
SENATE BILL 5344

State of Washington

66th Legislature

2019 Regular Session

By Senators Cleveland, O'Ban, Hobbs, Takko, Mullet, Palumbo, Rivers, Wellman, and Hunt

Read first time 01/17/19. Referred to Committee on Health & Long Term Care.

1 AN ACT Relating to nursing fatigue; amending RCW 70.41.420,
2 70.41.425, 18.79.200, 18.79.210, and 49.28.140; amending 2017 c 249 s
3 4 (uncodified); reenacting and amending RCW 18.79.260; providing an
4 effective date; and providing expiration dates.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 70.41.420 and 2017 c 249 s 2 are each amended to
7 read as follows:

8 (1) By September 1, 2008, each hospital shall establish a nurse
9 staffing committee, either by creating a new committee or assigning
10 the functions of a nurse staffing committee to an existing committee.
11 At least one-half of the members of the nurse staffing committee
12 shall be registered nurses currently providing direct patient care
13 and up to one-half of the members shall be determined by the hospital
14 administration. The selection of the registered nurses providing
15 direct patient care shall be according to the collective bargaining
16 agreement if there is one in effect at the hospital. If there is no
17 applicable collective bargaining agreement, the members of the nurse
18 staffing committee who are registered nurses providing direct patient
19 care shall be selected by their peers.

20 (2) Participation in the nurse staffing committee by a hospital
21 employee shall be on scheduled work time and compensated at the

1 appropriate rate of pay. Nurse staffing committee members shall be
2 relieved of all other work duties during meetings of the committee.

3 (3) Primary responsibilities of the nurse staffing committee
4 shall include:

5 (a) Development and oversight of an annual patient care unit and
6 shift-based nurse staffing plan, based on the needs of patients, to
7 be used as the primary component of the staffing budget. Factors to
8 be considered in the development of the plan should include, but are
9 not limited to:

10 (i) Census, including total numbers of patients on the unit on
11 each shift and activity such as patient discharges, admissions, and
12 transfers;

13 (ii) Level of intensity of all patients and nature of the care to
14 be delivered on each shift;

15 (iii) Skill mix;

16 (iv) Level of experience and specialty certification or training
17 of nursing personnel providing care;

18 (v) The need for specialized or intensive equipment;

19 (vi) The architecture and geography of the patient care unit,
20 including but not limited to placement of patient rooms, treatment
21 areas, nursing stations, medication preparation areas, and equipment;

22 (vii) Staffing guidelines adopted or published by national
23 nursing professional associations, specialty nursing organizations,
24 and other health professional organizations;

25 (viii) Availability of other personnel supporting nursing
26 services on the unit; and

27 (ix) Regular review of aggregate data on missed meal and rest
28 breaks and development of strategies to enable registered nurses to
29 take meal and rest breaks as required by law or the terms of an
30 applicable collective bargaining agreement, if any, between the
31 hospital and a representative of the nursing staff;

32 (b) Semiannual review of the staffing plan against patient need
33 and known evidence-based staffing information, including the nursing
34 sensitive quality indicators collected by the hospital;

35 (c) Review, assessment, and response to staffing variations
36 ~~((or)),~~ concerns, or complaints presented to the committee on a
37 quarterly basis if variations, concerns, or complaints are presented.

38 (4) In addition to the factors listed in subsection (3)(a) of
39 this section, hospital finances and resources must be taken into
40 account in the development of the nurse staffing plan.

1 (5) The staffing plan must not diminish other standards contained
2 in state or federal law and rules, or the terms of an applicable
3 collective bargaining agreement, if any, between the hospital and a
4 representative of the nursing staff.

5 (6) The committee will produce the hospital's annual nurse
6 staffing plan. If this staffing plan is not adopted by the hospital,
7 the chief executive officer shall provide a written explanation of
8 the reasons why the plan was not adopted to the committee. The chief
9 executive officer must then either: (a) Identify those elements of
10 the proposed plan being changed prior to adoption of the plan by the
11 hospital or (b) prepare an alternate annual staffing plan that must
12 be adopted by the hospital. Beginning January 1, 2019, each hospital
13 shall submit its staffing plan to the department and thereafter on an
14 annual basis and at any time in between that the plan is updated.

15 (7) Beginning January 1, 2019, each hospital shall implement the
16 staffing plan and assign nursing personnel to each patient care unit
17 in accordance with the plan.

18 (a) A registered nurse may report to the staffing committee any
19 variations where the nurse personnel assignment in a patient care
20 unit is not in accordance with the adopted staffing plan and may make
21 a complaint to the committee based on the variations.

22 (b) Shift-to-shift adjustments in staffing levels required by the
23 plan may be made by the appropriate hospital personnel overseeing
24 patient care operations. If a registered nurse on a patient care unit
25 objects to a shift-to-shift adjustment, the registered nurse may
26 submit the complaint to the staffing committee.

27 (c) A registered nurse may report to the staffing committee
28 instances of missed meal and rest breaks.

29 (d) Staffing committees shall develop a process to examine and
30 respond to data submitted under (a) ~~((and))~~, (b), and (c) of this
31 subsection, including the ability to determine if a specific
32 complaint is resolved or dismissing a complaint based on
33 unsubstantiated data.

34 (8) Each hospital shall post, in a public area on each patient
35 care unit, the nurse staffing plan and the nurse staffing schedule
36 for that shift on that unit, as well as the relevant clinical
37 staffing for that shift. The staffing plan and current staffing
38 levels must also be made available to patients and visitors upon
39 request.

1 (9) A hospital may not retaliate against or engage in any form of
2 intimidation of:

3 (a) An employee for performing any duties or responsibilities in
4 connection with the nurse staffing committee; or

5 (b) An employee, patient, or other individual who notifies the
6 nurse staffing committee or the hospital administration of his or her
7 concerns on nurse staffing.

8 (10) This section is not intended to create unreasonable burdens
9 on critical access hospitals under 42 U.S.C. Sec. 1395i-4. Critical
10 access hospitals may develop flexible approaches to accomplish the
11 requirements of this section that may include but are not limited to
12 having nurse staffing committees work by telephone or email.

13 **Sec. 2.** RCW 70.41.425 and 2017 c 249 s 3 are each amended to
14 read as follows:

15 (1)(a) The department shall investigate a complaint submitted
16 under this section for violation of RCW 70.41.420 following receipt
17 of a complaint with documented evidence of failure to:

18 (i) Form or establish a staffing committee;

19 (ii) Conduct a semiannual review of a nurse staffing plan;

20 (iii) Submit a nurse staffing plan on an annual basis and any
21 updates; (~~or~~)

22 (iv) (~~(A)~~) Follow the nursing personnel assignments in a patient
23 care unit in violation of RCW 70.41.420(7)(a) or shift-to-shift
24 adjustments in staffing levels in violation of RCW 70.41.420(7)(b);
25 or

26 (v) Provide meal and rest breaks as required by law or the terms
27 of an applicable collective bargaining agreement, if any, between the
28 hospital and a representative of the nursing staff.

29 (~~(B)~~) (b)(i) The department may only investigate a complaint
30 under (~~this subsection (1)~~) (a)(iv) or (v) of this subsection after
31 making an assessment that the submitted evidence indicates a
32 continuing pattern of unresolved violations of RCW 70.41.420(7) (a)
33 (~~or~~), (b), or (c) that were submitted to the nurse staffing
34 committee excluding complaints determined by the nurse staffing
35 committee to be resolved or dismissed. The submitted evidence must
36 include the aggregate data contained in the complaints submitted to
37 the hospital's nurse staffing committee that indicate a continuing
38 pattern of unresolved violations for a minimum sixty-day continuous
39 period leading up to receipt of the complaint by the department.

1 (~~(c)~~) (ii) The department may not investigate a complaint under
2 (~~this subsection (1)~~) (a) (iv) or (v) of this subsection in the event
3 of unforeseeable emergency circumstances or if the hospital, after
4 consultation with the nurse staffing committee, documents it has made
5 reasonable efforts to obtain staffing to meet required assignments
6 but has been unable to do so.

7 (~~(b)~~) (c) After an investigation conducted under (a) of this
8 subsection, if the department determines that there has been a
9 violation, the department shall require the hospital to submit a
10 corrective plan of action within forty-five days of the presentation
11 of findings from the department to the hospital.

12 (2) In the event that a hospital fails to submit or submits but
13 fails to follow such a corrective plan of action in response to a
14 violation or violations found by the department based on a complaint
15 filed pursuant to subsection (1) of this section, the department may
16 impose, for all violations asserted against a hospital at any time, a
17 civil penalty of one hundred dollars per day until the hospital
18 submits or begins to follow a corrective plan of action or takes
19 other action agreed to by the department.

20 (3) The department shall maintain for public inspection records
21 of any civil penalties, administrative actions, or license
22 suspensions or revocations imposed on hospitals under this section.

23 (4) For purposes of this section, "unforeseeable emergency
24 circumstance" means:

25 (a) Any unforeseen national, state, or municipal emergency;

26 (b) When a hospital disaster plan is activated;

27 (c) Any unforeseen disaster or other catastrophic event that
28 substantially affects or increases the need for health care services;
29 or

30 (d) When a hospital is diverting patients to another hospital or
31 hospitals for treatment or the hospital is receiving patients who are
32 from another hospital or hospitals.

33 (5) Nothing in this section shall be construed to preclude the
34 ability to otherwise submit a complaint to the department for failure
35 to follow RCW 70.41.420.

36 (6) The department shall submit a report to the legislature on
37 December 31, 2020. This report shall include the number of complaints
38 submitted to the department under this section, the disposition of
39 these complaints, the number of investigations conducted, the
40 associated costs for complaint investigations, and recommendations

1 for any needed statutory changes. The department shall also project,
2 based on experience, the impact, if any, on hospital licensing fees
3 over the next four years. Prior to the submission of the report, the
4 secretary shall convene a stakeholder group consisting of the
5 Washington state hospital association, the Washington state nurses
6 association, service employees international union healthcare 1199NW,
7 and united food and commercial workers 21. The stakeholder group
8 shall review the report prior to its submission to review findings
9 and jointly develop any legislative recommendations to be included in
10 the report.

11 (7) No fees shall be increased to implement chapter 249, Laws of
12 2017 prior to July 1, 2021.

13 (8) This section expires June 1, 2023.

14 **Sec. 3.** RCW 18.79.260 and 2012 c 164 s 407, 2012 c 13 s 3, and
15 2012 c 10 s 37 are each reenacted and amended to read as follows:

16 (1) A registered nurse under his or her license may perform for
17 compensation nursing care, as that term is usually understood, to
18 individuals with illnesses, injuries, or disabilities.

19 (2) A registered nurse may, at or under the general direction of
20 a licensed physician and surgeon, dentist, osteopathic physician and
21 surgeon, naturopathic physician, optometrist, podiatric physician and
22 surgeon, physician assistant, osteopathic physician assistant,
23 advanced registered nurse practitioner, or midwife acting within the
24 scope of his or her license, administer medications, treatments,
25 tests, and inoculations, whether or not the severing or penetrating
26 of tissues is involved and whether or not a degree of independent
27 judgment and skill is required. Such direction must be for acts which
28 are within the scope of registered nursing practice.

29 (3) A registered nurse may delegate tasks of nursing care to
30 other individuals where the registered nurse determines that it is in
31 the best interest of the patient.

32 (a) The delegating nurse shall:

33 (i) Determine the competency of the individual to perform the
34 tasks;

35 (ii) Evaluate the appropriateness of the delegation;

36 (iii) Supervise the actions of the person performing the
37 delegated task; and

38 (iv) Delegate only those tasks that are within the registered
39 nurse's scope of practice.

1 (b) A registered nurse, working for a home health or hospice
2 agency regulated under chapter 70.127 RCW, may delegate the
3 application, instillation, or insertion of medications to a
4 registered or certified nursing assistant under a plan of care.

5 (c) Except as authorized in (b) or (e) of this subsection, a
6 registered nurse may not delegate the administration of medications.
7 Except as authorized in (e) of this subsection, a registered nurse
8 may not delegate acts requiring substantial skill, and may not
9 delegate piercing or severing of tissues. Acts that require nursing
10 judgment shall not be delegated.

11 (d) No person may coerce a nurse into compromising patient safety
12 by requiring the nurse to delegate if the nurse determines that it is
13 inappropriate to do so. Nurses shall not be subject to any employer
14 reprisal or disciplinary action by the nursing care quality assurance
15 commission for refusing to delegate tasks or refusing to provide the
16 required training for delegation if the nurse determines delegation
17 may compromise patient safety.

18 (e) For delegation in community-based care settings or in-home
19 care settings, a registered nurse may delegate nursing care tasks
20 only to registered or certified nursing assistants or home care aides
21 certified under chapter 18.88B RCW. Simple care tasks such as blood
22 pressure monitoring, personal care service, diabetic insulin device
23 set up, verbal verification of insulin dosage for sight-impaired
24 individuals, or other tasks as defined by the nursing care quality
25 assurance commission are exempted from this requirement.

26 (i) "Community-based care settings" includes: Community
27 residential programs for people with developmental disabilities,
28 certified by the department of social and health services under
29 chapter 71A.12 RCW; adult family homes licensed under chapter 70.128
30 RCW; and assisted living facilities licensed under chapter 18.20 RCW.
31 Community-based care settings do not include acute care or skilled
32 nursing facilities.

33 (ii) "In-home care settings" include an individual's place of
34 temporary or permanent residence, but does not include acute care or
35 skilled nursing facilities, and does not include community-based care
36 settings as defined in (e)(i) of this subsection.

37 (iii) Delegation of nursing care tasks in community-based care
38 settings and in-home care settings is only allowed for individuals
39 who have a stable and predictable condition. "Stable and predictable
40 condition" means a situation in which the individual's clinical and

1 behavioral status is known and does not require the frequent presence
2 and evaluation of a registered nurse.

3 (iv) The determination of the appropriateness of delegation of a
4 nursing task is at the discretion of the registered nurse. Other than
5 delegation of the administration of insulin by injection for the
6 purpose of caring for individuals with diabetes, the administration
7 of medications by injection, sterile procedures, and central line
8 maintenance may never be delegated.

9 (v) When delegating insulin injections under this section, the
10 registered nurse delegator must instruct the individual regarding
11 proper injection procedures and the use of insulin, demonstrate
12 proper injection procedures, and must supervise and evaluate the
13 individual performing the delegated task weekly during the first four
14 weeks of delegation of insulin injections. If the registered nurse
15 delegator determines that the individual is competent to perform the
16 injection properly and safely, supervision and evaluation shall occur
17 at least every ninety days thereafter.

18 (vi) (A) The registered nurse shall verify that the nursing
19 assistant or home care aide, as the case may be, has completed the
20 required core nurse delegation training required in chapter 18.88A or
21 18.88B RCW prior to authorizing delegation.

22 (B) Before commencing any specific nursing tasks authorized to be
23 delegated in this section, a home care aide must be certified
24 pursuant to chapter 18.88B RCW and must comply with RCW 18.88B.070.

25 (vii) The nurse is accountable for his or her own individual
26 actions in the delegation process. Nurses acting within the protocols
27 of their delegation authority are immune from liability for any
28 action performed in the course of their delegation duties.

29 (viii) Nursing task delegation protocols are not intended to
30 regulate the settings in which delegation may occur, but are intended
31 to ensure that nursing care services have a consistent standard of
32 practice upon which the public and the profession may rely, and to
33 safeguard the authority of the nurse to make independent professional
34 decisions regarding the delegation of a task.

35 (f) The nursing care quality assurance commission may adopt rules
36 to implement this section.

37 (4) Only a person licensed as a registered nurse may instruct
38 nurses in technical subjects pertaining to nursing.

1 (5) Only a person licensed as a registered nurse may hold herself
2 or himself out to the public or designate herself or himself as a
3 registered nurse.

4 (6) (a) A registered nurse may not perform direct clinical nursing
5 care for compensation for more than sixty hours in a week, except for
6 direct clinical nursing care that:

7 (i) Occurs because of an unforeseeable emergent circumstance; or

8 (ii) Is performed by a registered nurse who is employed as a
9 flight nurse.

10 (b) For purposes of this subsection:

11 (i) "Unforeseeable emergency circumstance" means any:

12 (A) Unforeseen national, state, or municipal emergency;

13 (B) Time a hospital disaster plan is activated; or

14 (C) Unforeseen disaster or other catastrophic event that
15 substantially affects or increases the need for health care services.

16 (ii) "Week" means a period of seven consecutive calendar days
17 regardless of where direct clinical nursing care is provided. The
18 beginning and ending day and time of the week may be defined and
19 adjusted by the nurse, except that the beginning and ending day and
20 time of the week may not be adjusted for the purposes of evading the
21 requirements of this subsection.

22 (iii) An employer is not held responsible for tracking the total
23 hours worked of a registered nurse.

24 **Sec. 4.** RCW 18.79.200 and 1996 c 191 s 62 are each amended to
25 read as follows:

26 (1) An applicant for a license to practice as a registered nurse,
27 advanced registered nurse practitioner, or licensed practical nurse
28 shall:

29 (a) Comply with administrative procedures, administrative
30 requirements, and fees as determined under RCW 43.70.250 and
31 43.70.280; and

32 (b) Attest at the time of application that he or she will not
33 provide direct clinical nursing care under his or her license for
34 compensation for more than the time permitted by RCW 18.79.260(6).

35 (2) The commission shall use existing paper or electronic
36 licensing systems for an applicant to attest to the requirement under
37 subsection (1) (b) of this section.

1 **Sec. 5.** RCW 18.79.210 and 1996 c 191 s 63 are each amended to
2 read as follows:

3 (1) A license issued under this chapter must be renewed, except
4 as provided in this chapter. The licensee shall comply with
5 administrative procedures, administrative requirements, and fees as
6 determined under RCW 43.70.250 and 43.70.280.

7 (2) A registered nurse must attest at the time of license renewal
8 that he or she has not provided direct clinical nursing care under
9 his or her license for compensation more than the time permitted by
10 RCW 18.78.260(6).

11 (3) The commission shall use existing paper or electronic
12 licensing systems for an applicant to attest to the requirement under
13 subsection (2) of this section.

14 **Sec. 6.** RCW 49.28.140 and 2002 c 112 s 3 are each amended to
15 read as follows:

16 (1) No employee of a health care facility may be required to work
17 overtime. Attempts to compel or force employees to work overtime are
18 contrary to public policy, and any such requirement contained in a
19 contract, agreement, or understanding is void.

20 (2) The acceptance by any employee of overtime is strictly
21 voluntary, and the refusal of an employee to accept such overtime
22 work is not grounds for discrimination, dismissal, discharge, or any
23 other penalty, threat of reports for discipline, or employment
24 decision adverse to the employee.

25 (3) This section does not apply to overtime work that occurs:

26 (a) Because of any unforeseeable emergent circumstance;

27 (b) Because of prescheduled on-call time. If an employee on
28 prescheduled on-call is activated and working a shift immediately
29 before or after a regularly scheduled twelve-hour shift, a health
30 care facility must use reasonable efforts to find a replacement for
31 the employee if he or she indicates he or she is fatigued and needs
32 to be replaced;

33 (c) When the employer documents that the employer has used
34 reasonable efforts to obtain staffing. An employer has not used
35 reasonable efforts if overtime work is used to fill vacancies
36 resulting from chronic staff shortages; or

37 (d) When an employee is required to work overtime to complete a
38 patient care procedure already in progress where the absence of the
39 employee could have an adverse effect on the patient.

1 **Sec. 7.** 2017 c 249 s 4 (uncodified) is amended to read as
2 follows:

3 Sections 1 and 5 of this act expire((s)) June 1, 2023.

4 NEW SECTION. **Sec. 8.** This act takes effect January 1, 2020.

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