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701 shall be initiated by a direct care registered nurse at the time
702 of admission.

703 (e) The nursing plan for the patient's care, which shall
704 be discussed with and developed as a result of coordination with
705 the patient, the patient's family, or other representatives,
706 when appropriate, and staff of other disciplines involved in the
707 care of the patient.

708 (f) An evaluation of the effectiveness of the care plan
709 through assessments based on direct observation of the patient's
710 physical condition and behavior, signs and symptoms of illness,
711 and reactions to treatment and through communication with the
712 patient and the health care team members, and shall modify the
713 plan as needed.

714 (g) Information related to the patient's initial
715 assessment and reassessments, nursing diagnosis, plan,
716 intervention, evaluation, and patient advocacy, which shall be
717 permanently recorded in the patient's medical record as
718 narrative direct care progress notes. The practice of charting
719 by exception is expressly prohibited.

720 (2) (a) Patient assessment requires direct observation of
721 the patient's signs and symptoms of illness, reaction to
722 treatment, behavior and physical condition, and interpretation
723 of information obtained from the patient and others, including
724 other caregivers on the health team. Assessment requires data
725 collection by the direct care registered nurse and the analysis,
726 synthesis, and evaluation of such data.

727 (b) Only direct care registered nurses are authorized to
728 perform patient assessments. A licensed practical nurse or

729 licensed psychiatric technician may assist direct care
730 registered nurses in data collection.

731 (3) (a) The nursing care needs of individual patients shall
732 be determined by a direct care registered nurse through the
733 process of ongoing patient assessments, nursing diagnosis,
734 formulation, and adjustment of nursing care plans.

735 (b) The prediction of individual patient nursing care
736 needs for prospective assignment of direct care registered
737 nurses shall be based on individual patient assessments of the
738 direct care registered nurse assigned to each patient and in
739 accordance with a documented patient classification system as
740 provided in subsections (1) and (2) of section 4.

741 (4) (a) Competent performance of the essential functions of
742 a direct care registered nurse as provided in this section
743 requires the exercise of independent judgment in the interests
744 of the patient. The exercise of such independent judgment,
745 unencumbered by the commercial or revenue-generation priorities
746 of a hospital or employing entity of a direct care registered
747 nurse, is essential to safe nursing care.

748 (b) The exercise of independent judgment by a direct care
749 registered nurse in the performance of the functions described
750 in this section shall be provided in the exclusive interests of
751 the patient and may not, for any purpose, be considered, relied
752 upon, or represented as a job function, authority,
753 responsibility, or activity undertaken in any respect for the
754 purpose of serving the business, commercial, operational, or
755 other institutional interests of the hospital employer.

756 (5) (a) In addition to the limitations on assignments of

757 patient care tasks provided in subsection (8) of section 4, a
758 direct care registered nurse who is responsible for a patient
759 may assign tasks required in the implementation of nursing care
760 for that patient to other licensed nursing staff or to
761 unlicensed staff only if she or he:

762 1. Determines that the personnel assigned the tasks
763 possess the necessary training, experience, and capability to
764 competently and safely perform the tasks to be assigned; and

765 2. The assigning direct care registered nurse effectively
766 supervises the clinical functions and nursing care tasks
767 performed by the assigned personnel.

768 (b) The exercise of clinical supervision of nursing care
769 personnel by a direct care registered nurse in the performance
770 of the functions as provided in this section shall be in the
771 exclusive interests of the patient and may not, for any purpose
772 whatsoever, be considered, relied upon, or represented as a job
773 function, authority, responsibility, or activity undertaken in
774 any respect for the purpose of serving the business, commercial,
775 operational, or other institutional interests of the hospital
776 employer, but constitutes the exercise of professional nursing
777 authority and duty exclusively in the interests of the patient.

778 (6) A health care facility may not engage in the
779 deployment of technology that limits the direct care provided by
780 a direct care registered nurse in the performance of functions
781 that are part of the nursing process, including the full
782 exercise of independent clinical judgment in assessment,
783 planning, implementation, and evaluation of care, or that limits
784 a direct registered nurse from acting as a patient advocate in

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785 the exclusive interest of the patient. Technology may not be
786 skill degrading, interfere with the direct care registered
787 nurse's provision of individualized patient care, override the
788 direct care registered nurse's independent professional judgment
789 or interfere with the registered nurse's right to advocate in
790 the exclusive interest of the patient.

791 (7) This section applies only to nurses employed by or
792 providing care in a health care facility.

793 Section 6. Direct care registered nurse's duty and right
794 of patient advocacy.—

795 (1) By virtue of their professional license and ethical
796 obligations, all direct care registered nurses have a duty and
797 right to act and provide care in the exclusive interests of the
798 patients and to act as the patient's advocate, as circumstances
799 require, in accordance with this section.

800 (2) The direct care registered nurse is always responsible
801 for providing competent, safe, therapeutic, and effective
802 nursing care to assigned patients.

803 (a) Before accepting a patient assignment, a direct care
804 registered nurse must have the necessary knowledge, judgment,
805 skills, and ability to provide the required care. It is the
806 responsibility of the direct care registered nurse to determine
807 whether she or he is clinically competent to perform the nursing
808 care required by patients in a particular clinical unit or who
809 have a particular diagnosis, condition, prognosis, or other
810 determinative characteristics of nursing care, and whether
811 acceptance of a patient assignment would expose the patient to
812 the risk of harm.

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813 (b) If the direct care registered nurse is not clinically
814 competent to perform the care required for a patient assigned
815 for nursing care, or if the assignment would expose the patient
816 to risk of harm, the direct care registered nurse shall not
817 accept the patient care assignment. Such refusal to accept a
818 patient care assignment is an exercise of the direct care
819 registered nurse's duty and right of patient advocacy.

820 (3) In the course of performing the responsibilities and
821 essential functions described in section 5 and this section, the
822 direct care registered nurse assigned to a patient receives
823 orders initiated by physicians and other legally authorized
824 health care professionals within their scope of licensure
825 regarding patient care services to be provided to the patient,
826 including, without limitation, the administration of medications
827 and therapeutic agents that are necessary to implement a
828 treatment, disease prevention, or rehabilitative regimen.

829 (a) The direct care registered nurse shall assess each
830 such order before implementation in order to determine if the
831 order is:

- 832 1. In the best interests of the patient;
833 2. Initiated by a person legally authorized to issue the
834 order; and
835 3. Issued in accordance with applicable law and rules
836 governing nursing care.

837 (b) If the direct care registered nurse determines these
838 criteria have not been satisfied with respect to a particular
839 order, or has some doubt regarding the meaning or conformance of
840 the order with these criteria, she or he shall seek

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841 clarification from the initiator of the order, the patient's
842 physician, or other appropriate medical officer. Clarification
843 must be obtained prior to implementation.

844 (c) If, upon clarification, the direct care registered
845 nurse determines that the criteria for implementation of an
846 order have not been satisfied, she or he may refuse
847 implementation on the basis that the order is not in the best
848 interests of the patient. Seeking clarification of an order or
849 refusing an order as described in this section constitutes an
850 exercise of the direct care registered nurse's duty and right of
851 patient advocacy.

852 (4) A direct care registered nurse has the professional
853 obligation and therefore the right to act as the patient's
854 advocate, as circumstances require, by initiating action to
855 improve health care or to change decisions or activities that,
856 in the professional judgment of the direct care registered
857 nurse, are against the interests or wishes of the patient, or by
858 giving the patient the opportunity to make informed decisions
859 about health care before it is provided.

860 Section 7. Free speech; patient protection.—

861 (1) A direct care registered nurse has the right to act as
862 the patient's advocate, as circumstances require, by:

863 (a) Initiating action to improve health care or to change
864 decisions or activities that, in the professional judgment of
865 the nurse, are against the interests and wishes of the patient;
866 and

867 (b) Giving the patient an opportunity to make informed
868 decisions about health care before it is provided.

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869 (2) A direct care registered nurse may refuse to accept an
870 assignment as a nurse in a health care facility if:

871 (a) The assignment would violate any provision of chapter
872 464, Florida Statutes, or the rules adopted thereunder;

873 (b) The assignment would violate sections 3 through 6; or

874 (c) The direct care registered nurse is not prepared by
875 education, training, or experience to fulfill the assignment
876 without compromising the safety of any patient or jeopardizing
877 the license of the registered nurse.

878 (3) A direct care registered nurse may refuse to perform
879 any assigned tasks as a nurse in a health care facility if:

880 (a) The assigned task would violate any provision of
881 chapter 464, Florida Statutes, or the rules adopted thereunder;

882 (b) The assigned task is outside the scope of practice of
883 the direct care registered nurse; or

884 (c) The direct care registered nurse is not prepared by
885 education, training, or experience to fulfill the assigned task
886 without compromising the safety of any patient or jeopardizing
887 the license of the direct care registered nurse.

888 (4) (a) A health care facility may not discharge,
889 discriminate, or retaliate in any manner with respect to any
890 aspect of employment, including discharge, promotion,
891 compensation, or terms, conditions, or privileges of employment
892 against a direct care registered nurse based on the nurse's
893 refusal of a work assignment or assigned task as provided in
894 this section.

895 (b) A health care facility may not file a complaint or a
896 report against a direct care registered nurse with the Board of

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897 Nursing or the Agency for Health Care Administration because of
898 the nurse's refusal of a work assignment or assigned task
899 described in this section.

900 (5) Any direct care registered nurse who has been
901 discharged, discriminated against, or retaliated against in
902 violation of this section or against whom a complaint has been
903 filed in violation of paragraph (4) (b) may bring a cause of
904 action in a state court. A direct care registered nurse who
905 prevails on the cause of action is entitled to one or more of
906 the following:

907 (a) Reinstatement.

908 (b) Reimbursement of lost wages, compensation, and
909 benefits.

910 (c) Attorneys' fees.

911 (d) Court costs.

912 (e) Other damages.

913 (6) A direct care registered nurse, patient, or other
914 individual may file a complaint with the agency against a health
915 care facility that violates the provisions of this act. For any
916 complaint filed, the agency shall:

917 (a) Receive and investigate the complaint;

918 (b) Determine whether a violation of this act as alleged
919 in the complaint has occurred; and

920 (c) If such a violation has occurred, issue an order that
921 the complaining nurse or individual shall not suffer any
922 retaliation described in this section.

923 (7) (a) The agency shall provide for the establishment of a
924 toll-free telephone hotline to provide information regarding the

925 requirements of this section and to receive reports of
 926 violations of such section.

927 (b) A health care facility shall provide each patient
 928 admitted to the facility for in-patient care with the hotline
 929 described in paragraph (a), and shall give notice to each
 930 patient that such hotline may be used to report inadequate
 931 staffing or care.

932 (8) (a) A health care facility may not discriminate or
 933 retaliate in any manner against any patient, employee, or
 934 contract employee of the facility, or any other individual, on
 935 the basis that such individual, in good faith, individually or
 936 in conjunction with another person or persons, has presented a
 937 grievance or complaint, or has initiated or cooperated in any
 938 investigation or proceeding of any governmental entity,
 939 regulatory agency, or private accreditation body, made a civil
 940 claim or demand, or filed an action relating to the care,
 941 services, or conditions of the health care facility or of any
 942 affiliated or related facilities.

943 (b) For purposes of this subsection, an individual shall
 944 be deemed to be acting in good faith if the individual
 945 reasonably believes:

- 946 1. The information reported or disclosed is true; and
- 947 2. A violation of this act has occurred or may occur.

948 (9) (a) A health care facility may not:

- 949 1. Interfere with, restrain, or deny the exercise, or
 950 attempt to exercise, by any person of any right provided or
 951 protected under this act; or

- 952 2. Coerce or intimidate any person regarding the exercise

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953 or attempt to exercise such right.

954 (b) A health care facility may not discriminate or
955 retaliate against any person for opposing any facility policy,
956 practice, or actions that are alleged to violate, breach, or
957 fail to comply with any provision of this act.

958 (c) A health care facility, or an individual representing
959 a health care facility, may not make, adopt, or enforce any
960 rule, regulation, policy, or practice that in any manner
961 directly or indirectly prohibits, impedes, or discourages a
962 direct care registered nurse from, or intimidates, coerces, or
963 induces a direct care registered nurse regarding, engaging in
964 free speech activities or disclosing information as provided
965 under this act.

966 (d) A health care facility, or an individual representing
967 a health care facility, may not in any way interfere with the
968 rights of nurses to organize, bargain collectively, and engage
969 in concerted activity under s. 7 of the National Labor Relations
970 Act, 29 U.S.C. s. 157.

971 (e) A health care facility shall post in an appropriate
972 location in each unit a conspicuous notice in a form specified
973 by the agency which:

974 1. Explains the rights of nurses, patients, and other
975 individuals under this section;

976 2. Includes a statement that a nurse, patient, or other
977 individual may file a complaint with the agency against a health
978 care facility that violates the provisions of this act; and

979 3. Provides instructions on how to file a complaint.

980 Section 8. Enforcement.—

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981 (1) In addition to any other penalties prescribed by law,
982 the agency may impose civil penalties as follows:

983 (a) The agency may impose against a health care facility
984 found to be in violation of any provision of this act a civil
985 penalty of not more than \$25,000 for each such violation, except
986 that the agency shall impose a civil penalty of more than
987 \$25,000 for each violation in the case of a health care facility
988 that the agency determines has a pattern of practice of such
989 violation.

990 (b) The agency may impose against an individual who is
991 employed by a health care facility and who is found by the
992 agency to have violated a requirement of this act a civil
993 penalty of not more than \$20,000 for each such violation.

994 (2) The agency shall post on its Internet website the
995 names of health care facilities against which civil penalties
996 have been imposed under this act, and such additional
997 information as the agency deemed necessary.

998 Section 9. This act shall take effect July 1, 2010.