
SUBSTITUTE HOUSE BILL 1868

State of Washington

67th Legislature

2022 Regular Session

By House Labor & Workplace Standards (originally sponsored by Representatives Riccelli, Volz, Berry, Fitzgibbon, Shewmake, Bateman, Berg, Bronoske, Callan, Cody, Davis, Duerr, Goodman, Gregerson, J. Johnson, 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)

READ FIRST TIME 02/01/22.

1 AN ACT Relating to improving worker safety and patient care in
2 health care facilities by addressing staffing needs, overtime, meal
3 and rest breaks, and enforcement; amending RCW 70.41.410, 70.41.420,
4 70.41.425, 49.12.480, 49.28.130, 49.28.140, and 49.28.150; adding a
5 new chapter to Title 49 RCW; recodifying RCW 70.41.410, 70.41.420,
6 70.41.425, 49.12.480, 49.28.130, 49.28.140, and 49.28.150; repealing
7 2017 c 249 s 4 (uncodified); prescribing penalties; and providing an
8 effective date.

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

10 **Sec. 1.** RCW 70.41.410 and 2008 c 47 s 2 are each amended to read
11 as follows:

12 The definitions in this section apply throughout this section
13 ((and)), RCW 70.41.420 and 70.41.425 (as recodified by this act), and
14 section 5 of this act unless the context clearly requires otherwise.

15 (1) "Department" means the department of labor and industries.

16 (2) "Direct care nursing assistant-certified" means an individual
17 certified under chapter 18.88A RCW who provides direct care to
18 patients.

19 (3) "Direct care registered nurse" means an individual licensed
20 as a nurse under chapter 18.79 RCW who provides direct care to
21 patients.

1 (4) "Hospital" has the same meaning as defined in RCW 70.41.020,
2 and also includes state hospitals as defined in RCW 72.23.010.

3 ~~((2))~~ (5) "Hospital staffing committee" means the committee
4 established by a hospital under RCW 70.41.420 (as recodified by this
5 act).

6 (6) "Intensity" means the level of patient need for nursing care,
7 as determined by the nursing assessment.

8 ~~((3))~~ (7) "Nursing and ancillary health care personnel" means
9 ((registered nurses, licensed practical nurses, and unlicensed
10 assistive nursing personnel providing direct patient care)) a person
11 who is providing direct care or supportive services to patients.

12 ~~((4) "Nurse staffing committee" means the committee established~~
13 ~~by a hospital under RCW 70.41.420.~~

14 ~~(5))~~ (8) "Patient care unit" means any unit or area of the
15 hospital that provides patient care by registered nurses.

16 ~~((6))~~ (9) "Reasonable efforts" means that the employer, to the
17 extent reasonably possible, does all of the following but is unable
18 to obtain staffing coverage:

19 (a) Seeks individuals to volunteer to work extra time from all
20 available qualified staff who are working;

21 (b) Contacts qualified employees who have made themselves
22 available to work extra time;

23 (c) Seeks the use of per diem staff; and

24 (d) Seeks personnel from a contracted temporary agency when such
25 staffing is permitted by law or an applicable collective bargaining
26 agreement, and when the employer regularly uses a contracted
27 temporary agency.

28 (10) "Skill mix" means the experience of, and number and relative
29 percentages of ~~((registered nurses, licensed practical nurses, and~~
30 ~~unlicensed assistive personnel among the total number of nursing~~
31 ~~personnel)), nursing and ancillary health personnel.~~

32 (11) "Unforeseeable emergent circumstance" means:

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

34 (b) When a hospital disaster plan is activated.

35 NEW SECTION. Sec. 2. (1) The definitions in this subsection
36 apply throughout this section unless the context clearly requires
37 otherwise.

38 (a) "Department" means the department of labor and industries.

1 (b) "Direct care nursing assistant-certified" means an individual
2 certified under chapter 18.88A RCW who provides direct care to
3 patients.

4 (c) "Direct care registered nurse" means an individual licensed
5 as a nurse under chapter 18.79 RCW who provides direct care to
6 patients.

7 (d) "Hospital" has the same meaning as defined in RCW 70.41.020.

8 (e) "Hospital staffing committee" means the committee established
9 by a hospital under RCW 70.41.420 (as recodified by this act).

10 (f) "Patient care unit" means any unit or area of the hospital
11 that provides patient care by registered nurses.

12 (2)(a) A hospital shall comply with minimum staffing standards in
13 accordance with this section.

14 (b) The department shall enforce compliance with this section
15 under sections 10 through 12 of this act.

16 (3) Direct care registered nurses shall not be assigned more
17 patients than the following for any shift:

18 (a) Emergency department: One direct care registered nurse to
19 three nontrauma or noncritical care patients and one direct care
20 registered nurse to one trauma or critical care patient;

21 (b) Intensive care unit, such as critical care unit, special care
22 unit, coronary care unit, pediatric intensive care, neonatal
23 intensive care, neurological critical care unit, or a burn unit: One
24 direct care registered nurse to two patients or one direct care
25 registered nurse to one patient depending on the stability of the
26 patient as assessed by the direct care registered nurse on the unit;

27 (c) Labor and delivery: One direct care registered nurse to two
28 patients and one direct care registered nurse to one patient for
29 active labor and in all stages of labor for any patients with
30 complications;

31 (d) Postpartum, antepartum, and well-baby nursery: One direct
32 care registered nurse to six patients in postpartum, antepartum, and
33 well-baby nursery. In this context, the mother and the baby are each
34 counted as separate patients. This would mean, for example, one
35 direct care registered nurse to three mother-baby couplets;

36 (e) Operating room: One direct care registered nurse to one
37 patient;

38 (f) Oncology: One direct care registered nurse to four patients;

39 (g) Postanesthesia care unit: One direct care registered nurse to
40 two patients;

1 (h) Progressive care unit, intensive specialty care unit, or
2 stepdown unit: One direct care registered nurse to three patients;
3 (i) Medical-surgical unit: One direct care registered nurse to
4 four patients;
5 (j) Telemetry unit: One direct care registered nurse to three
6 patients;
7 (k) Psychiatric unit: One direct care registered nurse to six
8 patients;
9 (l) Pediatrics: One direct care registered nurse to three
10 patients.
11 (4) Direct care nursing assistants-certified shall not be
12 assigned more patients than the following for any shift:
13 (a) Intensive care unit, such as critical care unit, special care
14 unit, coronary care unit, pediatric intensive care, neonatal
15 intensive care, neurological critical care unit, or a burn unit: One
16 direct care nursing assistant-certified to eight patients;
17 (b) Cardiac unit: One direct care nursing assistant-certified to
18 four patients;
19 (c) Labor and delivery: One direct care nursing assistant-
20 certified to eight patients and one direct care nursing assistant-
21 certified to four patients for active labor and in all stages of
22 labor for any patients with complications;
23 (d) Oncology: One direct care nursing assistant-certified to
24 seven patients;
25 (e) Postanesthesia care unit: One direct care nursing assistant-
26 certified to eight patients;
27 (f) Progressive care unit, intensive specialty care unit, or
28 stepdown unit: One direct care nursing assistant-certified to eight
29 patients;
30 (g) Medical-surgical unit: One direct care nursing assistant-
31 certified to eight patients;
32 (h) Telemetry unit: One direct care nursing assistant-certified
33 to eight patients;
34 (i) Psychiatric unit: One direct care nursing assistant-certified
35 to seven patients;
36 (j) Pediatrics: One direct care nursing assistant-certified to 13
37 patients;
38 (k) Emergency department: One direct care nursing assistant-
39 certified to seven patients;

1 (l) Telesitting unit: One direct care nursing assistant-certified
2 to eight patients;

3 (m) Cardiac monitoring unit: One direct care nursing assistant-
4 certified to 50 patients.

5 (5) (a) The personnel assignment limits established in this
6 section are based on the type of care provided in these patient care
7 units, regardless of the specific name or reference the hospital
8 calls these units.

9 (b) The personnel assignment limits established in this section
10 represent the maximum number of patients to which a direct care
11 registered nurse or direct care nursing assistant-certified may be
12 assigned at all points during a shift.

13 (c) A hospital may not average the number of patients and the
14 total number of direct care registered nurses and direct care nursing
15 assistants-certified assigned to patients in a unit during any one
16 shift or over any period of time, in order to meet the personnel
17 assignment limits established in this section.

18 (6) Nothing in this section precludes a hospital from assigning
19 fewer patients to a direct care registered nurse or direct care
20 nursing assistant-certified than the limits established in this
21 section.

22 (7) The personnel assignment limits established in this section
23 do not decrease any nurse-to-patient staffing levels in effect
24 pursuant to a collective bargaining agreement or hospital's staffing
25 plan in effect on the effective date of this section.

26 (8) A direct care registered nurse or direct care nursing
27 assistant-certified may not be assigned to a nursing unit or clinical
28 area unless that nurse has first received orientation in that
29 clinical area sufficient to provide competent care to patients in
30 that area and has demonstrated current competence in providing care
31 in that area.

32 (9) (a) Except as provided in (b) of this subsection, a hospital
33 shall develop and implement minimum staffing standards into its
34 staffing plan required under RCW 70.41.420 (as recodified by this
35 act), no later than two years after the effective date of this
36 section.

37 (b) The following hospitals shall develop and implement minimum
38 staffing standards into their staffing plan required under RCW
39 70.41.420 (as recodified by this act) no later than four years after
40 the effective date of this section:

1 (i) Hospitals certified as critical access hospitals under 42
2 U.S.C. Sec. 1395i-4;

3 (ii) Hospitals with fewer than 25 acute care beds in operation;
4 and

5 (iii) Hospitals certified by the centers for medicare and
6 medicaid services as sole community hospitals as of January 1, 2013,
7 that: Have had less than 150 acute care licensed beds in fiscal year
8 2011; have a level III adult trauma service designation from the
9 department of health as of January 1, 2014; and are owned and
10 operated by the state or a political subdivision.

11 **Sec. 3.** RCW 70.41.420 and 2017 c 249 s 2 are each amended to
12 read as follows:

13 (1) By September 1, ~~((2008))~~ 2023, each hospital shall establish
14 a ~~((nurse))~~ hospital staffing committee, either by creating a new
15 committee or assigning the functions of ~~((a))~~ an existing nurse
16 staffing committee to ~~((an-existing))~~ a hospital staffing committee.

17 (a) At least ~~((one-half))~~ 50 percent of the members of the
18 ~~((nurse))~~ hospital staffing committee shall be ~~((registered-nurses))~~
19 nursing and ancillary health care personnel, who are nonsupervisory
20 and nonmanagerial, currently providing direct patient care ~~((and up~~
21 ~~to one-half of the members shall be determined by the hospital~~
22 ~~administration))~~. The selection of the ~~((registered-nurses-providing~~
23 ~~direct patient care))~~ nursing and ancillary health care personnel
24 shall be according to the collective bargaining ~~((agreement))~~
25 representative or representatives if there is one ~~((in-effect))~~ or
26 more at the hospital. If there is no ~~((applicable))~~ collective
27 bargaining ~~((agreement))~~ representative, the members of the ~~((nurse))~~
28 hospital staffing committee who are ~~((registered-nurses))~~ nursing and
29 ancillary health care personnel providing direct patient care shall
30 be selected by their peers.

31 (b) Up to 50 percent of the members of the hospital staffing
32 committee shall be determined by the hospital administration and
33 shall include but not be limited to the chief financial officer, the
34 chief nursing officers, and patient care unit directors or managers
35 or their designees.

36 (2) Participation in the ~~((nurse))~~ hospital staffing committee by
37 a hospital employee shall be on scheduled work time and compensated
38 at the appropriate rate of pay. ~~((Nurse))~~ Hospital staffing committee
39 members shall be relieved of all other work duties during meetings of

1 the committee. Additional staffing relief must be provided if
2 necessary to ensure committee members are able to attend hospital
3 staffing committee meetings.

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

6 (a) Development and oversight of an annual patient care unit and
7 shift-based ((nurse)) staffing plan, in compliance with the standards
8 established in section 2 of this act and based on the needs of
9 patients, to be used as the primary component of the staffing budget.
10 The hospital staffing committee shall use a uniform format or form,
11 created by the department, for complying with the requirement to
12 submit the annual staffing plan. The uniform format or form must
13 allow patients and the public to clearly understand and compare
14 staffing patterns and actual levels of staffing across facilities.
15 Hospitals may include a description of additional resources available
16 to support unit-level patient care and a description of the hospital,
17 including the size and type of facility. Factors to be considered in
18 the development of the plan should include, but are not limited to:

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

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

24 (iii) Skill mix;

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

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

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

31 ~~(vii) ((Staffing guidelines adopted or published by national~~
32 ~~nursing professional associations, specialty nursing organizations,~~
33 ~~and other health professional organizations;~~

34 ~~(viii))~~ Availability of other personnel supporting nursing
35 services on the unit; and

36 ~~((ix) Strategies to enable registered nurses to take meal and~~
37 ~~rest breaks as required by law or)) (viii) Ability to comply with the
38 terms of an applicable collective bargaining agreement, if any,
39 ((between the hospital and a representative of the nursing staff))
40 and relevant state and federal laws and rules, including those~~

1 regarding meal and rest breaks and use of overtime and on-call
2 shifts;

3 (b) Semiannual review of the staffing plan against the ability to
4 meet staffing standards established under section 2 of this act,
5 patient need, and known evidence-based staffing information,
6 including the nursing sensitive quality indicators collected by the
7 hospital;

8 (c) Review, assessment, and response to staffing variations or
9 ((concerns)) complaints presented to the committee.

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

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

17 (6) (a) The committee ((will)) shall produce the hospital's annual
18 ((nurse)) staffing plan. If this staffing plan is not adopted by
19 consensus of the hospital ((, the)) staffing committee, the prior
20 annual staffing plan remains in effect and the hospital is subject to
21 daily fines of \$10,000 for hospitals licensed under chapter 70.41 RCW
22 or daily fines of \$100 for: (i) Hospitals certified as critical
23 access hospitals; (ii) hospitals with fewer than 25 acute care beds
24 in operation; and (iii) hospitals certified by the centers for
25 medicare and medicaid services as sole community hospitals as of
26 January 1, 2013, that: Have had less than 150 acute care licensed
27 beds in fiscal year 2011; have a level III adult trauma service
28 designation from the department of health as of January 1, 2014; and
29 are owned and operated by the state or a political subdivision until
30 adoption of a new annual staffing plan by consensus of the committee.

31 (b) The chief executive officer shall provide ((a written
32 explanation of the reasons why the plan was not adopted to the
33 committee)) feedback to the hospital staffing committee on a
34 semiannual basis, prior to the committee's semiannual review and
35 adoption of an annual staffing plan. The ((chief executive officer))
36 feedback must ((then either)): ((a)) (i) Identify those elements of
37 the ((proposed plan being changed prior to adoption of the plan by
38 the hospital or (b) prepare an alternate annual staffing plan that
39 must be adopted by the hospital)) staffing plan the chief executive
40 officer requests changes to; or (ii) provide a status report on

1 implementation of the staffing plan including nursing sensitive
2 quality indicators collected by the hospital, patient surveys, and
3 recruitment and retention efforts.

4 (c) Beginning ((January 1, 2019)) June 1, 2023, each hospital
5 shall submit its staffing plan to the department and thereafter on an
6 annual basis and at any time in between that the plan is updated.

7 (7) Beginning ((January 1, 2019)) June 1, 2023, each hospital
8 shall implement the staffing plan and assign nursing personnel to
9 each patient care unit in accordance with the plan.

10 (a) A registered nurse, ancillary health care personnel,
11 collective bargaining representative, patient, or other individual
12 may report to the staffing committee any variations where the
13 ((nurse)) personnel assignment in a patient care unit is not in
14 accordance with the adopted staffing plan and may make a complaint to
15 the committee based on the variations.

16 (b) Shift-to-shift adjustments in staffing levels required by the
17 plan may be made by the appropriate hospital personnel overseeing
18 patient care operations. If a registered nurse or nursing assistant-
19 certified on a patient care unit objects to a shift-to-shift
20 adjustment, the registered nurse or nursing assistant-certified may
21 submit the complaint to the staffing committee.

22 (c) Staffing committees shall develop a process to examine and
23 respond to data submitted under (a) and (b) of this subsection,
24 including the ability to determine if a specific complaint is
25 resolved or dismissing a complaint based on unsubstantiated data. All
26 complaints submitted to the hospital staffing committee must be
27 reviewed, regardless of what format the complainant uses to submit
28 the complaint.

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

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

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

1 (b) An employee, patient, or other individual who notifies the
2 ((nurse)) staffing committee or the hospital administration of his or
3 her concerns on nurse or ancillary health care personnel staffing.

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

10 (11) The hospital staffing committee shall file with the
11 department a charter that must include, but is not limited to:

12 (a) Roles, responsibilities, and processes by which the hospital
13 staffing committee functions, including processes to ensure adequate
14 quorum and ability of committee members to attend;

15 (b) Schedule for monthly meetings with more frequent meetings as
16 needed that ensures committee members have 30-days notice of
17 meetings;

18 (c) Processes by which all staffing complaints will be reviewed,
19 noting the date received as well as initial, contingent, and final
20 disposition of complaints and corrective action plan where
21 applicable;

22 (d) Processes by which complaints will be resolved within 60 days
23 of receipt and processes to ensure the complainant receives a letter
24 stating the outcome of the complaint;

25 (e) Processes for attendance by any nurse, ancillary health care
26 personnel, collective bargaining representative, patient, or member
27 of the public who is involved in a complaint;

28 (f) Processes for the hospital staffing committee to conduct
29 quarterly reviews of staff turnover rates including new hire turnover
30 rates during first year of employment and hospital plans regarding
31 workforce development;

32 (g) Standards for hospital staffing committee approval of meeting
33 documentation including meeting minutes, attendance, and actions
34 taken; and

35 (h) Policies for retention of meeting documentation for a minimum
36 of three years and consistent with each hospital's document retention
37 policies.

38 **Sec. 4.** RCW 70.41.425 and 2017 c 249 s 3 are each amended to
39 read as follows:

1 (1) (a) The department shall investigate a complaint submitted
2 under this section for violation of RCW 70.41.420 (as recodified by
3 this act) or section 2 of this act following receipt of a complaint
4 with documented evidence of failure to:

5 (i) Form or establish a hospital staffing committee;
6 (ii) Conduct a semiannual review of a ((nurse)) staffing plan;
7 (iii) Submit a ((nurse)) staffing plan on an annual basis and any
8 updates; or

9 (iv) ((A)) Follow the ((nursing)) personnel assignments in a
10 patient care unit in violation of section 2 of this act, RCW
11 70.41.420(7) (a) (as recodified by this act), or shift-to-shift
12 adjustments in staffing levels in violation of RCW 70.41.420(7) (b)
13 (as recodified by this act).

14 ~~((B) The department may only investigate a complaint under this~~
15 ~~subsection (1) (a) (iv) after making an assessment that the submitted~~
16 ~~evidence indicates a continuing pattern of unresolved violations of~~
17 ~~RCW 70.41.420(7) (a) or (b), that were submitted to the nurse~~
18 ~~staffing committee excluding complaints determined by the nurse~~
19 ~~staffing committee to be resolved or dismissed. The submitted~~
20 ~~evidence must include the aggregate data contained in the complaints~~
21 ~~submitted to the hospital's nurse staffing committee that indicate a~~
22 ~~continuing pattern of unresolved violations for a minimum sixty-day~~
23 ~~continuous period leading up to receipt of the complaint by the~~
24 ~~department.~~

25 ~~(C) The department may not investigate a complaint under this~~
26 ~~subsection (1) (a) (iv) in the event of unforeseeable emergency~~
27 ~~circumstances or if the hospital, after consultation with the nurse~~
28 ~~staffing committee, documents it has made reasonable efforts to~~
29 ~~obtain staffing to meet required assignments but has been unable to~~
30 ~~do so.)~~

31 (b) After an investigation conducted under (a) of this
32 subsection, if the department determines that there has been a
33 violation, the department shall require the hospital to submit a
34 corrective plan of action within ((forty-five)) 45 days of the
35 presentation of findings from the department to the hospital.

36 (c) Hospitals will not be found in violation of section 2 of this
37 act or RCW 70.41.420 (as recodified by this act) if it has been
38 determined, following an investigation, that:

39 (i) There were unforeseeable emergent circumstances; or

1 (ii) The hospital, after consultation with the hospital staffing
2 committee, documents that the hospital has made reasonable efforts to
3 obtain and retain staffing to meet required personnel assignments but
4 has been unable to do so.

5 (d) No later than 30 days after a hospital deviates from its
6 staffing plan as adopted by the staffing committee under RCW
7 70.41.420 (as recodified by this act), the hospital incident command
8 shall report to the cochairs of the hospital staffing committee an
9 assessment of the staffing needs arising from the unforeseeable
10 emergent circumstance and the hospital's plan to address those
11 identified staffing needs. Upon receipt of the report, the hospital
12 staffing committee shall convene to develop a contingency staffing
13 plan to address the needs arising from the unforeseeable emergent
14 circumstance. The hospital's deviation from its staffing plan may not
15 be in effect for more than 90 days without the approval of the
16 hospital staffing committee.

17 (2) In the event that a hospital fails to submit or submits but
18 fails to follow such a corrective plan of action in response to a
19 violation or violations found by the department based on a complaint
20 filed pursuant to subsection (1) of this section, the department may
21 impose, for all violations asserted against a hospital at any time, a
22 civil penalty of ~~((one hundred dollars))~~ \$10,000 per day for
23 hospitals licensed under chapter 70.41 RCW, or \$100 per day for: (a)
24 Hospitals certified as critical access hospitals; (b) hospitals with
25 fewer than 25 acute care beds in operation; and (c) hospitals
26 certified by the centers for medicare and medicaid services as sole
27 community hospitals as of January 1, 2013, that: Have had less than
28 150 acute care licensed beds in fiscal year 2011; have a level III
29 adult trauma service designation from the department of health as of
30 January 1, 2014; and are owned and operated by the state or a
31 political subdivision. Civil penalties apply until the hospital
32 submits ~~((or begins to follow))~~ a corrective plan of action ~~((or~~
33 takes other action agreed to)) that has been approved by the
34 department and follows the corrective plan of action for 90 days.
35 Once the approved corrective action plan has been followed by the
36 hospital for 90 days, the department may reduce the accumulated fine.
37 The fine shall continue to accumulate until the 90 days has passed.
38 Revenue from these fines must be deposited into the supplemental
39 pension fund established under RCW 51.44.033.

1 (3) The department shall maintain for public inspection records
2 of any civil (~~penalties,~~) penalty and administrative actions (~~, or~~
3 ~~license suspensions or revocations~~) imposed on hospitals under this
4 section. In addition, the department must report violations of this
5 section on its website.

6 (4) (~~For purposes of this section, "unforeseeable emergency~~
7 ~~circumstance" means:~~

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

9 ~~(b) When a hospital disaster plan is activated;~~

10 ~~(c) Any unforeseen disaster or other catastrophic event that~~
11 ~~substantially affects or increases the need for health care services;~~
12 ~~or~~

13 ~~(d) When a hospital is diverting patients to another hospital or~~
14 ~~hospitals for treatment or the hospital is receiving patients who are~~
15 ~~from another hospital or hospitals.~~

16 ~~(5))~~ Nothing in this section shall be construed to preclude the
17 ability to otherwise submit a complaint to the department for failure
18 to follow RCW 70.41.420 (as recodified by this act).

19 (~~(6) The department shall submit a report to the legislature on~~
20 ~~December 31, 2020. This report shall include the number of complaints~~
21 ~~submitted to the department under this section, the disposition of~~
22 ~~these complaints, the number of investigations conducted, the~~
23 ~~associated costs for complaint investigations, and recommendations~~
24 ~~for any needed statutory changes. The department shall also project,~~
25 ~~based on experience, the impact, if any, on hospital licensing fees~~
26 ~~over the next four years. Prior to the submission of the report, the~~
27 ~~secretary shall convene a stakeholder group consisting of the~~
28 ~~Washington state hospital association, the Washington state nurses~~
29 ~~association, service employees international union healthcare 1199NW,~~
30 ~~and united food and commercial workers 21. The stakeholder group~~
31 ~~shall review the report prior to its submission to review findings~~
32 ~~and jointly develop any legislative recommendations to be included in~~
33 ~~the report.~~

34 ~~(7) No fees shall be increased to implement chapter 249, Laws of~~
35 ~~2017 prior to July 1, 2021.)~~

36 NEW SECTION. Sec. 5. (1)(a) The department shall review each
37 hospital staffing plan submitted by a hospital to ensure it is
38 received by the appropriate deadline and is completed on the
39 department-issued staffing plan form.

1 (b) The hospital must complete all portions of the staffing plan
2 form. The department may determine that a hospital has failed to
3 timely submit its staffing plan if the staffing plan form is
4 incomplete.

5 (c) Failure to submit the staffing plan by the appropriate
6 deadline will result in a violation and civil penalty of \$25,000
7 issued by the department. Revenue from these fines must be deposited
8 into the supplemental pension fund established under RCW 51.44.033.

9 (2) Failure to submit a staffing committee charter to the
10 department by the appropriate deadline will result in a violation and
11 a civil penalty of \$25,000 issued by the department. Revenue from
12 these fines must be deposited into the supplemental pension fund
13 established under RCW 51.44.033.

14 (3) The department must post on its website:

15 (a) Hospital staffing plans;

16 (b) Staffing committee charters; and

17 (c) Violations of this section.

18 **Sec. 6.** RCW 49.12.480 and 2019 c 296 s 1 are each amended to
19 read as follows:

20 (1) An employer shall provide employees with meal and rest
21 periods as required by law, subject to the following:

22 (a) Rest periods must be scheduled at any point during each work
23 period during which the employee is required to receive a rest
24 period;

25 (b) Employers must provide employees with uninterrupted meal and
26 rest breaks. This subsection (1)(b) does not apply in the case of(~~+~~

27 ~~(i) An~~) an unforeseeable emergent circumstance, as defined in
28 RCW 49.28.130(~~;~~~~or~~

29 ~~(ii) A clinical circumstance, as determined by the employee,~~
30 ~~employer, or employer's designee, that may lead to a significant~~
31 ~~adverse effect on the patient's condition:~~

32 ~~(A) Without the knowledge, specific skill, or ability of the~~
33 ~~employee on break; or~~

34 ~~(B) Due to an unforeseen or unavoidable event relating to patient~~
35 ~~care delivery requiring immediate action that could not be planned~~
36 ~~for by an employer;~~

37 ~~(c) For any rest break that is interrupted before ten complete~~
38 ~~minutes by an employer or employer's designee under the provisions of~~
39 ~~(b)(ii) of this subsection, the employee must be given an additional~~

1 ~~ten minute uninterrupted rest break at the earliest reasonable time~~
2 ~~during the work period during which the employee is required to~~
3 ~~receive a rest period. If the elements of this subsection are met, a~~
4 ~~rest break shall be considered taken for the purposes of the minimum~~
5 ~~wage act as defined by chapter 49.46 RCW) (as recodified by this~~
6 ~~act).~~

7 (2) The employer shall provide a mechanism to record when an
8 employee misses a meal or rest period and maintain these records.

9 (3) For purposes of this section, the following terms have the
10 following meanings:

11 (a) "Employee" means a person who:

12 (i) Is employed by (~~a health care facility~~) an employer;

13 (ii) Is involved in direct patient care activities or clinical
14 services; and

15 (iii) Receives an hourly wage or is covered by a collective
16 bargaining agreement (~~;~~ and

17 ~~(iv) Is a licensed practical nurse or registered nurse licensed~~
18 ~~under chapter 18.79 RCW, a surgical technologist registered under~~
19 ~~chapter 18.215 RCW, a diagnostic radiologic technologist or~~
20 ~~cardiovascular invasive specialist certified under chapter 18.84 RCW,~~
21 ~~a respiratory care practitioner licensed under chapter 18.89 RCW, or~~
22 ~~a nursing assistant certified as defined in RCW 18.88A.020)).~~

23 (b) "Employer" means hospitals licensed under chapter 70.41
24 RCW (~~, except that the following hospitals are excluded until July 1,~~
25 ~~2021:~~

26 ~~(i) Hospitals certified as critical access hospitals under 42~~
27 ~~U.S.C. Sec. 1395i-4;~~

28 ~~(ii) Hospitals with fewer than twenty-five acute care beds in~~
29 ~~operation; and~~

30 ~~(iii) Hospitals certified by the centers for medicare and~~
31 ~~medicaid services as sole community hospitals as of January 1, 2013,~~
32 ~~that: Have had less than one hundred fifty acute care licensed beds~~
33 ~~in fiscal year 2011; have a level III adult trauma service~~
34 ~~designation from the department of health as of January 1, 2014; and~~
35 ~~are owned and operated by the state or a political subdivision)).~~

36 **Sec. 7.** RCW 49.28.130 and 2019 c 296 s 2 are each amended to
37 read as follows:

1 The definitions in this section apply throughout this section and
2 RCW 49.28.140 and 49.28.150 (as recodified by this act) unless the
3 context clearly requires otherwise.

4 (1) (a) "Employee" means a person who:

5 (i) Is employed by a health care facility;

6 (ii) Is involved in direct patient care activities or clinical
7 services; and

8 (iii) Receives an hourly wage or is covered by a collective
9 bargaining agreement (~~;~~ ~~and~~

10 ~~(iv) Is either:~~

11 ~~(A) A licensed practical nurse or registered nurse licensed under~~
12 ~~chapter 18.79 RCW; or~~

13 ~~(B) Beginning July 1, 2020, a surgical technologist registered~~
14 ~~under chapter 18.215 RCW, a diagnostic radiologic technologist or~~
15 ~~cardiovascular invasive specialist certified under chapter 18.84 RCW,~~
16 ~~a respiratory care practitioner licensed under chapter 18.89 RCW, or~~
17 ~~a nursing assistant certified as defined in RCW 18.88A.020)).~~

18 (b) "Employee" does not mean a person who is both:

19 (i) (~~Is employed~~) Employed by a health care facility as defined
20 in subsection (3) (a) (v) of this section; and

21 (ii) (~~Is a~~) A surgical technologist registered under chapter
22 18.215 RCW, a diagnostic radiologic technologist or cardiovascular
23 invasive specialist certified under chapter 18.84 RCW, a respiratory
24 care practitioner licensed under chapter 18.89 RCW, or a certified
25 nursing assistant as defined in RCW 18.88A.020.

26 (2) "Employer" means an individual, partnership, association,
27 corporation, the state, a political subdivision of the state, or
28 person or group of persons, acting directly or indirectly in the
29 interest of a health care facility.

30 (3) (a) "Health care facility" means the following facilities, or
31 any part of the facility, including such facilities if owned and
32 operated by a political subdivision or instrumentality of the state,
33 that operate on a twenty-four hours per day, seven days per week
34 basis:

35 (i) Hospices licensed under chapter 70.127 RCW;

36 (ii) Hospitals licensed under chapter 70.41 RCW (~~(, except that~~
37 ~~until July 1, 2021, the provisions of section 3, chapter 296, Laws of~~
38 ~~2019 do not apply to:~~

39 ~~(A) Hospitals certified as critical access hospitals under 42~~
40 ~~U.S.C. Sec. 1395i-4;~~

1 ~~(B) Hospitals with fewer than twenty-five acute care beds in~~
2 ~~operation; and~~

3 ~~(C) Hospitals certified by the centers for medicare and medicaid~~
4 ~~services as sole community hospitals as of January 1, 2013, that:~~
5 ~~Have had less than one hundred fifty acute care licensed beds in~~
6 ~~fiscal year 2011; have a level III adult trauma service designation~~
7 ~~from the department of health as of January 1, 2014; and are owned~~
8 ~~and operated by the state or a political subdivision));~~

9 (iii) Rural health care facilities as defined in RCW 70.175.020;

10 (iv) Psychiatric hospitals licensed under chapter 71.12 RCW; or

11 (v) Facilities owned and operated by the department of
12 corrections or by a governing unit as defined in RCW 70.48.020 in a
13 correctional institution as defined in RCW 9.94.049 that provide
14 health care services.

15 (b) If a nursing home regulated under chapter 18.51 RCW or a home
16 health agency regulated under chapter 70.127 RCW is operating under
17 the license of a health care facility, the nursing home or home
18 health agency is considered part of the health care facility for the
19 purposes of this subsection.

20 (4) "Overtime" means the hours worked in excess of an agreed
21 upon, predetermined, regularly scheduled shift within a twenty-four
22 hour period not to exceed twelve hours in a twenty-four hour period
23 or eighty hours in a consecutive fourteen-day period.

24 (5) "On-call time" means time spent by an employee who is not
25 working on the premises of the place of employment but who is
26 compensated for availability or who, as a condition of employment,
27 has agreed to be available to return to the premises of the place of
28 employment on short notice if the need arises.

29 (6) "Reasonable efforts" means that the employer, to the extent
30 reasonably possible, does all of the following but is unable to
31 obtain staffing coverage:

32 (a) Seeks individuals to volunteer to work extra time from all
33 available qualified staff who are working;

34 (b) Contacts qualified employees who have made themselves
35 available to work extra time;

36 (c) Seeks the use of per diem staff; and

37 (d) Seeks personnel from a contracted temporary agency when such
38 staffing is permitted by law or an applicable collective bargaining
39 agreement, and when the employer regularly uses a contracted
40 temporary agency.

1 (7) "Unforeseeable emergent circumstance" means (a) any
2 unforeseen declared national, state, or municipal emergency; or (b)
3 when a health care facility disaster plan is activated(~~(; or (c) any~~
4 ~~unforeseen disaster or other catastrophic event which substantially~~
5 ~~affects or increases the need for health care services)~~).

6 **Sec. 8.** RCW 49.28.140 and 2019 c 296 s 3 are each amended to
7 read as follows:

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

12 (2) The acceptance by any employee of overtime is strictly
13 voluntary, and the refusal of an employee to accept such overtime
14 work is not grounds for discrimination, dismissal, discharge, or any
15 other penalty, threat of reports for discipline, or employment
16 decision adverse to the employee.

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

18 (a) Because of any unforeseeable emergent circumstance;

19 (b) Because of prescheduled on-call time not to exceed more than
20 20 hours per week, subject to the following:

21 (i) Mandatory prescheduled on-call time may not be used in lieu
22 of scheduling employees to work regularly scheduled shifts when a
23 staffing plan indicates the need for a scheduled shift; and

24 (ii) Mandatory prescheduled on-call time may not be used to
25 address regular changes in patient census or acuity or expected
26 increases in the number of employees not reporting for predetermined
27 scheduled shifts;

28 (c) When the employer documents that the employer has used
29 reasonable efforts to obtain and retain staffing. An employer has not
30 used reasonable efforts if overtime work is used to fill vacancies
31 resulting from chronic staff shortages that persist longer than three
32 months; or

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

36 (4) An employee accepting overtime who works more than twelve
37 consecutive hours shall be provided the option to have at least eight
38 consecutive hours of uninterrupted time off from work following the
39 time worked.

1 **Sec. 9.** RCW 49.28.150 and 2002 c 112 s 4 are each amended to
2 read as follows:

3 The department of labor and industries shall investigate
4 complaints of violations of RCW 49.28.140 (as recodified by this act)
5 as provided under section 10 of this act. (~~(A violation of RCW~~
6 ~~49.28.140 is a class 1 civil infraction in accordance with chapter~~
7 ~~7.80 RCW, except that the maximum penalty is one thousand dollars for~~
8 ~~each infraction up to three infractions. If there are four or more~~
9 ~~violations of RCW 49.28.140 for a health care facility, the employer~~
10 ~~is subject to a fine of two thousand five hundred dollars for the~~
11 ~~fourth violation, and five thousand dollars for each subsequent~~
12 ~~violation. The department of labor and industries is authorized to~~
13 ~~issue and enforce civil infractions according to chapter 7.80 RCW.))~~)

14 NEW SECTION. **Sec. 10.** (1)(a) If a complainant files a complaint
15 with the department alleging a violation of this chapter, the
16 department shall investigate the complaint.

17 (b) The department may not investigate any such alleged violation
18 of rights that occurred more than three years before the date that
19 the complainant filed the complaint.

20 (c) Upon the investigation of a complaint, the department shall
21 issue either a citation and notice of assessment or a closure letter,
22 within 90 days after the date on which the department received the
23 complaint, unless the complaint is otherwise resolved. The department
24 may extend the period by providing advance written notice to the
25 complainant and the employer setting forth good cause for an
26 extension of the period, and specifying the duration of the
27 extension.

28 (d) The department shall send a citation and notice of assessment
29 or the closure letter to both the employer and the complainant by
30 service of process or using a method by which the mailing can be
31 tracked or the delivery can be confirmed to their last known
32 addresses.

33 (2) If the department's investigation finds that the
34 complainant's allegation cannot be substantiated, the department
35 shall issue a closure letter to the complainant and the employer
36 detailing such finding.

37 (3)(a) If the department finds a violation of this chapter, the
38 department shall order the employer to pay the department a civil
39 penalty.

1 (b) Except as provided otherwise in this chapter, the maximum
2 penalty is \$1,000 for each violation up to three violations. If there
3 are four or more violations of this chapter for a health care
4 facility, the employer is subject to a civil penalty of \$2,500 for
5 the fourth violation, and \$5,000 for each subsequent violation.

6 (4) The department may, at any time, waive or reduce a civil
7 penalty assessed under this section if the director of the department
8 determines that the employer has taken corrective action to resolve
9 the violation.

10 (5) The department shall deposit all civil penalties paid under
11 this chapter in the supplemental pension fund established under RCW
12 51.44.033.

13 NEW SECTION. **Sec. 11.** (1) A person, firm, or corporation
14 aggrieved by a citation and notice of assessment by the department
15 under this chapter may appeal the citation and notice of assessment
16 to the director of the department by filing a notice of appeal with
17 the director within 30 days of the department's issuance of the
18 citation and notice of assessment. A citation and notice of
19 assessment not appealed within 30 days is final and binding, and not
20 subject to further appeal.

21 (2) A notice of appeal filed with the director of the department
22 under this section shall stay the effectiveness of the citation and
23 notice of assessment pending final review of the appeal by the
24 director as provided for in chapter 34.05 RCW.

25 (3) Upon receipt of a notice of appeal, the director of the
26 department shall assign the hearing to an administrative law judge of
27 the office of administrative hearings to conduct the hearing and
28 issue an initial order. The hearing and review procedures shall be
29 conducted in accordance with chapter 34.05 RCW, and the standard of
30 review by the administrative law judge of an appealed citation and
31 notice of assessment shall be de novo. Any party who seeks to
32 challenge an initial order shall file a petition for administrative
33 review with the director within 30 days after service of the initial
34 order. The director shall conduct administrative review in accordance
35 with chapter 34.05 RCW.

36 (4) The director of the department shall issue all final orders
37 after appeal of the initial order. The final order of the director is
38 subject to judicial review in accordance with chapter 34.05 RCW.

1 (5) Orders that are not appealed within the time period specified
2 in this section and chapter 34.05 RCW are final and binding, and not
3 subject to further appeal.

4 (6) An employer who fails to allow adequate inspection of records
5 in an investigation by the department under this chapter within a
6 reasonable time period may not use such records in any appeal under
7 this section to challenge the correctness of any determination by the
8 department of the penalty assessed.

9 NEW SECTION. **Sec. 12.** Collections of unpaid citations assessing
10 civil penalties will be pursuant to RCW 49.48.086.

11 NEW SECTION. **Sec. 13.** (1) Any employee employed by a health
12 care facility covered by RCW 49.12.480, 49.28.130, and 49.28.140 (as
13 recodified by this act), and any direct care nurse or direct care
14 nursing assistant-certified covered by section 2 of this act, or any
15 labor organization that is the exclusive bargaining representative of
16 any such persons, alleging a violation of this chapter may bring a
17 civil action against the health care facility or hospital.

18 (2) A health care facility's or hospital's violation of this
19 chapter or rules adopted under this chapter constitutes a concrete
20 and particularized injury in fact to employees employed by the health
21 care facility.

22 (3) The court may award to a prevailing plaintiff:

23 (a) An amount not less than \$100 and not greater than \$10,000 per
24 violation per day;

25 (b) Reasonable attorneys' fees and litigation costs;

26 (c) Any other relief, including equitable and declaratory relief,
27 that the court deems appropriate.

28 (4) The remedy under this section is in addition to any
29 administrative enforcement under this chapter.

30 NEW SECTION. **Sec. 14.** The department may adopt and implement
31 rules to carry out and enforce the provisions of this chapter,
32 including but not limited to protecting employees from retaliation
33 for filing complaints under this chapter.

34 NEW SECTION. **Sec. 15.** 2017 c 249 s 4 (uncodified) is repealed.

1 NEW SECTION. **Sec. 16.** Sections 2, 5, and 10 through 14 of this
2 act constitute a new chapter in Title 49 RCW.

3 NEW SECTION. **Sec. 17.** RCW 70.41.410, 70.41.420, and 70.41.425
4 are each recodified as sections in chapter 49.--- RCW (the new
5 chapter created in section 16 of this act).

6 NEW SECTION. **Sec. 18.** RCW 49.12.480, 49.28.130, 49.28.140, and
7 49.28.150 are each recodified as sections in chapter 49.--- RCW (the
8 new chapter created in section 16 of this act).

9 NEW SECTION. **Sec. 19.** This act takes effect January 1, 2023.

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