

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

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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:

65  
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

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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

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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

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

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

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

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

238 (d) "Telemetry unit" means a unit that is established to  
239 safeguard and protect patients whose severity of illness,  
240 including all co-occurring morbidities, restorative measures,  
241 and level of nursing intensity, requires intermediate intensive  
242 care through direct observation by the direct 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,

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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

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

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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

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

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

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

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

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

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

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

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

536 2. The documentation required by this section shall be  
537 submitted in its entirety to the Agency of Health Care  
538 Administration as a mandatory condition of licensure, with a  
539 certification by the chief nurse officer for the health care  
540 facility that it completely and accurately reflects  
541 implementation of a valid acuity-based patient classification  
542 system used to determine nursing service staffing by the  
543 facility for every shift on every clinical unit in which  
544 patients reside and receive care. The certification shall be  
545 executed by the chief nurse officer under penalty of perjury and  
546 must contain an 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, 2013, 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

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

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

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

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

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

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

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

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

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

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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

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785 the exclusive interest of the patient. Technology may not be  
786 skill degrading, interfere with the direct care registered  
787 nurse's provision of individualized patient care, override the  
788 direct care registered nurse's independent professional  
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.

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813 (b) If the direct care registered nurse is not clinically  
814 competent to perform the care required for a patient assigned  
815 for nursing care, or if the assignment would expose the patient  
816 to risk of harm, the direct care registered nurse 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

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

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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.

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

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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, 2012.