

HOUSE BILL REPORT

ESHB 1714

As Passed Legislature

Title: An act relating to nursing staffing practices at hospitals.

Brief Description: Concerning nursing staffing practices at hospitals.

Sponsors: House Committee on Health Care & Wellness (originally sponsored by Representatives Cody, Doglio, Ryu, Pollet, Peterson, McBride, Wylie, Stonier, Goodman, Sawyer, Bergquist, Gregerson, Sullivan, Lytton, Tharinger, Chapman, Lovick, Senn, Hansen, Sells, Frame, Fitzgibbon, Riccelli, Macri, Jinkins, Dolan, Stanford, Orwall, Ortiz-Self, Farrell, Slatter, Tarleton, Clibborn, Fey, Kilduff, Reeves, Pettigrew, Appleton, Robinson, Blake, Ormsby, Pellicciotti, Kloba, Hudgins and Santos).

Brief History:

Committee Activity:

Health Care & Wellness: 2/7/17, 2/17/17 [DPS];
Appropriations: 2/23/17, 2/24/17 [DPS(HCW)].

Floor Activity:

Passed House: 3/7/17, 61-36.
Senate Amended.
Passed Senate: 4/11/17, 42-7.
House Refused to Concur.
Senate Receded.
Senate Amended.
Passed Senate: 4/19/17, 44-5.
House Concurred.
Passed House: 4/20/17, 95-1.
Passed Legislature.

Brief Summary of Engrossed Substitute Bill

- Changes the factors that must be considered when developing a nurse staffing plan.
- Requires all hospitals to implement nurse staffing plans beginning January 1, 2019.
- Creates a process for investigating violations and fining violators.

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

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Cody, Chair; Macri, Vice Chair; Clibborn, Jinkins, Riccelli, Robinson, Slatter, Stonier and Tharinger.

Minority Report: Do not pass. Signed by 7 members: Representatives Schmick, Ranking Minority Member; Graves, Assistant Ranking Minority Member; Caldier, Harris, MacEwen, Maycumber and Rodne.

Minority Report: Without recommendation. Signed by 1 member: Representative DeBolt.

Staff: Jim Morishima (786-7191).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on Health Care & Wellness be substituted therefor and the substitute bill do pass. Signed by 26 members: Representatives Ormsby, Chair; Robinson, Vice Chair; Stokesbary, Assistant Ranking Minority Member; Bergquist, Caldier, Cody, Fitzgibbon, Hansen, Harris, Hudgins, Jinkins, Kagi, Lytton, Manweller, Pettigrew, Pollet, Sawyer, Schmick, Senn, Springer, Stanford, Sullivan, Tharinger, Vick, Volz and Wilcox.

Minority Report: Do not pass. Signed by 5 members: Representatives Chandler, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Buys, Haler and Taylor.

Minority Report: Without recommendation. Signed by 1 member: Representative Nealey.

Staff: Linda Merelle (786-7092).

Background:

Hospitals must establish nurse staffing committees to develop and oversee an annual patient care unit and shift-based nurse staffing plan (nurse staffing plan); conduct a semiannual review of the nurse staffing plan; and review, assess, and respond to staffing concerns. Hospital finances may be taken into account in the development of a nurse staffing plan. A nurse staffing plan must consider such factors as:

- patient census, including total patients by unit and shift;
- level of intensity of patients and the nature of the care to be delivered on each shift;
- skill mix;
- level of experience of nurses providing care;
- the need for specialized or intensive equipment;
- the physical design of the patient care unit; and
- staffing guidelines adopted by national nursing associations, specialty associations, and other health professional associations.

If the chief executive officer of the hospital does not approve the nurse staffing committee's plan, he or she must provide a written explanation to the committee. The hospital may not retaliate against employees performing duties in connection with the nurse staffing committee or an individual who notifies the nurse staffing committee or the hospital administration about concerns on nurse staffing.

Summary of Engrossed Substitute Bill:

The duties of a nurse staffing committee are expanded to include the review, assessment, and response to staffing variations. The factors that must be considered in developing a nurse staffing plan are expanded to include:

- the availability of other personnel supporting nursing services;
- strategies to enable nurses to take meal and rest breaks as required by law or the terms of an applicable collective bargaining agreement, if any, between the hospital and a representative of the nursing staff; and
- hospital finances and resources.

If a hospital does not adopt a nurse staffing committee's staffing plan, the chief executive officer of the hospital must either identify the elements of the plan being changed prior to adoption or prepare an alternative plan that must be adopted by the hospital. Beginning January 1, 2019, a hospital must implement its nurse staffing plan and assign nursing personnel to patient care units according to the plan. The hospital must submit its adopted nurse staffing plans to the Department of Health (DOH) annually and whenever the plan is updated.

A nurse may report to the staffing committee any variations where the nurse personnel assignment in a patient care unit is not in accord with the adopted staffing plan and may make a complaint to the committee based on the variations. 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 nurse on a patient care unit objects to a shift-to-shift adjustment, the registered nurse may submit the complaint to the committee. The committee must develop a process to examine and respond to these data, including the ability to determine if a specific complaint is resolved or dismissing a complaint based on unsubstantiated data.

The DOH must investigate a complaint for a violation of nurse staffing committee or nurse staffing plan requirements if the complaint has documented evidence of failure to:

- form or establish a staffing committee;
- conduct a semi-annual review of a nurse staffing plan;
- submit a nurse staffing plan on an annual basis or when updated; or
- follow the nurse personnel assignments or shift-to shift adjustments.

The DOH may only investigate complaints relating to personnel assignments or shift-to-shift adjustments after making an assessment that the submitted evidence indicates a continuing pattern of unresolved violations that were submitted to the nurse staffing committee, excluding complaints determined to be resolved or dismissed. The evidence must include the aggregate data contained in the complaints submitted to the nurse staffing committee

indicating a continuing pattern of unresolved violations for a minimum 60-day continuous period leading up to the DOH's receipt of the complaint.

The DOH may not investigate complaints relating to personnel assignments or shift-to-shift adjustments 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. "Unforeseeable emergency circumstance" is defined as:

- any unforeseen national, state, or municipal emergency;
- when a hospital disaster plan is activated;
- any unforeseen disaster or other catastrophic event that substantially affects or increases the need for health care services; or
- when a hospital is diverting patients to another hospital for treatment or the hospital is receiving patients who are from another hospital.

If the DOH finds there has been a violation, the hospital must submit a corrective plan of action to the DOH of the presentation of findings to the hospital. Failure to submit or to follow a corrective plan of action may result in fines of \$100 per day for all violations asserted against the hospital at any time until the hospital submits or begins to follow a corrective plan of action or takes other action agreed to by the DOH. The DOH must maintain for public inspection records of any civil penalties, administrative actions, or license suspensions or revocations imposed on hospitals for these purposes.

The complaint process does not preclude the ability to otherwise submit complaints regarding nurse staffing to the DOH.

The DOH must submit a report to the Legislature on December 31, 2020, which must include the number of complaints submitted to the DOH, the disposition of the complaints, the number of investigations conducted, the associated costs for complaint investigations, recommendations for needed statutory changes, and projections on the impact on hospital licensing fees over the next four years. The DOH must convene a stakeholder group prior to submitting the report to review the report and findings and to jointly develop any legislative recommendations. The group must consist 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 DOH may not increase fees to implement the act prior to July 1, 2021.

The act expires on June 1, 2023.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony (Health Care & Wellness):

(In support) Inadequate nurse staffing can cost patient lives through inadequate care and medical errors. Safe working conditions are linked to better patient care and lower costs. Nurse staffing committees, nurse staffing plans, and collective bargaining have not led to measurable changes in how staffing is developed. Nurses have experienced frustration with nurse staffing committees, which have not been sustained over time. Implementation of nurse staffing plans is inconsistent. Nurse staffing plans must be implemented. Hospitals are often administered by entities in other states, who make decisions on patient care remotely. A statewide regulatory plan is necessary. The current law does not have enough teeth. Nurse staffing ratios have worked in California. This bill is good for patients, nurses, and hospitals.

(Opposed) Hospitals are committed to patient safety and have worked with nurses to find a collaborative solution through the nurse staffing committees. Washington is not like California. Washington is a frontrunner in patient safety. A one-size-fits-all solution will not work for hospitals. For example, small hospitals in rural communities face different challenges than large hospitals in urban communities. Hospitals must use providers at the top of their licenses and must balance staff satisfaction in order to retain staff. This bill will limit a hospital's ability to provide nimble solutions to complicated problems. Minimum staffing ratios may cause hospitals to turn patients away. To improve patient care, a full complement of staff is necessary, not just minimum staff ratios.

Staff Summary of Public Testimony (Appropriations):

(In support) This legislation is critical for patient safety. The estimated number of complaints described in the fiscal note is far greater than the actual experience in Washington, and the fiscal impacts regarding the complaints will be negligible. This bill is a reasonable compromise; it is a small step towards patient safety. To date, there have only been six complaints regarding how nurses are staffed.

(Opposed) None.

(Other) The language in the bill is workable, and further discussions would be helpful. It is not clear which elements of nursing plans are subject to the complaints process. Additional clarity on that point is needed.

Persons Testifying (Health Care & Wellness): (In support) Cindy Clark, Service Employees International Union Healthcare 1199NW; Daniel O'Tool and Ann Tan Piazza, Washington State Nursing Association; Jeanette Moore, United Food and Commercial Workers; and Chris Barton, Service Employees International Union Nurse Alliance.

(Opposed) Lisa Thatcher, Washington State Hospital Association; Melissa Strong, Mason General Hospital; and Alison Bradywood, Virginia Mason Hospital.

Persons Testifying (Appropriations): (In support) Lindsay Grad, Service Employees International Union Healthcare 1199 Northwest; and Melissa Johnson, Washington State Nurses Association.

(Other) Lisa Thatcher, Washington State Hospital Association.

Persons Signed In To Testify But Not Testifying (Health Care & Wellness): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.