

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 of this act
 67 may be cited 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

HB 305

2011

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 outcomes. 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

HB 305

2011

113 schemes.

114 Section 3. Definitions.—As used in sections 1 through 8 of
115 this act, 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 underpin
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 the 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 of this
163 act, which 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

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

HB 305

2011

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 care registered
243 nurse, monitoring, multiple assessments, specialized
244 interventions, evaluations, and education or teaching of the
245 patient's family or other representatives by a competent and
246 experienced direct care registered nurse. A telemetry unit
247 includes the equipment used to provide for the electronic
248 monitoring, recording, retrieval, and display of cardiac
249 electrical signals.

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

HB 305

2011

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

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

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

279 (11) "Licensed nurse" means a registered nurse or a
280 licensed practical nurse, as defined in s. 464.003, Florida

281 Statutes, who is licensed by the Board of Nursing to engage in
282 the practice of professional nursing or the practice of
283 practical nursing, as defined in s. 464.003, Florida Statutes.

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

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

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

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

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

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

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

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

308 (17) "Staffing level" means the actual numerical

309 registered nurse-to-patient ratio within a nursing department,
310 unit, or clinical patient care area.

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

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

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

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

335 (c) "Assigned" means the direct care registered nurse has
336 responsibility for the provision of care to a particular patient

337 within her or his validated competency.

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

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

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

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

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

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

363 1. The direct care registered nurse-to-patient ratio for
364 critical care patients in the emergency department shall be 1 to

HB 305

2011

365 2 or fewer at all times.

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

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

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

374 (g) In the labor and delivery unit, the direct care
375 registered nurse-to-patient ratio shall be 1 to 1 for active
376 labor patients and patients having medical or obstetrical
377 complications, during the initiation of epidural anesthesia, and
378 during circulation for cesarean delivery.

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

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

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

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

392 5. The direct care registered nurse-to-patient ratio for

393 postpartum women or postsurgical gynecological patients only
394 shall be 1 to 4 or fewer at all times.

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

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

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

403 (h) The direct care registered nurse-to-patient ratio for
404 patients receiving conscious sedation shall be 1 to 1 or fewer
405 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

HB 305

2011

421 immediate postpartum patients, so that the direct-care
422 registered nurse-to-patient ratio is 1 to 2 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 1 to 3 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 1 to 4 or fewer at all
432 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 1 to 5 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 1 to 6 or fewer
438 at all times.

439 (h) Three couplets in postpartum units, so that the direct
440 care registered nurse-to-patient ratio is 1 to 3 couplets or
441 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 of this act
444 does not affect the requirement to provide for staff at the
445 direct care registered nurse-to-patient ratios identified for
446 the level of intensity or type of care described in subsections
447 (1) and (2).

448 (b) Patients shall be cared for only on units or clinical

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

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

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

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

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

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

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

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

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

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

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

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

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

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

HB 305

2011

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

HB 305

2011

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 expressed acknowledgement that any false
547 statement in the certification constitutes fraud and is subject
548 to 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, 2012, 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 that 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 not 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 must 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

589 individual files a disclosure-of-interest statement with the
590 agency, along with a 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 of sufficiency by the agency. The report shall be
601 disclosed to the public upon notice of public hearings and a
602 public comment period for proposed adoption of uniform standards
603 for a patient 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

HB 305

2011

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

HB 305

2011

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 of this act.

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

HB 305

2011

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

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

766 2. Effectively supervises the clinical functions and
767 nursing care tasks 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 the assessment,
783 planning, implementation, and evaluation of care, or that limits
784 a direct registered nurse from acting as a patient advocate in

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
789 judgment, or interfere with the registered nurse's right to
790 advocate in 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 characteristic of nursing care, and whether
811 acceptance of a patient assignment would expose the patient to
812 the risk of harm.

HB 305

2011

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 may not accept
817 the patient care assignment. Such refusal to accept a patient
818 care assignment is an exercise of the direct care registered
819 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 of this act and this
822 section, the direct care registered nurse assigned to a patient
823 receives orders initiated by physicians and other legally
824 authorized health care professionals within their scope of
825 licensure regarding patient care services to be provided to the
826 patient, including, without limitation, the administration of
827 medications and therapeutic agents that are necessary to
828 implement a treatment, disease prevention, or rehabilitative
829 regimen.

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

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

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

HB 305

2011

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

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

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

861 Section 7. Free speech; patient protection.-

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

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

868 (b) Giving the patient an opportunity to make informed

869 decisions about health care before it is provided.

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

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

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

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

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

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

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

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

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

HB 305

2011

897 (b) A health care facility may not file a complaint or a
898 report against a direct care registered nurse with the Board of
899 Nursing or the Agency for Health Care Administration because of
900 the nurse's refusal of a work assignment or assigned task
901 described in this section.

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

909 (a) Reinstatement.

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

912 (c) Attorney's fees.

913 (d) Court costs.

914 (e) Other damages.

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

919 (a) Receive and investigate the complaint;

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

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

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

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

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

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

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

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

- 951 1. Interfere with, restrain, or deny the exercise, or
- 952 attempt to exercise, by any person of any right provided or

953 protected under this act; or

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

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

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

968 (d) A health care facility, or an individual representing
 969 a 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 chapter 7 of the National Labor
 972 Relations 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
 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
 997 names of health care facilities against which civil penalties
 998 have been imposed under this act, and such additional
 999 information as the agency deemed necessary.

1000 Section 9. This act shall take effect July 1, 2011.