

SENATE BILL REPORT

SB 5751

As of January 27, 2022

Title: An act relating to improving worker safety and patient care in health care facilities by addressing staffing needs, overtime, meal and rest breaks, and enforcement.

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

Sponsors: Senators Robinson, Keiser, Conway, Dhingra, Hasegawa, Hunt, Kuderer, Lias, Nguyen, Nobles, Pedersen, Randall, Saldaña, Stanford and Wilson, C..

Brief History:

Committee Activity: Labor, Commerce & Tribal Affairs: 1/31/22.

Brief Summary of Bill

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

SENATE COMMITTEE ON LABOR, COMMERCE & TRIBAL AFFAIRS

Staff: Jarrett Sacks (786-7448)

Background: Nurse Staffing Committees. Hospitals are required to establish nurse staffing committees whose membership consists of:

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- at least one-half who are registered nurses providing direct patient care; and
- up to one-half who are determined by the hospital administration.

The responsibilities of the nurse staffing committee include:

- development and oversight of annual staffing plans;
- review of the staffing plan; and
- review, assessment, and response to staffing variations or concerns presented to the committee.

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

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

DOH must investigate complaints related to the failure to establish a staffing committee, submit a nurse staffing plan annually, conduct a semi-annual review of the nurse staffing plan, or follow nursing assignments or shift-to-shift adjustments. There are statutory limitations on when DOH may investigate a complaint of a failure to follow nurse assignments or shift-to-shift adjustments.

After an investigation, if DOH determines there has been a violation, DOH must require the hospital to submit a corrective action plan within 45 days of the presentation of findings from DOH to the hospital. If the hospital fails to submit or follow the corrective action plan, DOH may impose a civil penalty of \$100 per day.

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

Meal and Rest Breaks. In general, hospitals must provide employees with uninterrupted meal and rest breaks, except for:

- in the case of an unforeseeable emergent circumstance; or
- a clinical circumstance that may lead to a significant adverse effect on the patient's condition without the knowledge, specific skill, or ability of the employee on break, or due to an unforeseen or unavoidable event relating to patient care requiring immediate action that could not be planned for by an employer.

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

An unforeseeable emergent circumstance is:

- any unforeseen declared national, state, or municipal emergency;
- when a health care facility disaster plan is activated; or
- any unforeseen disaster or other catastrophic event which substantially affects or increases the need for health care services.

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

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

Health Care Facility Overtime. No employee of a health care facility may be required to work overtime and the acceptance by an employee of overtime is strictly voluntary.

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

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

Health care facilities covered by the overtime restrictions include hospitals, hospices, rural health care facilities, psychiatric hospitals, and facilities owned and operated by the Department of Corrections.

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

The Department of Labor and Industries (L&I) enforces the meal and rest break and overtime provisions, as well as other wage and hour laws and workplace health and safety standards.

Summary of Bill: Staffing Committees. The staffing committee statutes are recodified to be under the jurisdiction of L&I, rather than DOH. The expiration date of the various provisions related to staffing committees and agency investigations is repealed.

Instead of nurse staffing committees, hospitals are required to have hospital staffing committees whose membership consists of:

- 50 percent nursing and ancillary health care personnel, who are nonsupervisory and nonmanagerial, currently providing direct patient care; and
- up to 50 percent are determined by the hospital administration, and must include the

chief financial officer, the chief nursing officers, and patient care unit directors and managers, or their designees.

The hospital staffing committee must submit its annual staffing plan in compliance with the staffing standards established in the bill and submit the staffing plan using the uniform format established by L&I. Factors considered by the hospital staffing committee when developing the staffing plan are modified.

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

Additional changes are made to the hospital staffing committee statutes, including requiring the chief executive officer to provide feedback to the hospital staffing committee on a semiannual basis and providing that all complaints to the staffing committee must be reviewed, regardless of the format the complainant uses.

Hospital staffing committees must file a charter with L&I that includes:

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

L&I must review submitted staffing plans to ensure they are timely received and completed. Failure to timely submit a staffing plan or a charter will result in a violation and civil penalty of \$25,000.

L&I must also investigate submitted complaints. The provision limiting investigations to complaints with evidence of a continuing pattern of unresolved violations is removed.

After an investigation, hospitals will not be found in violation of the minimum staffing standards if:

- there was an unforeseeable emergency circumstance; or
- the hospital, after consultation with the hospital staffing committee, documents that the hospital made reasonable efforts to obtain and retain staffing to meet required personnel assignments, but was unable to do so.

The definition of unforeseeable emergency circumstance is changed to remove unforeseen

disasters or other catastrophic events and when a hospital diverts patients or receives diverted patients.

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

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

Staffing Standards. Minimum staffing standards are established for specific patient units. Direct care registered nurses may not be assigned more patients than the following for any shift—expressed as nurse:patient ratios:

- emergency department: 1:3 non-trauma/non-critical care patients and 1:1 trauma/critical care patients;
- intensive care units: 1:2 or 1:1 depending on the stability of the patient as assessed by the nurse;
- labor and delivery: 1:2 and 1:1 patient for active labor and in all stages of labor for patients with complications;
- postpartum, antepartum, and well-baby nursery: 1:6; in this context, the mother and the baby count as separate patients;
- operating room: 1:1;
- oncology: 1:4;
- post-anesthesia care unit: 1:2;
- progressive care unit, intensive specialty care unit, or stepdown unit: 1:3;
- medical-surgical unit: 1:4;
- telemetry unit: 1:3;
- psychiatric unit: 1:6; and
- pediatrics: 1:3.

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

- intensive care units: 1:8;
- cardiac unit: 1:4;
- labor and delivery: 1:8 and 1:4 patients for active labor and in all stages of labor for patients with complications;
- oncology: 1:7;

- post-anesthesia care unit: 1:8;
- progressive care unit, intensive specialty care unit, or stepdown unit: 1:8;
- medical-surgical unit: 1:8;
- telemetry unit: 1:8;
- psychiatric unit: 1:7;
- pediatrics: 1:13;
- emergency department: 1:7;
- electing unit: 1:8; and
- cardiac monitoring unit: 1:50.

A hospital may not average the number of patients and direct care nurses in a unit over any period of time to meet the staffing limits established in the bill. The limits in the bill do not decrease any ratios established in any collective bargaining agreement.

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

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

Meal and Rest Breaks and Overtime Restrictions. Provisions that allowed certain clinical circumstances to exempt hospitals from meal and rest break requirements are removed.

The definition of employee is broadened to apply the meal and rest break provisions and overtime restrictions to an employee who:

- is involved in direct patient care activities or clinical services; and
- receives an hourly wage or is covered by a collective bargaining agreement.

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

Exemptions to the overtime restrictions include:

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

Enforcement. A person may file a complaint with L&I alleging violations of the staffing provisions, meal and rest break requirements, and overtime restrictions. Procedures are established for the issuance of citations and notices of assessments, appeals, and other

processes. L&I must enforce the overtime restrictions using citations and notices of assessments for violations rather than by civil infractions.

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

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

Appropriation: None.

Fiscal Note: Requested on January 12, 2022.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.