

By Senator Braynon

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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

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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

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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

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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 outcomes. 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,

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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

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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.

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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

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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

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

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

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

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

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

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

289 (12) "Long-term acute care hospital" means any hospital or
290 health care facility that specializes in providing long-term

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291 acute care to medically complex patients. The term includes
292 freestanding and hospital-within-hospital models of long-term
293 acute care facilities.

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

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

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

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

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

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

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

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

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

318 (1) Each health care facility shall implement a staffing
319 plan that provides for minimum staffing by direct care

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

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

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

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

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

348 2. A health care facility may not impose mandatory overtime

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349 requirements in order to meet the hospital unit direct care
350 registered nurse-to-patient ratios required under this section.

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

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

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

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

367 1. The direct care registered nurse-to-patient ratio for
368 critical care patients in the emergency department shall be 1 to
369 2 or fewer at all times.

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

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

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

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

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

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

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

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

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

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

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

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

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407 (h) The direct care registered nurse-to-patient ratio for
408 patients receiving conscious sedation shall be 1 to 1 or fewer
409 at all times.

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

414 (a) One patient in trauma emergency units.

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

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

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

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

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436 times.

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

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

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

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

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

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

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

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465 level of emergency or other medical services.

466 (5) (a) A written staffing plan shall be developed by the
467 chief nursing officer or a designee, based on individual patient
468 care needs determined by the patient classification system. The
469 staffing plan shall be developed and implemented for each
470 patient care unit and must specify individual patient care
471 requirements and the staffing levels for direct care registered
472 nurses and other licensed and unlicensed personnel. In no case
473 shall the staffing level for direct care registered nurses on
474 any shifts fall below the requirements of subsections (1) and
475 (2).

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

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

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

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494 shift basis.

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

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

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

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

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

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

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

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

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

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

522 (f) A health care facility shall update its staffing plan

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523 and acuity system to the extent appropriate based on the annual
524 evaluation. If the review reveals that adjustments are necessary
525 in order to ensure accuracy in measuring patient care needs,
526 such adjustments must be implemented within 30 days after that
527 determination.

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

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

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

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

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

570 (i)1. By July 1, 2013, the Agency for Health Care
571 Administration shall develop uniform statewide standards for a
572 standardized acuity tool for use in health care facilities which
573 provides a method for establishing nurse staffing requirements
574 that exceed the hospital unit or clinical patient care area
575 direct care registered nurse-to-patient ratios required under
576 subsections (1) and (2).

577 2. Proposed standards shall be developed by a committee
578 composed of not more than 20 individuals, at least 11 of whom
579 must be currently licensed registered nurses who are employed as
580 direct care registered nurses, and the remaining 9 must include

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581 a sufficient number of technical or scientific experts in the
582 specialized fields involved in the design and development of a
583 patient classification system that meets the requirements of
584 this act.

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

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

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

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610 that exceed the direct care registered nurse-to-patient ratios
611 described in subsections (1) and (2) shall be assigned in a
612 manner determined by such statewide tool.

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

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

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

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

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

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

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

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

636 a. The number of patients in each unit;

637 b. The identity and duty hours of each direct care
638 registered nurse, licensed practical nurse, licensed psychiatric

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639 technician, and certified nursing assistant assigned to each
640 patient in each unit in each shift. The hospital shall retain
641 the record for 2 years; and

642 c. A copy of each posted notice.

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

645 a. The agency;

646 b. Registered nurses and their collective bargaining
647 representatives, if any; and

648 c. The public under rules adopted by the agency.

649 (c) The agency shall conduct periodic audits to ensure:

650 1. Implementation of the staffing plan in accordance with
651 this section; and

652 2. Accuracy in records maintained under this section.

653 (7) Acute care facilities shall plan for routine
654 fluctuations such as admissions, discharges, and transfers in
655 the patient census. If a declared health care emergency causes a
656 change in the number of patients on a unit, the hospital must
657 demonstrate that immediate and diligent efforts were made to
658 maintain required staffing levels.

659 (8) The following activities are prohibited:

660 (a) A health care facility may not directly assign any
661 unlicensed personnel to perform registered-nurse functions in
662 lieu of care being delivered by a licensed or registered nurse,
663 and may not assign unlicensed personnel to perform registered-
664 nurse functions under the clinical supervision of a direct care
665 registered nurse.

666 (b) Unlicensed personnel may not perform tasks that require
667 the clinical assessment, judgment, and skill of a licensed

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668 registered nurse, including, without limitation, nursing
669 activities that require nursing assessment and judgment during
670 implementation; physical, psychological, or social assessments
671 that require nursing judgment, intervention, referral, or
672 followup; formulation of a plan of nursing care and an
673 evaluation of a patient's response to the care provided,
674 including administration of medication, venipuncture or
675 intravenous therapy, parenteral or tube feedings, invasive
676 procedures, including inserting nasogastric tubes, inserting
677 catheters, or tracheal suctioning, educating patients and their
678 families concerning the patient's health care problems,
679 including postdischarge care, with the exception that only
680 phlebotomists, emergency room technicians, and medical
681 technicians, under the general supervision of the clinical
682 laboratory director or designee or a physician, may perform
683 venipunctures in accordance with written hospital policies and
684 procedures.

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

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

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

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

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697 (c) The assessment, planning, implementation, and
698 evaluation of patient education, including ongoing discharge
699 teaching of each patient.

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

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

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

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

723 (2) (a) Patient assessment requires direct observation of
724 the patient's signs and symptoms of illness, reaction to
725 treatment, behavior and physical condition, and interpretation

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726 of information obtained from the patient and others, including
727 other caregivers on the health team. Assessment requires data
728 collection by the direct care registered nurse and the analysis,
729 synthesis, and evaluation of such data.

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

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

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

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

751 (b) The exercise of independent judgment by a direct care
752 registered nurse in the performance of the functions described
753 in this section shall be provided in the exclusive interests of
754 the patient and may not, for any purpose, be considered, relied

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755 upon, or represented as a job function, authority,
756 responsibility, or activity undertaken in any respect for the
757 purpose of serving the business, commercial, operational, or
758 other institutional interests of the hospital employer.

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

766 1. Determines that the personnel assigned the tasks possess
767 the necessary training, experience, and capability to
768 competently and safely perform the tasks to be assigned; and

769 2. Effectively supervises the clinical functions and
770 nursing care tasks performed by the assigned personnel.

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

781 (6) A health care facility may not engage in the deployment
782 of technology that limits the direct care provided by a direct
783 care registered nurse in the performance of functions that are

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

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

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

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

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

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

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813 determinative characteristic of nursing care, and whether
814 acceptance of a patient assignment would expose the patient to
815 the risk of harm.

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

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

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

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

841 (b) If the direct care registered nurse determines these

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842 criteria have not been satisfied with respect to a particular
843 order, or has some doubt regarding the meaning or conformance of
844 the order with these criteria, she or he shall seek
845 clarification from the initiator of the order, the patient's
846 physician, or other appropriate medical officer. Clarification
847 must be obtained prior to implementation.

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

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

864 Section 7. Free speech; patient protection.—

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

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

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

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

875 (a) The assignment would violate any provision of chapter
876 464, Florida Statutes, or the rules adopted thereunder;

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

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

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

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

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

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

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

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

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

912 (a) Reinstatement.

913 (b) Reimbursement of lost wages, compensation, and
914 benefits.

915 (c) Attorney fees.

916 (d) Court costs.

917 (e) Other damages.

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

922 (a) Receive and investigate the complaint;

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

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

928 (7) (a) The agency shall provide for the establishment of a

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929 toll-free telephone hotline to provide information regarding the
930 requirements of this section and to receive reports of
931 violations of such section.

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

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

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

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

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

- 954 1. Interfere with, restrain, or deny the exercise, or
955 attempt to exercise, by any person of any right provided or
956 protected under this act; or
957 2. Coerce or intimidate any person regarding the exercise

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958 or attempt to exercise such right.

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

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

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

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

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

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

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

984 Section 8. Enforcement.—

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

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987 (a) The agency may impose against a health care facility
988 found to be in violation of any provision of this act a civil
989 penalty of not more than \$25,000 for each such violation, except
990 that the agency shall impose a civil penalty of more than
991 \$25,000 for each violation in the case of a health care facility
992 that the agency determines has a pattern of practice of such
993 violation.

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

998 (2) The agency shall post on its Internet website the names
999 of health care facilities against which civil penalties have
1000 been imposed under this act, and such additional information as
1001 the agency deems necessary.

1002 Section 9. This act shall take effect July 1, 2012.