

By Senator Hill

1-01695A-10

20102316__

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

1-01695A-10

20102316

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

1-01695A-10

20102316__

59 information be provided to each patient who is
60 admitted to a health care facility; prohibiting a
61 health care facility from interfering with the right
62 of nurses to organize or bargain collectively;
63 authorizing the agency to impose fines for violations
64 of the act; requiring that the agency post in its
65 website information regarding health care facilities
66 that have violated the act; providing an effective
67 date.

68
69 Be It Enacted by the Legislature of the State of Florida:

70
71 Section 1. Short title.—Sections 1 through 8 of this act
72 may be cited as the "Florida Hospital Patient Protection Act."

73 Section 2. Legislative findings.—The Legislature finds
74 that:

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

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

1-01695A-10

20102316

88 residents and to ensure that hospital nursing care is provided
89 in the exclusive interests of patients, mandatory practice
90 standards and professional practice protections for professional
91 direct care registered nursing staff must be established. Direct
92 care registered nurses have a fiduciary duty to care for
93 assigned patients and a necessary duty of individual and
94 collective patient advocacy in order to satisfy professional
95 fiduciary obligations.

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

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

115 (5) Direct care registered nurses have an irrevocable duty
116 and right to advocate on behalf of their patients' interests,

1-01695A-10

20102316__

117 and this duty and right may not be encumbered by cost-saving
118 schemes.

119 Section 3. Definitions.—As used in sections 1 through 8 of
120 this act, the term:

121 (1) "Acuity-based patient classification system," "acuity
122 system," or "patient classification system" means an established
123 measurement tool that:

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

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

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

141 (2) "Agency" means the Agency for Health Care
142 Administration.

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

1-01695A-10

20102316__

146 clerks and secretaries, clinical technicians, respiratory
147 therapists, and radiology, laboratory, housekeeping, and dietary
148 personnel.

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

152 (5) "Clinical supervision" means the assignment and
153 direction of patient care tasks required in the implementation
154 of nursing care for patients to other licensed nursing staff or
155 to unlicensed staff by a direct care registered nurse in the
156 exclusive interests of the patients.

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

164 (a) The statutorily recognized duties and responsibilities
165 of the registered nurses, as set forth in chapter 464, Florida
166 Statutes, and rules adopted thereunder; and

167 (b) The standards required under sections 4 and 5 of this
168 act, which are specific to each hospital unit.

169 (7) "Declared state of emergency" means an officially
170 designated state of emergency that has been declared by a
171 federal, state, or local government official who has the
172 authority to declare the state of emergency. The term does not
173 include a state of emergency that results from a labor dispute
174 in the health care industry.

1-01695A-10

20102316

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

181 (9) "Health care facility" means an acute care hospital; an
182 emergency care, ambulatory, or outpatient surgery facility
183 licensed under chapter 395, Florida Statutes; or a psychiatric
184 facility licensed under chapter 394, Florida Statutes, including
185 a critical access and long-term acute care hospital.

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

195 (a) "Critical care unit" or "intensive care unit" means a
196 nursing unit of an acute care hospital which is established to
197 safeguard and protect patients whose severity of medical
198 conditions require continuous monitoring and complex
199 interventions by direct care registered nurses and whose
200 restorative measures and level of nursing intensity requires
201 intensive care through direct observation by the direct care
202 registered nurse, complex monitoring, intensive intricate
203 assessment, evaluation, specialized rapid intervention, and

1-01695A-10

20102316

204 education or teaching of the patient, the patient's family, or
205 other representatives by a competent and experienced direct care
206 registered nurse. The term includes an intensive care unit, a
207 burn center, a coronary care unit, or an acute respiratory unit.

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

229 (c) "Medical or surgical unit" means a unit established to
230 safeguard and protect patients whose severity of illness,
231 including all co-occurring morbidities, restorative measures,
232 and level of nursing intensity requires continuous care through

1-01695A-10

20102316

233 direct observation by the direct care registered nurse,
234 monitoring, multiple assessments, specialized interventions,
235 evaluations, and education or teaching of the patient's family
236 or other representatives by a competent and experienced direct
237 care registered nurse. These units may include patients
238 requiring less than intensive care or step-down care; patients
239 receiving 24-hour inpatient general medical care, post-surgical
240 care, or both general medical and post-surgical care; and mixed
241 patient populations of diverse diagnoses and diverse age groups,
242 but excluding pediatric patients.

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

254 (e) "Specialty care unit" means a unit that is established
255 to safeguard and protect patients whose severity of illness,
256 including all co-occurring morbidities, restorative measures,
257 and level of nursing intensity requires continuous care through
258 direct observation by the direct care registered nurse,
259 monitoring, multiple assessments, specialized interventions,
260 evaluations, and education or teaching of the patient's family
261 or other representatives by a competent and experienced direct

1-01695A-10

20102316

262 care registered nurse. The term includes a unit established to
263 provide the intensity of care required for a specific medical
264 condition or a specific patient population or to provide more
265 comprehensive care for a specific condition or disease process
266 than that which is required on medical or surgical units, and
267 includes those units not otherwise covered by the definitions in
268 this section.

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

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

283 (11) "Licensed nurse" means a registered nurse or a
284 licensed practical nurse, as defined in s. 464.003, Florida
285 Statutes, who is licensed by the Board of Nursing to engage in
286 the practice of professional nursing or the practice of
287 practical nursing, as defined in s. 464.003, Florida Statutes.

288 (12) "Long-term acute care hospital" means any hospital or
289 health care facility that specializes in providing long-term
290 acute care to medically complex patients. The term includes

1-01695A-10

20102316

291 freestanding and hospital-within-hospital models of long-term
292 acute care facilities.

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

294 (a) An agreed-upon, predetermined, regularly scheduled
295 shift;

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

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

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

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

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

312 (17) "Staffing level" means the actual numerical registered
313 nurse-to-patient ratio within a nursing department, unit, or
314 clinical patient care area.

315 Section 4. Minimum direct care registered nurse-to-patient
316 staffing requirements.-

317 (1) Each health care facility shall implement a staffing
318 plan that provides for minimum staffing by direct care
319 registered nurses in accordance with the general requirements

1-01695A-10

20102316

320 set forth in this section and the clinical unit direct care
321 registered nurse-to-patient ratios specified in subsection (2).
322 Staffing for patient care tasks not requiring a direct care
323 registered nurse is not included within these ratios and shall
324 be determined pursuant to an acuity-based patient classification
325 system defined by agency rule.

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

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

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

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

347 2. A health care facility may not impose mandatory overtime
348 requirements in order to meet the hospital unit direct care

1-01695A-10

20102316

349 registered nurse-to-patient ratios required under this section.

350 3. A health care facility shall ensure that only a direct
351 care registered nurse may relieve another direct care registered
352 nurse during breaks, meals, and routine absences from a clinical
353 unit.

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

359 (e) Only direct care registered nurses shall be assigned to
360 intensive care newborn nursery service units, which specifically
361 require one direct care registered nurse to two or fewer infants
362 at all times.

363 (f) Only direct care registered nurses shall be assigned to
364 triage patients and only direct care registered nurses shall be
365 assigned to critical trauma patients.

366 1. The direct care registered nurse-to-patient ratio for
367 critical care patients in the emergency department shall be 1 to
368 2 or fewer at all times.

369 2. No fewer than two direct care registered nurses must be
370 physically present in the emergency department when a patient is
371 present.

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

375 4. Triage-registered nurses may not be assigned the
376 responsibility of the base radio.

377 (g) In the labor and delivery unit, the direct care

1-01695A-10

20102316__

378 registered nurse-to-patient ratio shall be 1 to 1 for active
379 labor patients and patients having medical or obstetrical
380 complications, during the initiation of epidural anesthesia, and
381 during circulation for cesarean delivery.

382 1. The direct care registered nurse-to-patient ratio for
383 antepartum patients who are not in active labor shall be 1 to 3
384 or fewer at all times.

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

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

391 4. For postpartum areas in which the direct care registered
392 nurse's assignment consists of mothers only, the direct care
393 registered nurse-to-patient ratio shall be 1 to 4 or fewer at
394 all times.

395 5. The direct care registered nurse-to-patient ratio for
396 postpartum women or postsurgical gynecological patients only
397 shall be 1 to 4 or fewer at all times.

398 6. The direct care registered nurse-to-patient ratio for
399 the well-baby nursery shall be 1 to 5 at all times.

400 7. The direct care registered nurse-to-patient ratio for
401 unstable newborns and those in the resuscitation period as
402 assessed by the direct care registered nurse shall be 1 to 1 at
403 all times.

404 8. The direct care registered nurse-to-patient ratio for
405 recently born infants shall be 1 to 4 or fewer at all times.

406 (h) The direct care registered nurse-to-patient ratio for

1-01695A-10

20102316

407 patients receiving conscious sedation shall be 1 to 1 or fewer
408 at all times.

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

413 (a) One patient in trauma emergency units.

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

419 (c) Two patients in critical care units, including neonatal
420 intensive care units, emergency critical care and intensive care
421 units, labor and delivery units, coronary care units, acute
422 respiratory care units, postanesthesia units regardless of the
423 type of anesthesia received, burn units, and immediate
424 postpartum patients, so that the direct-care registered nurse-
425 to-patient ratio is 1 to 2 at all times.

426 (d) Three patients in the emergency room units, step-down
427 or intermediate intensive care units, pediatrics units,
428 telemetry units, and combined labor, delivery, and postpartum
429 units, so that the direct care registered nurse-to-patient
430 ratios is 1 to 3 or fewer at all times.

431 (e) Four patients in medical-surgical units, antepartum
432 units, intermediate care nursery units, psychiatric units, and
433 presurgical and other specialty care units, so that the direct
434 care registered nurse-to-patient ratio is 1 to 4 or fewer at all
435 times.

1-01695A-10

20102316

436 (f) Five patients in rehabilitation units and skilled
437 nursing units, so that the direct care registered nurse-to-
438 patient ratio is 1 to 5 or fewer at all times.

439 (g) Six patients in well-baby nursery units, so that the
440 direct care registered nurse-to-patient ratio is 1 to 6 or fewer
441 at all times.

442 (h) Three couplets in postpartum units, so that the direct
443 care registered nurse-to-patient ratio is 1 to 3 couplets or
444 fewer at all times.

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

451 (b) Patients shall be cared for only on units or clinical
452 patient care areas where the level of intensity, type of care,
453 and direct care registered nurse-to-patients ratios meet the
454 individual requirements and needs of each patient. The use of
455 patient acuity-adjustable units is strictly prohibited.

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

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

1-01695A-10

20102316

465 (5) (a) A written staffing plan shall be developed by the
466 chief nursing officer or a designee, based on individual patient
467 care needs determined by the patient classification system. The
468 staffing plan shall be developed and implemented for each
469 patient care unit and must specify individual patient care
470 requirements and the staffing levels for direct care registered
471 nurses and other licensed and unlicensed personnel. In no case
472 shall the staffing level for direct care registered nurses on
473 any shifts fall below the requirements of subsections (1) and
474 (2).

475 (b) In addition to the direct care registered nurse-ratio
476 requirements of subsections (1) and (2), each health care
477 facility shall assign additional nursing staff, such as licensed
478 practical nurses, licensed psychiatric technicians, and
479 certified nursing assistants, through the implementation of a
480 valid patient classification system for determining nursing care
481 needs of individual patients which reflects the assessment made
482 by the assigned direct care registered nurse of patient nursing
483 care requirements and which provides for shift-by-shift staffing
484 based on those requirements. The ratios specified in subsections
485 (1) and (2) constitute the minimum number of registered nurses
486 who shall be assigned to provide direct patient care.

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

491 1. The number of patients and acuity level of patients as
492 determined by the application of an acuity system on a shift-by-
493 shift basis.

1-01695A-10

20102316__

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

496 3. Specialized experience required of direct care
497 registered nurses on a particular unit.

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

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

503 6. The level of familiarity with hospital practices,
504 policies, and procedures by temporary agency direct care
505 registered nurses who are assigned during a shift.

506 7. Obstacles to efficiency in the delivery of patient care
507 which is caused by the physical layout of the health care
508 facility.

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

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

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

519 2. The validity of the acuity-based patient classification
520 system.

521 (f) A health care facility shall update its staffing plan
522 and acuity system to the extent appropriate based on the annual

1-01695A-10

20102316__

523 evaluation. If the review reveals that adjustments are necessary
524 in order to ensure accuracy in measuring patient care needs,
525 such adjustments must be implemented within 30 days after that
526 determination.

527 (g)1. Any acuity-based patient classification system
528 adopted by a health care facility under this section shall be
529 transparent in all respects, including disclosure of detailed
530 documentation of the methodology used to predict nursing
531 staffing; an identification of each factor, assumption, and
532 value used in applying such methodology; an explanation of the
533 scientific and empirical basis for each such assumption and
534 value; and certification by a knowledgeable and authorized
535 representative of the health care facility that the disclosures
536 regarding methods used for testing and validating the accuracy
537 and reliability of the system are true and complete.

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

551 3. Such documentation shall be available for public

1-01695A-10

20102316

552 inspection in its entirety in accordance with procedures
553 established by appropriate administrative rules adopted by the
554 Agency for Health Care Administration, consistent with the
555 purposes of this act.

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

560 2. The members of the committee shall be appointed by the
561 chief nurse officer, except at a facility where direct care
562 registered nurses are represented for collective bargaining
563 purposes, all direct care registered nurses on the committee
564 shall be appointed by the authorized collective bargaining
565 agent. In case of a dispute, the direct care registered nurse
566 assessment shall prevail. This act does not authorize conduct
567 that is prohibited under the National Labor Relations Act or
568 under the Federal Labor Relations Act.

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

576 2. Proposed standards shall be developed by a committee
577 composed of no more than 20 individuals, at least 11 of whom
578 must be currently licensed registered nurses who are employed as
579 direct care registered nurses, and the remaining 9 shall include
580 a sufficient number of technical or scientific experts in the

1-01695A-10

20102316

581 specialized fields involved in the design and development of a
582 patient classification system that meets the requirements of
583 this act.

584 3. A person who has any employment, commercial,
585 proprietary, financial, or other personal interest in the
586 development, marketing, or utilization of any private patient
587 classification system product or related methodology,
588 technology, or component system is not eligible to serve on the
589 development committee. A candidate for appointment to the
590 development committee may not be confirmed as a member until the
591 individual files a disclosure-of-interest statement with the
592 agency, with signed certification of full disclosure and
593 complete accuracy under oath, which provides all necessary
594 information as determined by the agency to demonstrate the
595 absence of actual or potential conflict of interest. All such
596 filings are subject to public inspection.

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

606 (j) Each hospital shall adopt and implement the patient
607 classification system and provide staffing based on such tool.
608 Any additional direct care registered nursing staffing levels
609 that exceed the direct care registered nurse-to-patient ratios

1-01695A-10

20102316

610 described in subsections (1) and (2) shall be assigned in a
611 manner determined by such statewide tool.

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

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

616 1. Explains the requirements imposed under this section;

617 2. Includes actual direct care registered nurse-to-patient
618 ratios during each shift;

619 3. Is visible, conspicuous, and accessible to staff,
620 patients, and the public;

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

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

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

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

635 a. The number of patients in each unit;

636 b. The identity and duty hours of each direct care
637 registered nurse, licensed practical nurse, licensed psychiatric
638 technician, and certified nursing assistant assigned to each

1-01695A-10

20102316

639 patient in each unit in each shift. The hospital shall retain
640 the record for 2 years; and
641 c. A copy of each posted notice.
642 2. Each hospital shall make its records maintained under
643 the requirements of this section available to:
644 a. The agency;
645 b. Registered nurses and their collective bargaining
646 representatives, if any; and
647 c. The public under rules adopted by the agency.
648 (c) The agency shall conduct periodic audits to ensure:
649 1. Implementation of the staffing plan in accordance with
650 this section; and
651 2. Accuracy in records maintained under this section.
652 (7) Acute care facilities shall plan for routine
653 fluctuations such as admissions, discharges, and transfers in
654 the patient census. If a declared health care emergency causes a
655 change in the number of patients on a unit, the hospital must
656 demonstrate that immediate and diligent efforts were made to
657 maintain required staffing levels.
658 (8) The following activities are prohibited:
659 (a) A health care facility may not directly assign any
660 unlicensed personnel to perform registered-nurse functions in
661 lieu of care being delivered by a licensed or registered nurse,
662 and may not assign unlicensed personnel to perform registered-
663 nurse functions under the clinical supervision of a direct care
664 registered nurse.
665 (b) Unlicensed personnel may not perform tasks that require
666 the clinical assessment, judgment, and skill of a licensed
667 registered nurse, including, without limitation, nursing

1-01695A-10

20102316

668 activities that require nursing assessment and judgment during
669 implementation; physical, psychological, or social assessments
670 that require nursing judgment, intervention, referral, or
671 followup; formulation of a plan of nursing care and a evaluation
672 of a patient's response to the care provided, including
673 administration of medication, venipuncture or intravenous
674 therapy, parenteral or tube feedings, invasive procedures,
675 including inserting nasogastric tubes, inserting catheters, or
676 tracheal suctioning, educating patients and their families
677 concerning the patient's health care problems, including
678 postdischarge care, with the exception that only phlebotomists,
679 emergency room technicians, and medical technicians, under the
680 general supervision of the clinical laboratory director or
681 designee or a physician, may perform venipunctures in accordance
682 with written hospital policies and procedures.

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

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

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

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

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

1-01695A-10

20102316

697 teaching of each patient.

698 (d) The planning and delivery of patient care, which shall
699 reflect all elements of the nursing process and shall include
700 assessment, nursing diagnosis, planning, intervention,
701 evaluation, and, as circumstances require, patient advocacy, and
702 shall be initiated by a direct care registered nurse at the time
703 of admission.

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

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

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

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

1-01695A-10

20102316__

726 collection by the direct care registered nurse and the analysis,
727 synthesis, and evaluation of such data.

728 (b) Only direct care registered nurses are authorized to
729 perform patient assessments. A licensed practical nurse or
730 licensed psychiatric technician may assist direct care
731 registered nurses in data collection.

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

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

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

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

1-01695A-10

20102316

755 purpose of serving the business, commercial, operational, or
756 other institutional interests of the hospital employer.

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

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

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

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

779 (6) A health care facility may not engage in the deployment
780 of technology that limits the direct care provided by a direct
781 care registered nurse in the performance of functions that are
782 part of the nursing process, including the full exercise of
783 independent clinical judgment in assessment, planning,

1-01695A-10

20102316

784 implementation, and evaluation of care, or that limits a direct
785 registered nurse from acting as a patient advocate in the
786 exclusive interest of the patient. Technology may not be skill
787 degrading, interfere with the direct care registered nurse's
788 provision of individualized patient care, override the direct
789 care registered nurse's independent professional judgment or
790 interfere with the registered nurse's right to advocate in the
791 exclusive interest of the patient.

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

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

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

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

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

1-01695A-10

20102316

813 the risk of harm.

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

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

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

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

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

1-01695A-10

20102316

842 the order with these criteria, she or he shall seek
843 clarification from the initiator of the order, the patient's
844 physician, or other appropriate medical officer. Clarification
845 must be obtained prior to implementation.

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

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

862 Section 7. Free speech; patient protection.-

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

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

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

1-01695A-10

20102316

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

873 (a) The assignment would violate any provision of chapter
874 464, Florida Statutes, or the rules adopted thereunder;

875 (b) The assignment would violate sections 3 through 6 of
876 this act; or

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

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

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

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

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

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

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

1-01695A-10

20102316

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

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

910 (a) Reinstatement.

911 (b) Reimbursement of lost wages, compensation, and
912 benefits.

913 (c) Attorneys' fees.

914 (d) Court costs.

915 (e) Other damages.

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

920 (a) Receive and investigate the complaint;

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

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

926 (7) (a) The agency shall provide for the establishment of a
927 toll-free telephone hotline to provide information regarding the
928 requirements of this section and to receive reports of

1-01695A-10

20102316__

929 violations of such section.

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

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

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

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

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

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

- 955 2. Coerce or intimidate any person regarding the exercise
956 or attempt to exercise such right.

957 (b) A health care facility may not discriminate or

1-01695A-10

20102316

958 retaliate against any person for opposing any facility policy,
959 practice, or actions that are alleged to violate, breach, or
960 fail to comply with any provision of this act.

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

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

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

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

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

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

982 Section 8. Enforcement.—

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

985 (a) The agency may impose against a health care facility
986 found to be in violation of any provision of this act a civil

1-01695A-10

20102316__

987 penalty of not more than \$25,000 for each such violation, except
988 that the agency shall impose a civil penalty of more than
989 \$25,000 for each violation in the case of a health care facility
990 that the agency determines has a pattern of practice of such
991 violation.

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

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

1000 Section 9. This act shall take effect July 1, 2010.