Washington State
House of Representatives
Office of Program Research

BILL ANALYSIS

Labor & Workplace Standards Committee

HB 1868

Brief Description: Improving worker safety and patient care in health care facilities by addressing staffing needs, overtime, meal and rest breaks, and enforcement.

Sponsors: Representatives Riccelli, Volz, Berry, Fitzgibbon, Shewmake, Bateman, Berg, Bronoske, Callan, Cody, Davis, Duerr, Goodman, Gregerson, Johnson, J., Kirby, Macri, Peterson, Ramel, Ramos, Ryu, Santos, Sells, Senn, Sullivan, Simmons, Chopp, Bergquist, Graham, Valdez, Wicks, Dolan, Pollet, Ortiz-Self, Paul, Stonier, Donaghy, Ormsby, Slatter, Hackney, Taylor, Harris-Talley, Kloba and Frame.

Brief Summary of Bill

- Requires the Department of Labor and Industries (Department) to regulate and enforce hospital staffing committees and minimum staffing standards.
- Establishes minimum staffing standards for specific patient units.
- Amends the meal and rest breaks and overtime provisions for health care employees.
- Provides administrative enforcement and a private cause of action for violations.

Hearing Date: 1/19/22

Staff: Trudes Tango (786-7384).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Nurse staffing committees**.**
Hospitals are required to have nurse staffing committees, whose membership consist of: (a) at least one-half who are registered nurses providing direct patient care; and (b) up to one-half who are determined by the hospital administration. Nurse staffing committees develop and review annual staffing plans and respond to staffing variations and complaints presented to the nurse staffing committee.

When developing the annual staffing plan, the committee must consider certain statutory factors, such as patient activity, intensity level, nature of care required, and level of experience of staff.

If the staffing plan is not adopted by the hospital, the chief executive officer must provide reasons why the plan was not adopted and either identify the changes to the plan prior to the hospital's adoption or prepare an alternative staffing plan that the hospital will adopt. Hospitals must submit their nurse staffing plans annually to the Department of Health (DOH).

Registered nurses may submit complaints to the staffing committee about variations to the staffing plan and shift-to-shift adjustments. Nurse staffing committees must create a process to review complaints.

The DOH may investigate complaints about violations of the nurse staffing statutes, as well as complaints related to failure to: establish a nurse staffing committee; submit a plan annually; conduct semiannual reviews of the plan; and follow nursing assignments or shift-to-shift adjustments.

The DOH may investigate complaints of nursing personnel assignments and shift-to-shift adjustments only if the complainant submits evidence of data showing a continuing pattern of unresolved violations for a minimum 60-day continuous period. If the complaint is substantiated, the DOH will issue the hospital a statement of deficiencies. The hospital has 45 days to submit a corrective action plan. If the hospital fails to submit or follow the corrective action plan, the DOH may impose a civil penalty of $100 per day.

The DOH may not investigate complaints in the event of unforeseeable emergency circumstances or if the hospital made reasonable efforts to obtain staffing but was unable to do so. "Unforeseeable emergency circumstance" is defined as: (1) any unforeseen national, state, or municipal emergency; (2) when a hospital disaster plan is activated; (3) any unforeseen disaster or catastrophic event that substantially affects the need for health care services; or (4) when a hospital is diverting patients to another hospital or receiving diverted patients from another hospital.

Various provisions related to the staffing committees, including requirements for the DOH to investigate complaints, is set to expire June 1, 2023.

Meal and rest breaks**.**
Generally, hospitals must provide certain employees with uninterrupted meal and rest breaks.

This rule does not apply:

- in a case of an unforeseeable emergent circumstance; or
- in a clinical circumstance that may lead to a significant adverse effect on the patient: (1) without the knowledge, skill, or ability of the employee; or (2) due to an unforeseen or unavoidable event requiring immediate action.

"Unforeseeable emergent circumstance" means: (1) any unforeseen declared national, state, or municipal emergency; (2) when a health care facility disaster plan is activated; or (3) any unforeseen disaster or other catastrophic event that substantially effects or increases the need for health care services.

In the case of a clinical circumstance, if a rest break is interrupted by the employer before 10 complete minutes, the employee must be given an additional 10 minute uninterrupted rest break at the earliest reasonable time during the work period.

The meal and rest break provision applies to a hospital employee who is:

- involved in direct patient care activities or clinical services;
- receiving an hourly wage or covered by a collective bargaining agreement; and
- is a licensed practical nurse, registered nurse, surgical technologist, diagnostic radiologic technologist, cardiovascular invasive specialist, respiratory care practitioner, or a nursing assistant-certified.

Overtime restrictions**.**

Hospitals and other health care facilities (such as hospices, rural health care facilities, and facilities operated by the Department of Corrections) are prohibited from requiring certain employees to work overtime. The definition of "employee" is the same as used in the meal and rest break statutes.

The overtime restriction does not apply to overtime work that occurs because of:

- any unforeseeable emergent circumstance;
- prescheduled on-call time, subject to certain limitations;
- when the employer documents that it has used reasonable efforts to obtain staffing. An employer has not used reasonable efforts if overtime work is used to fill vacancies resulting from chronic staff shortages; or
- when an employee must work overtime to complete a patient care procedure.

A violation of the overtime provision is a class 1 civil infraction.

Department of Labor and Industries**.**

The Department of Labor and Industries (Department) enforces the meal and rest break and overtime provisions, as well as other wage and hour laws and workplace health and safety standards. The Department has procedures for investigating complaints, issuing citations and notices of assessments, handling appeals, and imposing civil penalties.

Summary of Bill:

Staffing committees and staffing standards**.**
The staffing committee statutes are recodified to be under the jurisdiction of the Department of Labor and Industries (Department), rather than the Department of Health (DOH). The expiration date of the various provisions related to staffing committees and agency investigations is repealed.

Staffing standards: Minimum staffing standards are established for specific patient units. Direct care registered nurses may not be assigned more patients than the following for any shift (shown as nurse-to-patient ratios):

a. Emergency department: 1:3 nontrauma/noncritical care patients and 1:1 trauma/critical care patients;
b. Intensive care units: 1:2 or 1:1 depending on the stability of the patient as assessed by the nurse;
c. Labor and delivery: 1:2 and 1:1 patient for active labor and in all stages of labor for patients with complications;
d. Postpartum, antepartum, and well-baby nursery: 1:6 (mother and baby count as separate patients);
e. Operating room: 1:1;
f. Oncology: 1:4;
g. Postanesthesia care unit: 1:2;
h. Progressive care unit, intensive specialty care unit, or stepdown unit: 1:3;
i. Medical-surgical unit: 1:4;
j. Telemetry unit: 1:3;
k. Psychiatric unit: 1:6; and
l. Pediatrics: 1:3.

Direct care nursing assistants-certified may not be assigned more patients than the following for any shift:

a. Intensive care units: 1:8;
b. Cardiac unit: 1:4;
c. Labor and delivery: 1:8 and 1:4 patients for active labor and in all stages of labor for patients with complications;
d. Oncology: 1:7;
e. Postanesthesia care unit: 1:8;
f. Progressive care unit, intensive specialty care unit, or stepdown unit: 1:8;
g. Medical-surgical unit: 1:8;
h. Telemetry unit: 1:8;
i. Psychiatric unit: 1:7;
j. Pediatrics: 1:13;
k. Emergency department: 1:7;
l. Telesitting unit: 1:8; and
m. Cardiac monitoring unit: 1:50.

A direct care registered nurse or nursing assistant-certified may not be assigned to a nursing unit or clinical area unless that nurse first received orientation sufficient to provide competent care and the nurse has demonstrated current competence in providing care in that area.

Hospitals must implement the minimum staffing standards no later than two years after the effective date of the bill, except critical access hospitals, hospitals with fewer than 25 acute care beds, and certain sole community hospitals certified by the Centers for Medicare and Medicaid Services, have up to four years to implement the minimum staffing standards.

Staffing committees: Hospitals must have hospital staffing committees whose members must consist of: (1) at least 50 percent are direct care nursing and ancillary health care personnel who are nonsupervisory and nonmanagerial; and (2) up to 50 percent are determined by the hospital administration, and must include the chief financial officer, the chief nursing officers, and patient care unit directors and managers, or their designees.

Changes are made to the factors the staffing committee must consider when developing the staffing plan. Changes are made regarding the adoption of the staffing plan. If the staffing plan is not adopted by consensus of the hospital staffing committee, the prior staffing plan remains in effect and the hospital is subject to daily fines of $10,000. The daily fine is $100 for critical access hospitals, hospitals with fewer than 25 acute care beds, and certain sole community hospitals certified by the Centers for Medicare and Medicaid Services.

The chief executive officer must provide feedback to the staffing committee on a semiannual basis prior to the committee's semiannual review and adoption of the plan.

Ancillary health care personnel, patients, collective bargaining representatives, and other individuals are allowed to report on and file complaints to the staffing committee on variations of personnel assignments in patient care units. All complaints submitted to the staffing committee must be reviewed, regardless of what format the complainant uses to submit the complaint.

Charters: Hospital staffing committees must file a charter with the Department that includes:

- roles, responsibilities, and processes related to the functioning of the staffing committee;
- schedule for monthly staffing committee meetings;
- processes for complaints to be reviewed and resolved within 60 days of receipt;
- processes for attendance by any nurse, ancillary health care personnel, collective bargaining representative, patient or other individual who is involved in a complaint;
- processes for quarterly reviews of staff turnover rates; and
- policies for documenting meetings and document retention.

The hospital staffing committee must submit their staffing plan using a form created by the Department. The Department must review submitted staffing plans to ensure they are timely received and completed. Failure to timely submit a staffing plan or a charter will result in a violation and civil penalty of $25,000.

The Department must investigate submitted complaints. The provision limiting investigations to complaints with evidence of a continuing pattern of unresolved violations is removed. Provisions prohibiting investigation of complaints in the event of unforeseeable emergency circumstances or where the hospital documents efforts to obtain staffing are also removed. However, after an investigation, hospitals will not be found in violation of the minimum staffing standards if there were unforeseeable emergency circumstances or the hospital documents that it made reasonable efforts to obtain and retain staffing. What constitutes an "unforeseeable emergency circumstance" is amended to remove: (a) unforeseen disasters or other catastrophic events; and (b) when a hospital diverts patients or receives diverted patients.

No later than 30 days after a hospital deviates from its staffing plan, the hospital incident command must provide the staffing committee an assessment of staffing needs arising from the emergency and the hospital's plan to address the staffing needs. The staffing committee must develop a contingency staffing plan. The hospital may not deviate from its staffing plan for more than 90 days without the approval of the staffing committee.

The administrative civil penalty for not following a corrective action plan, after a violation has been determined, is increased from $100 per day, to $10,000 per day, except the $100 per day remains for critical access hospitals, hospitals with fewer than 25 acute care beds, and certain sole community hospitals certified by the Centers for Medicare and Medicaid Services. The fines apply until the hospital follows the corrective action plan for 90 days, after which the Department may reduce the accumulated fine. The Department must report violations on its website.

Meal and rest breaks and overtime restrictions.
Provisions that allowed certain "clinical circumstances" to exempt hospitals from meal and rest break requirements are removed.

The definition of "employee" is broadened, thereby applying the meal and rest break provisions and overtime restrictions to an employee who: (1) is involved in direct patient care activities or clinical services; and (2) receives an hourly wage or is covered by a collective bargaining agreement.

Unforeseen disasters or other catastrophic events that substantially affect the need for health care services is removed from the definition of "unforeseeable emergent circumstances".

For the purposes exemptions to the overtime restrictions: (1) the prescheduled on-call time must not exceed more than 20 hours per week; and (2) the health care facility's "reasonable efforts" to obtain staffing is not reasonable if overtime is used to fill vacancies from chronic staff shortages that persist longer than three months.

Department of Labor and Industries.
A person may file a complaint with the Department alleging violations of the staffing provisions,

meal and rest break requirements, and overtime restrictions. Procedures are established for the issuance of citations and notices of assessments, appeals, and other processes. The Department must enforce the overtime restrictions using citations and notices of assessments for violations rather than by civil infractions.

Unless different amounts are provided in specific provisions, the Department may impose a maximum penalty of $1,000 for each violation, up to three violations;$2,500 for the fourth violation; and $5,000 for each subsequent violation.

Civil cause of action.
Any employee of a health care facility, for purposes of meal and rest breaks and overtime restrictions, and any direct care nurse or direct care nursing assistant-certified, for purposes of staffing standards, and any exclusive bargaining representative, may bring a civil action for damages for violations of the chapter. A court may order to the plaintiff an award ranging from $100 to $10,000 per violation per day, plus reasonable attorneys' fees, and other equitable relief.

Appropriation: None.

Fiscal Note: Requested on January 13, 2022.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.