

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  
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 a patient assessment be performed only by a  
41 direct care registered nurse; authorizing a direct  
42 care 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 he or she 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 against, 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  
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  
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  
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.

146 (b) "Ancillary support staff" means the personnel assigned  
147 to assist in providing nursing services for the delivery of  
148 safe, therapeutic, and effective patient care, including unit or  
149 ward clerks and secretaries, clinical technicians, and  
150 respiratory therapists and radiology, laboratory, housekeeping,  
151 and dietary 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;  
175 an 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  
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  
 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  
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  
278 licensed practical nurse, as defined in s. 464.003, who is  
279 licensed by the Board of Nursing to engage in the practice of  
280 professional nursing or the practice of practical nursing, as  
281 defined in s. 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  
 291        3. Eighty hours in a 14-day period.  
 292        (l) "Patient assessment" means the use of critical  
 293 thinking by a direct care licensed nurse and is the  
 294 intellectually disciplined process of actively and skillfully  
 295 interpreting, applying, analyzing, synthesizing, or evaluating  
 296 data obtained through direct observation and communication with  
 297 others.  
 298        (m) "Professional judgment" means the intellectual,  
 299 educated, informed, and experienced process that a direct care  
 300 registered nurse exercises in forming an opinion and reaching a  
 301 clinical decision that is in the patient's best interest and is  
 302 based upon analysis of data, information, and scientific  
 303 evidence.  
 304        (n) "Skill mix" means the differences in licensing,  
 305 specialty, and experience among direct care registered nurses.  
 306        (3) MINIMUM DIRECT CARE REGISTERED NURSE STAFFING LEVEL  
 307 REQUIREMENTS.—  
 308        (a) Each health care facility shall implement a staffing  
 309 plan that provides for a minimum direct care registered nurse  
 310 staffing level in accordance with the general requirements set  
 311 forth in this subsection and the directed care registered nurse  
 312 staffing levels in a clinical unit as specified in paragraph

313 (b). Staffing levels for patient care tasks that do not require  
314 a direct care registered nurse are not included within these  
315 ratios and shall be determined pursuant to an acuity-based  
316 patient classification system defined by agency rule.

317 1. A health care facility may not assign a direct care  
318 registered nurse to a clinical unit unless the health care  
319 facility and the direct care registered nurse determine that she  
320 or he has demonstrated and validated current competence in  
321 providing care in that clinical unit and has also received  
322 orientation in that area which is sufficient to provide  
323 competent, safe, therapeutic, and effective care to a patient in  
324 that area. The policies and procedures of the health care  
325 facility must contain the criteria for making this  
326 determination.

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

330 3. A health care facility:

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

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

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

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

348 4. Only a direct care registered nurse may be assigned to  
349 an intensive care newborn nursery service unit, which  
350 specifically requires a direct care registered nurse staffing  
351 level of one nurse to two or fewer infants at all times.

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

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

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

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

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

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

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

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

377 c. In the event of a caesarean delivery, the total number  
378 of mothers plus infants assigned to a single direct care  
379 registered nurse may not exceed four.

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

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

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

390 g. The direct care registered nurse staffing level for the

391 well-baby nursery must be one nurse to five or fewer patients at  
392 all times.

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

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

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

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

407 1. One patient in a trauma emergency unit;

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

413 3. Two patients in a critical care unit, including  
414 neonatal intensive care units, emergency critical care and  
415 intensive care units, labor and delivery units, coronary care  
416 units, acute respiratory care units, postanesthesia units



417 regardless of the type of anesthesia received, and postpartum  
418 units, so that the direct care registered nurse staffing level  
419 is one nurse to two or fewer patients at all times;

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

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

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

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

436 8. Three mother plus infant couplets in a postpartum unit  
437 so that the direct care registered nurse staffing level is one  
438 nurse to three or fewer mother plus infant couplets at all  
439 times.

440 (c)1. Identifying a hospital unit or clinical unit by a  
441 name or term other than those defined in subsection (2) does not  
442 affect the requirement of direct care registered nurse staffing

443 level identified for the level of intensity or type of care  
444 described in paragraphs (a) and (b).

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

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

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

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

462 1. The staffing plan must be in writing and, based on  
463 individual patient care needs determined by the patient  
464 classification system, must specify individual patient care  
465 requirements and the staffing levels for direct care registered  
466 nurses and other licensed and unlicensed personnel. The direct  
467 care registered nurse staffing level on any shift may not at any  
468 time fall below the requirements in paragraphs (a) and (b).

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

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

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

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

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

494       d. Staffing levels of other health care personnel who

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

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

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

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

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

506 5. A health care facility shall annually evaluate:

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

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

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

521 that determination.

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

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

546 b. Such documentation must be available for public

547 inspection in its entirety in accordance with procedures  
548 established by administrative rules adopted by the agency,  
549 consistent with the purposes of this section.

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

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

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

562 c. This section does not authorize conduct that is  
563 prohibited under the National Labor Relations Act or under the  
564 Federal Labor Relations Act.

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

572 a. The proposed standards shall be developed by a

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

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

594 c. Within 1 year after the official commencement of  
595 committee operations, the development committee shall provide a  
596 written report to the agency which proposes uniform standards  
597 for a valid patient classification system, along with sufficient  
598 explanation and justification to allow for competent review and

599 determination of sufficiency by the agency. The agency shall  
600 disclose the report to the public upon notice of public hearings  
601 and provide a public comment period for proposed adoption of  
602 uniform standards for a patient classification system by the  
603 agency.

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

611 11. A health care facility shall submit to the agency its  
612 staffing plan and annual update required under this paragraph.

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

616 a. Explains the requirements imposed under this  
617 subsection;

618 b. Includes actual direct care registered nurse staffing  
619 levels during each shift;

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

622 d. Identifies staffing requirements as determined by the  
623 patient classification system for each hospital unit or clinical  
624 unit, documented and posted on the unit for public view on a



625 day-to-day, shift-by-shift basis;

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

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

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

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

638 (II) The identity and duty hours of each direct care  
639 registered nurse, licensed practical nurse, licensed psychiatric  
640 technician, and certified nursing assistant assigned to each  
641 patient in the hospital unit or clinical unit for each shift;  
642 and

643 (III) A copy of each posted notice.

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

649 3. The agency shall conduct periodic audits to ensure  
650 implementation of the staffing plan in accordance with this

651 section and to ensure accuracy in records maintained under  
652 paragraph (e).

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

659 (h) The following activities are prohibited:

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

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

668 a. Nursing activities that require nursing assessment and  
669 judgment during implementation;

670 b. Physical, psychological, or social assessments that  
671 require nursing judgment, intervention, referral, or followup;  
672 and

673 c. Formulation of a plan of nursing care and evaluation of  
674 a patient's response to the care provided, including  
675 administration of medication; venipuncture or intravenous  
676 therapy; parenteral or tube feedings; invasive procedures,

677 including inserting nasogastric tubes, inserting catheters, or  
678 tracheal suctioning; and educating patients and their families  
679 concerning the patient's health care problems, including  
680 postdischarge care. However, a phlebotomist, an emergency room  
681 technician, or a medical technician may, under the general  
682 supervision of the clinical laboratory director or designee or a  
683 physician, perform venipunctures in accordance with written  
684 hospital policies and procedures.

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

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

691 1. Continuous and ongoing assessments of the patient's  
692 condition.

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

695 3. The assessment, planning, implementation, and  
696 evaluation of patient education, including ongoing postdischarge  
697 education of each patient.

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

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

708 6. 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 7. Information related to the initial assessment and  
715 reassessments of the patient, 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 (b)1. 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 care team. A patient assessment  
725 requires data collection by a direct care registered nurse and  
726 the analysis, synthesis, and evaluation of such data.

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

729 psychiatric technician may assist a direct care registered nurse  
730 in data collection.

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

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

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

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

751 a. The statutorily recognized duties and responsibilities  
752 of a registered nurse as set forth in chapter 464 and under  
753 rules adopted under that chapter; and

754 b. The standards required under subsection (3) and this

755 subsection that are specific to each hospital unit or clinical  
756 unit.

757 2. A direct care registered nurse's independent judgment  
758 while performing the functions described in this section shall  
759 be provided in the exclusive interests of the patient and may  
760 not, for any purpose, be considered, relied upon, or represented  
761 as a job function, authority, responsibility, or activity  
762 undertaken in any respect for the purpose of serving the  
763 business, commercial, operational, or other institutional  
764 interests of the health care facility employer.

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

771 a. Determines that the personnel assigned the tasks  
772 possess the necessary training, experience, and capability to  
773 competently and safely perform the tasks to be assigned; and

774 b. Effectively supervises the clinical functions and  
775 nursing care tasks performed by the assigned personnel.

776 2. The exercise of clinical supervision of nursing care  
777 personnel by a direct care registered nurse in the performance  
778 of the functions as provided in this subsection must be in the  
779 exclusive interest of the patient and may not, for any purpose,  
780 be considered, relied upon, or represented as a job function,

781 authority, responsibility, or activity undertaken in any respect  
782 for the purpose of serving the business, commercial,  
783 operational, or other institutional interests of the health care  
784 facility employer, but constitutes the exercise of professional  
785 nursing authority and duty exclusively in the interest of the  
786 patient.

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

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

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

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

807 (b) A direct care registered nurse shall always provide  
808 competent, safe, therapeutic, and effective nursing care to an  
809 assigned patient.

810 1. Before accepting a patient assignment, a direct care  
811 registered nurse must have the necessary knowledge, judgment,  
812 skills, and ability to provide the required care. It is the  
813 responsibility of the direct care registered nurse to determine  
814 whether the nurse is clinically competent to perform the nursing  
815 care required by patients in a particular clinical unit or who  
816 have a particular diagnosis, condition, prognosis, or other  
817 determinative characteristic of nursing care, and whether  
818 acceptance of a patient assignment would expose the patient to  
819 the risk of harm.

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

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

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

831 2. The assignment would violate subsection (3), subsection  
832 (4), or this subsection; or



833 3. The direct care registered nurse is not prepared by  
834 education, training, or experience to fulfill the assignment  
835 without compromising the safety of a patient or jeopardizing the  
836 license of the direct care registered nurse.

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

839 1. The assigned task would violate a provision of chapter  
840 464 or the rules adopted under that chapter;

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

843 3. The direct care registered nurse is not prepared by  
844 education, training, or experience to fulfill the assigned task  
845 without compromising the safety of a patient or jeopardizing the  
846 license of the direct care registered nurse.

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

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

858 a. In the best interest of the patient;

859 b. Initiated by a person legally authorized to issue the  
860 order; or

861 c. Issued in accordance with applicable law and rules  
862 governing nursing care.

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

870 3. If, upon clarification, the direct care registered  
871 nurse determines that the criteria for implementation of an  
872 order have not been satisfied, the nurse may refuse  
873 implementation on the basis that the order is not in the best  
874 interest of the patient. Seeking clarification of an order or  
875 refusing an order as described in this section is an exercise of  
876 the direct care registered nurse's duty and right of patient  
877 advocacy.

878 (f) A direct care registered nurse shall, as circumstances  
879 require, initiate action to improve the patient health care or  
880 to change decisions or activities that, in the professional  
881 judgment of the direct care registered nurse, are against the  
882 interest or wishes of the patient, or shall give the patient the  
883 opportunity to make informed decisions about the health care  
884 before it is provided.

885        (6) FREE SPEECH; PATIENT PROTECTION.—  
 886        (a) A health care facility may not:  
 887            1. Discharge, discriminate, or retaliate in any manner  
 888 with respect to any aspect of employment, including discharge,  
 889 promotion, compensation, or terms, conditions, or privileges of  
 890 employment, against a direct care registered nurse based on the  
 891 nurse's refusal of a work assignment or assigned task pursuant  
 892 to paragraph (5) (c).  
 893            2. File a complaint or a report against a direct care  
 894 registered nurse with the Board of Nursing or the agency because  
 895 of the nurse's refusal of a work assignment or assigned task  
 896 pursuant to paragraph (5) (c).  
 897        (b) A direct care registered nurse who has been  
 898 discharged, discriminated against, or retaliated against in  
 899 violation of this section or against whom a complaint or a  
 900 report has been filed in violation of subparagraph (a)2. may  
 901 bring a cause of action in a state court. A direct care  
 902 registered nurse who prevails on the cause of action is entitled  
 903 to one or more of the following:  
 904            1. Reinstatement.  
 905            2. Reimbursement of lost wages, compensation, and  
 906 benefits.  
 907            3. Attorney fees.  
 908            4. Court costs.  
 909            5. Other damages.  
 910        (c) A direct care registered nurse, patient, or other

911 individual may file a complaint with the agency against a health  
 912 care facility that violates this section. For any complaint  
 913 filed, the agency shall:

- 914 1. Receive and investigate the complaint;  
 915 2. Determine whether a violation of this section as  
 916 alleged in the complaint has occurred; and  
 917 3. If such a violation has occurred, issue an order that  
 918 the complaining nurse or individual not suffer any retaliation  
 919 described paragraph (a).

920 (d)1. The agency shall provide for the establishment of a  
 921 toll-free telephone hotline to provide information regarding the  
 922 requirements of this section and to receive reports of  
 923 violations of this subsection.

924 2. A health care facility shall provide each patient  
 925 admitted to the facility for inpatient care with the toll-free  
 926 telephone hotline described in subparagraph 1. and shall give  
 927 notice to each patient that the hotline may be used to report  
 928 inadequate staffing or care.

929 (e)1. A health care facility may not discriminate or  
 930 retaliate in any manner against any patient, employee, or  
 931 contract employee of the facility, or any other individual, on  
 932 the basis that such individual, in good faith, individually or  
 933 in conjunction with another person or persons, has presented a  
 934 grievance or complaint; initiated or cooperated in an  
 935 investigation or proceeding by a governmental entity, regulatory  
 936 agency, or private accreditation body; made a civil claim or

937 demand; or filed an action relating to the care, services, or  
938 conditions of the health care facility or of any affiliated or  
939 related facilities.

940 2. For purposes of this paragraph, an individual is deemed  
941 to be acting in good faith if the individual reasonably  
942 believes:

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

944 b. A violation of this section has occurred or may occur.

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

946 a. Interfere with, restrain, or deny the exercise of, or  
947 the attempt to exercise, any right provided or protected under  
948 this section; or

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

951 2. A health care facility may not discriminate or  
952 retaliate against any person for opposing any facility policy,  
953 practice, or actions that are alleged to violate, breach, or  
954 fail to comply with any provision of this section.

955 3. A health care facility, or an individual representing a  
956 health care facility, may not make, adopt, or enforce any rule,  
957 regulation, policy, or practice that in any manner directly or  
958 indirectly prohibits, impedes, or discourages a direct care  
959 registered nurse from engaging in free speech activities or  
960 disclosing information as provided under this section.

961 4. A health care facility, or an individual representing a  
962 health care facility, may not in any way interfere with the

963 rights of nurses to organize, bargain collectively, and engage  
964 in concerted activity under chapter 7 of the National Labor  
965 Relations Act, 29 U.S.C. s. 157.

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

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

971 b. Includes a statement that a nurse, patient, or other  
972 individual may file a complaint with the agency against a health  
973 care facility that violates this section; and

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

975 (7) ENFORCEMENT.—

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

978 1. Against a health care facility found to have violated a  
979 provision of this section, a civil penalty of up to \$25,000 for  
980 each violation, except that the agency shall impose a civil  
981 penalty of at least \$25,000 for each violation if the agency  
982 determines that the health care facility has a pattern of  
983 practice of such violation.

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

987 (b) The agency shall post on its website the names of  
988 health care facilities against which civil penalties have been

HB 905

2014

989 imposed under this section and such additional information as  
990 the agency deems necessary.

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