

2SSB 5236 - S AMD 180

By Senator Mullet

ADOPTED AS AMENDED 03/06/2023

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 43.70
4 RCW to read as follows:

5 (1) The department, in consultation with the department of labor
6 and industries, must establish an advisory committee on hospital
7 staffing by September 1, 2023.

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

13 (3) The advisory committee membership includes:

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

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

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

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

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

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

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

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

18 (10) The department and the department of labor and industries
19 must provide the advisory committee on hospital staffing with data on
20 a quarterly basis related to compliance with this chapter, complaint
21 filing and disposition trends, and notification of corrective plans
22 of action plans and adherence to those plans.

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

31 (12) By December 1, 2024, the advisory committee on hospital
32 staffing must review the report prepared by the Washington state
33 institute for public policy as required by section 15 of this act.

34 (13) After January 1, 2027, when the forms are developed and
35 effective, the advisory committee on hospital staffing may meet if it
36 is determined by the department of health and committee members that
37 such meetings are necessary.

38 (14) No earlier than July 1, 2029, the advisory committee on
39 hospital staffing must discuss the issues related to applicability of
40 RCW 70.41.420(7)(b) (i) and (ii) for hospitals listed under RCW

1 70.41.420(7)(b)(iv). This must include possible data collection
2 options, potential costs, sources of funding, and implementation
3 timeline.

4 (15) The advisory committee on hospital staffing must advise the
5 department of labor and industries on the department's development by
6 March 1, 2024, of a uniform form for reporting under RCW
7 49.12.480(2).

8 (16) This section expires July 1, 2030.

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

11 The definitions in this section apply throughout this section
12 (~~and~~), RCW 70.41.420, and 70.41.425 unless the context clearly
13 requires otherwise.

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

16 (2) "Hospital staffing committee" means the committee established
17 by a hospital under RCW 70.41.420.

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

20 (~~(3)~~) (4) "Nursing assistant-certified" means an individual
21 certified under chapter 18.88A RCW who provides direct care to
22 patients.

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

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

28 (~~(5)~~) (6) "Patient care staff" means a person who is providing
29 direct care or supportive services to patients but who is not:

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

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

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

33 (d) An advanced registered nurse practitioner licensed under RCW
34 18.79.250, unless working as a direct care registered nurse.

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

37 (~~(6)~~) (8) "Reasonable efforts" means that the employer exhausts
38 and documents all of the following but is unable to obtain staffing
39 coverage:

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

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

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

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

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

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

16 (11) "Unforeseeable emergent circumstance" means:

17 (a) Any unforeseen declared national, state, or municipal
18 emergency;

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

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

23 (d) When a hospital is diverting patients to another hospital or
24 hospitals for treatment.

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

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

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

33 (a) At least ~~((one-half))~~ 50 percent of the voting members of the
34 ~~((nurse))~~ hospital staffing committee shall be ~~((registered nurses))~~
35 nursing staff, who are nonsupervisory and nonmanagerial, currently
36 providing direct patient care ~~((and up to one-half of the members~~
37 shall be determined by the hospital administration)). The selection
38 of the ~~((registered nurses providing direct patient care))~~ nursing
39 staff shall be according to the collective bargaining ~~((agreement))~~

1 representative or representatives if there is one (~~(in-effect)~~) or
2 more at the hospital. If there is no (~~(applicable)~~) collective
3 bargaining (~~(agreement)~~) representative, the members of the (~~(nurse)~~)
4 hospital staffing committee who are (~~(registered-nurses)~~) nursing
5 staff providing direct patient care shall be selected by their peers.

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

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

18 (~~((3))~~) (4) Primary responsibilities of the (~~(nurse)~~) hospital
19 staffing committee shall include:

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

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

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

1 (iii) Skill mix;

2 (iv) Level of experience and specialty certification or training

3 of nursing (~~personnel~~) and patient care staff providing care;

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

5 (vi) The architecture and geography of the patient care unit,

6 including but not limited to placement of patient rooms, treatment

7 areas, nursing stations, medication preparation areas, and equipment;

8 (vii) Staffing guidelines adopted or published by national

9 nursing professional associations, specialty nursing organizations,

10 and other health professional organizations;

11 (viii) Availability of other personnel and patient care staff

12 supporting nursing services on the unit; and

13 (ix) (~~Strategies to enable registered nurses to take meal and~~

14 ~~rest breaks as required by law or~~) Compliance with the terms of an

15 applicable collective bargaining agreement, if any, (~~between the~~

16 ~~hospital and a representative of the nursing staff~~) and relevant

17 state and federal laws and rules, including those regarding meal and

18 rest breaks and use of overtime and on-call shifts;

19 (b) Semiannual review of the staffing plan against patient need

20 and known evidence-based staffing information, including the nursing

21 sensitive quality indicators collected by the hospital; and

22 (c) Review, assessment, and response to staffing variations or

23 (~~concerns~~) complaints presented to the committee.

24 (~~(4)~~) (5) In addition to the factors listed in subsection

25 (~~(3)~~) (4)(a) of this section, hospital finances and resources must

26 be taken into account in the development of the (~~nurse~~) hospital

27 staffing plan.

28 (~~(5) The staffing plan must not diminish other standards~~

29 ~~contained in state or federal law and rules, or the terms of an~~

30 ~~applicable collective bargaining agreement, if any, between the~~

31 ~~hospital and a representative of the nursing staff.))~~

32 (6) (a) The committee (~~will~~) shall produce the hospital's annual

33 (~~nurse~~) hospital staffing plan.

34 (~~If this staffing plan is not adopted by the hospital, the chief~~

35 ~~executive officer shall provide a written explanation of the reasons~~

36 ~~why the plan was not adopted to the committee. The chief executive~~

37 ~~officer must then either: (a) Identify those elements of the proposed~~

38 ~~plan being changed prior to adoption of the plan by the hospital or~~

39 ~~(b) prepare an alternate annual staffing plan that must be adopted by~~

40 ~~the hospital.))~~

1 (b) The committee shall propose by a 50 percent plus one vote a
2 draft of the hospital's annual staffing plan which must be delivered
3 to the hospital's chief executive officer or their designee by July
4 1, 2024, and annually thereafter.

5 (c) The chief executive officer or their designee must provide
6 written feedback to the hospital staffing committee on the proposed
7 annual staffing plan. The feedback must:

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

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

20 (d) The committee must review and consider any feedback required
21 under (c)(i) of this subsection prior to approving by a 50 percent
22 plus one vote a revised hospital staffing plan to provide to the
23 chief executive officer.

24 (e) If this revised proposed staffing plan is not adopted by the
25 hospital, the most recent of the following remains in effect:

26 (i) The staffing plan that was in effect January 1, 2023; or

27 (ii) The staffing plan last approved by a 50 percent plus one
28 vote of a duly constituted hospital staffing committee and adopted by
29 the hospital, in accordance with all standards under this section.

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

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

38 ((-a-)) (b) Each hospital shall document when a patient care unit
39 nursing staff assignment is out of compliance with the adopted
40 hospital staffing plan. For purposes of this subsection, out of

1 compliance means the number of patients assigned to the nursing staff
2 exceeds the patient care unit assignment as directed by the nurse
3 staffing plan. The hospital must adopt written policies and
4 procedures under this subsection no later than October 1, 2024.

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

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

17 (iii) The department must develop a form or forms for the report
18 to be made under this subsection by October 1, 2024. The form must
19 include a checkbox for either cochair of the hospital staffing
20 committee to indicate their belief that the validity of the report
21 should be investigated by the department. If the checkbox on the form
22 has been checked, the department may initiate an investigation as to
23 the validity of the semiannual report under (b)(i) of this
24 subsection.

25 (iv) This subsection (7)(b) does not apply to:

26 (A) Hospitals certified as critical access hospitals;

27 (B) Hospitals with fewer than 25 acute care licensed beds;

28 (C) Hospitals certified by the centers for medicare and medicaid
29 services as sole community hospitals that are not owned or operated
30 by a health system that owns or operates more than one acute hospital
31 licensed under chapter 70.41 RCW; and

32 (D) Hospitals located on an island operating within a public
33 hospital district in Skagit county.

34 (c) A (~~registered nurse~~) nursing staff may report to the
35 hospital staffing committee any variations where the (~~nurse~~
36 personnel) nursing staff assignment in a patient care unit is not in
37 accordance with the adopted staffing plan and may make a complaint to
38 the committee based on the variations.

39 (~~(b)~~) (d) Shift-to-shift adjustments in staffing levels
40 required by the plan may be made by the appropriate hospital

1 personnel overseeing patient care operations. If (~~(a—registered~~
2 ~~nurse~~)) nursing staff on a patient care unit objects to a shift-to-
3 shift adjustment, (~~(the—registered—nurse)~~) the nursing staff may
4 submit the complaint to the hospital staffing committee.

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

13 (f) In the event of an unforeseeable emergent circumstance
14 lasting for 15 days or more, the hospital incident command shall
15 report within 30 days to the cochairs of the hospital staffing
16 committee an assessment of the staffing needs arising from the
17 unforeseeable emergent circumstance and the hospital's plan to
18 address those identified staffing needs. Upon receipt of the report,
19 the hospital staffing committee shall convene to develop a
20 contingency staffing plan to address the needs arising from the
21 unforeseeable emergent circumstance. The hospital's deviation from
22 its staffing plan may not be in effect for more than 90 days without
23 the review of the hospital staffing committee. Within 90 days of an
24 initial deviation under this section the hospital must report to the
25 department the basis for the deviation and must report to the
26 department again once the deviation under this section is no longer
27 in effect.

28 (g) A direct care registered nurse or direct care nursing
29 assistant-certified may not be assigned by hospitals to a nursing
30 unit or clinical area unless that nurse has first received
31 orientation in that clinical area sufficient to provide competent
32 care to patients in that area and has demonstrated current competence
33 in providing care in that area. The hospital must adopt written
34 policies and procedures under this subsection no later than July 1,
35 2025.

36 (8) Each hospital shall post, in a public area on each patient
37 care unit, the (~~(nurse)~~) staffing plan and the (~~(nurse)~~) staffing
38 schedule for that shift on that unit, as well as the relevant
39 clinical staffing for that shift. The staffing plan and current
40 staffing levels must also be made available to patients and visitors

1 upon request. The hospital must also post in a public area on each
2 patient care unit any corrective action plan relevant to that patient
3 care unit as required under RCW 70.41.425(4).

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

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

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

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

17 (11) By July 1, 2024, the hospital staffing committee shall file
18 with the department a charter that must include, but is not limited
19 to:

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

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

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

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

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

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

1 (g) Processes for the hospital staffing committee to conduct
2 quarterly reviews of: Staff turnover rates including new hire
3 turnover rates during first year of employment; anonymized aggregate
4 exit interview data on an annual basis; and hospital plans regarding
5 workforce development;

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

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

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

16 (k) Processes for how the information from the reports required
17 under subsection (7) of this section will be used to inform the
18 development and semiannual review of the staffing plan.

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

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

27 (1)(a) The department shall investigate a complaint submitted
28 under this section for violation of RCW 70.41.420 following receipt
29 of a complaint with documented evidence of failure to:

- 30 (i) Form or establish a hospital staffing committee;
31 (ii) Conduct a semiannual review of a ((~~nurse~~)) staffing plan;
32 (iii) Submit a ((~~nurse~~)) staffing plan on an annual basis and any
33 updates; or
34 (iv) (A) Follow the nursing ((~~personnel~~)) staff assignments in a
35 patient care unit in violation of RCW 70.41.420(7) ((~~(a) or shift-to-~~
36 ~~shift~~ adjustments in staffing levels in violation of RCW
37 70.41.420(7)(b))) (c) or (d).

38 (B) Based on their formal agreement required under sections 5 and
39 6 of this act, the department and the department of labor and

1 industries shall investigate complaints under this subsection
2 (1)(a)(iv). The departments may only investigate a complaint under
3 this subsection (1)(a)(iv) ~~((after making an assessment that the~~
4 ~~submitted evidence indicates a continuing pattern of unresolved))~~ for
5 violations of RCW 70.41.420(7) ((-a) or (-b-)) (c) or (d), that were
6 submitted to the ~~((nurse))~~ hospital staffing committee and remain
7 unresolved for 60 days after receipt by the hospital staffing
8 committee, excluding complaints determined by the ~~((nurse))~~ hospital
9 staffing committee to be resolved or dismissed. ~~((The submitted~~
10 ~~evidence must include the aggregate data contained in the complaints~~
11 ~~submitted to the hospital's nurse staffing committee that indicate a~~
12 ~~continuing pattern of unresolved violations for a minimum sixty-day~~
13 ~~continuous period leading up to receipt of the complaint by the~~
14 ~~department.~~

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

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

26 (b) The department and the department of labor and industries may
27 investigate and take appropriate enforcement action without any
28 complaint if either department discovers data in the course of an
29 investigation or inspection suggesting any violation of RCW
30 70.41.420.

31 (c) After an investigation conducted under (a) of this
32 subsection, if the department and the department of labor and
33 industries, pursuant to their formal agreement under sections 5 and 6
34 of this act, determine that there has been multiple unresolved
35 violations of RCW 70.41.420(7) (c) and (d) of a similar nature within
36 30 days prior to the receipt of the complaint by the department, the
37 department shall require the hospital to submit for their approval a
38 corrective plan of action within 45 days of the presentation of
39 findings from the department to the hospital.

1 (d) Hospitals will not be found in violation of RCW 70.41.420 if
2 it has been determined, following an investigation, that:

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

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

9 (iii) Per documentation provided by the hospital, an individual
10 admission of a patient in need of critical care to sustain their life
11 or prevent disability received from another hospital caused the
12 staffing plan violation alleged in the complaint.

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

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

21 (3) Beginning January 1, 2027, the department shall review all
22 reports submitted under RCW 70.41.420(7)(b)(i) to ensure:

23 (a) The forms are received by the appropriate deadline;

24 (b) The forms are completed on the department-issued form; and

25 (c) The checkbox under RCW 70.41.420(7)(b)(iii) has not been
26 checked.

27 (4) Beginning January 1, 2027, the department, in consultation
28 with the department of labor and industries, must require a hospital
29 to submit for their approval a corrective plan of action within 45
30 calendar days of a report to the department under RCW
31 70.41.420(7)(b)(ii) of this section or after an investigation under
32 RCW 70.41.420(7)(b)(iii) of this section finds that the hospital is
33 not in compliance.

34 (5)(a) Pursuant to their formal agreement under sections 5 and 6
35 of this act the department and the department of labor and industries
36 must review and approve a hospital's proposed corrective plan of
37 action under subsection (1)(c) or (4) of this section. As necessary,
38 the department will require the hospital to revise the plan for it to
39 adequately address issues identified by the department and the
40 department of labor and industries prior to approving the plan.

1 (b) The department may review any corrective plan of action under
2 subsection (1)(c) or (4) of this section that adversely impact
3 provision of health care services or patient safety, and may require
4 revisions to the corrective plan of action to ensure patient safety
5 is maintained.

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

8 (i) Exercising efforts to obtain additional staff;

9 (ii) Implementing actions to improve staffing plan variation or
10 shift-to-shift adjustment planning;

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

12 (iv) Requiring minimum staffing standards;

13 (v) Reducing hospital beds or services; or

14 (vi) Closing the hospital emergency department to ambulance
15 transport, except for patients in need of critical care to sustain
16 their life or prevent disability.

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

20 (e) In the event that the hospital follows a corrective plan of
21 action under this subsection but remains in compliance for less than
22 80 percent of the nurse staffing assignments in the month following
23 completion of the corrective plan of action, the hospital is required
24 to submit a revised corrective plan of action with new elements that
25 are likely to produce a minimum of 80 percent of the nurse staffing
26 assignments in a month.

27 (6)(a) In the event that a hospital fails to submit a staffing
28 plan, staffing committee charter, or a corrective plan of action by
29 the relevant deadline, the department may take administrative action
30 with penalties up to \$10,000 per 30 days of failure to comply.

31 (b)(i) In the event that a hospital (~~(fails to submit or)~~)
32 submits but fails to follow (~~(such)~~) a corrective plan of action (~~(in~~
33 response to a violation or violations found by the department based
34 on a complaint filed pursuant to subsection (1) of this section))
35 required under subsection (1)(c) or (4) of this section, the
36 department of labor and industries may impose(~~(, for all violations~~
37 asserted against a hospital at any time,)) a civil penalty of (~~(one~~
38 hundred dollars)) \$50,000 per (~~(day)~~) 30 days. Civil penalties apply
39 until the hospital (~~(submits or begins to follow)~~) begins to follow a
40 corrective plan of action (~~(or takes other action agreed to)~~) that

1 has been approved by the department. Revenue from these fines must be
2 deposited into the supplemental pension fund established under RCW
3 51.44.033.

4 ~~((3) The)~~ (ii) If the department of labor and industries finds
5 a violation after an investigation pursuant to subsection
6 (1)(a)(iv)(B) of this section or assesses or imposes any penalty
7 pursuant to this section, the employer may appeal the department's
8 finding or assessment of penalties according to the procedures under
9 sections 12 through 14 of this act.

10 (7)(a) As resources allow, the department ~~((shall maintain for~~
11 ~~public inspection))~~ must make records of any civil penalties ~~((7))~~ and
12 administrative actions ~~((7))~~ or license suspensions or revocations
13 imposed on hospitals, or any notices of resolution under this section
14 available to the public.

15 (b) The department must post hospital staffing plans, hospital
16 staffing committee charters, and the semi-annual compliance reports
17 required under RCW 70.41.420 on its website.

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

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

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

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

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

28 ~~(5))~~ (8) Nothing in this section shall be construed to preclude
29 the ability to otherwise submit a complaint to the department for
30 failure to follow RCW 70.41.420.

31 ~~((6) The department shall submit a report to the legislature on~~
32 ~~December 31, 2020. This report shall include the number of complaints~~
33 ~~submitted to the department under this section, the disposition of~~
34 ~~these complaints, the number of investigations conducted, the~~
35 ~~associated costs for complaint investigations, and recommendations~~
36 ~~for any needed statutory changes. The department shall also project,~~
37 ~~based on experience, the impact, if any, on hospital licensing fees~~
38 ~~over the next four years. Prior to the submission of the report, the~~
39 ~~secretary shall convene a stakeholder group consisting of the~~
40 ~~Washington state hospital association, the Washington state nurses~~

1 ~~association, service employees international union healthcare 1199NW,~~
2 ~~and united food and commercial workers 21. The stakeholder group~~
3 ~~shall review the report prior to its submission to review findings~~
4 ~~and jointly develop any legislative recommendations to be included in~~
5 ~~the report.~~

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

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

10 By July 1, 2024, the department and the department of labor and
11 industries must jointly establish a formal agreement that identifies
12 the roles of each of the two agencies with respect to the oversight
13 and enforcement of RCW 70.41.420 (4)(a) and (12) and 70.41.425 (1),
14 (4), (5), (6)(b), and (7), as follows:

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

18 (2) Include provisions that allow for data sharing, including
19 hospital staffing plans, reports submitted under RCW 70.41.420(8),
20 and hospital staffing committee complaints submitted to the
21 department.

22 NEW SECTION. **Sec. 6.** A new section is added to chapter 49.12
23 RCW to read as follows:

24 By July 1, 2024, the department and the department of health must
25 jointly establish a formal agreement that identifies the roles of
26 each of the two agencies with respect to the oversight and
27 enforcement of RCW 70.41.420(7) and 70.41.425 (1) and (5)(b), as
28 follows:

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

32 (2) Include provisions that allow for data sharing, including
33 hospital staffing plans, reports submitted under RCW 70.41.420(8),
34 and hospital staffing committee complaints submitted to the
35 department of health.

36 **Sec. 7.** RCW 70.41.130 and 2021 c 61 s 2 are each amended to read
37 as follows:

1 (1) The department is authorized to take any of the actions
2 identified in this section against a hospital's license or
3 provisional license in any case in which it finds that there has been
4 a failure or refusal to comply with the requirements of this chapter
5 or the standards or rules adopted under this chapter or the
6 requirements of RCW 71.34.375 on the basis of findings by the
7 department of labor and industries under RCW 70.41.425(6)(b).

8 (a) When the department determines the hospital has previously
9 been subject to an enforcement action for the same or similar type of
10 violation of the same statute or rule, or has been given any previous
11 statement of deficiency that included the same or similar type of
12 violation of the same or similar statute or rule, or when the
13 hospital failed to correct noncompliance with a statute or rule by a
14 date established or agreed to by the department, the department may
15 impose reasonable conditions on a license. Conditions may include
16 correction within a specified amount of time, training, or hiring a
17 department-approved consultant if the hospital cannot demonstrate to
18 the department that it has access to sufficient internal expertise.
19 If the department determines that the violations constitute immediate
20 jeopardy, the conditions may be imposed immediately in accordance
21 with subsection (3) of this section.

22 (b)(i) In accordance with the authority the department has under
23 RCW 43.70.095, the department may assess a civil fine of up to
24 \$10,000 per violation, not to exceed a total fine of \$1,000,000, on a
25 hospital licensed under this chapter when the department determines
26 the hospital has previously been subject to an enforcement action for
27 the same or similar type of violation of the same statute or rule, or
28 has been given any previous statement of deficiency that included the
29 same or similar type of violation of the same or similar statute or
30 rule, or when the hospital failed to correct noncompliance with a
31 statute or rule by a date established or agreed to by the department.

32 (ii) Proceeds from these fines may only be used by the department
33 to offset costs associated with licensing hospitals.

34 (iii) The department shall adopt in rules under this chapter
35 specific fine amounts in relation to:

36 (A) The severity of the noncompliance and at an adequate level to
37 be a deterrent to future noncompliance; and

38 (B) The number of licensed beds and the operation size of the
39 hospital. The licensed hospital beds will be categorized as:

40 (I) Up to 25 beds;

- 1 (II) 26 to 99 beds;
- 2 (III) 100 to 299 beds; and
- 3 (IV) 300 beds or greater.

4 (iv) If a licensee is aggrieved by the department's action of
5 assessing civil fines, the licensee has the right to appeal under RCW
6 43.70.095.

7 (c) The department may suspend a specific category or categories
8 of services or care or recovery units within the hospital as related
9 to the violation by imposing a limited stop service. This may only be
10 done if the department finds that noncompliance results in immediate
11 jeopardy.

12 (i) Prior to imposing a limited stop service, the department
13 shall provide a hospital written notification upon identifying
14 deficient practices or conditions that constitute an immediate
15 jeopardy, and upon the review and approval of the notification by the
16 secretary or the secretary's designee. The hospital shall have 24
17 hours from notification to develop and implement a department-
18 approved plan to correct the deficient practices or conditions that
19 constitute an immediate jeopardy. If the deficient practice or
20 conditions that constitute immediate jeopardy are not verified by the
21 department as having been corrected within the same 24 hour period,
22 the department may issue the limited stop service.

23 (ii) When the department imposes a limited stop service, the
24 hospital may not admit any new patients to the units in the category
25 or categories subject to the limited stop service until the limited
26 stop service order is terminated.

27 (iii) The department shall conduct a follow-up inspection within
28 five business days or within the time period requested by the
29 hospital if more than five business days is needed to verify the
30 violation necessitating the limited stop service has been corrected.

31 (iv) The limited stop service shall be terminated when:

32 (A) The department verifies the violation necessitating the
33 limited stop service has been corrected or the department determines
34 that the hospital has taken intermediate action to address the
35 immediate jeopardy; and

36 (B) The hospital establishes the ability to maintain correction
37 of the violation previously found deficient.

38 (d) The department may suspend new admissions to the hospital by
39 imposing a stop placement. This may only be done if the department
40 finds that noncompliance results in immediate jeopardy and is not

1 confined to a specific category or categories of patients or a
2 specific area of the hospital.

3 (i) Prior to imposing a stop placement, the department shall
4 provide a hospital written notification upon identifying deficient
5 practices or conditions that constitute an immediate jeopardy, and
6 upon the review and approval of the notification by the secretary or
7 the secretary's designee. The hospital shall have 24 hours from
8 notification to develop and implement a department-approved plan to
9 correct the deficient practices or conditions that constitute an
10 immediate jeopardy. If the deficient practice or conditions that
11 constitute immediate jeopardy are not verified by the department as
12 having been corrected within the same 24 hour period, the department
13 may issue the stop placement.

14 (ii) When the department imposes a stop placement, the hospital
15 may not admit any new patients until the stop placement order is
16 terminated.

17 (iii) The department shall conduct a follow-up inspection within
18 five business days or within the time period requested by the
19 hospital if more than five business days is needed to verify the
20 violation necessitating the stop placement has been corrected.

21 (iv) The stop placement order shall be terminated when:

22 (A) The department verifies the violation necessitating the stop
23 placement has been corrected or the department determines that the
24 hospital has taken intermediate action to address the immediate
25 jeopardy; and

26 (B) The hospital establishes the ability to maintain correction
27 of the violation previously found deficient.

28 (e) The department may deny an application for a license or
29 suspend, revoke, or refuse to renew a license.

30 (2) The department shall adopt in rules under this chapter a fee
31 methodology that includes funding expenditures to implement
32 subsection (1) of this section. The fee methodology must consider:

33 (a) The operational size of the hospital; and

34 (b) The number of licensed beds of the hospital.

35 (3) (a) Except as otherwise provided, RCW 43.70.115 governs notice
36 of actions taken by the department under subsection (1) of this
37 section and provides the right to an adjudicative proceeding.
38 Adjudicative proceedings and hearings under this section are governed
39 by the administrative procedure act, chapter 34.05 RCW. The
40 application for an adjudicative proceeding must be in writing, state

1 the basis for contesting the adverse action, including a copy of the
2 department's notice, be served on and received by the department
3 within 28 days of the licensee's receipt of the adverse notice, and
4 be served in a manner that shows proof of receipt.

5 (b) When the department determines a licensee's noncompliance
6 results in immediate jeopardy, the department may make the imposition
7 of conditions on a licensee, a limited stop placement, stop
8 placement, or the suspension of a license effective immediately upon
9 receipt of the notice by the licensee, pending any adjudicative
10 proceeding.

11 (i) When the department makes the suspension of a license or
12 imposition of conditions on a license effective immediately, a
13 licensee is entitled to a show cause hearing before a presiding
14 officer within 14 days of making the request. The licensee must
15 request the show cause hearing within 28 days of receipt of the
16 notice of immediate suspension or immediate imposition of conditions.
17 At the show cause hearing the department has the burden of
18 demonstrating that more probably than not there is an immediate
19 jeopardy.

20 (ii) At the show cause hearing, the presiding officer may
21 consider the notice and documents supporting the immediate suspension
22 or immediate imposition of conditions and the licensee's response and
23 must provide the parties with an opportunity to provide documentary
24 evidence and written testimony, and to be represented by counsel.
25 Prior to the show cause hearing, the department must provide the
26 licensee with all documentation that supports the department's
27 immediate suspension or imposition of conditions.

28 (iii) If the presiding officer determines there is no immediate
29 jeopardy, the presiding officer may overturn the immediate suspension
30 or immediate imposition of conditions.

31 (iv) If the presiding officer determines there is immediate
32 jeopardy, the immediate suspension or immediate imposition of
33 conditions shall remain in effect pending a full hearing.

34 (v) If the presiding officer sustains the immediate suspension or
35 immediate imposition of conditions, the licensee may request an
36 expedited full hearing on the merits of the department's action. A
37 full hearing must be provided within 90 days of the licensee's
38 request.

1 **Sec. 8.** RCW 49.12.480 and 2019 c 296 s 1 are each amended to
2 read as follows:

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

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

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

10 (i) An unforeseeable emergent circumstance, as defined in RCW
11 49.28.130; or

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

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

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

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

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

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

3 (b) The employer must provide a quarterly report to the
4 department of the total meals and rest periods missed in violation of
5 this section during the quarter covered by the report, and the total
6 number of meals and rest periods required during the quarter. The
7 reports are due to the department 30 calendar days after the
8 conclusion of the calendar quarter.

9 (c) The provisions of (b) in this subsection (2) do not apply to
10 hospitals defined in RCW 70.41.420(7)(b)(iv) until July 1, 2026.

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

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

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

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

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

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

25 (b) "Employer" means hospitals licensed under chapter 70.41
26 RCW ~~((, except that the following hospitals are excluded until July 1,~~
27 ~~2021:~~

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

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

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

38 NEW SECTION. Sec. 9. A new section is added to chapter 49.12
39 RCW to read as follows:

1 (1) The department must enforce the provisions of RCW 49.12.480,
2 including reviewing reports submitted under RCW 49.12.480(2) to
3 ensure they are timely, complete, and on the department-issued form.

4 (2) (a) Upon the department's review of the employer's report due
5 under RCW 49.12.480(2), if the department determines that 80 percent
6 or less of meals and rest periods were not missed in violation of RCW
7 49.12.480, or if an employer fails to properly submit a report, the
8 department may offer to provide technical assistance to the employer,
9 although until June 30, 2026, the department must offer technical
10 assistance to the employer.

11 (b) Beginning July 1, 2026, if the department finds that an
12 employer has exceeded the quarterly threshold in (a) of this
13 subsection for missed meals and rest periods, the department must
14 impose a penalty. The provisions of this subsection do not apply to
15 employers who are hospitals defined in RCW 70.41.420(7)(b)(iv) until
16 July 1, 2028.

17 (c) (i) The penalties assessed by the department each time the
18 department imposes a penalty under (b) of this subsection are as
19 follows:

20 (A) For hospitals certified as critical access hospitals under 42
21 U.S.C. Sec. 1395i-4, or with up to 25 licensed beds: \$5,000;

22 (B) For hospitals with 26 to 99 licensed beds: \$10,000;

23 (C) For hospitals with 100 to 299 beds: \$15,000; and

24 (D) For hospitals with 300 or more beds: \$20,000.

25 (ii) If the department imposes a penalty in a third consecutive
26 quarter, the department must double the penalty amounts in (c)(i) of
27 this subsection for subsequent consecutive quarters. An employer in
28 compliance for a single quarter is no longer subject to the penalties
29 for subsequent violations under this subsection (c)(ii).

30 (3) (a) An employer may not take any adverse action against
31 employees for exercising any right under RCW 49.12.480. An adverse
32 action means any action taken or threatened by an employer against an
33 employee for exercising the employee's rights under RCW 49.12.480 or
34 this section, but does not include noncoercive counseling, coaching,
35 training, or other resources offered to an employee.

36 (b) The department must investigate complaints related to
37 compliance with (a) of this subsection. The director may require the
38 testimony of witnesses and the production of documents as part of the
39 director's investigation.

1 (c) If the director determines that an employer has violated (a)
2 of this subsection, the director may:

3 (i) Order payment to the department of a civil penalty of not
4 more than \$1,000 for an employer's first violation and not more than
5 \$5,000 for any subsequent related violation;

6 (ii) Order appropriate relief under this subsection (3) that
7 includes any earnings the employee did not receive due to the
8 employer's adverse action, including interest of one percent per
9 month on all earnings owed. The earnings and interest owed will be
10 calculated from the first date earnings were owed to the employee; or

11 (iii) Order the employer to restore the employee to the position
12 of employment held by the employee when the retaliation occurred, or
13 restore the employee to an equivalent position with equivalent
14 employment hours, work schedule, benefits, pay, and other terms and
15 conditions of employment.

16 (4) (a) (i) An employer must provide valid data in reports required
17 under RCW 49.12.480(2). Valid data means that the data included in
18 the reports is attested to by an employer's designee and has not been
19 inappropriately manipulated or modified; and

20 (ii) Employees must be free from coercion into inaccurate
21 recording of their meal and rest periods under RCW 49.12.480.

22 (b) The department must investigate complaints related to
23 compliance with (a) of this subsection that are facially based on the
24 actual knowledge of the complaining party. The director may require
25 the testimony of witnesses and the production of documents as part of
26 the director's investigation.

27 (c) If the director determines that an employer has violated (a)
28 of this subsection, the director may:

29 (i) Order the employer to pay the department a civil penalty of
30 not more than \$1,000 for an employer's first violation and not more
31 than \$5,000 for any subsequent related violation; and

32 (ii) Order appropriate relief that includes any earnings the
33 employee did not receive due to the employer's adverse action,
34 including interest of one percent per month on all earnings owed. The
35 earnings and interest owed will be calculated from the first date
36 earnings were owed to the employee.

37 (5) The department may investigate and take appropriate
38 enforcement action under this section without any complaint if the
39 department discovers data in the course of an investigation or
40 inspection.

1 (6) Any appeals of the department's decisions, including assessed
2 penalties, and collection or deposit of civil penalties under this
3 section must be pursuant to sections 12 through 14 of this act.

4 (7) For the purposes of this section, "coercion" means compelling
5 or inducing an employee to engage in conduct which the employee has a
6 legal right to abstain from or to abstain from the conduct which the
7 employee has a legal right to engage in.

8 **Sec. 10.** RCW 49.28.140 and 2019 c 296 s 3 are each amended to
9 read as follows:

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

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

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

20 (a) Because of any unforeseeable emergent circumstance;

21 (b) Because of prescheduled on-call time, subject to the
22 following:

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

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

30 (iii) Mandatory, prescheduled on-call time may not be used to
31 begin at a time when the duration of the procedure is expected to
32 exceed the employee's regular scheduled hours of work, except for the
33 case of a nonemergent patient procedure for which, in the judgment of
34 the provider responsible for the procedure, a delay would cause a
35 worse clinical outcome;

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

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

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

8 **Sec. 11.** RCW 49.28.150 and 2002 c 112 s 4 are each amended to
9 read as follows:

10 The department of labor and industries shall investigate
11 complaints of violations of RCW 49.28.140 and 70.41.420(9) as
12 provided under sections 12 through 14 of this act. (~~(A violation of~~
13 ~~RCW 49.28.140 is a class 1 civil infraction in accordance with~~
14 ~~chapter 7.80 RCW, except that the maximum penalty is one thousand~~
15 ~~dollars for each infraction up to three infractions. If there are~~
16 ~~four or more violations of RCW 49.28.140 for a health care facility,~~
17 ~~the employer is subject to a fine of two thousand five hundred~~
18 ~~dollars for the fourth violation, and five thousand dollars for each~~
19 ~~subsequent violation. The department of labor and industries is~~
20 ~~authorized to issue and enforce civil infractions according to~~
21 ~~chapter 7.80 RCW.))~~

22 NEW SECTION. **Sec. 12.** A new section is added to chapter 49.12
23 RCW to read as follows:

24 (1)(a) If a complainant files a complaint with the department of
25 labor and industries alleging a violation of this chapter or RCW
26 70.41.420(9), the department shall investigate the complaint.

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

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

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

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

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

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

18 (c) The department may not assess a civil penalty if the employer
19 reasonably relied on: (i) A rule related to any of the requirements
20 of this chapter; (ii) a written order, ruling, approval, opinion,
21 advice, determination, or interpretation of the director; or (iii) an
22 interpretive or administrative policy issued by the department and
23 filed with the office of the code reviser. In accordance with the
24 department's retention schedule obligations under chapter 40.14 RCW,
25 the department shall maintain a complete and accurate record of all
26 written orders, rulings, approvals, opinions, advice, determinations,
27 and interpretations for purposes of determining whether an employer
28 is immune from civil penalties under (b) of this subsection.

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

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

36 NEW SECTION. **Sec. 13.** A new section is added to chapter 49.12
37 RCW to read as follows:

38 (1) A person, firm, or corporation aggrieved by a citation and
39 notice of assessment or a determination of compliance by the

1 department of labor and industries under section 12 of this act may
2 appeal the citation and notice of assessment to the director of the
3 department by filing a notice of appeal with the director within 30
4 days of the department's issuance of the citation and notice of
5 assessment. A citation and notice of assessment or a determination of
6 compliance not appealed within 30 days is final and binding, and not
7 subject to further appeal.

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

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

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

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

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

37 NEW SECTION. **Sec. 14.** A new section is added to chapter 49.12
38 RCW to read as follows:

1 Collections of unpaid citations assessing civil penalties under
2 sections 11 through 13 of this act will be pursuant to RCW 49.48.086.

3 NEW SECTION. **Sec. 15.** The Washington state institute for public
4 policy shall conduct a study on hospital staffing standards for
5 direct care registered nurses and direct care nursing assistants.

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

9 (a) Timeliness and completeness of filed forms;

10 (b) Format of filed forms;

11 (c) Patient care unit nursing staff assignments related to the
12 maximum number of patients to which a direct care nursing or nursing
13 assistant may be assigned;

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

15 (e) Trends over time, if any;

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

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

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

23 (3) The institute must provide a report on its findings to the
24 department and relevant committees of the legislature by June 30,
25 2024.

26 NEW SECTION. **Sec. 16.** 2017 c 249 s 4 (uncodified) is repealed.

27 NEW SECTION. **Sec. 17.** Except for sections 1, 3, 15, and 16 of
28 this act, this act takes effect July 1, 2024.

29 NEW SECTION. **Sec. 18.** Section 16 of this act is necessary for
30 the immediate preservation of the public peace, health, or safety, or
31 support of the state government and its existing public institutions,
32 and takes effect June 1, 2023."

2SSB 5236 - S AMD 180

By Senator Mullet

ADOPTED AS AMENDED 03/06/2023

1 On page 1, line 1 of the title, after "Relating to;" strike the
2 remainder of the title and insert "improving workplace standards for
3 certain hospital staff by expanding staffing committees to include
4 additional nursing staff, modifying staffing committee requirements,
5 and clarifying standards and enforcement regarding mandatory overtime
6 and uninterrupted meal and rest breaks; amending RCW 70.41.410,
7 70.41.420, 70.41.425, 70.41.130, 49.12.480, 49.28.140, and 49.28.150;
8 adding a new section to chapter 43.70 RCW; adding a new section to
9 chapter 70.41 RCW; adding new sections to chapter 49.12 RCW; creating
10 a new section; repealing 2017 c 249 s 4 (uncodified); prescribing
11 penalties; providing effective dates; providing an expiration date;
12 and declaring an emergency."

EFFECT: Modifies the title. Removes the creation of a new chapter in Title 49 RCW and corresponding recodifications. Removes the four nonvoting ex officio members from the advisory committee. Removes the provision allowing the advisory committee to consult on rule making. Requires the advisory committee, after July 1, 2029, to discuss the applicability of the staffing plan reporting requirements to hospitals excluded from those requirements under the bill. Requires the advisory committee to advise the department of labor and industries (L&I) on the development of the meal and rest breaks reporting form.

Removes the 90-day limitation for both the reasonable efforts and unforeseen emergent circumstance exceptions. Adds when a hospital is diverting patients to another hospital to the definition of unforeseen emergent circumstances. Modifies the process by which a proposed staffing plan is delivered and reviewed by the hospital's chief executive officer. Requires delivery of the first proposed staffing plan by July 1, 2024, rather than January 1, 2025. Provides that if a revised staffing plan is not adopted by the hospital, the most recent of the following remains in effect: The staffing plan in effect on January 1, 2023, or the staffing plan last approved by a 50 percent plus one vote of the staffing committee. Requires the submission of a final staffing plan by January 1, 2025, rather than July 1, 2025.

Requires reporting of noncompliance to the staffing plan to only the department of health (DOH), rather than both DOH and L&I. Modifies the exclusions to the compliance reporting requirements to exclude: Critical access hospitals; hospitals with fewer than 25 acute care licensed beds; certain sole community hospitals; and hospitals located on an island within a public hospital district in Skagit county. Removes certain references to patient care staffing. Requires the staffing committee to review all written complaints, rather than all complaints. Requires, in the event of an unforeseen

emergent circumstance, the hospital to report to DOH within 90 days of the initial deviation from the staffing plan and the basis for the deviation, as well as once the deviation is no longer in effect. Requires the submission of the charter by July 1, 2024, rather than January 1, 2025. Modifies what the charter must include. Provides that DOH investigates complaints related to failing to form a staffing committee or staffing plan and both DOH and L&I investigate complaints for failing to follow staff assignments per the formal agreement between the agencies. Limits investigations to complaints that remain unresolved by the staffing committee for 60 days. Provides that the agencies must require a corrective plan of action if they determine there has been multiple unresolved violations of a similar nature within the 30 days prior to receipt of the complaint. Provides that a hospital will not be found in violation of the staffing plan requirements if an individual admission of a patient in need of critical care to sustain their life or prevent disability received from another hospital caused the staffing plan violation. Requires L&I and DOH, per their formal agreement, to review and approve corrective plans of action, and allows the agencies to request revisions if a corrective plan of action is followed but the hospital remains under 80 percent compliant with the staffing plan. Modifies what a corrective plan of action may include.

Requires DOH and L&I to establish their formal agreement by July 1, 2024. Allows DOH to act under its current authority against a hospital's license on the basis of findings by L&I that a hospital failed to follow a corrective plan of action.

Requires hospitals to provide a quarterly report to L&I of the total meal and rest periods missed. Excludes the hospitals excluded from the staffing plan compliance report from the meal and rest break report. Requires L&I to enforce the meal and rest break requirements and the required reports. Requires L&I, until June 30, 2026, to provide technical assistance to hospitals with below an 80 percent compliance rate with meal and rest breaks, with the technical assistance becoming permissive after that date. Requires L&I, beginning July 1, 2026, to impose a penalty for missed meal and rest breaks for employers that exceed the threshold for missed meal and rest breaks. Establishes penalties for meal and rest break violations based on the number of beds in the hospital, ranging from \$5,000 to \$20,000. Requires the doubling of penalties for violations in three consecutive quarters. Prohibits retaliation against employees for exercising rights granted by the meal and rest break requirements and imposes penalties for retaliation. Requires employers to provide valid data and prohibits coercing employees into inaccurate recording of meal and rest breaks. Removes the changes to the definitions for the purposes of the mandatory overtime provisions. Removes the cap on prescheduled on-call time. Provides that prescheduled on-call time may not be used to begin at a time when the duration of the procedure that is expected to exceed the employee's regular scheduled hours of work, except for nonemergent patient procedures for which, in the judgment of the provider, a delay would cause a worse clinical outcome. Requires L&I to investigate complaints of retaliation in relation to staffing committee activities and establishes procedures for citations and notices of assessment and penalties for retaliation, as well as procedures for appealing citations. Prohibits L&I from assessing a civil penalty if the employer reasonably relied

on a rule, written order, or an interpretive or administrative policy issued by L&I.

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