

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"; creating s.
4 395.1014, F.S.; providing legislative findings;
5 defining terms; requiring minimum staffing levels of
6 direct care registered nurses in a health care
7 facility; requiring that each health care facility
8 implement a staffing plan; prohibiting a health care
9 facility from imposing mandatory overtime and certain
10 other actions; specifying the required ratios of
11 direct care registered nurses to patients for each
12 type of care provided; prohibiting a health care
13 facility from using an acuity-adjustable unit to care
14 for a patient; prohibiting a health care facility from
15 using video cameras or monitors as substitutes for the
16 required level of care; providing an exception during
17 a declared state of emergency; requiring that the
18 chief nursing officer of a health care facility
19 prepare a written staffing plan that meets the direct
20 care registered nurse staffing levels required by the
21 act; requiring that a health care facility annually
22 evaluate its actual direct care registered nurse
23 staffing levels and update the staffing plan based on
24 the evaluation; requiring that certain documentation
25 be submitted to the Agency for Health Care
26 Administration and be made available for public
27 inspection; requiring that the agency develop uniform
28 standards for use by health care facilities in
29 establishing nurse staffing requirements; providing

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30 requirements for the committee members who are
31 appointed to develop the uniform standards; requiring
32 health care facilities to annually report certain
33 information to the agency and post a notice containing
34 such information in each unit of the facility;
35 prohibiting a health care facility from assigning
36 unlicensed personnel to perform functions or tasks
37 that are performed by a licensed or registered nurse;
38 specifying those actions that constitute professional
39 practice by a direct care registered nurse; requiring
40 that patient assessment be performed only by a direct
41 care registered nurse; authorizing a direct care
42 registered nurse to assign certain specified
43 activities to other licensed or unlicensed nursing
44 staff; prohibiting a health care facility from
45 deploying technology that limits certain care provided
46 by a direct care registered nurse; providing that it
47 is a duty and right of a direct care registered nurse
48 to act as the patient's advocate; providing certain
49 requirements with respect to such duty; authorizing a
50 direct care registered nurse to refuse to perform
51 certain activities if she or he determines that it is
52 not in the best interest of the patient; authorizing a
53 direct care registered nurse to refuse an assignment
54 under certain circumstances; prohibiting a health care
55 facility from discharging, discriminating, or
56 retaliating against a nurse based on such refusal;
57 providing that a direct care registered nurse has a
58 right of action against a health care facility that

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59 violates certain provisions of the act; requiring that
60 the agency establish a toll-free telephone hotline to
61 provide information and to receive reports of
62 violations of the act; requiring that certain
63 information be provided to each patient who is
64 admitted to a health care facility; prohibiting a
65 health care facility from interfering with the right
66 of nurses to organize or bargain collectively;
67 authorizing the agency to impose fines for violations
68 of the act; requiring that the agency post on its
69 website information regarding health care facilities
70 that have violated the act; providing an effective
71 date.

72

73 Be It Enacted by the Legislature of the State of Florida:

74

75 Section 1. Short title.—This act may be cited as the
76 “Florida Hospital Patient Protection Act.”

77 Section 2. Section 395.1014, Florida Statutes, is created
78 to read:

79 395.1014 Health care facility patient care standards.—

80 (1) LEGISLATIVE FINDINGS.—The Legislature finds that:

81 (a) The state has a substantial interest in ensuring that,
82 in the delivery of health care services to patients, health care
83 facilities retain sufficient nursing staff so as to promote
84 optimal health care outcomes.

85 (b) Health care services are becoming more complex and it
86 is increasingly difficult for patients to access integrated
87 services. Competent, safe, therapeutic, and effective patient

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88 care is jeopardized because of staffing changes implemented in
89 response to market-driven managed care. In order to ensure
90 effective protection of patients in acute care settings, it is
91 essential that qualified direct care registered nurses be
92 accessible and available to meet the individual needs of the
93 patient at all times. Also, in order to ensure the health and
94 welfare of residents and to ensure that hospital nursing care is
95 provided in the exclusive interests of patients, mandatory
96 practice standards and professional practice protections for
97 professional direct care registered nursing staff must be
98 established. Direct care registered nurses have a duty to care
99 for assigned patients and a necessary duty of individual and
100 collective patient advocacy in order to satisfy professional
101 obligations.

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

113 (d) Direct care registered nurses must be able to advocate
114 for their patients without fear of retaliation from their
115 employers. Whistle-blower protections that encourage registered
116 nurses and patients to notify governmental and private

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117 accreditation entities of suspected unsafe patient conditions,
118 including protection against retaliation for refusing unsafe
119 patient care assignments, will greatly enhance the health,
120 safety, and welfare of patients.

121 (e) Direct care registered nurses have an irrevocable duty
122 and right to advocate on behalf of their patients' interests and
123 this duty and right may not be encumbered by cost-saving
124 practices.

125 (2) DEFINITIONS.—As used in this section, the term:

126 (a) "Acuity-based patient classification system," "acuity
127 system," or "patient classification system" means an established
128 measurement tool that:

129 1. Predicts registered nursing care requirements for
130 individual patients based on the severity of a patient's
131 illness; the need for specialized equipment and technology; the
132 intensity of required nursing interventions; the complexity of
133 clinical nursing judgment required to design, implement, and
134 evaluate the patient nursing care plan consistent with
135 professional standards; the ability for self-care, including
136 motor, sensory, and cognitive deficits; and the need for
137 advocacy intervention;

138 2. Details the amount of nursing care needed and the
139 additional number of direct care registered nurses and other
140 licensed and unlicensed nursing staff that the hospital must
141 assign, based on the independent professional judgment of a
142 direct care registered nurse, in order to meet the needs of
143 individual patients at all times; and

144 3. Can be readily understood and used by direct care
145 nursing staff.

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146 (b) "Ancillary support staff" means the personnel assigned
147 to assist in providing nursing services in the delivery of safe,
148 therapeutic, and effective patient care, including unit or ward
149 clerks and secretaries, clinical technicians, respiratory
150 therapists, and radiology, laboratory, housekeeping, and dietary
151 personnel.

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

157 (d) "Competence" means the ability of a direct care
158 registered nurse to act and integrate the knowledge, skill,
159 abilities, and independent professional judgment that underpin
160 safe, therapeutic, and effective patient care.

161 (e) "Declared state of emergency" means an officially
162 designated state of emergency which has been declared by a
163 federal, state, or local government official who has the
164 authority to declare the state of emergency. The term does not
165 include a state of emergency which results from a labor dispute
166 in the health care industry.

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

174 (g) "Health care facility" means an acute care hospital; an

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175 emergency care, ambulatory, or outpatient surgery facility
176 licensed under this chapter; or a psychiatric facility licensed
177 under chapter 394.

178 (h) "Hospital unit" or "clinical unit" means a critical
179 care or intensive care unit, labor and delivery room, antepartum
180 and postpartum unit, newborn nursery, postanesthesia unit,
181 emergency department, operating room, pediatric unit, surgical
182 unit, rehabilitation unit, skilled nursing unit, specialty care
183 unit, step-down unit or intermediate intensive care unit,
184 telemetry unit, or psychiatric unit.

185 1. "Acuity adjustable unit" means a unit that adjusts a
186 room's technology, monitoring systems, and intensity of nursing
187 care based on the severity of the patient's condition.

188 2. "Critical care unit" or "intensive care unit" means a
189 nursing unit established to safeguard and protect a patient
190 whose severity of medical condition requires continuous
191 monitoring and complex intervention by a direct care registered
192 nurse and whose restorative measures and level of nursing
193 intensity require intensive care through direct observation by a
194 direct care registered nurse and complex monitoring, intensive
195 intricate assessment, evaluation, specialized rapid
196 intervention, and education or teaching of the patient, the
197 patient's family, or other representatives by a competent and
198 experienced direct care registered nurse. The term includes a
199 burn unit, a coronary care unit, or an acute respiratory unit.

200 3. "Rehabilitation unit" means a functional clinical unit
201 established to provide rehabilitation services that restore an
202 ill or injured patient to the highest level of self-sufficiency
203 or gainful employment of which he or she is capable in the

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204 shortest possible time, compatible with his or her physical,
205 intellectual, and emotional or psychological capabilities, and
206 in accordance with planned goals and objectives.

207 4. "Skilled nursing unit" means a functional clinical unit
208 established to provide skilled nursing care and supportive care
209 to patients whose primary need is for skilled nursing care on a
210 long-term basis and who are admitted after at least a 48-hour
211 period of continuous inpatient care. The term includes, but is
212 not limited to, a unit established to provide medical, nursing,
213 dietary, and pharmaceutical services and activity programs.

214 5. "Specialty care unit" means a unit established to
215 safeguard and protect a patient whose severity of illness,
216 including all co-occurring morbidities, restorative measures,
217 and level of nursing intensity, requires continuous care through
218 direct observation by a direct care registered nurse and
219 monitoring, multiple assessments, specialized interventions,
220 evaluations, and education or teaching of the patient, the
221 patient's family, or other representatives by a competent and
222 experienced direct care registered nurse. The term includes, but
223 is not limited to, a unit established to provide the intensity
224 of care required for a specific medical condition or a specific
225 patient population or to provide more comprehensive care for a
226 specific condition or disease than the care required in a
227 surgical unit.

228 6. "Step-down unit" or "intermediate intensive care unit"
229 means a unit established to safeguard and protect a patient
230 whose severity of illness, including all co-occurring
231 morbidities, restorative measures, and level of nursing
232 intensity, requires intermediate intensive care through direct

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233 observation by a direct care registered nurse and monitoring,
234 multiple assessments, specialized interventions, evaluations,
235 and education or teaching of the patient, the patient's family,
236 or other representatives by a competent and experienced direct
237 care registered nurse. The term includes units established to
238 provide care to patients who have moderate or potentially severe
239 physiologic instability requiring technical support, but not
240 necessarily artificial life support. As used in this
241 subparagraph, the term:

242 a. "Artificial life support" means a system that uses
243 medical technology to aid, support, or replace a vital function
244 of the body which has been seriously damaged.

245 b. "Technical support" means the use of specialized
246 equipment by a direct care registered nurse in providing for
247 invasive monitoring, telemetry, and mechanical ventilation for
248 the immediate amelioration or remediation of severe pathology
249 for a patient requiring less care than intensive care, but more
250 care than the care provided in a surgical unit.

251 7. "Surgical unit" means a unit established to safeguard
252 and protect a patient whose severity of illness, including all
253 co-occurring morbidities, restorative measures, and level of
254 nursing intensity requires continuous care through direct
255 observation by a direct care registered nurse and monitoring,
256 multiple assessments, specialized interventions, evaluations,
257 and education or teaching of the patient, the patient's family,
258 or other representatives by a competent and experienced direct
259 care registered nurse. These units may include patients
260 requiring less than intensive care or step-down care; patients
261 receiving 24-hour inpatient general medical care, postsurgical

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262 care, or both general medical and postsurgical care; and mixed
263 populations of patients of diverse diagnoses and diverse age
264 groups, but excluding pediatric patients.

265 8. "Telemetry unit" means a unit established to safeguard
266 and protect a patient whose severity of illness, including all
267 co-occurring morbidities, restorative measures, and level of
268 nursing intensity, requires intermediate intensive care through
269 direct observation by a direct care registered nurse and
270 monitoring, multiple assessments, specialized interventions,
271 evaluations, and education or teaching of the patient, the
272 patient's family, or other representatives by a competent and
273 experienced direct care registered nurse. A telemetry unit
274 includes the equipment used to provide for the electronic
275 monitoring, recording, retrieval, and display of cardiac
276 electrical signals.

277 (i) "Licensed nurse" means a registered nurse or a licensed
278 practical nurse, as defined in s. 464.003, who is licensed by
279 the Board of Nursing to engage in the practice of professional
280 nursing or the practice of practical nursing, as defined in s.
281 464.003.

282 (j) "Long-term acute care hospital" means a hospital or
283 health care facility that specializes in providing long-term
284 acute care to medically complex patients. The term includes a
285 freestanding and hospital-within-hospital model of a long-term
286 acute care facility.

287 (k) "Overtime" means the hours worked in excess of:

- 288 1. An agreed-upon, predetermined, regularly scheduled
289 shift;
290 2. Twelve hours in a 24-hour period; or

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291 3. Eighty hours in a 14-day period.

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

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

303 (n) "Skill mix" means the differences in licensing,
304 specialty, and experience among direct care registered nurses.

305 (3) MINIMUM DIRECT CARE REGISTERED NURSE STAFFING LEVEL
306 REQUIREMENTS.—

307 (a) Each health care facility shall implement a staffing
308 plan that provides for a minimum direct care registered nurse
309 staffing level in accordance with the general requirements set
310 forth in this subsection and the directed care registered nurse
311 staffing levels in a clinical unit as specified in paragraph
312 (b). Staffing levels for patient care tasks that do not require
313 a direct care registered nurse are not included within these
314 ratios and shall be determined pursuant to an acuity-based
315 patient classification system defined by agency rule.

316 1. A health care facility may not assign a direct care
317 registered nurse to a clinical unit unless the health care
318 facility and the direct care registered nurse determine that she
319 or he has demonstrated and validated current competence in

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320 providing care in that clinical unit and has also received
321 orientation to that area which is sufficient to provide
322 competent, safe, therapeutic, and effective care to a patient in
323 that area. The policies and procedures of the health care
324 facility must contain the criteria for making this
325 determination.

326 2. The direct care registered nurse staffing levels
327 represent the maximum number of patients that may be assigned to
328 one direct care registered nurse at any time.

329 3. A health care facility:

330 a. May not average the number of patients and the total
331 number of direct care registered nurses assigned to patients in
332 a hospital unit or clinical unit during any period of time for
333 purposes of meeting the requirements under this section.

334 b. May not impose mandatory overtime in order to meet the
335 minimum direct care registered nurse staffing levels in the
336 hospital unit or clinical unit which are required under this
337 subsection.

338 c. Shall ensure that only a direct care registered nurse
339 may relieve another direct care registered nurse during breaks,
340 meals, and routine absences from a hospital unit or clinical
341 unit.

342 d. May not lay off licensed practical nurses, licensed
343 psychiatric technicians, certified nursing assistants, or other
344 ancillary support staff in order to meet the directed care
345 registered nurse staffing levels in a hospital unit or clinical
346 unit, as required in this subsection.

347 4. Only a direct care registered nurse may be assigned to
348 an intensive care newborn nursery service unit, which

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349 specifically requires a direct care registered nurse staffing
350 level of one nurse to two or fewer infants at all times.

351 5. Only a direct care registered nurse may be assigned to a
352 triage patient, and only a direct care registered nurse may be
353 assigned to a critical care patient in the emergency department.

354 a. The direct care registered nurse staffing level for
355 triage patients or critical care patients in the emergency
356 department must be one nurse to two or fewer patients at all
357 times.

358 b. At least two direct care registered nurses must be
359 physically present in the emergency department when a patient is
360 present.

361 c. Triage-, radio-, specialty-, or flight-registered nurses
362 do not count in the calculation of direct care registered nurse
363 staffing levels.

364 d. Triage-registered nurses may not be assigned the
365 responsibility of the base radio.

366 6. Only a direct care registered nurse may be assigned to a
367 labor and delivery unit.

368 a. The direct care registered nurse staffing level must be
369 one nurse to one active labor patient, or one patient having
370 medical or obstetrical complications, during the initiation of
371 epidural anesthesia and during circulation for a caesarean
372 delivery.

373 b. The direct care registered nurse staffing level for
374 antepartum patients who are not in active labor must be one
375 nurse to three or fewer patients at all times.

376 c. In the event of a caesarean delivery, the total number
377 of mothers plus infants assigned to a single direct care

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378 registered nurse may not exceed four.

379 d. In the event of multiple births, the total number of
380 mothers plus infants assigned to a single direct care registered
381 nurse may not exceed six.

382 e. The direct care registered nurse staffing level for
383 postpartum areas in which the direct care registered nurse's
384 assignment consists of only mothers must be one nurse to four or
385 fewer patients at all times.

386 f. The direct care registered nurse staffing level for only
387 postpartum women or postsurgical gynecological patients must be
388 one nurse to four or fewer patients at all times.

389 g. The direct care registered nurse staffing level for the
390 well-baby nursery must be one nurse to five or fewer patients at
391 all times.

392 h. The direct care registered nurse staffing level for
393 unstable newborns and those in the resuscitation period as
394 assessed by a direct care registered nurse must be at least one
395 nurse to one patient at all times.

396 i. The direct care registered nurse staffing level for
397 recently born infants must be one nurse to four or fewer
398 patients at all times.

399 7. The direct care registered nurse staffing level for
400 patients receiving conscious sedation must be at least one nurse
401 to one patient at all times.

402 (b) A health care facility's staffing plan must provide
403 that, at all times during each shift within a unit of the
404 facility, a direct care registered nurse is assigned to not more
405 than:

406 1. One patient in a trauma emergency unit;

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407 2. One patient in an operating room unit. The operating
408 room must have at least one direct care registered nurse
409 assigned to the duties of the circulating registered nurse and a
410 minimum of one additional person as a scrub assistant for each
411 patient-occupied operating room;

412 3. Two patients in a critical care unit, including neonatal
413 intensive care units, emergency critical care and intensive care
414 units, labor and delivery units, coronary care units, acute
415 respiratory care units, postanesthesia units regardless of the
416 type of anesthesia received, and postpartum units, so that the
417 direct care registered nurse staffing level is one nurse to two
418 or fewer patients at all times;

419 4. Three patients in an emergency room unit, step-down unit
420 or intermediate intensive care unit, pediatrics unit, telemetry
421 unit, or combined labor, delivery, and postpartum unit, so that
422 the direct care registered nurse staffing level is one nurse to
423 three or fewer patients at all times;

424 5. Four patients in a surgical unit, antepartum unit,
425 intermediate care nursery unit, psychiatric unit, or presurgical
426 or other specialty care unit so that the direct care registered
427 nurse staffing level is one nurse to four or fewer patients at
428 all times;

429 6. Five patients in a rehabilitation unit and skilled
430 nursing unit, so that the direct care registered nurse staffing
431 level is one nurse to five or fewer patients at all times;

432 7. Six patients in a well-baby nursery unit so that the
433 direct care registered nurse staffing level is one nurse to six
434 or fewer patients at all times; or

435 8. Three mother plus infant couplets in a postpartum unit

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436 so that the direct care registered nurse staffing level is one
437 nurse to three or fewer mother plus infant couplets at all
438 times.

439 (c)1. Identifying a hospital unit or clinical unit by a
440 name or term other than those defined in subsection (2) does not
441 affect the requirement of direct care registered nurse staffing
442 level identified for the level of intensity or type of care
443 described in paragraphs (a) and (b).

444 2. Patients shall be cared for only in hospital units or
445 clinical units in which the level of intensity, type of care,
446 and direct care registered nurse staffing levels meet the
447 individual requirements and needs of each patient. A health care
448 facility may not use an acuity-adjustable unit to care for a
449 patient.

450 3. A health care facility may not use a video camera or
451 monitor or any form of electronic visualization of a patient to
452 substitute for the direct observation required for patient
453 assessment by the direct care registered nurse and for patient
454 protection required by an attendant.

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

459 (e) The chief nursing officer or his or her designee shall
460 develop a staffing plan for each hospital unit or clinical unit.

461 1. The staffing plan must be in writing and, based on
462 individual patient care needs determined by the patient
463 classification system, must specify individual patient care
464 requirements and the staffing levels for direct care registered

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465 nurses and other licensed and unlicensed personnel. The direct
466 care registered nurse staffing level on any shift may not at any
467 time fall below the requirements of paragraphs (a) and (b).

468 2. In addition to the requirements of direct care
469 registered nurse staffing levels of paragraphs (a) and (b), each
470 health care facility shall assign additional nursing staff, such
471 as licensed practical nurses, licensed psychiatric technicians,
472 and certified nursing assistants, through the implementation of
473 a valid patient classification system for determining nursing
474 care needs of individual patients which reflects the assessment
475 of patient nursing care requirements made by the assigned direct
476 care registered nurse and which provides for shift-by-shift
477 staffing based on those requirements. The direct care registered
478 nurse staffing levels specified in paragraphs (a) and (b)
479 constitute the minimum number of registered nurses who shall be
480 assigned to provide direct patient care.

481 3. In developing the staffing plan, a health care facility
482 shall provide for direct care registered nurse staffing levels
483 that are above the minimum levels required under paragraphs (a)
484 and (b) based upon consideration of the following factors:

485 a. The number of patients and acuity level of patients as
486 determined by the application of an acuity system on a shift-by-
487 shift basis.

488 b. The anticipated admissions, discharges, and transfers of
489 patients during each shift which affect direct patient care.

490 c. The specialized experience required of direct care
491 registered nurses on a particular hospital unit or clinical
492 unit.

493 d. Staffing levels of other health care personnel who

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494 provide services for direct patient care needs which normally do
495 not require care by a direct care registered nurse.

496 e. The level of efficacy of technology that is available
497 and that affects the delivery of direct patient care.

498 f. The level of familiarity with hospital practices,
499 policies, and procedures by a direct care registered nurse from
500 a temporary agency during a shift.

501 g. Obstacles to efficiency in the delivery of patient care
502 caused by the physical layout of the health care facility.

503 4. A health care facility shall specify the system used to
504 document actual staffing in each unit for each shift.

505 5. A health care facility shall annually evaluate:

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

513 b. The validity of the acuity-based patient classification
514 system.

515 6. A health care facility shall update its staffing plan
516 and acuity system to the extent appropriate based on the annual
517 evaluation. If the evaluation reveals that adjustments are
518 necessary in order to ensure accuracy in measuring patient care
519 needs, such adjustments must be implemented within 30 days after
520 that determination.

521 7. Any acuity-based patient classification system adopted
522 by a health care facility under this subsection must be

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523 transparent in all respects, including disclosure of detailed
524 documentation of the methodology used to predict nursing
525 staffing; an identification of each factor, assumption, and
526 value used in applying such methodology; an explanation of the
527 scientific and empirical basis for each such assumption and
528 value; and certification by a knowledgeable and authorized
529 representative of the health care facility that the disclosures
530 regarding methods used for testing and validating the accuracy
531 and reliability of the system are true and complete.

532 a. The documentation required by this subparagraph shall be
533 submitted in its entirety to the agency as a mandatory condition
534 of licensure, with a certification by the chief nursing officer
535 for the health care facility that the documentation completely
536 and accurately reflects implementation of a valid acuity-based
537 patient classification system used to determine nursing service
538 staffing by the facility for each shift on each hospital unit or
539 clinical unit in which patients receive care. The chief nursing
540 officer shall execute the certification under penalty of
541 perjury, and the certification must contain an expressed
542 acknowledgment that any false statement constitutes fraud and is
543 subject to criminal and civil prosecution and penalties.

544 b. Such documentation must be available for public
545 inspection in its entirety in accordance with procedures
546 established by administrative rules adopted by the agency,
547 consistent with the purposes of this act.

548 8. A staffing plan of a health care facility shall be
549 developed and evaluated by a committee created by the health
550 care facility. At least half of the members of the committee
551 must be unit-specific competent direct care registered nurses.

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552 a. The chief nursing officer at the facility shall appoint
553 the members who are not direct care registered nurses. The
554 direct care registered nurses on the committee shall be
555 appointed by the chief nursing officer, if the direct care
556 registered nurses are not represented by a collective bargaining
557 agreement; or an authorized collective bargaining agent.

558 b. In case of a dispute, the direct care registered nurse
559 assessment shall prevail.

560 c. This act does not authorize conduct that is prohibited
561 under the National Labor Relations Act or under the Federal
562 Labor Relations Act.

563 9. By July 1, 2015, the agency shall approve uniform
564 statewide standards for a standardized acuity tool for use in
565 health care facilities. The standardized acuity tool will
566 provide a method for establishing nurse staffing requirements
567 that exceed the required direct care registered nurse staffing
568 levels in the hospital units or clinical units under paragraphs
569 (a) and (b).

570 a. The proposed standards shall be developed by a committee
571 created by the health care facility consisting of up to 20
572 members. At least 11 of the committee members must be currently
573 licensed registered nurses who are employed as direct care
574 registered nurses, and the remaining members must include a
575 sufficient number of technical or scientific experts in the
576 specialized fields who are involved in the design and
577 development of a patient classification system that meets the
578 requirements of this act.

579 b. A person who has any employment or any commercial,
580 proprietary, financial, or other personal interest in the

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581 development, marketing, or use of a private patient
582 classification system product or related methodology,
583 technology, or component system is not eligible to serve on the
584 development committee. A candidate for appointment to the
585 development committee may not be confirmed as a member until the
586 candidate files a disclosure-of-interest statement with the
587 agency, along with a signed certification of full disclosure and
588 complete accuracy under oath, which provides all necessary
589 information as determined by the agency to demonstrate the
590 absence of actual or potential conflict of interest. All such
591 filings are subject to public inspection.

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

602 10. Each hospital shall adopt and implement the patient
603 classification system and provide staffing based on the
604 standardized acuity tool. Any additional direct care registered
605 nurse staffing levels that exceed the direct care registered
606 nurse staffing levels described in paragraphs (a) and (b) shall
607 be assigned in a manner determined by such standardized acuity
608 tool.

609 11. A health care facility shall submit to the agency its

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610 staffing plan and annual update required under paragraph (e).

611 (f)1. In each hospital unit or clinical unit, a health care
612 facility shall post a uniform notice in a form specified by
613 agency rule which:

614 a. Explains the requirements imposed under this subsection;

615 b. Includes actual direct care registered nurse staffing
616 levels during each shift;

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

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

623 e. Documents the actual number of staff and the skill mix,
624 documented and posted on the hospital unit or clinical unit for
625 public view on a day-to-day, shift-by-shift basis; and

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

630 2.a. Each long-term acute care hospital shall maintain
631 accurate records of actual staffing levels in each hospital unit
632 or clinical unit for each shift for at least 2 years. Such
633 records must include:

634 (I) The number of patients in each unit;

635 (II) The identity and duty hours of each direct care
636 registered nurse, licensed practical nurse, licensed psychiatric
637 technician, and certified nursing assistant assigned to each
638 patient in each hospital unit or clinical unit in each shift;

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639 and640 (III) A copy of each posted notice.

641 b. Each health care facility shall make its records
642 maintained under paragraph (e) available to the agency; to
643 registered nurses and their collective bargaining
644 representatives, if any; and to the public under rules adopted
645 by the agency.

646 3. The agency shall conduct periodic audits to ensure
647 implementation of the staffing plan in accordance with this
648 section and to ensure accuracy in records maintained under
649 paragraph (e).

650 (g) Health 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 facility must
654 demonstrate that immediate and diligent efforts are made to
655 maintain required staffing levels.

656 (h) The following activities are prohibited:

657 1. The direct assignment of unlicensed personnel by a
658 health care facility to perform functions required of a
659 registered nurse in lieu of care being delivered by a licensed
660 or registered nurse under the clinical supervision of a direct
661 care registered nurse.

662 2. The performance of tasks by unlicensed personnel which
663 require the clinical assessment, judgment, and skill of a
664 licensed registered nurse, including, but not limited to:

665 a. Nursing activities that require nursing assessment and
666 judgment during implementation;

667 b. Physical, psychological, or social assessments that

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668 require nursing judgment, intervention, referral, or followup;
669 and

670 c. Formulation of a plan of nursing care and evaluation of
671 a patient's response to the care provided, including
672 administration of medication; venipuncture or intravenous
673 therapy; parenteral or tube feedings; invasive procedures,
674 including inserting nasogastric tubes, inserting catheters, or
675 tracheal suctioning; and educating patients and their families
676 concerning the patient's health care problems, including
677 postdischarge care. However, a phlebotomist, an emergency room
678 technician, or a medical technician may, under the general
679 supervision of the clinical laboratory director or designee or a
680 physician, perform venipunctures in accordance with written
681 hospital policies and procedures.

682 (4) PROFESSIONAL PRACTICE STANDARDS FOR DIRECT CARE
683 REGISTERED NURSES WORKING IN A HEALTH CARE FACILITY.-

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

688 1. Continuous and ongoing assessments of the patient's
689 condition.

690 2. The planning, clinical supervision, implementation, and
691 evaluation of the nursing care to each patient.

692 3. The assessment, planning, implementation, and evaluation
693 of patient education, including ongoing postdischarge education
694 of each patient.

695 4. The delivery of patient care, which must reflect all
696 elements of the nursing process and must include assessment,

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697 nursing diagnosis, planning, intervention, evaluation, and, as
698 circumstances require, patient advocacy and shall be initiated
699 by a direct care registered nurse at the time of admission.

700 5. The nursing plan for the patient care, which shall be
701 discussed with and developed as a result of coordination with
702 the patient, the patient's family or other representatives, when
703 appropriate, and staff of other disciplines involved in the care
704 of the patient.

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

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

717 (b)1. A patient assessment requires direct observation of
718 the patient's signs and symptoms of illness, reaction to
719 treatment, behavior and physical condition, and interpretation
720 of information obtained from the patient and others, including
721 other caregivers on the health care team. A patient assessment
722 requires data collection by a direct care registered nurse and
723 the analysis, synthesis, and evaluation of such data.

724 2. Only a direct care registered nurse may perform a
725 patient assessment. A licensed practical nurse or licensed

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726 psychiatric technician may assist a direct care registered nurse
727 in data collection.

728 (c)1. A direct care registered nurse shall determine the
729 nursing care needs of individual patients through the process of
730 ongoing patient assessments, nursing diagnosis, formulation, and
731 adjustment of nursing care plans.

732 2. The prediction of individual patient nursing care needs
733 for prospective assignment of direct care registered nurses
734 shall be based on individual patient assessments of the direct
735 care registered nurse assigned to each patient and in accordance
736 with a documented patient classification system as provided in
737 subsection (3).

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

745 1. Current documented, demonstrated, and validated
746 competency is required for each direct care registered nurse and
747 must be determined based on the satisfactory performance of:

748 a. The statutorily recognized duties and responsibilities
749 of a registered nurse as set forth in chapter 464 and under
750 rules adopted under that chapter; and

751 b. The standards required under subsections (3) and (4),
752 which are specific to each hospital unit or clinical unit.

753 2. A direct care registered nurse's independent judgment
754 while performing the functions described in this section shall

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755 be provided in the exclusive interests of the patient and may
756 not, for any purpose, be considered, relied upon, or represented
757 as a job function, authority, responsibility, or activity
758 undertaken in any respect for the purpose of serving the
759 business, commercial, operational, or other institutional
760 interests of the health care facility employer.

761 (e)1. In addition to the prohibition on assignments of
762 patient care tasks provided in paragraph (3)(h), a direct care
763 registered nurse may assign tasks required in the implementation
764 of nursing care for a patient to other licensed nursing staff or
765 to unlicensed staff only if the assigning direct care registered
766 nurse:

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

770 b. Effectively supervises the clinical functions and
771 nursing care tasks performed by the assigned personnel.

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

783 (f) A health care facility may not deploy technology that

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

796 (g) This subsection applies only to nurses employed by or
797 providing care in a health care facility.

798 (5) DIRECT CARE REGISTERED NURSE'S DUTY AND RIGHT OF
799 PATIENT ADVOCACY.—

800 (a) A direct care registered nurse has a duty and right to
801 act and provide care in the exclusive interest of the patient
802 and to act as the patient's advocate.

803 (b) A direct care registered nurse shall always provide
804 competent, safe, therapeutic, and effective nursing care to an
805 assigned patient.

806 1. 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 the nurse 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 2. If the direct care registered nurse is not competent to
817 perform the care required for a patient assigned for nursing
818 care or if the assignment would expose the patient to risk of
819 harm, the direct care registered nurse may not accept the
820 patient care assignment. Such refusal to accept a patient care
821 assignment is an exercise of the direct care registered nurse's
822 duty and right of patient advocacy.

823 (c) A direct care registered nurse may refuse to accept an
824 assignment as a nurse in a health care facility if:

825 1. The assignment would violate a provision of chapter 464
826 or the rules adopted under that chapter;

827 2. The assignment would violate subsection (3), subsection
828 (4), or this subsection; or

829 3. The direct care registered nurse is not prepared by
830 education, training, or experience to fulfill the assignment
831 without compromising the safety of a patient or jeopardizing the
832 license of the direct care registered nurse.

833 (d) A direct care registered nurse may refuse to perform an
834 assigned task as a nurse in a health care facility if:

835 1. The assigned task would violate a provision of chapter
836 464 or the rules adopted under that chapter;

837 2. The assigned task is outside the scope of practice of
838 the direct care registered nurse; or

839 3. The direct care registered nurse is not prepared by
840 education, training, or experience to fulfill the assigned task
841 without compromising the safety of a patient or jeopardizing the

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842 license of the direct care registered nurse.

843 (e) In the course of performing the responsibilities and
844 essential functions described in subsection (4), the direct care
845 registered nurse assigned to a patient receives orders initiated
846 by physicians and other legally authorized health care
847 professionals within their scope of licensure regarding patient
848 care services to be provided to the patient, including, but not
849 limited to, the administration of medications and therapeutic
850 agents that are necessary to implement a treatment, disease
851 prevention, or rehabilitative regimen.

852 1. The direct care registered nurse shall assess each such
853 order before implementation to determine if the order is:

854 a. In the best interest of the patient;

855 b. Initiated by a person legally authorized to issue the
856 order; or

857 c. Issued in accordance with applicable law and rules
858 governing nursing care.

859 2. If the direct care registered nurse determines that
860 these criteria have not been satisfied with respect to a
861 particular order or if the nurse has some doubt regarding the
862 meaning or conformance of the order with these criteria, he or
863 she shall seek clarification from the initiator of the order,
864 the patient's physician, or another appropriate medical officer
865 before implementing the order.

866 3. If, upon clarification, the direct care registered nurse
867 determines that the criteria for implementation of an order have
868 not been satisfied, the nurse may refuse implementation on the
869 basis that the order is not in the best interest of the patient.
870 Seeking clarification of an order or refusing an order as

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871 described in this section is an exercise of the direct care
872 registered nurse's duty and right of patient advocacy.

873 (f) A direct care registered nurse shall, as circumstances
874 require, initiate action to improve the patient health care or
875 to change decisions or activities that, in the professional
876 judgment of the direct care registered nurse, are against the
877 interests or wishes of the patient, or shall give the patient
878 the opportunity to make informed decisions about the health care
879 before it is provided.

880 (6) FREE SPEECH; PATIENT PROTECTION.—

881 (a) A health care facility may not:

882 1. Discharge, discriminate, or retaliate in any manner with
883 respect to any aspect of employment, including discharge,
884 promotion, compensation, or terms, conditions, or privileges of
885 employment, against a direct care registered nurse based on the
886 nurse's refusal of a work assignment or assigned task pursuant
887 to paragraph (5) (c).

888 2. File a complaint or a report against a direct care
889 registered nurse with the Board of Nursing or the agency because
890 of the nurse's refusal of a work assignment or assigned task
891 pursuant to paragraph (5) (c).

892 (b) A direct care registered nurse who has been discharged,
893 discriminated against, or retaliated against in violation of
894 this section or against whom a complaint or a report has been
895 filed in violation of subparagraph (a)2. may bring a cause of
896 action in a state court. A direct care registered nurse who
897 prevails on the cause of action is entitled to one or more of
898 the following:

899 1. Reinstatement.

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900 2. Reimbursement of lost wages, compensation, and benefits.

901 3. Attorney fees.

902 4. Court costs.

903 5. Other damages.

904 (c) A direct care registered nurse, patient, or other
905 individual may file a complaint with the agency against a health
906 care facility that violates this act. For any complaint filed,
907 the agency shall:

908 1. Receive and investigate the complaint;

909 2. Determine whether a violation of this act as alleged in
910 the complaint has occurred; and

911 3. If such a violation has occurred, issue an order that
912 the complaining nurse or individual not suffer any retaliation
913 described paragraph (a).

914 (d)1. The agency shall provide for the establishment of a
915 toll-free telephone hotline to provide information regarding the
916 requirements of this section and to receive reports of
917 violations of this subsection.

918 2. A health care facility shall provide each patient
919 admitted to the facility for inpatient care with the toll-free
920 telephone hotline described in subparagraph 1. and shall give
921 notice to each patient that the hotline may be used to report
922 inadequate staffing or care.

923 (e)1. A health care facility may not discriminate or
924 retaliate in any manner against any patient, employee, or
925 contract employee of the facility, or any other individual, on
926 the basis that such individual, in good faith, individually or
927 in conjunction with another person or persons, has presented a
928 grievance or complaint; initiated or cooperated in an

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929 investigation or proceeding by a governmental entity, regulatory
930 agency, or private accreditation body; made a civil claim or
931 demand; or filed an action relating to the care, services, or
932 conditions of the health care facility or of any affiliated or
933 related facilities.

934 2. For purposes of this paragraph, an individual is deemed
935 to be acting in good faith if the individual reasonably
936 believes:

937 a. The information reported or disclosed is true; and

938 b. A violation of this act has occurred or may occur.

939 (f)1. A health care facility may not:

940 a. Interfere with, restrain, or deny the exercise of, or
941 the attempt to exercise, any right provided or protected under
942 this act; or

943 b. Coerce or intimidate any person regarding the exercise
944 of, or the attempt to exercise, such right.

945 2. A health care facility may not discriminate or retaliate
946 against any person for opposing any facility policy, practice,
947 or actions that are alleged to violate, breach, or fail to
948 comply with any provision of this act.

949 3. A health care facility, or an individual representing a
950 health care facility, may not make, adopt, or enforce any rule,
951 regulation, policy, or practice that in any manner directly or
952 indirectly prohibits, impedes, or discourages a direct care
953 registered nurse from engaging in free speech activities or
954 disclosing information as provided under this act.

955 4. A health care facility, or an individual representing a
956 health care facility, may not in any way interfere with the
957 rights of nurses to organize, bargain collectively, and engage

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958 in concerted activity under chapter 7 of the National Labor
959 Relations Act, 29 U.S.C. s. 157.

960 5. A health care facility shall post in an appropriate
961 location in each hospital unit or clinical unit a conspicuous
962 notice in a form specified by the agency which:

963 a. Explains the rights of nurses, patients, and other
964 individuals under this subsection;

965 b. Includes a statement that a nurse, patient, or other
966 individual may file a complaint with the agency against a health
967 care facility that violates this act; and

968 c. Provides instructions on how to file a complaint.

969 (7) ENFORCEMENT.—

970 (a) In addition to any other penalties prescribed by law,
971 the agency may impose civil penalties as follows:

972 1. Against a health care facility found to have violated a
973 provision of this act, a civil penalty of up to \$25,000 for each
974 violation, except that the agency shall impose a civil penalty
975 of at least \$25,000 for each violation if the agency determines
976 that the health care facility has a pattern of practice of such
977 violation.

978 2. Against an individual who is employed by a health care
979 facility and who is found to have violated a provision of this
980 act, a civil penalty of up to \$20,000 for each violation.

981 (b) The agency shall post on its website the names of
982 health care facilities against which civil penalties have been
983 imposed under this act and such additional information as the
984 agency deems necessary.

985 Section 3. This act shall take effect July 1, 2014.