

House Bill 3416

Sponsored by Representative GALIZIO; Representatives CANNON, GREENLICK, ROSENBAUM, SHIELDS, WITT, Senator MONNES ANDERSON (at the request of United Nurses of Legacy, Oregon Federation of Nurses and Health Professionals, AFT Local 5017)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Establishes acuity-based patient classification system for certain health care facilities. Imposes minimum nurse-to-patient staffing ratios. Authorizes Department of Human Services to adopt rules for system. Requires facilities to file certain reports about system. Imposes penalties for violations. Punishes falsification of required documents by maximum imprisonment of one year, \$6,250 fine, or both.

Takes effect January 1, 2009.

A BILL FOR AN ACT

1
2 Relating to acuity-based patient classification system; creating new provisions; amending ORS
3 441.030, 441.166 and 441.180; repealing ORS 441.162, 441.164 and 441.170; and prescribing an ef-
4 fective date.

5 Whereas the purpose of this 2007 Act is to ensure that the delivery of health care services to
6 patients in health care facilities is adequate and safe, and that health care facilities retain sufficient
7 registered nursing staff to promote optimal health care outcomes; and

8 Whereas inadequate hospital staffing results in dangerous medical errors and patient infections;
9 and

10 Whereas registered nurses constitute the highest percentage of direct health care staff in acute
11 care facilities and have a central role in health care delivery; and

12 Whereas in order to ensure the adequate protection and care for patients in health care facili-
13 ties it is essential that qualified registered nurses be accessible and available to meet the nursing
14 needs of patients; and

15 Whereas the basic principles of staffing in health care facilities should be focused on patient
16 health care needs and be based on consideration of patient acuity levels and services that ensure
17 optimal outcomes; and

18 Whereas the high-stress workplace environment caused by an increase in the number of patients
19 assigned to nurses results in a decrease in the amount of time nurses have to participate in direct
20 patient care and severely and negatively impacts the quality of nursing care patients receive; and

21 Whereas establishing staffing standards for registered nurses in health care facilities ensures
22 that the facilities provide safe workplace environments and improves public safety and the quality
23 of health care services; now, therefore,

24 **Be It Enacted by the People of the State of Oregon:**

SECTION 1. As used in sections 1 to 5 of this 2007 Act:

25
26 (1) **“Acuity-based patient classification system” means a standard set of criteria, based**
27 **on scientific data, that:**

28 (a) **Acts as a measurement instrument to predict registered nursing care requirements**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 for individual patients based on severity of patient illness, need for specialized equipment and
 2 technology, intensity of nursing interventions required and the complexity of clinical judgment
 3 needed to design, implement and evaluate a patient's nursing care plan consistent with
 4 professional standards of care;

5 (b) Details the amount of registered nursing care needed, both in number of direct care
 6 registered nurses and skill mix of nursing personnel required on a daily basis for each patient
 7 in a nursing department or unit;

8 (c) Is stated in terms that can be used readily and understood by direct care registered
 9 nurses; and

10 (d) Takes into consideration the patient care services provided by registered nurses, li-
 11 censed practical nurses and other health care personnel.

12 (2) "Assessment tool" means a measurement system that compares the registered nurse
 13 staffing level in each nursing department or unit against actual patient nursing care re-
 14 quirements in order to review the accuracy of an acuity-based patient classification system.

15 (3) "Direct care registered nurse" means a registered nurse who has accepted direct re-
 16 sponsibility and accountability to carry out medical regimens, nursing care or other bedside
 17 care for patients.

18 (4) "Facility" means a hospital licensed in Oregon, any licensed private or state owned
 19 and operated general acute care program hospital, psychiatric facility or specialty hospital
 20 or an acute care program within a state operated facility.

21 (5) "Nursing care" means care that falls within the scope of the practice of nursing de-
 22 fined in ORS 678.010 to 678.410 or within recognized professional standards of nursing, in-
 23 cluding, but not limited to, assessment, nursing diagnosis, planning, intervention, evaluation
 24 and patient advocacy.

25 **SECTION 2.** The Department of Human Services shall adopt rules necessary to imple-
 26 ment the provisions of sections 1 to 5 of this 2007 Act, including, but not limited to:

27 (1) An acuity-based patient classification system to be used by all facilities for the pur-
 28 pose of increasing the number of direct care registered nurses to meet patient needs.

29 (2) An easily accessible, confidential method of:

30 (a) Reporting any failure to comply with the requirements of sections 1 to 5 of this 2007
 31 Act; and

32 (b) Providing public access to information about reports of inspections of facilities, fail-
 33 ure by a facility to comply with the requirements of sections 1 to 5 of this 2007 Act and
 34 corrective action taken by facilities to correct any deficiencies identified.

35 **SECTION 3.** (1) Each facility shall implement and maintain the following minimum direct
 36 care registered nurse-to-patient staffing ratios:

37 (a) Burn unit, 1:2;

38 (b) Critical care unit, 1:2;

39 (c) Emergency critical care, 1:2;

40 (d) Emergency department, 1:3;

41 (e) Emergency trauma, 1:1;

42 (f) Intensive care unit, 1:2;

43 (g) Medical and surgical, 1:4;

44 (h) Neonatal intensive care, 1:2;

45 (i) Observational and outpatient treatment, 1:4;

- 1 (j) Operating room:
- 2 (A) Under anesthesia, 1:1; and
- 3 (B) Post-anesthesia, 1:2;
- 4 (k) Pediatrics, 1:3;
- 5 (L) Perinatal care:
- 6 (A) Antepartum, 1:3;
- 7 (B) Active labor, 1:1;
- 8 (C) Immediate postpartum, 1:2;
- 9 (D) Postpartum, 1:6;
- 10 (E) Intermediate care nursery, 1:4; and
- 11 (F) Well baby nursery, 1:6;
- 12 (m) Post-anesthesia care unit:
- 13 (A) Under anesthesia, 1:1; and
- 14 (B) Post-anesthesia, 1:2;
- 15 (n) Psychiatric, 1:4;
- 16 (o) Rehabilitation unit, 1:5;
- 17 (p) Specialty care unit, 1:4;
- 18 (q) Step-down/intermediate care, 1:3;
- 19 (r) Telemetry, 1:3; and
- 20 (s) Transitional care, 1:5.

21 (2)(a) Any unit not otherwise listed in subsection (1) of this section shall be considered
22 a specialty care unit.

23 (b) The triage, radio or other specialty registered nurse may not be counted as a nurse
24 required for the minimum direct care registered nurse-to-patient staffing ratio established
25 by subsection (1)(c) of this section.

26 (3)(a) If a facility fails to comply with the minimum direct care registered nurse-to-
27 patient staffing ratios established by this section, additional direct care registered nurses
28 shall be added to bring the facility into compliance with an approved acuity-based patient
29 classification system.

30 (b) Nothing in this section:

31 (A) Precludes a facility from increasing the number of direct care registered nurses in
32 any unit above the minimum staffing ratios established by this section; or

33 (B) Supersedes any requirements otherwise mandated by law, rule or a collective bar-
34 gaining agreement if compliance with those requirements allows the facility to meet the
35 minimum staffing ratios established by this section.

36 (4) The minimum direct care registered nurse-to-patient staffing ratios established by
37 this section do not authorize the understaffing of other critical health care workers, includ-
38 ing but not limited to licensed practical nurses and certified nursing assistants, required to
39 enable direct care registered nurses to focus on the nursing care functions that only direct
40 care registered nurses are authorized by law to perform.

41 **SECTION 4.** (1) Prior to being issued a license by the Department of Human Services, a
42 facility shall submit annually to the department:

43 (a) A prospective staffing plan, together with a certified statement that the staffing plan
44 is sufficient to provide adequate and appropriate delivery of health care services to patients
45 for the ensuing year. The prospective staffing plan shall:

1 (A) Meet the minimum direct care registered nurse-to-patient staffing ratios established
2 by section 3 of this 2007 Act;

3 (B) Meet any other requirements for a facility established by any other applicable law
4 or regulation;

5 (C) Employ the acuity-based patient classification system for addressing fluctuations in
6 patient acuity levels increasing direct care registered nurse staffing levels above the mini-
7 mum staffing ratios established by section 3 of this 2007 Act;

8 (D) Provide for orientation of direct care registered nursing staff to assigned clinical
9 practice areas, including temporary assignments, sufficient to provide competent nursing
10 care;

11 (E) Include staffing requirements for other nursing department or unit activity such as
12 discharges, transfers, admissions and administrative and support tasks that are expected to
13 be done by direct care registered nurses in addition to direct nursing care;

14 (F) Include a verifiable assessment tool for measuring and documenting, on a daily basis,
15 direct care registered nurse staffing in each nursing department or unit of the facility for
16 each shift;

17 (G) Include the assessment tool used to validate the acuity-based patient classification
18 system relied upon in the plan; and

19 (H) Be produced in consultation with a majority of the direct care registered nurses in
20 each nursing department or unit or, if applicable, with the recognized or certified collective
21 bargaining representative of direct care registered nurses at the facility.

22 (b) An audit of the preceding year's staffing plan submitted in compliance with this sec-
23 tion. The audit shall compare the requirements of the staffing plan with the actual staffing
24 for the period covered by the audit as well as measurements of actual acuity for all units
25 within the facility.

26 (2) A facility required to have a staffing plan under this section shall:

27 (a) Prominently post within each unit of the facility the daily written nursing staffing
28 plan to reflect the minimum direct care registered nurse-to-patient staffing ratios estab-
29 lished by section 3 of this 2007 Act as a means of public information and protection;

30 (b) Upon request, make copies of the staffing plan filed with the Department of Human
31 Services available to the public; and

32 (c) Provide each patient and family member with a toll-free hotline number for the de-
33 partment that may be used to report inadequate direct care registered nurse staffing. Within
34 24 hours after receiving a complaint, the department shall conduct an investigation to de-
35 termine whether a violation has occurred.

36 (3) A facility may not directly assign any person who is not a licensed direct care regis-
37 tered nurse to perform functions that must be provided by a licensed direct care registered
38 nurse, including performing tasks that require the clinical assessment, judgment and skill
39 of a licensed direct care registered nurse. These functions include, but are not limited to:

40 (a) Nursing activities that require nursing assessment and judgment;

41 (b) Physical, psychological and social assessments that require nursing judgment, inter-
42 vention, referral or follow-up;

43 (c) Formulation of the plan of nursing care and evaluation of the patient's response to
44 the care provided;

45 (d) Administration of medications; and

1 (e) Health teaching and health counseling.

2 (4) A full-time direct care registered nurse executive leader shall be employed by each
3 facility to be responsible for:

4 (a) Overall execution of the resources to ensure sufficient direct care registered nurse
5 staffing is provided by the facility;

6 (b) Overall quality assurance of nursing care provided by the facility; and

7 (c) Overall occupational health and safety of nursing staff employed by the facility.

8 (5) For the purpose of compliance with the minimum direct care registered nurse-to-
9 patient staffing ratios established by section 3 of this 2007 Act, a direct care registered nurse
10 may not be assigned to or be included in the count of assigned direct care registered nurse
11 staff in a nursing department or unit or a clinical practice area within the facility unless that
12 direct care registered nurse has had the appropriate orientation in that clinical practice area
13 sufficient to provide competent nursing care to the patients in that area, and has demon-
14 strated current competence in providing care in that area.

15 (6) The Department of Human Services shall require by rule that a facility adopt, dis-
16 seminate to direct care registered nurses and comply with a written policy that meets the
17 requirements of this section and establishes the circumstances under which a direct care
18 registered nurse may refuse a work assignment. The work assignment policy shall include,
19 but not be limited to:

20 (a) A provision that permits a direct care registered nurse to refuse any assignment that:

21 (A) The nurse is not prepared by education, training or experience to safely fulfill without
22 compromising or jeopardizing patient safety, the nurse's ability to meet foreseeable patient
23 needs or the nurse's license; or

24 (B) Would violate requirements established by sections 1 to 5 of this 2007 Act.

25 (b) Reasonable requirements and methods for providing prior notice to the direct care
26 registered nurse's supervisor regarding the nurse's request and supporting reasons for being
27 relieved of the assignment or continued duty.

28 (c) A provision that allows, when feasible, an opportunity for the supervisor to review the
29 specific conditions supporting the direct care registered nurse's request, and to decide
30 whether to remedy the conditions, to relieve the nurse of the assignment or to deny the
31 nurse's request to be relieved of the assignment or continued duty.

32 (d) A process that permits the direct care registered nurse to exercise the right to refuse
33 the assignment or continued duty status when the supervisor denies the request to be re-
34 lieved if:

35 (A) The supervisor rejects the request without proposing a remedy or the proposed
36 remedy would be inadequate or untimely;

37 (B) The complaint and investigation process with a regulatory agency would be untimely
38 to address the concern; and

39 (C) The nurse refusing the work assignment believes in good faith that the assignment
40 meets conditions justifying refusal.

41 (7) A nurse who refuses an assignment pursuant to a work assignment policy established
42 by this section shall not, because of the refusal, be considered to have engaged in negligent
43 or incompetent action or patient abandonment, or otherwise to have violated applicable legal
44 standards of nursing.

45 **SECTION 5.** (1) The Department of Human Services may impose on a facility that fails

1 to anticipate, design, maintain or adhere to a daily written nurse staffing plan in accordance
 2 with the provisions of sections 1 to 5 of this 2007 Act or rules adopted in accordance with
 3 sections 1 to 5 of this 2007 Act:

4 (a) Revocation or suspension of the facility's license or registration; and

5 (b) A civil penalty of not more than \$25,000 for each violation.

6 (2) Each day a facility is in violation of the provisions of sections 1 to 5 of this 2007 Act
 7 or rules adopted in accordance with sections 1 to 5 of this 2007 Act is a separate violation.

8 (3) Civil penalties imposed under this section are in addition to any other penalties that
 9 may be prescribed by law.

10 (4) Civil penalties may be assessed in any court of competent jurisdiction in any action
 11 brought on behalf of any patient or resident aggrieved by a violation of the provisions of
 12 sections 1 to 5 of this 2007 Act or rules adopted in accordance with sections 1 to 5 of this
 13 2007 Act.

14 (5) Civil penalties assessed under this section shall be deposited in the State Treasury
 15 and credited to the Nursing Education Grant Fund established under ORS 353.612.

16 (6) Falsification of any documents required to be filed with the department by sections
 17 1 to 5 of this 2007 Act is a Class A misdemeanor. A facility shall be subject to fine when the
 18 facility is found to falsify or causes to falsify documentation required by sections 1 to 5 of
 19 this 2007 Act.

20 **SECTION 6. ORS 441.162, 441.164 and 441.170 are repealed.**

21 **SECTION 7.** ORS 441.030 is amended to read:

22 441.030. (1) The Department of Human Services, pursuant to ORS 479.215, shall deny, suspend
 23 or revoke a license in any case where the State Fire Marshal, or the representative of the State
 24 Fire Marshal, certifies that there is a failure to comply with all applicable laws, lawful ordinances
 25 and rules relating to safety from fire.

26 (2) The department may deny, suspend or revoke a license in any case where it finds that there
 27 has been a substantial failure to comply with ORS 441.015 to 441.063, 441.085, 441.087, 441.990 (3)
 28 or the rules or minimum standards adopted under those statutes.

29 (3) The department may suspend or revoke a license issued under ORS 441.025 for failure to
 30 comply with a department order arising from a health care facility's substantial lack of compliance
 31 with the provisions of ORS 441.015 to 441.063, 441.084 to 441.087 and 441.990 (3) or ORS [441.162
 32 or] 441.166, or the rules adopted thereunder, or for failure to pay a civil penalty imposed under ORS
 33 [441.170 or] 441.710.

34 (4) The department may order a long term care facility licensed under ORS 441.025 to restrict
 35 the admission of patients when the department finds an immediate threat to patient health and
 36 safety arising from failure of the long term care facility to be in compliance with ORS 441.015 to
 37 441.063, 441.084 to 441.087 and the rules adopted pursuant thereto.

38 (5) Any long term care facility which has been ordered to restrict the admission of patients
 39 pursuant to subsection (4) of this section shall post a notice of such restriction, provided by the
 40 department, on all doors providing ingress to and egress from the facility, for the duration of the
 41 restriction.

42 **SECTION 8.** ORS 441.166 is amended to read:

43 441.166. (1) When a hospital learns about the need for replacement staff, the hospital shall make
 44 every reasonable effort to obtain registered nurses, licensed practical nurses or certified nursing
 45 assistants for unfilled hours or shifts before requiring a registered nurse, licensed practical nurse

1 or certified nursing assistant to work overtime.

2 (2) A hospital may not require a registered nurse, licensed practical nurse or certified nursing
3 assistant to work:

4 (a) Beyond the agreed-upon shift;

5 (b) More than 48 hours in any hospital-defined work week; or

6 (c) More than 12 consecutive hours in a 24-hour time period, except that a hospital may require
7 an additional hour of work beyond the 12 hours if:

8 (A) A staff vacancy for the next shift becomes known at the end of the current shift; or

9 (B) There is a potential harm to an assigned patient if the registered nurse, licensed practical
10 nurse or certified nursing assistant leaves the assignment or transfers care to another.

11 (3)(a) Time spent in required meetings or receiving education or training shall be included as
12 hours worked for purposes of subsection (2) of this section.

13 (b) Time spent on call but away from the premises of the employer may not be included as hours
14 worked for purposes of subsection (2) of this section.

15 (c) Time spent on call or on standby when the registered nurse, licensed practical nurse or
16 certified nursing assistant is required to be at the premises of the employer shall be included as
17 hours worked for purposes of subsection (2) of this section.

18 (4) The provisions of this section do not apply to nursing staff needs:

19 (a) In the event of a national or state emergency or circumstances requiring the implementation
20 of a facility disaster plan;

21 (b) In emergency circumstances identified by the Department of Human Services by rule; or

22 (c) If a hospital has made reasonable efforts to contact *[all of the]* on-call nursing staff or staffing
23 agencies *[on the list described in ORS 441.162]* and is unable to obtain replacement staff in a timely
24 manner.

25 **SECTION 9.** ORS 441.180 is amended to read:

26 441.180. (1) A hospital shall post a notice summarizing the provisions of ORS *[441.162,]* 441.166,
27 441.168, 441.174, 441.176, 441.178 and 441.192 in a conspicuous place on the premises of the hospital.
28 The notice must be posted where notices to employees and applicants for employment are custom-
29 arily displayed.

30 (2) Any hospital that willfully violates this section is subject to a civil penalty not to exceed
31 \$500. Civil penalties under this section shall be imposed by the Department of Human Services in
32 the manner provided by ORS 183.745.

33 **SECTION 10.** The Department of Human Services shall adopt the rules required by sec-
34 tion 2 of this 2007 Act by January 1, 2009.

35 **SECTION 11.** This 2007 Act takes effect January 1, 2009.

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