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**SECOND SUBSTITUTE SENATE BILL 5236**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators Robinson, Keiser, Conway, Frame, Hunt, Kauffman, Lovelett, Nguyen, Nobles, Pedersen, Shewmake, Stanford, Trudeau, Valdez, and C. Wilson)

AN ACT Relating to improving nurse and health care worker safety and patient care by establishing minimum staffing standards in hospitals, requiring hospital staffing committees to develop staffing plans, addressing mandatory overtime and meal and rest breaks, and providing for enforcement; amending RCW 70.41.410, 70.41.420, 70.41.425, 49.12.480, 49.28.130, 49.28.140, and 49.28.150; adding a new section to chapter 70.41 RCW; adding a new chapter to Title 49 RCW; creating a new section; recodifying RCW 70.41.410, 70.41.420, 70.41.425, 49.12.480, 49.28.130, 49.28.140, and 49.28.150; repealing 2017 c 249 s 4 (uncodified); prescribing penalties; providing effective dates; and declaring an emergency.

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

NEW SECTION. **Sec.**  (1) The department of health and the department of labor and industries must establish an advisory committee on hospital staffing by September 1, 2023.

(2) Appointments to the advisory committee on hospital staffing shall be jointly made by the secretary of health and the director of labor and industries. Members of the committee must have expertise in hospital staffing and working conditions and should reflect a diversity of hospital settings.

(3) The advisory committee membership includes:

(a) Six members representing hospitals and hospital systems and their alternates, selected from a list of nominees submitted by the Washington state hospital association;

(b) Six members representing frontline hospital patient care staff and their alternates, selected from a list of nominees submitted by collective bargaining representatives of frontline hospital nursing staff; and

(c) Up to four nonvoting ex officio members.

(4) Any list submitted to the departments for the initial appointment under this section must be provided by August 4, 2023.

(5) If any member of the advisory committee is unable to continue to serve on the committee the secretary of health and the director of labor and industries shall select a new member based on the recommendations of either the hospital association for members appointed under subsection (3)(a) of this section or the collective bargaining representative for members appointed under subsection (3)(b) of this section.

(6) The advisory committee on hospital staffing shall meet at least once per month until the hospital staffing plan uniform form is developed.

(7) The advisory committee on hospital staffing shall advise the department of health on its development of the uniform hospital staffing plan form.

(8) At the discretion of the department of health and the department of labor and industries, the advisory committee on hospital staffing may advise on any rule making undertaken by either the department of health or the department of labor and industries.

(9) The department of health and the department of labor and industries shall provide any necessary documentation to the advisory committee on hospital staffing in advance of the meetings to discuss technical assistance so that the advisory committee may consider areas of needed information.

(10) After January 1, 2027, when the forms and rules are developed and effective, the advisory committee on hospital staffing may meet on a quarterly basis as needed, if it is determined by the department and committee members that such meetings are necessary.

(11) The advisory committee on hospital staffing must consider innovative hospital staffing and care delivery models, such as those that integrate on-site team-based care delivery, use of patient monitoring equipment and technology, and virtual or remote care delivery. This includes identifying and analyzing hospital innovative hospital staffing and care delivery models including those explored by national organizations and evaluating feasibility of broad-based implementation of identified models. The advisory committee may consider disseminating this information and analysis.

(12) The department of health and the department of labor and industries must provide the advisory committee on hospital staffing with data on a quarterly basis related to compliance with this chapter, complaint filing and disposition trends, notification of correction action plans and adherence to those plans, and reporting metrics on any approved variances and innovative hospital staffing and care delivery models.

(13) By December 1, 2023, the Washington state hospital association shall survey hospitals in Washington state and report to the advisory committee on hospital staffing on Washington hospitals' existing use of innovative hospital staffing and care delivery models including, but not limited to, integration of patient monitoring equipment, remote patient monitoring, team-based care models, apprenticeship and career ladder programs, and virtual or remote care delivery models, and any challenges with implementing the models.

(14) By December 1, 2024, the advisory committee on hospital staffing must review the report prepared by the Washington state institute for public policy as required by section 16 of this act.

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

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

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

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

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

((~~(3)~~)) (4) "Nursing assistant-certified" means an individual certified under chapter 18.88A RCW who provides direct care to patients.

(5) "Nursing ((~~personnel~~)) staff" means registered nurses, licensed practical nurses, nursing assistants-certified, and unlicensed assistive nursing personnel providing direct patient care.

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

~~(5)~~)) (6) "Patient care staff" means a person who is providing direct care or supportive services to patients but who is not:

(a) Nursing staff as defined in this section;

(b) A physician licensed under chapter 18.71 or 18.57 RCW;

(c) A physician's assistant licensed under chapter 18.71A RCW; or

(d) An advanced registered nurse practitioner licensed under RCW 18.79.250, unless working as a direct care registered nurse.

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

((~~(6)~~)) (8)(a) "Reasonable efforts" means that the employer exhausts and documents all of the following but is unable to obtain staffing coverage:

(i) Seeks individuals to consent to work additional time from all available qualified staff who are working;

(ii) Contacts qualified employees who have made themselves available to work additional time;

(iii) Seeks the use of per diem staff; and

(iv) When practical, seeks personnel from a contracted temporary agency when such staffing is permitted by law or an applicable collective bargaining agreement, and when the employer regularly uses a contracted temporary agency.

(b) "Reasonable efforts" does not mean circumstances when an employer is chronically short staffed with vacancies that persist longer than 90 days or have frequently recurring absences.

(9) "Registered nurse" means an individual licensed as a nurse under chapter 18.79 RCW who provides direct care to patients.

(10) "Skill mix" means the experience of, and number and relative percentages of ((~~registered nurses, licensed practical nurses, and unlicensed assistive personnel among the total number of nursing personnel~~)), nursing and patient care staff.

(11)(a) "Unforeseeable emergent circumstance" means:

(i) Any unforeseen declared national, state, or municipal emergency;

(ii) When a hospital disaster plan is activated; or

(iii) Any unforeseen disaster or other catastrophic event that substantially affects or increases the need for health care services.

(b) "Unforeseeable emergent circumstance" does not mean a declared national, state, or municipal emergency or when a hospital disaster plan is activated, if the events persist longer than 90 days.

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

(1) By ((~~September~~)) January 1, ((~~2008~~)) 2024, each hospital shall establish a ((~~nurse~~)) hospital staffing committee, either by creating a new committee or assigning the functions of ((~~a~~)) the hospital staffing committee to an existing nurse staffing committee ((~~to an existing committee~~)).

(2) Hospital staffing committees must be comprised of:

(a) At least ((~~one-half~~)) 50 percent of the voting members of the ((~~nurse~~)) hospital staffing committee shall be ((~~registered nurses~~)) nursing staff, who are nonsupervisory and nonmanagerial, currently providing direct patient care ((~~and up to one-half of the members shall be determined by the hospital administration~~)). The selection of the ((~~registered nurses providing direct patient care~~)) nursing staff shall be according to the collective bargaining ((~~agreement~~)) representative or representatives if there is one ((~~in effect~~)) or more at the hospital. If there is no ((~~applicable~~)) collective bargaining ((~~agreement~~)) representative, the members of the ((~~nurse~~)) hospital staffing committee who are ((~~registered nurses~~)) nursing staff providing direct patient care shall be selected by their peers.

((~~(2)~~)) (b) 50 percent of the members of the hospital staffing committee shall be determined by the hospital administration and shall include but not be limited to the chief financial officer, the chief nursing officers, and patient care unit directors or managers or their designees.

(3) Participation in the ((~~nurse~~)) hospital staffing committee by a hospital employee shall be on scheduled work time and compensated at the appropriate rate of pay. ((~~Nurse~~)) Hospital staffing committee members shall be relieved of all other work duties during meetings of the committee. Additional staffing relief must be provided if necessary to ensure committee members are able to attend hospital staffing committee meetings.

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

(a) Development and oversight of an annual patient care unit and shift‑based ((~~nurse~~)) hospital staffing plan, based on the needs of patients, to be used as the primary component of the staffing budget. The hospital staffing committee shall use a uniform format or form, created by the department of health in consultation with the advisory committee established in section 1 of this act and the department of labor and industries, for complying with the requirement to submit the annual staffing plan. The uniform format or form must allow for variations in service offerings, facility design, and other differences between hospitals, but must allow patients and the public to clearly understand and compare staffing plans. Hospitals may include a description of additional resources available to support unit-level patient care and a description of the hospital, including the size and type of facility. Factors to be considered in the development of the plan should include, but are not limited to:

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

(ii) ((~~Level of intensity of all patients and nature of the~~)) Patient acuity level, intensity of care needs, and the type of care to be delivered on each shift;

(iii) Skill mix;

(iv) Level of experience and specialty certification or training of nursing ((~~personnel~~)) and patient care staff providing care;

(v) The need for specialized or intensive equipment;

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

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

(viii) Availability of other personnel and patient care staff supporting nursing services on the unit; and

(ix) ((~~Strategies to enable registered nurses to take meal and rest breaks as required by law or~~)) Compliance with the terms of an applicable collective bargaining agreement, if any, ((~~between the hospital and a representative of the nursing staff~~)) and relevant state and federal laws and rules, including those regarding meal and rest breaks and use of overtime and on-call shifts;

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

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

((~~(4)~~)) (5) In addition to the factors listed in subsection ((~~(3)~~)) (4)(a) of this section, hospital finances and resources must be taken into account in the development of the ((~~nurse~~)) hospital staffing plan.

((~~(5)~~)) (6) The staffing plan must not diminish other standards contained in state or federal law and rules, or the terms of an applicable collective bargaining agreement((~~, if any, between the hospital and a representative of the nursing staff~~)).

((~~(6)~~)) (7)(a) The committee ((~~will~~)) shall produce the hospital's annual ((~~nurse~~)) hospital staffing plan.

(b) The committee shall adopt by a 50 percent plus one vote a draft of the hospital's annual staffing plan which must be delivered to the hospital's chief executive officer or their designee by January 1, 2025, and annually thereafter.

(c) The chief executive officer or their designee must provide written feedback to the hospital staffing committee on a semiannual basis, prior to the committee's semiannual review and adoption of an annual staffing plan. The feedback must:

(i) Identify those elements of the staffing plan the chief executive officer requests to be changed to address elements identified by the chief executive officer, including subsection (4)(a) of this section, that could cause the chief executive officer concern regarding financial feasibility, concern regarding temporary or permanent closure of units, or patient care risk; and

(ii) Provide a status report on implementation of the staffing plan including nursing sensitive quality indicators collected by the hospital, patient surveys, and recruitment and retention efforts including the hospital's success over the previous six months in filling approved open positions for employees covered by the staffing plan.

(d) The committee must review and consider any feedback required under (c)(i) of this subsection prior to adoption of a final hospital staffing plan.

(e) If this staffing plan is not adopted by 50 percent plus one vote of the hospital((~~, the chief executive officer shall provide a written explanation of the reasons why the plan was not adopted to the committee. The chief executive officer must then either: (a) Identify those elements of the proposed plan being changed prior to adoption of the plan by the hospital or (b) prepare an alternate annual staffing plan that must be adopted by the hospital~~)) staffing committee, the prior annual staffing plan remains in effect.

(f) Beginning ((~~January 1, 2019~~)) July 1, 2025, each hospital shall submit its final staffing plan to the department of health and thereafter on an annual basis and at any time in between that the plan is updated.

((~~(7)~~)) (8)(a) Beginning ((~~January 1, 2019~~)) July 1, 2025, each hospital shall implement the staffing plan and assign nursing ((~~personnel~~)) and patient care staff to each patient care unit in accordance with the plan except in instances of unforeseeable emergent circumstances.

((~~(a)~~)) (b) Each hospital shall document when a patient care unit nursing staff assignment is out of compliance with the adopted hospital staffing plan. For purposes of this subsection, out of compliance means the number of patients assigned to the nursing staff exceeds the patient care unit assignment as directed by the nurse staffing plan.

(i) Each hospital must report to the department of health and the department of labor and industries on a semiannual basis the percentage of nurse staffing assignments where the assignment in a patient care unit is out of compliance with the adopted nurse staffing plan. Beginning in 2026, semiannual reports are due on July 31st and January 31st each year. The first report is due January 31, 2026, and must cover the last six months of 2025.

(ii) Beginning in 2025, if a hospital is in compliance for less than 80 percent of the nurse staffing assignment in a month, the hospital must, within seven calendar days following the end of the month in which the hospital was out of compliance, report to the department of health and the department of labor and industries regarding lack of compliance with the nurse staffing patient care unit assignments in the hospital staffing plan.

(iii) The department of health and the department of labor and industries must develop a form or forms for the report to be made under this subsection by October 1, 2024.

(iv) This subsection (b) does not apply to:

(A) Hospitals certified as critical access hospitals;

(B) Hospitals with fewer than 25 acute care licensed beds in operation; and

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

(c) A ((~~registered nurse~~)) nursing and patient care staff, collective bargaining representative, patient, or other individual may report to the hospital staffing committee any variations where the ((~~nurse~~)) personnel assignment in a patient care unit is not in accordance with the adopted staffing plan and may make a complaint to the committee based on the variations.

((~~(b)~~)) (d) Shift-to-shift adjustments in staffing levels required by the plan may be made by the appropriate hospital personnel overseeing patient care operations. If a ((~~registered nurse~~)) nursing or patient care staff on a patient care unit objects to a shift-to-shift adjustment, ((~~the registered nurse~~)) they may submit the complaint to the hospital staffing committee.

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

(f) In the event of an unforeseeable emergent circumstance lasting for 15 days or more, the hospital incident command shall report within 30 days to the cochairs of the hospital staffing committee an assessment of the staffing needs arising from the unforeseeable emergent circumstance and the hospital's plan to address those identified staffing needs. Upon receipt of the report, the hospital staffing committee shall convene to develop a contingency staffing plan to address the needs arising from the unforeseeable emergent circumstance. The hospital's deviation from its staffing plan may not be in effect for more than 90 days without the approval of the hospital staffing committee by a 50 percent plus one vote. The approval must indicate when the hospital will return to the hospital staffing plan and any additional extension must also be approved by the committee and include the date when the hospital will return to the nurse staffing plan.

(g) A direct care registered nurse or direct care nursing assistant-certified may not be assigned by hospitals to a nursing unit or clinical area unless that nurse has first received orientation in that clinical area sufficient to provide competent care to patients in that area and has demonstrated current competence in providing care in that area. Hospital staffing committees must adopt written policies and procedures under this subsection no later than July 1, 2025.

((~~(8)~~)) (9) Each hospital shall post, in a public area on each patient care unit, the ((~~nurse~~)) staffing plan and the ((~~nurse~~)) staffing schedule for that shift on that unit, as well as the relevant clinical staffing for that shift. The staffing plan and current staffing levels must also be made available to patients and visitors upon request. The hospital must also post in a public area on each patient care unit any corrective action plan relevant to that patient care unit as required under this act.

((~~(9)~~)) (10) A hospital may not retaliate against or engage in any form of intimidation ((~~of~~)) or otherwise take any adverse action against:

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

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

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

(12) By January 1, 2025, the hospital staffing committee shall file with the department of health a charter that must include, but is not limited to:

(a) A process for electing cochairs and their terms;

(b) Roles, responsibilities, and processes by which the hospital staffing committee functions, including which patient care staff job classes will be represented on the committee, how many members will serve on the committee, processes to ensure adequate quorum and ability of committee members to attend, and processes for replacing members who do not regularly attend;

(c) Schedule for monthly meetings with more frequent meetings as needed that ensures committee members have 30 days' notice of meetings;

(d) Processes by which all staffing complaints will be reviewed, investigated, and resolved, noting the date received as well as initial, contingent, and final disposition of complaints and corrective action plan where applicable;

(e) Processes by which complaints will be resolved within 90 days of receipt, or longer with majority approval of the committee, and processes to ensure the complainant receives a letter stating the outcome of the complaint;

(f) Processes for attendance by any employee, and a labor representative if requested by the employee, who is involved in a complaint;

(g) Processes for the hospital staffing committee to conduct quarterly reviews of: Staff turnover rates including new hire turnover rates during first year of employment; exit interviews; and hospital plans regarding workforce development;

(h) Standards for hospital staffing committee approval of meeting documentation including meeting minutes, attendance, and actions taken;

(i) Policies for retention of meeting documentation for a minimum of three years and consistent with each hospital's document retention policies; and

(j) Processes for the hospital to provide the hospital staffing committee with information regarding patient complaints involving staffing made to the hospital through the patient grievance process required under 42 C.F.R. 482.13(a)(2).

(13) The department of health and the department of labor and industries must provide technical assistance to hospital staffing committees to assist with compliance with this section. Technical assistance may not be provided during an inspection, or during the time between when an investigation of a psychiatric hospital has been initiated and when such investigation is resolved.

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

(1)(a) ((~~The department~~)) Based on their formal agreement required under sections 5 and 6 of this act, the department of health and the department of labor and industries shall investigate a complaint submitted under this section for violation of RCW 70.41.420 (as recodified by this act) following receipt of a complaint with documented evidence of failure to:

(i) Form or establish a hospital staffing committee;

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

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

(iv)((~~(A)~~)) Follow the ((~~nursing~~)) personnel assignments in a patient care unit in violation of RCW 70.41.420((~~(7)(a) or shift-to-shift adjustments in staffing levels in violation of RCW 70.41.420(7)(b)~~)) (8) (as recodified by this act).

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

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

(b) The department of health and the department of labor and industries may investigate and take appropriate enforcement action without any complaint if either department discovers information suggesting any violation of RCW 70.41.420 (as recodified by this act).

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

(d) Hospitals will not be found in violation of RCW 70.41.420 (as recodified by this act) if it has been determined, following an investigation, that:

(i) There were unforeseeable emergent circumstances and the process under RCW 70.41.420(7)(f) has been followed, if applicable; or

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

(2)(a) The department of health shall review each hospital staffing plan submitted by a hospital to ensure it is received by the appropriate deadline and is completed on the department-issued staffing plan form.

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

(3) Beginning January 1, 2027, the department of health shall review all reports submitted under RCW 70.41.420(7)(b)(i) to ensure they are received by the appropriate deadline and completed on the department-issued form.

(4)(a) Beginning January 1, 2027, the department of labor and industries, in consultation with the department of health, must require a hospital to submit a corrective plan of action within 45 calendar days of a report to the department under RCW 70.41.420(7)(b)(ii).

(b) A corrective plan of action may include, but is not limited to, the following elements:

(i) Directing the hospital to exercise reasonable efforts to obtain additional staff;

(ii) Delaying the addition of new services or procedure areas;

(iii) Requiring minimum staffing standards;

(iv) Reducing hospital beds or services; or

(v) Requiring the hospital emergency department to close to ambulance transport, except for patients in need of critical care to sustain their life or prevent disability.

(c) A corrective plan of action must be of a duration long enough to demonstrate the hospital's ability to sustain compliance with the requirements of this section.

(5)(a) In the event that a hospital fails to submit a staffing plan, staffing committee charter, or a corrective plan of action by the relevant deadline, the appropriate department may take administrative action with penalties up to $10,000 per month of failure to comply.

(b) In the event that a hospital ((~~fails to submit or~~)) submits but fails to follow such a corrective plan of action ((~~in response to a violation or violations found by the department based on a complaint filed pursuant to subsection (1) of this section~~)) required under this section, the department of labor and industries may impose, for all violations asserted against a hospital at any time, a civil penalty of ((~~one hundred dollars~~)) $50,000 per ((~~day~~)) month. Civil penalties apply until the hospital ((~~submits or begins to follow~~)) begins to follow a corrective plan of action ((~~or takes other action agreed to~~)) that has been approved by the department of labor and industries. Revenue from these fines must be deposited into the supplemental pension fund established under RCW 51.44.033.

((~~(3)~~)) (6) The department of health shall maintain for public inspection records of any civil penalties((~~,~~)) and administrative actions((~~, or license suspensions or revocations~~)) imposed on hospitals under this section. In addition, the department of health must post violations of this section on its website.

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

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

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

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

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

~~(5)~~)) (7) Nothing in this section shall be construed to preclude the ability to otherwise submit a complaint to the department for failure to follow RCW 70.41.420 (as recodified by this act).

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

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

NEW SECTION. **Sec.**  A new section is added to chapter 70.41 RCW to read as follows:

(1) The department may adopt and implement rules to carry out and enforce the provisions of this act.

(2) The department and the department of labor and industries must adopt joint rules for sections 1 through 4 of this act.

(3) The department and the department of labor and industries must jointly establish a formal agreement that identifies the roles of each of the two agencies with respect to the oversight and enforcement of this act. The agreement must:

(a) To the extent feasible, provide for oversight and enforcement actions by a single agency, and must include measures to avoid multiple citations for the same violation; and

(b) Include provisions that allow for data sharing, including hospital staffing plans submitted to the department.

NEW SECTION. **Sec.**  (1) The department of labor and industries and the department of health must adopt joint rules for sections 1 through 4 of this act.

(2) The department of labor and industries and the department of health must jointly establish a formal agreement that identifies the roles of each of the two agencies with respect to the oversight and enforcement of this act. The agreement must:

(a) To the extent feasible, provide for oversight and enforcement actions by a single agency, and must include measures to avoid multiple citations for the same violation; and

(b) Include provisions that allow for data sharing.

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

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

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

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

(i) An unforeseeable emergent circumstance, as defined in RCW 49.28.130 (as recodified by this act); or

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

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

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

~~(c) For any rest break that is interrupted before ten complete minutes by an employer or employer's designee under the provisions of (b)(ii) of this subsection, the employee must be given an additional ten minute uninterrupted rest break at the earliest reasonable time during the work period during which the employee is required to receive a rest period. If the elements of this subsection are met, a rest break shall be considered taken for the purposes of the minimum wage act as defined by chapter 49.46 RCW.~~)) An unforeseeable clinical circumstance, as determined by the employee that may lead to a significant adverse effect on the patient's condition, unless the employer or employer's designee determines that the patient may suffer life-threatening adverse effects;

(c) For any work period for which an employee is entitled to one or more meal periods and more than one rest period, the employee and the employer may agree that a meal period may be combined with a rest period. This agreement may be revoked at any time by the employee. If the employee is required to remain on duty during the combined meal and rest period, the time shall be paid. If the employee is released from duty for an uninterrupted combined meal and rest period, the time corresponding to the meal period shall be unpaid, but the time corresponding to the rest period shall be paid.

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

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

(a) "Employee" means a person who:

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

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

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

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

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

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

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

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

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

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

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

(i) Is employed by a health care facility;

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

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

~~(iv) Is either:~~

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

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

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

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

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

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

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

(i) Hospices licensed under chapter 70.127 RCW;

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

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

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

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

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

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

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

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

(4) "Overtime" means ((~~the hours~~)) any of the following:

(a) Hours worked in excess of an agreed upon, predetermined, regularly scheduled shift ((~~within a twenty-four hour period not to exceed twelve hours in a twenty-four hour period or eighty hours in a consecutive fourteen-day period~~));

(b) Hours worked in excess of 12 hours in a 24-hour period; or

(c) Hours worked in excess of 80 hours in a consecutive 14-day period.

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

(6) "Reasonable efforts" means that the employer((~~, to the extent reasonably possible, does~~)) exhausts and documents all of the following but is unable to obtain staffing coverage:

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

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

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

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

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

(b) "Unforeseeable emergent circumstance" does not mean a declared national, state, or municipal emergency or when a health care facility disaster plan is activated, if the events persist longer than 90 days.

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

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

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

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

(a) Because of any unforeseeable emergent circumstance;

(b) Because of mandatory prescheduled on-call time not to exceed more than 60 hours per month, subject to the following:

(i) Mandatory prescheduled on-call time may not be used in lieu of scheduling employees to work regularly scheduled shifts when a staffing plan indicates the need for a scheduled shift unless the classification of the worker is not subject to an annual staffing plan; ((~~and~~))

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

(iii) Mandatory prescheduled on-call time may not be used when an employer schedules a nonemergent patient procedure that is expected to exceed the employee's regular scheduled hours of work;

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

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

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

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

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

NEW SECTION. **Sec.**  (1)(a) If a complainant files a complaint with the department of labor and industries alleging a violation of this chapter, the department shall investigate the complaint.

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

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

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

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

(3)(a) If the department of labor and industries finds a violation of this chapter, the department shall order the employer to pay the department a civil penalty.

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

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

(5) The department of labor and industries shall deposit all civil penalties paid under this chapter in the supplemental pension fund established under RCW 51.44.033.

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

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

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

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

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

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

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

NEW SECTION. **Sec.**  The department of labor and industries may adopt and implement rules to carry out and enforce the provisions of this chapter, including but not limited to protecting employees from retaliation for filing complaints under this chapter and ordering appropriate remedy.

NEW SECTION. **Sec.**  The department may contract with consultants to support administration of its responsibilities under this chapter. The department may not contract with any entity that has financial interests that may create a potential conflict of interest.

NEW SECTION. **Sec.**  The Washington state institute for public policy shall conduct a study on hospital staffing standards for direct care registered nurses and direct care nursing assistants.

(1) The institute must review current and historical staffing plans filed with the department of health under chapter 70.41 RCW and describe:

(a) Timeliness and completeness of filed forms;

(b) Format of filed forms;

(c) Staffing ratios related to the maximum number of patients to which a direct care nursing or nursing assistant may be assigned;

(d) Descriptive statistics on submissions by hospital unit type;

(e) Trends over time, if any;

(f) Legal minimum staffing standards for registered nurses and nursing assistants in other jurisdictions; and

(g) Relevant professional association guidance, recommendations, or best practices.

(2) The department of health shall cooperate with the institute to facilitate access to data or other resources necessary to complete the analysis required under this section.

(3) The institute must provide a report on its findings to the department and relevant committees of the legislature by June 30, 2024.

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

NEW SECTION. **Sec.**  Sections 1, 6, and 11 through 15 of this act constitute a new chapter in Title 49 RCW.

NEW SECTION. **Sec.**  RCW 70.41.410, 70.41.420, and 70.41.425 are each recodified as sections in chapter 49.--- RCW (the new chapter created in section 18 of this act).

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

NEW SECTION. **Sec.**  Except for sections 1, 3, 15, and 17 of this act, this act takes effect July 1, 2024.

NEW SECTION. **Sec.**  Section 17 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 1, 2023.

**--- END ---**