
SUBSTITUTE SENATE BILL 5344

State of Washington

66th Legislature

2019 Regular Session

By Senate Health & Long Term Care (originally sponsored by Senators Cleveland, O'Ban, Hobbs, Takko, Mullet, Palumbo, Rivers, Wellman, and Hunt)

READ FIRST TIME 02/21/19.

1 AN ACT Relating to staffing committees and limiting the total
2 number of hours nurses can work across all health care settings to
3 sixty hours in a week; amending RCW 70.41.420, 70.41.425, 18.79.200,
4 and 18.79.210; amending 2017 c 249 s 4 (uncodified); reenacting and
5 amending RCW 18.79.260; creating a new section; providing an
6 effective date; and providing an expiration date.

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

8 NEW SECTION. **Sec. 1.** INTENT. (1) The legislature finds
9 monitoring and assessing whether nurses are able to receive their
10 meal and rest breaks as specified by law and where applicable, a
11 collective bargaining agreement, and monitoring the use of
12 prescheduled on-call and call-back rates for nurses is an important
13 component of mitigating nurse fatigue and operating a hospital
14 effectively. However, the legislature also finds that mandating rigid
15 constraints on how hospitals provide breaks, or how they use
16 prescheduled on-call and overtime does not allow the flexibility
17 needed to work collaboratively to find solutions that work for
18 complex care environments. Further, they may jeopardize quality care
19 and patient safety, by interrupting care transitions, creating
20 barriers to communication, and preventing safe staffing for
21 critically important procedures.

1 (2) Hospital nurse staffing committees have been in place since
2 2008, and were granted additional authority in 2017 to increase
3 monitoring and accountability and address nurse staffing issues
4 collaboratively and at the local level. Collaboration between direct
5 care nurses, other staff, and management is a hallmark of the culture
6 of safety found in organizations that successfully lower the
7 incidence of adverse events while carrying out complex and hazardous
8 work.

9 (3) Therefore, the legislature intends to address the concern of
10 nurse fatigue by building on the work of existing nurse staffing
11 committees which all hospitals must have in place pursuant to law.
12 This approach will address staffing concerns at the individual
13 hospital level in order to ensure local patient care needs can be
14 considered and quality and safety of care maintained. These nurse
15 staffing committees shall have new obligations to collect, maintain,
16 and review data on missed meal and rest breaks and the use of
17 prescheduled on-call. The nurse staffing committees will also have a
18 new requirement to establish a complaint process for missed rest
19 breaks. If complaints are not addressed at the local level, the state
20 department of health is granted the power to investigate the
21 operations of the hospital's nurse staffing committee.

22 (4) The legislature further intends to address nurse fatigue by
23 addressing the total number of hours a nurse works, especially for
24 nurses with multiple employers or who work in multiple care settings.
25 A maximum hours of weekly work for registered nurses is established
26 to ensure nurses can provide safe and effective care to patients.

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

29 (1) By September 1, 2008, each hospital shall establish a nurse
30 staffing committee, either by creating a new committee or assigning
31 the functions of a nurse staffing committee to an existing committee.
32 At least one-half of the members of the nurse staffing committee
33 shall be registered nurses currently providing direct patient care
34 and up to one-half of the members shall be determined by the hospital
35 administration. The selection of the registered nurses providing
36 direct patient care shall be according to the collective bargaining
37 agreement if there is one in effect at the hospital. If there is no
38 applicable collective bargaining agreement, the members of the nurse

1 staffing committee who are registered nurses providing direct patient
2 care shall be selected by their peers.

3 (2) Participation in the nurse staffing committee by a hospital
4 employee shall be on scheduled work time and compensated at the
5 appropriate rate of pay. Nurse staffing committee members shall be
6 relieved of all other work duties during meetings of the committee.

7 (3) Primary responsibilities of the nurse staffing committee
8 shall include:

9 (a) Development and oversight of an annual patient care unit and
10 shift-based nurse staffing plan, based on the needs of patients, to
11 be used as the primary component of the staffing budget. Factors to
12 be considered in the development of the plan should include, but are
13 not limited to:

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

17 (ii) Level of intensity of all patients and nature of the care to
18 be delivered on each shift;

19 (iii) Skill mix;

20 (iv) Level of experience and specialty certification or training
21 of nursing personnel providing care;

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

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

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

29 (viii) Availability of other personnel supporting nursing
30 services on the unit; ~~((and))~~

31 (ix) Regular review of aggregate data on missed meal and rest
32 breaks and development of strategies to enable registered nurses to
33 take meal and rest breaks as required by law or the terms of an
34 applicable collective bargaining agreement, if any, between the
35 hospital and a representative of the nursing staff. To facilitate
36 this requirement, the hospital must record when an employee misses a
37 meal or rest break; and

38 (x) Regular review of call-back rate for nurses activated and
39 called in to work during prescheduled on-call shifts and develop an
40 understanding of trends contributing to call-back rates;

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

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

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

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

13 (6) The committee will produce the hospital's annual nurse
14 staffing plan. If this staffing plan is not adopted by the hospital,
15 the chief executive officer shall provide a written explanation of
16 the reasons why the plan was not adopted to the committee. The chief
17 executive officer must then either: (a) Identify those elements of
18 the proposed plan being changed prior to adoption of the plan by the
19 hospital or (b) prepare an alternate annual staffing plan that must
20 be adopted by the hospital. Beginning January 1, 2019, each hospital
21 shall submit its staffing plan to the department and thereafter on an
22 annual basis and at any time in between that the plan is updated.

23 (7) Beginning January 1, 2019, each hospital shall implement the
24 staffing plan and assign nursing personnel to each patient care unit
25 in accordance with the plan.

26 (a) A registered nurse may report to the staffing committee any
27 variations where the nurse personnel assignment in a patient care
28 unit is not in accordance with the adopted staffing plan and may make
29 a complaint to the committee based on the variations.

30 (b) Shift-to-shift adjustments in staffing levels required by the
31 plan may be made by the appropriate hospital personnel overseeing
32 patient care operations. If a registered nurse on a patient care unit
33 objects to a shift-to-shift adjustment, the registered nurse may
34 submit the complaint to the staffing committee.

35 (c) A registered nurse may report to the staffing committee
36 instances of missed meal and rest breaks.

37 (d) Staffing committees shall develop a process to examine and
38 respond to data submitted under (a) ~~((and))~~, (b), and (c) of this
39 subsection, including the ability to determine if a specific

1 complaint is resolved or dismissing a complaint based on
2 unsubstantiated data.

3 (8) Each hospital shall post, in a public area on each patient
4 care unit, the nurse staffing plan and the nurse staffing schedule
5 for that shift on that unit, as well as the relevant clinical
6 staffing for that shift. The staffing plan and current staffing
7 levels must also be made available to patients and visitors upon
8 request.

9 (9) A hospital may not retaliate against or engage in any form of
10 intimidation of:

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

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

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

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

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

26 (i) Form or establish a staffing committee;

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

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

30 (iv) (~~(A)~~) Follow the nursing personnel assignments in a patient
31 care unit in violation of RCW 70.41.420(7)(a) or shift-to-shift
32 adjustments in staffing levels in violation of RCW 70.41.420(7)(b); i

33 (v) Collect and review aggregate data on missed meal and rest
34 breaks; or

35 (vi) Appropriately respond to complaints submitted to the nurse
36 staffing committee regarding patterns of missed meal and rest breaks.

37 (~~(B)~~) (b)(i) The department may only investigate a complaint
38 under (~~this subsection (1)~~) (a)(iv), (v), or (vi) of this subsection
39 after making an assessment that the submitted evidence indicates a

1 continuing pattern of unresolved violations of RCW 70.41.420(7) (a)
2 (~~(e)~~), (b), or (c) that were submitted to the nurse staffing
3 committee excluding complaints determined by the nurse staffing
4 committee to be resolved or dismissed. The submitted evidence must
5 include the aggregate data contained in the complaints submitted to
6 the hospital's nurse staffing committee that indicate a continuing
7 pattern of unresolved violations for a minimum sixty-day continuous
8 period leading up to receipt of the complaint by the department.

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

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

20 (2) In the event that a hospital fails to submit or submits but
21 fails to follow such a corrective plan of action in response to a
22 violation or violations found by the department based on a complaint
23 filed pursuant to subsection (1) of this section, the department may
24 impose, for all violations asserted against a hospital at any time, a
25 civil penalty of one hundred dollars per day until the hospital
26 submits or begins to follow a corrective plan of action or takes
27 other action agreed to by the department.

28 (3) The department shall maintain for public inspection records
29 of any civil penalties, administrative actions, or license
30 suspensions or revocations imposed on hospitals under this section.

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

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

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

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

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

1 (5) Nothing in this section shall be construed to preclude the
2 ability to otherwise submit a complaint to the department for failure
3 to follow RCW 70.41.420.

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

19 (7) No fees shall be increased to implement chapter 249, Laws of
20 2017 prior to July 1, 2021.

21 (8) This section expires June 1, 2023.

22 **Sec. 4.** RCW 18.79.260 and 2012 c 164 s 407, 2012 c 13 s 3, and
23 2012 c 10 s 37 are each reenacted and amended to read as follows:

24 (1) A registered nurse under his or her license may perform for
25 compensation nursing care, as that term is usually understood, to
26 individuals with illnesses, injuries, or disabilities.

27 (2) A registered nurse may, at or under the general direction of
28 a licensed physician and surgeon, dentist, osteopathic physician and
29 surgeon, naturopathic physician, optometrist, podiatric physician and
30 surgeon, physician assistant, osteopathic physician assistant,
31 advanced registered nurse practitioner, or midwife acting within the
32 scope of his or her license, administer medications, treatments,
33 tests, and inoculations, whether or not the severing or penetrating
34 of tissues is involved and whether or not a degree of independent
35 judgment and skill is required. Such direction must be for acts which
36 are within the scope of registered nursing practice.

37 (3) A registered nurse may delegate tasks of nursing care to
38 other individuals where the registered nurse determines that it is in
39 the best interest of the patient.

1 (a) The delegating nurse shall:

2 (i) Determine the competency of the individual to perform the

3 tasks;

4 (ii) Evaluate the appropriateness of the delegation;

5 (iii) Supervise the actions of the person performing the

6 delegated task; and

7 (iv) Delegate only those tasks that are within the registered

8 nurse's scope of practice.

9 (b) A registered nurse, working for a home health or hospice

10 agency regulated under chapter 70.127 RCW, may delegate the

11 application, instillation, or insertion of medications to a

12 registered or certified nursing assistant under a plan of care.

13 (c) Except as authorized in (b) or (e) of this subsection, a

14 registered nurse may not delegate the administration of medications.

15 Except as authorized in (e) of this subsection, a registered nurse

16 may not delegate acts requiring substantial skill, and may not

17 delegate piercing or severing of tissues. Acts that require nursing

18 judgment shall not be delegated.

19 (d) No person may coerce a nurse into compromising patient safety

20 by requiring the nurse to delegate if the nurse determines that it is

21 inappropriate to do so. Nurses shall not be subject to any employer

22 reprisal or disciplinary action by the nursing care quality assurance

23 commission for refusing to delegate tasks or refusing to provide the

24 required training for delegation if the nurse determines delegation

25 may compromise patient safety.

26 (e) For delegation in community-based care settings or in-home

27 care settings, a registered nurse may delegate nursing care tasks

28 only to registered or certified nursing assistants or home care aides

29 certified under chapter 18.88B RCW. Simple care tasks such as blood

30 pressure monitoring, personal care service, diabetic insulin device

31 set up, verbal verification of insulin dosage for sight-impaired

32 individuals, or other tasks as defined by the nursing care quality

33 assurance commission are exempted from this requirement.

34 (i) "Community-based care settings" includes: Community

35 residential programs for people with developmental disabilities,

36 certified by the department of social and health services under

37 chapter 71A.12 RCW; adult family homes licensed under chapter 70.128

38 RCW; and assisted living facilities licensed under chapter 18.20 RCW.

39 Community-based care settings do not include acute care or skilled

40 nursing facilities.

1 (ii) "In-home care settings" include an individual's place of
2 temporary or permanent residence, but does not include acute care or
3 skilled nursing facilities, and does not include community-based care
4 settings as defined in (e)(i) of this subsection.

5 (iii) Delegation of nursing care tasks in community-based care
6 settings and in-home care settings is only allowed for individuals
7 who have a stable and predictable condition. "Stable and predictable
8 condition" means a situation in which the individual's clinical and
9 behavioral status is known and does not require the frequent presence
10 and evaluation of a registered nurse.

11 (iv) The determination of the appropriateness of delegation of a
12 nursing task is at the discretion of the registered nurse. Other than
13 delegation of the administration of insulin by injection for the
14 purpose of caring for individuals with diabetes, the administration
15 of medications by injection, sterile procedures, and central line
16 maintenance may never be delegated.

17 (v) When delegating insulin injections under this section, the
18 registered nurse delegator must instruct the individual regarding
19 proper injection procedures and the use of insulin, demonstrate
20 proper injection procedures, and must supervise and evaluate the
21 individual performing the delegated task weekly during the first four
22 weeks of delegation of insulin injections. If the registered nurse
23 delegator determines that the individual is competent to perform the
24 injection properly and safely, supervision and evaluation shall occur
25 at least every ninety days thereafter.

26 (vi)(A) The registered nurse shall verify that the nursing
27 assistant or home care aide, as the case may be, has completed the
28 required core nurse delegation training required in chapter 18.88A or
29 18.88B RCW prior to authorizing delegation.

30 (B) Before commencing any specific nursing tasks authorized to be
31 delegated in this section, a home care aide must be certified
32 pursuant to chapter 18.88B RCW and must comply with RCW 18.88B.070.

33 (vii) The nurse is accountable for his or her own individual
34 actions in the delegation process. Nurses acting within the protocols
35 of their delegation authority are immune from liability for any
36 action performed in the course of their delegation duties.

37 (viii) Nursing task delegation protocols are not intended to
38 regulate the settings in which delegation may occur, but are intended
39 to ensure that nursing care services have a consistent standard of
40 practice upon which the public and the profession may rely, and to

1 safeguard the authority of the nurse to make independent professional
2 decisions regarding the delegation of a task.

3 (f) The nursing care quality assurance commission may adopt rules
4 to implement this section.

5 (4) Only a person licensed as a registered nurse may instruct
6 nurses in technical subjects pertaining to nursing.

7 (5) Only a person licensed as a registered nurse may hold herself
8 or himself out to the public or designate herself or himself as a
9 registered nurse.

10 (6) (a) A registered nurse may not perform direct clinical nursing
11 care for compensation for more than a cumulative sixty hours in a
12 week, regardless of health care setting, except for direct clinical
13 nursing care that:

14 (i) Occurs because of an unforeseeable emergent circumstance; or

15 (ii) Is performed by a registered nurse who is employed as a
16 flight nurse.

17 (b) For purposes of this subsection:

18 (i) "Unforeseeable emergency circumstance" means any:

19 (A) Unforeseen national, state, or municipal emergency;

20 (B) Time a hospital disaster plan is activated; or

21 (C) Unforeseen disaster or other catastrophic event that
22 substantially affects or increases the need for health care services.

23 (ii) "Week" means a period of seven consecutive calendar days
24 regardless of where direct clinical nursing care is provided. The
25 beginning and ending day and time of the week may be defined and
26 adjusted by the nurse, except that the beginning and ending day and
27 time of the week may not be adjusted for the purposes of evading the
28 requirements of this subsection.

29 (iii) No single health care setting may be held responsible for
30 tracking the total cumulative hours worked of a registered nurse
31 across all health care settings.

32 (iv) For purposes of this subsection, "health care setting" means
33 a hospital, clinic, nursing home, laboratory, office, or similar
34 place where a health care provider provides health care to patients.

35 **Sec. 5.** RCW 18.79.200 and 1996 c 191 s 62 are each amended to
36 read as follows:

37 (1) An applicant for a license to practice as a registered nurse,
38 advanced registered nurse practitioner, or licensed practical nurse
39 shall:

1 (a) Comply with administrative procedures, administrative
2 requirements, and fees as determined under RCW 43.70.250 and
3 43.70.280; and

4 (b) If applying for a license to practice as a registered nurse,
5 attest at the time of application that he or she will not provide
6 direct clinical nursing care under his or her license for
7 compensation for more than the time permitted by RCW 18.79.260(6).

8 (2) The commission shall use existing paper or electronic
9 licensing systems for an applicant to attest to the requirement under
10 subsection (1)(b) of this section.

11 **Sec. 6.** RCW 18.79.210 and 1996 c 191 s 63 are each amended to
12 read as follows:

13 (1) A license issued under this chapter must be renewed, except
14 as provided in this chapter. The licensee shall comply with
15 administrative procedures, administrative requirements, and fees as
16 determined under RCW 43.70.250 and 43.70.280.

17 (2) A registered nurse must attest at the time of license renewal
18 that he or she has not provided direct clinical nursing care under
19 his or her license for compensation more than the time permitted by
20 RCW 18.78.260(6).

21 (3) The commission shall use existing paper or electronic
22 licensing systems for an applicant to attest to the requirement under
23 subsection (2) of this section.

24 **Sec. 7.** 2017 c 249 s 4 (uncodified) is amended to read as
25 follows:

26 Sections 1 and 5 of this act expire(~~s~~) June 1, 2023.

27 NEW SECTION. **Sec. 8.** This act takes effect January 1, 2020.

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