

By Senator Braynon

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1 A bill to be entitled
2 An act relating to delivery of nursing services;
3 creating the "Florida Hospital Patient Protection
4 Act"; creating s. 395.1014, F.S.; providing
5 legislative findings; defining terms; requiring that
6 each health care facility implement a staffing plan
7 that provides minimum direct care registered nurse
8 staffing levels; requiring a direct care registered
9 nurse to demonstrate competence and to receive
10 specified orientation before being assigned to a
11 hospital or clinical unit; prohibiting a health care
12 facility from imposing mandatory overtime and from
13 engaging in other specified actions; providing
14 requirements for the staffing plan; specifying the
15 required ratios of direct care registered nurses to
16 patients for each type of care provided; prohibiting a
17 health care facility from using an acuity-adjustable
18 unit to care for a patient; prohibiting a health care
19 facility from using video cameras or monitors as
20 substitutes for the required level of care; providing
21 an exception during a declared state of emergency;
22 requiring that the chief nursing officer of a health
23 care facility, or his or her designee, develop a
24 staffing plan that meets the required direct care
25 registered nurse staffing levels; requiring that a
26 health care facility annually evaluate its actual
27 direct care registered nurse staffing levels and
28 update the staffing plan and acuity-based patient
29 classification system; requiring that certain

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30 documentation be submitted to the Agency for Health
31 Care Administration and be made available for public
32 inspection; requiring that the agency approve uniform
33 standards for use by health care facilities in
34 establishing direct care registered nurse staffing
35 requirements by a specified date; requiring a
36 committee to develop and evaluate a staffing plan for
37 each health care facility within a specified
38 timeframe; providing requirements for committee
39 membership; requiring health care facilities to
40 annually report certain information to the agency and
41 to post a notice containing such information in each
42 unit of the facility; providing recordkeeping
43 requirements; prohibiting a health care facility from
44 assigning unlicensed personnel to perform functions or
45 tasks that should be performed by a licensed or
46 registered nurse; specifying those actions that
47 constitute professional practice by a direct care
48 registered nurse; providing requirements for patient
49 assessment and requiring that such assessment be
50 performed only by a direct care registered nurse;
51 authorizing a direct care registered nurse to assign
52 certain specified activities to other licensed or
53 unlicensed nursing staff under certain circumstances;
54 prohibiting a health care facility from deploying
55 technology that limits certain care provided by a
56 direct care registered nurse; providing applicability;
57 providing that it is a duty and right of a direct care
58 registered nurse to act as the patient's advocate and

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59 providing requirements relating thereto; prohibiting a
60 direct care registered nurse from accepting an
61 assignment under specified circumstances; authorizing
62 a direct care registered nurse to refuse to accept an
63 assignment or to perform a task under certain
64 circumstances; requiring a direct care registered
65 nurse to initiate action or to change a decision or an
66 activity relating to a patient's health care under
67 certain circumstances; prohibiting a health care
68 facility from discharging, or from discriminating,
69 retaliating, or filing a complaint or report against,
70 a direct care registered nurse based on such refusal;
71 authorizing a direct care registered nurse to bring a
72 cause of action under certain circumstances;
73 authorizing certain entities to file a complaint with
74 the agency against a health care facility under
75 certain circumstances; requiring the agency to
76 investigate such complaints and issue certain orders
77 if certain findings are made; prohibiting a health
78 care facility from discriminating or retaliating
79 against those entities making such complaints;
80 prohibiting a health care facility from taking certain
81 actions in certain situations; prohibiting a health
82 care facility from interfering with the right of
83 direct care registered nurses to organize, bargain
84 collectively, and engage in concerted activity under a
85 federal act; requiring a health care facility to post
86 a certain notice in each hospital or clinical unit;
87 requiring that the agency establish a toll-free

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88 telephone hotline to provide certain information and
89 to receive reports of certain violations; requiring
90 that certain information be provided to each patient
91 who is admitted to a health care facility; authorizing
92 the agency to impose fines for violations; requiring
93 that the agency post on its website information
94 regarding health care facilities on which civil
95 penalties have been imposed; providing an effective
96 date.

97

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

99

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

102 Section 2. Section 395.1014, Florida Statutes, is created
103 to read:

104 395.1014 Health care facility patient care standards.—

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

106 (a) The state has a substantial interest in ensuring that,
107 in the delivery of health care services to patients, health care
108 facilities retain sufficient nursing staff to promote optimal
109 health care outcomes.

110 (b) Health care services are becoming more complex, and it
111 is increasingly difficult for patients to access integrated
112 services. Competent, safe, therapeutic, and effective patient
113 care is jeopardized because of staffing changes implemented in
114 response to market-driven managed care. To ensure effective
115 protection of patients in acute care settings, it is essential
116 that qualified direct care registered nurses be accessible and

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117 available to meet the individual needs of the patient at all
118 times. Also, to ensure the health and welfare of residents and
119 to ensure that hospital nursing care is provided in the
120 exclusive interests of patients, mandatory practice standards
121 and professional practice protections for professional direct
122 care registered nursing staff must be established. Direct care
123 registered nurses have a duty to care for assigned patients and
124 a necessary duty of individual and collective patient advocacy
125 to satisfy professional obligations.

126 (c) The basic principles of staffing in hospital settings
127 should be based on the care needs of the individual patient, the
128 severity of the patient's condition, the services needed, and
129 the complexity surrounding those services. Current unsafe
130 practices by hospital direct care registered nursing staff have
131 resulted in adverse patient outcomes. Mandating the adoption of
132 uniform, minimum, numerical, and specific direct care registered
133 nurse-to-patient staffing ratios by licensed hospital facilities
134 is necessary for competent, safe, therapeutic, and effective
135 professional nursing care and for the retention and recruitment
136 of qualified direct care registered nurses.

137 (d) Direct care registered nurses must be able to advocate
138 for their patients without fear of retaliation from their
139 employers. Whistle-blower protections that encourage direct care
140 registered nurses and patients to notify governmental and
141 private accreditation entities of suspected unsafe patient
142 conditions, including protection against retaliation for
143 refusing unsafe patient care assignments, will greatly enhance
144 the health, safety, and welfare of patients.

145 (e) Direct care registered nurses have an irrevocable duty

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146 and right to advocate on behalf of their patients' interests,
147 and this duty and right may not be encumbered by cost-saving
148 practices.

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

150 (a) "Acuity-based patient classification system" or
151 "patient classification system" means an established measurement
152 tool that:

153 1. Predicts registered nursing care requirements for
154 individual patients based on the severity of a patient's
155 illness; the need for specialized equipment and technology; the
156 intensity of required nursing interventions; the complexity of
157 clinical nursing judgment required to design, implement, and
158 evaluate the patient nursing care plan consistent with
159 professional standards; the ability for self-care, including
160 motor, sensory, and cognitive deficits; and the need for
161 advocacy intervention;

162 2. Details the amount of nursing care needed and the
163 additional number of direct care registered nurses and other
164 licensed and unlicensed nursing staff that the hospital must
165 assign, based on the independent professional judgment of a
166 direct care registered nurse, to meet the needs of individual
167 patients at all times; and

168 3. Can be readily understood and used by direct care
169 nursing staff.

170 (b) "Ancillary support staff" means the personnel assigned
171 to assist in providing nursing services for the delivery of
172 safe, therapeutic, and effective patient care, including unit or
173 ward clerks and secretaries; clinical technicians; respiratory
174 therapists; and radiology, laboratory, housekeeping, and dietary

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175 personnel.

176 (c) "Clinical supervision" means the assignment and
177 direction of a patient care task required in the implementation
178 of nursing care for a patient to other licensed nursing staff or
179 to unlicensed staff by a direct care registered nurse in the
180 exclusive interests of the patient.

181 (d) "Competence" means the ability of a direct care
182 registered nurse to act upon and integrate the knowledge,
183 skills, abilities, and independent professional judgment that
184 underpin safe, therapeutic, and effective patient care.

185 (e) "Declared state of emergency" means an officially
186 designated state of emergency that has been declared by a
187 federal, state, or local government official who has the
188 authority to declare the state of emergency. The term does not
189 include a state of emergency that results from a labor dispute
190 in the health care industry.

191 (f) "Direct care registered nurse" means a registered nurse
192 or licensed practical nurse, as defined in s. 464.003:

193 1. Who is licensed by the Board of Nursing to engage in the
194 practice of professional nursing or the practice of practical
195 nursing, as defined in s. 464.003;

196 2. Whose competence has been documented; and

197 3. Who has accepted a direct, hands-on patient care
198 assignment to implement medical and nursing regimens and provide
199 related clinical supervision of patient care while exercising
200 independent professional judgment at all times in the exclusive
201 interests of the patient.

202 (g) "Health care facility unit" means an acute care
203 hospital; an emergency care, ambulatory, or outpatient surgery

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204 facility licensed under this chapter; or a psychiatric facility
205 licensed under chapter 394.

206 (h) "Hospital unit" or "clinical unit" means an acuity-
207 adjustable unit, critical care unit or intensive care unit,
208 labor and delivery unit, antepartum and postpartum unit, newborn
209 nursery, postanesthesia unit, emergency department, operating
210 room, pediatric unit, rehabilitation unit, skilled nursing unit,
211 specialty care unit, step-down unit or intermediate intensive
212 care unit, surgical unit, telemetry unit, or psychiatric unit.

213 1. "Acuity-adjustable unit" means a unit that adjusts a
214 room's technology, monitoring systems, and intensity of nursing
215 care based on the severity of the patient's medical condition.

216 2. "Critical care unit" or "intensive care unit" means a
217 nursing unit established to safeguard and protect a patient
218 whose severity of medical condition requires continuous
219 monitoring and complex intervention by a direct care registered
220 nurse and whose restorative measures and level of nursing
221 intensity require intensive care through direct observation;
222 complex monitoring; intensive intricate assessment; evaluation;
223 specialized rapid intervention; and education or teaching of the
224 patient, the patient's family, or other representatives by a
225 competent and experienced direct care registered nurse. The term
226 includes a burn unit, coronary care unit, or acute respiratory
227 unit.

228 3. "Rehabilitation unit" means a functional clinical unit
229 established to provide rehabilitation services that restore an
230 ill or injured patient to the highest level of self-sufficiency
231 or gainful employment of which he or she is capable in the
232 shortest possible time; compatible with his or her physical,

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233 intellectual, and emotional or psychological capabilities; and
234 in accordance with planned goals and objectives.

235 4. "Skilled nursing unit" means a functional clinical unit
236 established to provide skilled nursing care and supportive care
237 to patients whose primary need is for skilled nursing care on a
238 long-term basis and who are admitted after at least a 48-hour
239 period of continuous inpatient care. The term includes, but is
240 not limited to, a unit established to provide medical, nursing,
241 dietary, and pharmaceutical services and activity programs.

242 5. "Specialty care unit" means a unit established to
243 safeguard and protect a patient whose severity of illness,
244 including all co-occurring morbidities, restorative measures,
245 and level of nursing intensity, requires continuous care through
246 direct observation and monitoring; multiple assessments;
247 specialized interventions; evaluations; and education or
248 teaching of the patient, the patient's family, or other
249 representatives by a competent and experienced direct care
250 registered nurse. The term includes, but is not limited to, a
251 unit established to provide the intensity of care required for a
252 specific medical condition or a specific patient population or
253 to provide more comprehensive care for a specific condition or
254 disease than the care required in a surgical unit.

255 6. "Step-down unit" or "intermediate intensive care unit"
256 means a unit established to safeguard and protect a patient
257 whose severity of illness, including all co-occurring
258 morbidities, restorative measures, and level of nursing
259 intensity, requires intermediate intensive care through direct
260 observation and monitoring; multiple assessments; specialized
261 interventions; evaluations; and education or teaching of the

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262 patient, the patient's family, or other representatives by a
263 competent and experienced direct care registered nurse. The term
264 includes a unit established to provide care to patients who have
265 moderate or potentially severe physiological instability
266 requiring technical support, but not necessarily artificial life
267 support. As used in this subparagraph, the term:

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

271 b. "Technical support" means the use of specialized
272 equipment by a direct care registered nurse in providing for
273 invasive monitoring, telemetry, and mechanical ventilation for
274 the immediate amelioration or remediation of severe pathology
275 for a patient requiring less care than intensive care, but more
276 care than the care provided in a surgical unit.

277 7. "Surgical unit" means a unit established to safeguard
278 and protect a patient whose severity of illness, including all
279 co-occurring morbidities, restorative measures, and level of
280 nursing intensity, requires continuous care through direct
281 observation and monitoring; multiple assessments; specialized
282 interventions; evaluations; and education or teaching of the
283 patient, the patient's family, or other representatives by a
284 competent and experienced direct care registered nurse. The term
285 includes a unit established to provide care to patients who
286 require less than intensive care or step-down care; patients who
287 receive 24-hour inpatient general medical care or postsurgical
288 care, or both; and mixed populations of patients of diverse
289 diagnoses and diverse ages, excluding pediatric patients.

290 8. "Telemetry unit" means a unit established to safeguard

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291 and protect a patient whose severity of illness, including all
292 co-occurring morbidities, restorative measures, and level of
293 nursing intensity, requires intermediate intensive care through
294 direct observation and monitoring; multiple assessments;
295 specialized interventions; evaluations; and education or
296 teaching of the patient, the patient's family, or other
297 representatives by a competent and experienced direct care
298 registered nurse. The term includes a unit in which specialized
299 equipment is used to provide for the electronic monitoring,
300 recording, retrieval, and display of cardiac electrical signals.

301 (i) "Long-term acute care hospital" means a hospital or
302 health care facility that specializes in providing long-term
303 acute care to medically complex patients. The term includes a
304 freestanding and hospital-within-hospital model of a long-term
305 acute care facility.

306 (j) "Overtime" means the hours worked in excess of:
307 1. An agreed-upon, predetermined, regularly scheduled
308 shift;
309 2. Twelve hours in a 24-hour period; or
310 3. Eighty hours in a 14-day period.

311 (k) "Patient assessment" means the use of critical thinking
312 by a direct care registered nurse, and the intellectually
313 disciplined process of actively and skillfully interpreting,
314 applying, analyzing, synthesizing, or evaluating data obtained
315 through direct observation and communication with others.

316 (l) "Professional judgment" means the intellectual,
317 educated, informed, and experienced process that a direct care
318 registered nurse exercises in forming an opinion and reaching a
319 clinical decision that is in the exclusive interests of the

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320 patient and is based upon the analysis of data, information, and
321 scientific evidence.

322 (m) "Skill mix" means the differences in licensing,
323 specialty, and experience among direct care registered nurses.

324 (3) MINIMUM DIRECT CARE REGISTERED NURSE STAFFING LEVEL
325 REQUIREMENTS.—

326 (a) A health care facility shall implement a staffing plan
327 that provides for a minimum direct care registered nurse
328 staffing level in accordance with the general requirements set
329 forth in this subsection and the direct care registered nurse
330 staffing levels in a clinical unit as specified in paragraph
331 (b). Staffing levels for patient care tasks that do not require
332 a direct care registered nurse are not included within these
333 ratios and shall be determined pursuant to an acuity-based
334 patient classification system defined by agency rule.

335 1. A health care facility may not assign a direct care
336 registered nurse to a clinical unit unless the health care
337 facility and the direct care registered nurse determine that
338 such nurse has demonstrated competence in providing care in the
339 clinical unit and has also received orientation in the clinical
340 unit's area of specialty which is sufficient to provide
341 competent, safe, therapeutic, and effective care to a patient in
342 that unit. The policies and procedures of the health care
343 facility must contain the criteria for making this
344 determination.

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

348 3. A health care facility:

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349 a. May not average the total number of patients and the
350 total number of direct care registered nurses assigned to
351 patients in a hospital unit or clinical unit during any period
352 for purposes of meeting the requirements under this subsection.

353 b. May not impose mandatory overtime in order to meet the
354 minimum direct care registered nurse staffing levels in the
355 hospital unit or clinical unit which are required under this
356 subsection.

357 c. Shall ensure that only a direct care registered nurse
358 may relieve another direct care registered nurse during breaks,
359 meals, and routine absences from a hospital unit or clinical
360 unit.

361 d. May not lay off licensed practical nurses, licensed
362 psychiatric technicians, certified nursing assistants, or other
363 ancillary support staff to meet the direct care registered nurse
364 staffing levels required in this subsection for a hospital unit
365 or clinical unit.

366 4. Only a direct care registered nurse may be assigned to
367 an intensive care newborn nursery service unit, which
368 specifically requires a direct care registered nurse staffing
369 level of one such nurse to two or fewer infants at all times.

370 5. In the emergency department, only a direct care
371 registered nurse may be assigned to a triage patient or a
372 critical care patient.

373 a. The direct care registered nurse staffing level for
374 triage patients or critical care patients in the emergency
375 department must be one such nurse to two or fewer patients at
376 all times.

377 b. At least two direct care registered nurses must be

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378 physically present in the emergency department when a patient is
379 present.

380 c. Triage, radio, specialty, or flight registered nurses do
381 not count in the calculation of direct care registered nurse
382 staffing levels. Triage registered nurses may not be assigned
383 the responsibility of the base radio.

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

386 a. The direct care registered nurse staffing level must be
387 one such nurse to one active labor patient, or one patient
388 having medical or obstetrical complications, during the
389 initiation of epidural anesthesia and during circulation for a
390 caesarean section delivery.

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

394 c. In the event of a caesarean delivery, the direct care
395 registered nurse staffing level must be one such nurse to four
396 or fewer mother-plus-infant couplets.

397 d. In the event of multiple births, the direct care
398 registered nurse staffing level must be one such nurse to six or
399 fewer mother-plus-infant couplets.

400 e. The direct care registered nurse staffing level for
401 postpartum areas in which the direct care registered nurse's
402 assignment consists of only mothers must be one such nurse to
403 four or fewer patients at all times.

404 f. The direct care registered nurse staffing level for
405 postpartum patients or postsurgical gynecological patients must
406 be one such nurse to four or fewer patients at all times.

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407 g. The direct care registered nurse staffing level for the
408 well-baby nursery unit must be one such nurse to five or fewer
409 patients at all times.

410 h. The direct care registered nurse staffing level for
411 unstable newborns and newborns in the resuscitation period as
412 assessed by a direct care registered nurse must be at least one
413 such nurse to one patient at all times.

414 i. The direct care registered nurse staffing level for
415 newborns must be one such nurse to four or fewer patients at all
416 times.

417 7. The direct care registered nurse staffing level for
418 patients receiving conscious sedation must be at least one such
419 nurse to one patient at all times.

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

424 1. One patient in a trauma emergency unit;

425 2. One patient in an operating room unit. The operating
426 room must have at least one direct care registered nurse
427 assigned to the duties of the circulating registered nurse and a
428 minimum of one additional person as a scrub assistant for each
429 patient-occupied operating room;

430 3. Two patients in a critical care unit, including neonatal
431 intensive care units; emergency critical care and intensive care
432 units; labor and delivery units; coronary care units; acute
433 respiratory care units; postanesthesia units, regardless of the
434 type of anesthesia administered; and postpartum units, so that
435 the direct care registered nurse staffing level is one such

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436 nurse to two or fewer patients at all times;

437 4. Three patients in an emergency room unit; step-down unit
438 or intermediate intensive care unit; pediatric unit; telemetry
439 unit; or combined labor and postpartum unit so that the direct
440 care registered nurse staffing level is one such nurse to three
441 or fewer patients at all times;

442 5. Four patients in a surgical unit, antepartum unit,
443 intermediate care nursery unit, psychiatric unit, or presurgical
444 or other specialty care unit so that the direct care registered
445 nurse staffing level is one such nurse to four or fewer patients
446 at all times;

447 6. Five patients in a rehabilitation unit or skilled
448 nursing unit so that the direct care registered nurse staffing
449 level is one such nurse to five or fewer patients at all times;

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

453 8. Three mother-plus-infant couplets in a postpartum unit
454 so that the direct care registered nurse staffing level is one
455 such nurse to three or fewer mother-plus-infant couplets at all
456 times.

457 (c)1. Identifying a hospital unit or clinical unit by a
458 name or term other than those defined in subsection (2) does not
459 affect the requirement of direct care registered nurse staffing
460 levels identified for the level of intensity or type of care
461 described in paragraphs (a) and (b).

462 2. Patients shall be cared for only in hospital units or
463 clinical units in which the level of intensity, type of care,
464 and direct care registered nurse staffing levels meet the

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465 individual requirements and needs of each patient. A health care
466 facility may not use an acuity-adjustable unit to care for a
467 patient.

468 3. A health care facility may not use a video camera or
469 monitor or any form of electronic visualization of a patient to
470 substitute for the direct observation required for patient
471 assessment by the direct care registered nurse and for patient
472 protection provided by an attendant.

473 (d) The requirements established under this subsection do
474 not apply during a declared state of emergency, as defined in
475 subsection (2), if a health care facility is requested or
476 expected to provide an exceptional level of emergency or other
477 medical services.

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

480 1. The staffing plan must be in writing and, based on
481 individual patient care needs determined by the acuity-based
482 patient classification system, must specify individual patient
483 care requirements and the staffing levels for direct care
484 registered nurses and other licensed and unlicensed personnel.
485 The direct care registered nurse staffing level on any shift may
486 not fall below the requirements in paragraphs (a) and (b) at any
487 time.

488 2. In addition to the requirements of direct care
489 registered nurse staffing levels in paragraphs (a) and (b), each
490 health care facility shall assign additional nursing staff,
491 including, but not limited to, licensed practical nurses,
492 licensed psychiatric technicians, and certified nursing
493 assistants, through the implementation of a valid acuity-based

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494 patient classification system for determining nursing care needs
495 of individual patients which reflects the assessment of patient
496 nursing care requirements made by the assigned direct care
497 registered nurse and which provides for shift-by-shift staffing
498 based on those requirements. The direct care registered nurse
499 staffing levels specified in paragraphs (a) and (b) constitute
500 the minimum number of direct care registered nurses who shall be
501 assigned to provide direct patient care.

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

506 a. The number of patients and their acuity levels as
507 determined by the application of a patient classification system
508 on a shift-by-shift basis.

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

511 c. The specialized experience required of direct care
512 registered nurses on a particular hospital unit or clinical
513 unit.

514 d. Staffing levels of other health care personnel who
515 provide direct patient care services for patients who normally
516 do not require care by a direct care registered nurse.

517 e. The level of efficacy of technology that is available
518 that affects the delivery of direct patient care.

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

522 g. Obstacles to efficiency in the delivery of patient care

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523 caused by the physical layout of the health care facility.

524 4. A health care facility shall specify the acuity-based
525 patient classification system used to document actual staffing
526 in each unit for each shift.

527 5. A health care facility shall annually evaluate:

528 a. The reliability of the acuity-based patient
529 classification system for validating staffing requirements to
530 determine whether such system accurately measures individual
531 patient care needs and accurately predicts the staffing
532 requirements for direct care registered nurses, licensed
533 practical nurses, licensed psychiatric technicians, and
534 certified nursing assistants, based exclusively on individual
535 patient needs.

536 b. The validity of the acuity-based patient classification
537 system.

538 6. A health care facility shall annually update its
539 staffing plan and acuity-based patient classification system to
540 the extent appropriate based on the annual evaluation conducted
541 under subparagraph 5. If the evaluation reveals that adjustments
542 are necessary to ensure accuracy in measuring patient care
543 needs, such adjustments must be implemented within 30 days after
544 such determination.

545 7. Any acuity-based patient classification system adopted
546 by a health care facility under this subsection must be
547 transparent in all respects, including disclosure of detailed
548 documentation of the methodology used to predict nurse staffing;
549 an identification of each factor, assumption, and value used in
550 applying such methodology; an explanation of the scientific and
551 empirical basis for each such assumption and value; and

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552 certification by a knowledgeable and authorized representative
553 of the health care facility that the disclosures regarding
554 methods used for testing and validating the accuracy and
555 reliability of such system are true and complete.

556 a. The documentation required by this subparagraph shall be
557 submitted in its entirety to the agency as a mandatory condition
558 of licensure, with a certification by the chief nursing officer
559 of the health care facility that the documentation completely
560 and accurately reflects implementation of a valid acuity-based
561 patient classification system used to determine nurse staffing
562 by the facility for each shift in each hospital unit or clinical
563 unit in which patients receive care. The chief nursing officer
564 shall execute the certification under penalty of perjury, and
565 the certification must contain an expressed acknowledgment that
566 any false statement constitutes fraud and is subject to criminal
567 and civil prosecution and penalties.

568 b. Such documentation must be available for public
569 inspection in its entirety in accordance with procedures
570 established by administrative rules adopted by the agency,
571 consistent with the purposes of this section.

572 8. A staffing plan of a health care facility shall be
573 developed and evaluated by a committee created by the health
574 care facility. At least half of the members of the committee
575 must be unit-specific competent direct care registered nurses.

576 a. The chief nursing officer at the facility shall appoint
577 the members who are not direct care registered nurses. The
578 direct care registered nurses on the committee shall be
579 appointed by the chief nursing officer if the direct care
580 registered nurses are not represented by a collective bargaining

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581 agreement or by an authorized collective bargaining agent.

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

584 c. This section does not authorize conduct that is
585 prohibited under the National Labor Relations Act or the Federal
586 Labor Relations Act of 1978.

587 9. By July 1, 2021, the agency shall approve uniform
588 statewide standards for a standardized acuity tool for use in
589 health care facilities. The standardized acuity tool must
590 provide a method for establishing direct care registered nurse
591 staffing requirements that exceed the required direct care
592 registered nurse staffing levels in the hospital units or
593 clinical units in paragraphs (a) and (b).

594 a. The proposed standards shall be developed by a committee
595 created by the health care facility consisting of up to 20
596 members. At least 11 of the committee members must be registered
597 nurses who are currently licensed and employed as direct care
598 registered nurses, and the remaining committee members must
599 include a sufficient number of technical or scientific experts
600 in specialized fields who are involved in the design and
601 development of an acuity-based patient classification system
602 that meets the requirements of this section.

603 b. A person who has any employment or any commercial,
604 proprietary, financial, or other personal interest in the
605 development, marketing, or use of a private patient
606 classification system product or related methodology,
607 technology, or component system is not eligible to serve on the
608 committee. A candidate for appointment to the committee may not
609 be confirmed as a member until the candidate files a disclosure-

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610 of-interest statement with the agency, along with a signed
611 certification of full disclosure and complete accuracy under
612 oath, which provides all necessary information as determined by
613 the agency to demonstrate the absence of actual or potential
614 conflict of interest. All such filings are subject to public
615 inspection.

616 c. Within 1 year after the official commencement of
617 committee operations, the committee shall provide a written
618 report to the agency which proposes uniform standards for a
619 valid, acuity-based patient classification system, along with a
620 sufficient explanation and justification to allow for competent
621 review and determination of sufficiency by the agency. The
622 agency shall disclose the report to the public upon notice of
623 public hearings and provide a public comment period for proposed
624 adoption of uniform standards for an acuity-based patient
625 classification system by the agency.

626 10. A hospital shall adopt and implement the acuity-based
627 patient classification system and provide staffing based on the
628 standardized acuity tool. Any additional direct care registered
629 nurse staffing level that exceeds the direct care registered
630 nurse staffing levels described in paragraphs (a) and (b) shall
631 be assigned in a manner determined by such standardized acuity
632 tool.

633 11. A health care facility shall submit to the agency its
634 annually updated staffing plan and acuity-based patient
635 classification system as required under this paragraph.

636 (f)1. In each hospital unit or clinical unit, a health care
637 facility shall post a notice in a form specified by agency rule
638 which:

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- 639 a. Explains the requirements imposed under this subsection;
640 b. Includes actual direct care registered nurse staffing
641 levels during each shift at the hospital unit or clinical unit;
642 c. Is visible, conspicuous, and accessible to staff and
643 patients of the hospital unit or clinical unit and the public;
644 d. Identifies staffing requirements as determined by the
645 acuity-based patient classification system for each hospital
646 unit or clinical unit, documented and posted in the unit for
647 public view on a day-to-day, shift-by-shift basis;
648 e. Documents the actual number of staff and the skill mix
649 of such staff in each hospital unit or clinical unit, documented
650 and posted in the unit for public view on a day-to-day, shift-
651 by-shift basis; and
652 f. Reports the variance between the required and actual
653 staffing patterns in each hospital unit or clinical unit,
654 documented and posted in the unit for public view on a day-to-
655 day, shift-by-shift basis.
- 656 2.a. A long-term acute care hospital shall maintain
657 accurate records of actual staffing levels in each hospital unit
658 or clinical unit for each shift for at least 2 years. Such
659 records must include:
- 660 (I) The number of patients in each unit;
661 (II) The identity and duty hours of each direct care
662 registered nurse, licensed practical nurse, licensed psychiatric
663 technician, and certified nursing assistant assigned to each
664 patient in the hospital unit or clinical unit for each shift;
665 and
- 666 (III) A copy of each posted notice.
667 b. A health care facility shall make its staffing plan and

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668 acuity-based patient classification system required under
669 paragraph (e), and all documentation related to such plan and
670 system, available to the agency; to direct care registered
671 nurses and their collective bargaining representatives, if any;
672 and to the public under rules adopted by the agency.

673 3. The agency shall conduct periodic audits to ensure
674 implementation of the staffing plan in accordance with this
675 subsection and to ensure the accuracy of the staffing plan and
676 the acuity-based patient classification system required under
677 paragraph (e).

678 (g) A health care facility shall plan for routine
679 fluctuations such as admissions, discharges, and transfers in
680 the patient census. If a declared state of emergency causes a
681 change in the number of patients in a unit, the health care
682 facility must demonstrate that immediate and diligent efforts
683 are made to maintain required staffing levels.

684 (h) The following activities are prohibited:

685 1. The direct assignment of unlicensed personnel by a
686 health care facility to perform functions required of a direct
687 care registered nurse in lieu of care being delivered by a
688 licensed or registered nurse under the clinical supervision of a
689 direct care registered nurse.

690 2. The performance of patient care tasks by unlicensed
691 personnel which require the clinical assessment, judgment, and
692 skill of a licensed or registered nurse, including, but not
693 limited to:

694 a. Nursing activities that require nursing assessment and
695 judgment during implementation;

696 b. Physical, psychological, or social assessments that

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697 require nursing judgment, intervention, referral, or followup;
698 and

699 c. Formulation of a plan of nursing care and evaluation of
700 a patient's response to the care provided, including
701 administration of medication; venipuncture or intravenous
702 therapy; parenteral or tube feedings; invasive procedures,
703 including inserting nasogastric tubes, inserting catheters, or
704 tracheal suctioning; and educating a patient and the patient's
705 family concerning the patient's health care problems, including
706 postdischarge care. However, a phlebotomist, emergency room
707 technician, or medical technician may, under the general
708 supervision of the clinical laboratory director, or his or her
709 designee, or a physician, perform venipunctures in accordance
710 with written hospital policies and procedures.

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

713 (a) A direct care registered nurse employing scientific
714 knowledge and experience in the physical, social, and biological
715 sciences, and exercising independent judgment in applying the
716 nursing process, shall directly provide:

717 1. Continuous and ongoing assessments of the patient's
718 condition.

719 2. The planning, clinical supervision, implementation, and
720 evaluation of the nursing care provided to each patient.

721 3. The assessment, planning, implementation, and evaluation
722 of patient education, including the ongoing postdischarge
723 education of each patient.

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

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

729 5. The nursing plan for the patient care, which shall be
730 discussed with and developed as a result of coordination with
731 the patient, the patient's family or other representatives, when
732 appropriate, and the staff of other disciplines involved in the
733 care of the patient.

734 6. An evaluation of the effectiveness of the care plan
735 through assessments based on direct observation of the patient's
736 physical condition and behavior, signs and symptoms of illness,
737 and reactions to treatment, and through communication with the
738 patient and the health care team members, and modification of
739 the plan as needed.

740 7. Information related to the initial assessment and
741 reassessments of the patient, nursing diagnosis, plan,
742 intervention, evaluation, and patient advocacy, which shall be
743 permanently recorded in the patient's medical record as
744 narrative direct care progress notes. The practice of charting
745 by exception is prohibited.

746 (b)1. A patient assessment requires direct observation of
747 the patient's signs and symptoms of illness, reaction to
748 treatment, behavior and physical condition, and interpretation
749 of information obtained from the patient and others, including
750 the health care team members. A patient assessment requires data
751 collection by a direct care registered nurse and the analysis,
752 synthesis, and evaluation of such data.

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

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755 psychiatric technician may assist a direct care registered nurse
756 in data collection.

757 (c)1. A direct care registered nurse shall determine the
758 nursing care needs of individual patients through the process of
759 ongoing patient assessments, nursing diagnosis, formulation, and
760 adjustment of nursing care plans.

761 2. The prediction of individual patient nursing care needs
762 for prospective assignment of direct care registered nurses
763 shall be based on individual patient assessments of the direct
764 care registered nurse assigned to each patient and in accordance
765 with a documented acuity-based patient classification system as
766 required in subsection (3).

767 (d) Competent performance of the essential functions of a
768 direct care registered nurse as provided in this section
769 requires the exercise of independent judgment in the exclusive
770 interests of the patient. A direct care registered nurse's
771 independent judgment while performing the functions described in
772 this section shall be provided in the exclusive interests of the
773 patient and may not, for any purpose, be considered, relied
774 upon, or represented as a job function, authority,
775 responsibility, or activity undertaken in any respect for the
776 purpose of serving the business, commercial, operational, or
777 other institutional interests of the health care facility
778 employer.

779 (e)1. In addition to the prohibition on assignments of
780 patient care tasks provided in paragraph (3)(h), a direct care
781 registered nurse may not assign tasks required to implement
782 nursing care for a patient to other licensed nursing staff or to
783 unlicensed staff unless the assigning direct care registered

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784 nurse:

785 a. Determines that the personnel assigned the nursing care
786 tasks possess the necessary training, experience, and capability
787 to competently and safely perform such tasks; and

788 b. Effectively supervises the clinical functions and
789 nursing care tasks performed by the assigned personnel.

790 2. The exercise of clinical supervision of nursing care
791 personnel by a direct care registered nurse in the performance
792 of the functions as provided in this subsection must be in the
793 exclusive interests of the patient and may not, for any purpose,
794 be considered, relied upon, or represented as a job function,
795 authority, responsibility, or activity undertaken in any respect
796 for the purpose of serving the business, commercial,
797 operational, or other institutional interests of the health care
798 facility employer, but constitutes the exercise of professional
799 nursing authority and duty in the exclusive interests of the
800 patient.

801 (f) A health care facility may not deploy technology that
802 limits the direct care provided by a direct care registered
803 nurse in the performance of functions that are part of the
804 nursing process, including the full exercise of independent
805 professional judgment in the assessment, planning,
806 implementation, and evaluation of care, or that limits a direct
807 care registered nurse from acting as a patient advocate in the
808 exclusive interests of the patient. Technology may not be skill-
809 degrading, interfere with the direct care registered nurse's
810 provision of individualized patient care, or override the direct
811 care registered nurse's independent professional judgment.

812 (g) This subsection applies only to direct care registered

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813 nurses employed by or providing care in a health care facility.

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

816 (a) A direct care registered nurse has a duty and right to
817 act and provide care in the exclusive interests of the patient
818 and to act as the patient's advocate.

819 (b) A direct care registered nurse shall always provide
820 competent, safe, therapeutic, and effective nursing care to an
821 assigned patient.

822 1. Before accepting a patient assignment, a direct care
823 registered nurse must have the necessary knowledge, judgment,
824 skills, and ability to provide the required care. It is the
825 responsibility of the direct care registered nurse to determine
826 whether he or she is clinically competent to perform the nursing
827 care required by a patient who is in a particular clinical unit
828 or who has a particular diagnosis, condition, prognosis, or
829 other determinative characteristic of nursing care, and whether
830 acceptance of a patient assignment would expose the patient to
831 the risk of harm.

832 2. If the direct care registered nurse is not competent to
833 perform the care required for a patient assigned for nursing
834 care or if the assignment would expose the patient to risk of
835 harm, the direct care registered nurse may not accept the
836 patient care assignment. Such refusal to accept a patient care
837 assignment is an exercise of the direct care registered nurse's
838 duty and right of patient advocacy.

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

841 1. The assignment would violate chapter 464 or rules

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842 adopted thereunder;

843 2. The assignment would violate subsection (3), subsection
844 (4), or this subsection; or

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

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

851 1. The assigned task would violate chapter 464 or rules
852 adopted thereunder;

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

855 3. The direct care registered nurse is not prepared by
856 education, training, or experience to fulfill the assigned task
857 without compromising the safety of a patient or jeopardizing the
858 license of the direct care registered nurse.

859 (e) In the course of performing the responsibilities and
860 essential functions described in subsection (4), the direct care
861 registered nurse assigned to a patient shall receive orders
862 initiated by physicians and other legally authorized health care
863 professionals within their scope of licensure regarding patient
864 care services to be provided to the patient, including, but not
865 limited to, the administration of medications and therapeutic
866 agents that are necessary to implement a treatment, a
867 rehabilitative regimen, or disease prevention.

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

870 a. In the exclusive interests of the patient;

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871 b. Initiated by a person legally authorized to issue the
872 order; and

873 c. Issued in accordance with the applicable laws and rules
874 governing nursing care.

875 2. If the direct care registered nurse determines that the
876 criteria provided in subparagraph 1. have not been satisfied
877 with respect to a particular order or if the direct care
878 registered nurse has some doubt regarding the meaning or
879 conformance of the order with such criteria, he or she shall
880 seek clarification from the initiator of the order, the
881 patient's physician, or another appropriate medical officer
882 before implementing the order.

883 3. If, upon clarification, the direct care registered nurse
884 determines that the criteria for implementation of an order
885 provided in subparagraph 1. have not been satisfied, the direct
886 care registered nurse may refuse implementation on the basis
887 that the order is not in the exclusive interests of the patient.
888 Seeking clarification of an order or refusing an order as
889 described in this subparagraph is an exercise of the direct care
890 registered nurse's duty and right of patient advocacy.

891 (f) A direct care registered nurse shall, as circumstances
892 require, initiate action to improve the patient's health care or
893 to change a decision or activity that, in the professional
894 judgment of the direct care registered nurse, is against the
895 exclusive interests or desires of the patient or shall give the
896 patient the opportunity to make informed decisions about the
897 health care before it is provided.

898 (6) FREE SPEECH; PATIENT PROTECTION.-

899 (a) A health care facility may not:

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900 1. Discharge, discriminate against, or retaliate against in
901 any manner with respect to any aspect of employment, including
902 discharge, promotion, compensation, or terms, conditions, or
903 privileges of employment, a direct care registered nurse based
904 on the direct care registered nurse's refusal to accept an
905 assignment pursuant to paragraph (5)(c) or an assigned task
906 pursuant to paragraph (5)(d).

907 2. File a complaint or a report against a direct care
908 registered nurse with the Board of Nursing or the agency because
909 of the direct care registered nurse's refusal of an assignment
910 pursuant to paragraph (5)(c) or an assigned task pursuant to
911 paragraph (5)(d).

912 (b) A direct care registered nurse who has been discharged,
913 discriminated against, or retaliated against in violation of
914 subparagraph (a)1. or against whom a complaint or a report has
915 been filed in violation of subparagraph (a)2. may bring a cause
916 of action in a court of competent jurisdiction. A direct care
917 registered nurse who prevails in the cause of action is entitled
918 to one or more of the following:

- 919 1. Reinstatement.
920 2. Reimbursement of lost wages, compensation, and benefits.
921 3. Attorney fees.
922 4. Court costs.
923 5. Other damages.

924 (c) A direct care registered nurse, a patient, or any other
925 individual may file a complaint with the agency against a health
926 care facility that violates this section. For any complaint
927 filed, the agency shall:

- 928 1. Receive and investigate the complaint;

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929 2. Determine whether a violation of this section as alleged
930 in the complaint has occurred; and

931 3. If such a violation has occurred, issue an order
932 prohibiting the health care facility from subjecting the
933 complaining direct care registered nurse, the patient, or the
934 other individual to any retaliation described in paragraph (a).

935 (d)1. A health care facility may not discriminate or
936 retaliate in any manner against any patient, employee, or
937 contract employee of the facility, or any other individual, on
938 the basis that such individual, in good faith, individually or
939 in conjunction with another person or persons, has presented a
940 grievance or complaint; initiated or cooperated in an
941 investigation or proceeding by a governmental entity, regulatory
942 agency, or private accreditation body; made a civil claim or
943 demand; or filed an action relating to the care, services, or
944 conditions of the health care facility or of any affiliated or
945 related facilities.

946 2. For purposes of this paragraph, an individual is deemed
947 to be acting in good faith if the individual reasonably believes
948 that the information reported or disclosed is true.

949 (e)1. A health care facility may not:

950 a. Interfere with, restrain, or deny the exercise of, or
951 the attempt to exercise, any right provided or protected under
952 this section; or

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

955 2. A health care facility may not discriminate or retaliate
956 against any person for opposing any facility policy, practice,
957 or action that is alleged to violate, breach, or fail to comply

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958 with this section.

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

965 4. A health care facility, or an individual representing a
966 health care facility, may not in any way interfere with the
967 rights of direct care registered nurses to organize, bargain
968 collectively, and engage in concerted activity under s. 7 of the
969 National Labor Relations Act.

970 5. A health care facility shall post in an appropriate
971 location in each hospital unit or clinical unit a notice in a
972 form specified by the agency which:

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

975 b. Includes a statement that a nurse, patient, or other
976 individual may file a complaint with the agency against a health
977 care facility that violates this subsection; and

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

979 (f)1. The agency shall establish a toll-free telephone
980 hotline to provide information regarding the requirements of
981 this section and to receive reports of violations of this
982 section.

983 2. A health care facility shall provide each patient
984 admitted to the facility for inpatient care with the toll-free
985 telephone hotline described in subparagraph 1. and shall give
986 notice to each patient that the hotline may be used to report

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987 inadequate staffing or care.

988 (7) ENFORCEMENT.—

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

991 1. Against a health care facility that violates this
992 section, a civil penalty of up to \$25,000 for each violation,
993 except that the agency shall impose a civil penalty of at least
994 \$25,000 for each violation if the agency determines that the
995 health care facility has a pattern of such violation.

996 2. Against an individual who is employed by a health care
997 facility who violates this section, a civil penalty of up to
998 \$20,000 for each violation.

999 (b) The agency shall post on its website the names of
1000 health care facilities against which civil penalties have been
1001 imposed under this subsection and such additional information as
1002 the agency deems necessary.

1003 Section 3. This act shall take effect July 1, 2020.