
SECOND SUBSTITUTE SENATE BILL 5236

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)

READ FIRST TIME 02/24/23.

1 AN ACT Relating to improving nurse and health care worker safety
2 and patient care by establishing minimum staffing standards in
3 hospitals, requiring hospital staffing committees to develop staffing
4 plans, addressing mandatory overtime and meal and rest breaks, and
5 providing for enforcement; amending RCW 70.41.410, 70.41.420,
6 70.41.425, 49.12.480, 49.28.130, 49.28.140, and 49.28.150; adding a
7 new section to chapter 70.41 RCW; adding a new chapter to Title 49
8 RCW; creating a new section; recodifying RCW 70.41.410, 70.41.420,
9 70.41.425, 49.12.480, 49.28.130, 49.28.140, and 49.28.150; repealing
10 2017 c 249 s 4 (uncodified); prescribing penalties; providing
11 effective dates; and declaring an emergency.

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

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

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

21 (3) The advisory committee membership includes:

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

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

8 (c) Up to four nonvoting ex officio members.

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

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

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

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

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

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

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

37 (11) The advisory committee on hospital staffing must consider
38 innovative hospital staffing and care delivery models, such as those
39 that integrate on-site team-based care delivery, use of patient
40 monitoring equipment and technology, and virtual or remote care

1 delivery. This includes identifying and analyzing hospital innovative
2 hospital staffing and care delivery models including those explored
3 by national organizations and evaluating feasibility of broad-based
4 implementation of identified models. The advisory committee may
5 consider disseminating this information and analysis.

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

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

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

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

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

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

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

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

35 (~~(3)~~) (4) "Nursing assistant-certified" means an individual
36 certified under chapter 18.88A RCW who provides direct care to
37 patients.

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

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

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

8 (a) Nursing staff as defined in this section;

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

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

11 (d) An advanced registered nurse practitioner licensed under RCW
12 18.79.250, unless working as a direct care registered nurse.

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

15 ~~((6))~~ (8) (a) "Reasonable efforts" means that the employer
16 exhausts and documents all of the following but is unable to obtain
17 staffing coverage:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (2) Hospital staffing committees must be comprised of:

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

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

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

1 ~~((3))~~ (4) Primary responsibilities of the ~~((nurse))~~ hospital
2 staffing committee shall include:

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

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

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

24 (iii) Skill mix;

25 (iv) Level of experience and specialty certification or training
26 of nursing ~~((personnel))~~ and patient care staff 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 and patient care staff
35 supporting nursing services on the unit; and

36 ~~((Strategies to enable registered nurses to take meal and~~
37 ~~rest breaks as required by law or))~~ Compliance with the terms of an
38 applicable collective bargaining agreement, if any, ~~((between the~~
39 ~~hospital and a representative of the nursing staff))~~ and relevant

1 state and federal laws and rules, including those regarding meal and
2 rest breaks and use of overtime and on-call shifts;

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

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

8 ~~((4))~~ (5) In addition to the factors listed in subsection
9 (~~(3)~~) (4)(a) of this section, hospital finances and resources must
10 be taken into account in the development of the (~~nurse~~) hospital
11 staffing plan.

12 ~~((5))~~ (6) The staffing plan must not diminish other standards
13 contained in state or federal law and rules, or the terms of an
14 applicable collective bargaining agreement (~~, if any, between the~~
15 hospital and a representative of the nursing staff)).

16 ~~((6))~~ (7)(a) The committee (~~will~~) shall produce the
17 hospital's annual (~~nurse~~) hospital staffing plan.

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

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

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

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

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

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

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

13 ((+7)) (8)(a) Beginning ((January 1, 2019)) July 1, 2025, each
14 hospital shall implement the staffing plan and assign nursing
15 ((personnel)) and patient care staff to each patient care unit in
16 accordance with the plan except in instances of unforeseeable
17 emergent circumstances.

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

24 (i) Each hospital must report to the department of health and the
25 department of labor and industries on a semiannual basis the
26 percentage of nurse staffing assignments where the assignment in a
27 patient care unit is out of compliance with the adopted nurse
28 staffing plan. Beginning in 2026, semiannual reports are due on July
29 31st and January 31st each year. The first report is due January 31,
30 2026, and must cover the last six months of 2025.

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

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

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

2 (A) Hospitals certified as critical access hospitals;

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

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

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

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

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

31 (f) In the event of an unforeseeable emergent circumstance
32 lasting for 15 days or more, the hospital incident command shall
33 report within 30 days to the cochairs of the hospital staffing
34 committee an assessment of the staffing needs arising from the
35 unforeseeable emergent circumstance and the hospital's plan to
36 address those identified staffing needs. Upon receipt of the report,
37 the hospital staffing committee shall convene to develop a
38 contingency staffing plan to address the needs arising from the
39 unforeseeable emergent circumstance. The hospital's deviation from
40 its staffing plan may not be in effect for more than 90 days without

1 the approval of the hospital staffing committee by a 50 percent plus
2 one vote. The approval must indicate when the hospital will return to
3 the hospital staffing plan and any additional extension must also be
4 approved by the committee and include the date when the hospital will
5 return to the nurse staffing plan.

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

14 ~~((8))~~ (9) Each hospital shall post, in a public area on each
15 patient care unit, the ((nurse)) staffing plan and the ((nurse))
16 staffing schedule for that shift on that unit, as well as the
17 relevant clinical staffing for that shift. The staffing plan and
18 current staffing levels must also be made available to patients and
19 visitors upon request. The hospital must also post in a public area
20 on each patient care unit any corrective action plan relevant to that
21 patient care unit as required under this act.

22 ~~((9))~~ (10) A hospital may not retaliate against or engage in
23 any form of intimidation ((of)) or otherwise take any adverse action
24 against:

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

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

30 ~~((10))~~ (11) This section is not intended to create unreasonable
31 burdens on critical access hospitals under 42 U.S.C. Sec. 1395i-4.
32 Critical access hospitals may develop flexible approaches to
33 accomplish the requirements of this section that may include but are
34 not limited to having ((nurse)) hospital staffing committees work by
35 video conference, telephone, or email.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 9 (i) Form or establish a hospital staffing committee;
10 (ii) Conduct a semiannual review of a ~~((nurse))~~ staffing plan;
11 (iii) Submit a ~~((nurse))~~ staffing plan on an annual basis and any
12 updates; or
13 (iv) ~~((A))~~ Follow the ~~((nursing))~~ personnel assignments in a
14 patient care unit in violation of RCW 70.41.420 ~~((7)(a) or shift-to-~~
15 ~~shift adjustments in staffing levels in violation of RCW~~
16 ~~70.41.420(7)(b))~~ (8) (as recodified by this act).

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

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

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

39 (c) After an investigation conducted under (a) of this
40 subsection, if the department determines that there has been a

1 violation, the department shall require the hospital to submit a
2 corrective plan of action within (~~forty-five~~) 45 days of the
3 presentation of findings from the department to the hospital.

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

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

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

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

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

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

26 (4)(a) Beginning January 1, 2027, the department of labor and
27 industries, in consultation with the department of health, must
28 require a hospital to submit a corrective plan of action within 45
29 calendar days of a report to the department under RCW
30 70.41.420(7)(b)(ii).

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

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

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

36 (iii) Requiring minimum staffing standards;

37 (iv) Reducing hospital beds or services; or

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

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

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

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

21 ~~((3))~~ (6) The department of health shall maintain for public
22 inspection records of any civil penalties((7)) and administrative
23 actions((, or license suspensions or revocations)) imposed on
24 hospitals under this section. In addition, the department of health
25 must post violations of this section on its website.

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

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

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

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

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

36 ~~(5))~~ (7) Nothing in this section shall be construed to preclude
37 the ability to otherwise submit a complaint to the department for
38 failure to follow RCW 70.41.420 (as recodified by this act).

39 ~~((6) The department shall submit a report to the legislature on~~
40 ~~December 31, 2020. This report shall include the number of complaints~~

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

14 ~~(7) No fees shall be increased to implement chapter 249, Laws of~~
15 ~~2017 prior to July 1, 2021.)~~

16 NEW SECTION. **Sec. 5.** A new section is added to chapter 70.41
17 RCW to read as follows:

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

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

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

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

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

31 NEW SECTION. **Sec. 6.** (1) The department of labor and industries
32 and the department of health must adopt joint rules for sections 1
33 through 4 of this act.

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

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

4 (b) Include provisions that allow for data sharing.

5 **Sec. 7.** RCW 49.12.480 and 2019 c 296 s 1 are each amended to
6 read as follows:

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

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

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

14 (i) An unforeseeable emergent circumstance, as defined in RCW
15 49.28.130 (as recodified by this act); or

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

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

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

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

36 (c) For any work period for which an employee is entitled to one
37 or more meal periods and more than one rest period, the employee and
38 the employer may agree that a meal period may be combined with a rest
39 period. This agreement may be revoked at any time by the employee. If

1 the employee is required to remain on duty during the combined meal
2 and rest period, the time shall be paid. If the employee is released
3 from duty for an uninterrupted combined meal and rest period, the
4 time corresponding to the meal period shall be unpaid, but the time
5 corresponding to the rest period shall be paid.

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

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

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

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

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

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

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

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

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

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

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

35 **Sec. 8.** RCW 49.28.130 and 2019 c 296 s 2 are each amended to
36 read as follows:

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

1 (1) (a) "Employee" means a person who:
2 (i) Is employed by a health care facility;
3 (ii) Is involved in direct patient care activities or clinical
4 services; and
5 (iii) Receives an hourly wage or is covered by a collective
6 bargaining agreement (~~;~~ and
7 ~~(iv) Is either:~~
8 ~~(A) A licensed practical nurse or registered nurse licensed under~~
9 ~~chapter 18.79 RCW; or~~
10 ~~(B) Beginning July 1, 2020, a surgical technologist registered~~
11 ~~under chapter 18.215 RCW, a diagnostic radiologic technologist or~~
12 ~~cardiovascular invasive specialist certified under chapter 18.84 RCW,~~
13 ~~a respiratory care practitioner licensed under chapter 18.89 RCW, or~~
14 ~~a nursing assistant certified as defined in RCW 18.88A.020)).~~
15 (b) "Employee" does not mean a person who is both:
16 (i) (~~Is employed~~) Employed by a health care facility as defined
17 in subsection (3) (a) (v) of this section; and
18 (ii) (~~Is a~~) A surgical technologist registered under chapter
19 18.215 RCW, a diagnostic radiologic technologist or cardiovascular
20 invasive specialist certified under chapter 18.84 RCW, a respiratory
21 care practitioner licensed under chapter 18.89 RCW, or a certified
22 nursing assistant as defined in RCW 18.88A.020.
23 (2) "Employer" means an individual, partnership, association,
24 corporation, the state, a political subdivision of the state, or
25 person or group of persons, acting directly or indirectly in the
26 interest of a health care facility.
27 (3) (a) "Health care facility" means the following facilities, or
28 any part of the facility, including such facilities if owned and
29 operated by a political subdivision or instrumentality of the state,
30 that operate on a twenty-four hours per day, seven days per week
31 basis:
32 (i) Hospices licensed under chapter 70.127 RCW;
33 (ii) Hospitals licensed under chapter 70.41 RCW (~~, except that~~
34 ~~until July 1, 2021, the provisions of section 3, chapter 296, Laws of~~
35 ~~2019 do not apply to:~~
36 ~~(A) Hospitals certified as critical access hospitals under 42~~
37 ~~U.S.C. Sec. 1395i-4;~~
38 ~~(B) Hospitals with fewer than twenty-five acute care beds in~~
39 ~~operation; and~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (d) Seeks personnel from a contracted temporary agency when such
40 staffing is permitted by law or an applicable collective bargaining

1 agreement, and when the employer regularly uses a contracted
2 temporary agency.

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

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

13 **Sec. 9.** RCW 49.28.140 and 2019 c 296 s 3 are each amended to
14 read as follows:

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

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

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

25 (a) Because of any unforeseeable emergent circumstance;

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

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

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

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

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

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

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

12 **Sec. 10.** RCW 49.28.150 and 2002 c 112 s 4 are each amended to
13 read as follows:

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

26 NEW SECTION. **Sec. 11.** (1)(a) If a complainant files a complaint
27 with the department of labor and industries alleging a violation of
28 this chapter, the department shall investigate the complaint.

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

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

1 extension of the period, and specifying the duration of the
2 extension.

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

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

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

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

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

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

27 NEW SECTION. **Sec. 12.** (1) A person, firm, or corporation
28 aggrieved by a citation and notice of assessment by the department of
29 labor and industries under this chapter may appeal the citation and
30 notice of assessment to the director of the department by filing a
31 notice of appeal with the director within 30 days of the department's
32 issuance of the citation and notice of assessment. A citation and
33 notice of assessment not appealed within 30 days is final and
34 binding, and not subject to further appeal.

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

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

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

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

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

24 NEW SECTION. **Sec. 13.** Collections of unpaid citations assessing
25 civil penalties will be pursuant to RCW 49.48.086.

26 NEW SECTION. **Sec. 14.** The department of labor and industries
27 may adopt and implement rules to carry out and enforce the provisions
28 of this chapter, including but not limited to protecting employees
29 from retaliation for filing complaints under this chapter and
30 ordering appropriate remedy.

31 NEW SECTION. **Sec. 15.** The department may contract with
32 consultants to support administration of its responsibilities under
33 this chapter. The department may not contract with any entity that
34 has financial interests that may create a potential conflict of
35 interest.

1 NEW SECTION. **Sec. 16.** The Washington state institute for public
2 policy shall conduct a study on hospital staffing standards for
3 direct care registered nurses and direct care nursing assistants.

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

7 (a) Timeliness and completeness of filed forms;

8 (b) Format of filed forms;

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

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

12 (e) Trends over time, if any;

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

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

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

20 (3) The institute must provide a report on its findings to the
21 department and relevant committees of the legislature by June 30,
22 2024.

23 NEW SECTION. **Sec. 17.** 2017 c 249 s 4 (uncodified) is repealed.

24 NEW SECTION. **Sec. 18.** Sections 1, 6, and 11 through 15 of this
25 act constitute a new chapter in Title 49 RCW.

26 NEW SECTION. **Sec. 19.** RCW 70.41.410, 70.41.420, and 70.41.425
27 are each recodified as sections in chapter 49.--- RCW (the new
28 chapter created in section 18 of this act).

29 NEW SECTION. **Sec. 20.** RCW 49.12.480, 49.28.130, 49.28.140, and
30 49.28.150 are each recodified as sections in chapter 49.--- RCW (the
31 new chapter created in section 18 of this act).

32 NEW SECTION. **Sec. 21.** Except for sections 1, 3, 15, and 17 of
33 this act, this act takes effect July 1, 2024.

1 NEW SECTION. **Sec. 22.** Section 17 of this act is necessary for
2 the immediate preservation of the public peace, health, or safety, or
3 support of the state government and its existing public institutions,
4 and takes effect June 1, 2023.

--- END ---