

FIRST REGULAR SESSION

HOUSE BILL NO. 1370

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MATTHIESEN.

2939H.011

JOSEPH ENGLER, Chief Clerk

AN ACT

To repeal section 197.289, RSMo, and to enact in lieu thereof eight new sections relating to nurse staffing requirements, with penalty provisions and a delayed effective date.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 197.289, RSMo, is repealed and eight new sections enacted in lieu thereof, to be known as sections 197.289, 197.1000, 197.1005, 197.1010, 197.1015, 197.1020, 197.1025, and 198.043, to read as follows:

197.289. 1. All ~~hospitals,~~ ambulatory surgical centers~~[-]~~ and abortion facilities shall develop and implement a methodology which ensures adequate nurse staffing that will meet the needs of patients. At a minimum, there shall be on duty at all times a sufficient number of licensed registered nurses to provide patient care requiring the judgment and skills of a licensed registered nurse and to oversee the activities of all nursing personnel.

2. There shall be sufficient licensed and ancillary nursing personnel on duty on each nursing unit to meet the needs of each patient in accordance with accepted standards of quality patient care.

3. **Hospitals shall comply with the nurse staffing requirements in sections 197.1000 to 197.1025.**

197.1000. For purposes of sections 197.1000 to 197.1025, the following terms mean:

(1) "Acuity level", the determination of nursing care requirements that is:

(a) Based on the assigned direct care registered nurse's professional judgment of:

a. The severity and complexity of an individual patient's illness or injury;

EXPLANATION — Matter enclosed in bold-faced brackets ~~thus~~ in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

7 **b. The need for specialized equipment; and**

8 **c. The intensity of nursing interventions required; and**

9 **(b) Made by using a hospital acuity measurement tool that has been developed**
10 **and established in coordination with direct care registered nurses and made available to**
11 **the public in accordance with section 37.070;**

12 **(2) "Competence" or "competent", the satisfactory application of the duties and**
13 **responsibilities of a registered nurse in providing nursing care to specific patient**
14 **populations and for acuity levels for each patient care unit or area in accordance with**
15 **chapter 335;**

16 **(3) "Department", the department of health and senior services;**

17 **(4) "Direct care registered nurse", a registered nurse as defined in section**
18 **335.016 who provides bedside care for one or more patients in a hospital regardless of**
19 **whether the registered nurse is an employee of the hospital;**

20 **(5) "Employment", the provision of services under a contract or other**
21 **arrangement to a hospital;**

22 **(6) "Hospital", the same meaning given to the term in section 197.020;**

23 **(7) "Nursing care plan", a plan developed by each patient's assigned direct care**
24 **registered nurse that indicates the nursing care to be given to the individual patient and**
25 **that:**

26 **(a) Considers the acuity level of the patient;**

27 **(b) Is developed in coordination with the patient; the patient's family, or other**
28 **representatives when appropriate; and staff of other disciplines involved in the care of**
29 **the patient;**

30 **(c) Reflects all elements of the nursing process; and**

31 **(d) Recommends the number and skill mix of additional licensed and unlicensed**
32 **direct care staff needed to fully implement the plan;**

33 **(8) "Professional judgment", the direct care registered nurse's application of**
34 **knowledge, expertise, and experience in conducting a comprehensive nursing**
35 **assessment of each patient and in making independent decisions about patient care,**
36 **including the need for additional staff, in accordance with chapter 335;**

37 **(9) "Staffing plan", a staffing plan required under section 197.1005;**

38 **(10) "State of emergency", a state of emergency declared under chapter 44.**

197.1005. 1. A hospital shall implement a staffing plan that states the ratio of
2 **patients to direct care registered nurses to be required by the hospital. The plan shall**
3 **provide adequate, appropriate, and quality delivery of health care services; protect**
4 **patient safety; and be consistent with the requirements of sections 197.1000 to 197.1025.**

5 The hospital shall file the plan with the department of health and senior services and
6 provide the plan to all patients and patient representatives in an accessible format.

7 2. The staffing plan shall provide that:

8 (1) At all times during each shift within a unit of the hospital, and with a full
9 complement of ancillary and support staff, patient assignments for direct care registered
10 nurses shall not exceed the following direct care registered nurse-to-patient ratios:

11 (a) One direct care registered nurse to one patient in a trauma emergency unit;

12 (b) One direct care registered nurse to one patient in an operating room unit,
13 provided that at least one additional person serves as a scrub assistant in such unit;

14 (c) One direct care registered nurse to two or fewer patients in a critical care
15 unit including, but not limited to, neonatal intensive care units, emergency critical care
16 and intensive care units, labor and delivery units, coronary care units, acute respiratory
17 care units, postanesthesia units, and burn units;

18 (d) One direct care registered nurse to three or fewer patients in an emergency
19 room unit, pediatrics unit, step-down unit, telemetry unit, antepartum unit, or
20 combined labor, delivery, and postpartum unit;

21 (e) One direct care registered nurse to four or fewer patients in a medical-
22 surgical unit, intermediate care nursery unit, acute care psychiatric unit, or other
23 specialty care unit;

24 (f) One direct care registered nurse to five or fewer patients in a rehabilitation
25 unit or skilled nursing unit;

26 (g) One direct care registered nurse to three or fewer mother-plus-infant
27 couplets in a postpartum unit; and

28 (h) One direct care registered nurse to six or fewer patients in a well-baby
29 nursery unit;

30 (2) A hospital may apply a direct care registered nurse-to-patient ratio for a unit
31 type described in subdivision (1) of this subsection to a type of hospital unit not
32 described in subdivision (1) of this subsection if the hospital unit not so described
33 provides a level of care to patients whose needs are similar to the needs of patients in the
34 unit type so described; and

35 (3) Every direct care registered nurse has a duty and right to act based on his or
36 her professional judgment in accordance with chapter 335, to provide care in the
37 exclusive interests of the patient, and to act as the patient's advocate. A direct care
38 registered nurse may refuse to accept a patient assignment if such assignment would
39 violate the provisions of this subsection or would otherwise compromise patient safety or
40 the ability of the direct care registered nurse to competently provide care to his or her
41 patients.

42 **3. A hospital shall assign a patient to a direct care registered nurse only if care is**
43 **provided by the direct care registered nurse and the provision of care to the patient is**
44 **within the direct care registered nurse's competence. A hospital shall not assign a direct**
45 **care registered nurse to a hospital unit unless the hospital determines that the direct**
46 **care registered nurse has demonstrated current competence in providing care in that**
47 **unit and has also received orientation to that hospital's unit sufficient to provide**
48 **competent care to patients in that unit.**

49 **4. A hospital shall not assign any nursing personnel from temporary nursing**
50 **agencies to patient care in any hospital unit without such personnel having**
51 **demonstrated competence on the assigned unit and received orientation to that**
52 **hospital's unit sufficient to provide competent care to patients in that unit.**

53 **5. A hospital shall ensure that during breaks, meals, and other routine, expected**
54 **absences from a hospital unit by a direct care registered nurse, only a direct care**
55 **registered nurse who is similarly competent may relieve the direct care registered nurse.**

56 **6. A registered nurse who is a nurse administrator, nurse supervisor, nurse**
57 **manager, charge nurse, case manager, or any other hospital administrator or supervisor**
58 **shall not be included in the calculation of the direct care registered nurse-to-patient**
59 **ratio unless that nurse has a current and active direct patient care assignment and**
60 **provides direct patient care in compliance with the requirements of this section,**
61 **including competency requirements.**

62 **7. Other personnel may perform patient care tasks based on their training and**
63 **demonstrated skill but shall not perform direct care registered nurse functions unless**
64 **authorized to do so in accordance with state scope of practice laws and regulations.**

65 **8. During each shift in a hospital unit, each patient shall be assigned to a direct**
66 **care registered nurse who shall directly provide the assessment, planning, supervision,**
67 **implementation, and evaluation of the nursing care provided to the patient during that**
68 **shift and who is responsible for the provision of care to such patient within his or her**
69 **scope of practice.**

70 **9. The need for additional staffing of direct care registered nurses, licensed**
71 **practical nurses, licensed psychiatric technicians, certified nursing or patient care**
72 **assistants, or other licensed or unlicensed ancillary staff above the minimum direct care**
73 **registered nurse-to-patient ratios described in this section shall be based on an**
74 **assessment of the individual patient's nursing care requirement, nursing care plan, and**
75 **acuity level.**

76 **10. A hospital shall not average the number of patients and the total number of**
77 **direct care registered nurses assigned to patients in a hospital unit during any shift or**
78 **over any period of time for purposes of meeting the requirements under this section.**

79 Any nurse held over from a prior shift or only staffed for a duration less than a
80 standard complete shift per hospital standards shall not be included in reported staffing
81 numbers unless the remaining shift is fulfilled by another direct care registered nurse.

82 11. A hospital shall not impose mandatory overtime requirements to meet the
83 hospital unit direct care registered nurse-to-patient ratios required under this section.

84 12. Patients shall be cared for only on units or patient care areas in which the
85 direct care registered nurse-to-patient ratios meet the level of intensity, type of care, and
86 the individual requirements and needs of each patient. Hospitals that provide patient
87 care in units or patient care areas that are acuity adaptable or acuity adjustable shall
88 apply the direct care registered nurse-to-patient ratio required in this section for the
89 highest patient acuity level or level of care in that unit or patient care area and shall
90 comply with all other requirements of this section.

91 13. Video monitors or any form of electronic visualization of a patient shall not
92 be included in the calculation of the direct care registered nurse-to-patient ratios
93 required in this section and shall not replace the requirements of subsections 3 and 8 of
94 this section. A hospital shall not employ technology that substitutes for the assigned
95 direct care registered nurse's professional judgment in assessment, planning,
96 implementation, and evaluation of care.

97 14. The requirements established under this section shall not apply during a
98 state of emergency if a hospital is requested or expected to provide an exceptional level
99 of emergency or other medical services. If a hospital seeks to apply the exemption under
100 this subsection in response to a complaint filed against the hospital for a violation of the
101 provisions of this section, the hospital shall be required to demonstrate that prompt and
102 diligent efforts were made to maintain required staffing levels.

197.1010. 1. A hospital shall report compliance with its staffing plan to the
2 department at least bimonthly. Such report shall include a list of active hospital units,
3 the number of patients in each unit, and the direct care registered nurse-to-patient
4 ratios on each shift in that unit.

5 2. The department shall make publicly available a list of hospitals that have filed
6 both a staffing plan under section 197.1005 and a compliance report under this section.

7 3. The department shall create an online portal for purposes of accepting
8 staffing plans, compliance reports, and complaints related to violations of sections
9 197.1000 to 197.1025 or the hospital's staffing plan.

197.1015. The department shall promulgate rules to implement the provisions of
2 sections 197.1000 to 197.1025. The department may promulgate rules allowing the
3 department to audit a hospital for compliance with sections 197.1000 to 197.1025 and
4 the hospital's filed staffing plan. Any rule or portion of a rule, as that term is defined in

5 section 536.010, that is created under the authority delegated in this section shall
6 become effective only if it complies with and is subject to all of the provisions of chapter
7 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable
8 and if any of the powers vested with the general assembly pursuant to chapter 536 to
9 review, to delay the effective date, or to disapprove and annul a rule are subsequently
10 held unconstitutional, then the grant of rulemaking authority and any rule proposed or
11 adopted after the effective date of this section shall be invalid and void.

197.1020. 1. A hospital or individual shall not take adverse action against a
2 nurse with respect to any aspect of a nurse's employment or licensing, including the
3 submission of a report to the state board of nursing, discharge, promotion,
4 compensation, or terms, conditions, or privileges of employment, based on the nurse's
5 refusal to accept an assignment if such assignment would violate the provisions of
6 sections 197.1000 to 197.1025 or based on the nurse's report to the department of a
7 violation of sections 197.1000 to 197.1025 or the hospital's staffing plan.

8 2. Any nurse who has been subject to an adverse action in violation of this
9 section may bring a cause of action against the individual or entity that unlawfully took
10 an adverse action. A nurse who prevails in the cause of action shall be entitled to one or
11 more of the following:

- 12 (1) Reinstatement;
- 13 (2) Reimbursement of lost wages, compensation, and benefits;
- 14 (3) Attorney's fees;
- 15 (4) Court costs; and
- 16 (5) Other damages.

197.1025. The department may impose civil penalties for violations of sections
2 197.1000 to 197.1025 that shall not exceed:

- 3 (1) Twenty-five thousand dollars for the first violation;
- 4 (2) Fifty thousand dollars for the second violation; and
- 5 (3) One hundred thousand dollars for the third and any subsequent violation.

198.043. 1. As used in this section, the following terms mean:

- 2 (1) "Certified nursing assistant", the same meaning given to the term in section
3 198.082;
- 4 (2) "Charge nurse", a registered professional nurse who oversees the operations
5 of the nurse's specific nursing unit during a set period;
- 6 (3) "CMS", the Centers for Medicare and Medicaid Services;
- 7 (4) "Hours per resident day", the total number of hours worked by each type of
8 staff divided by the total number of residents;

9 (5) "Registered professional nurse" or "registered nurse", the same meanings
10 given to the terms in section 335.016.

11 2. Assisted living facilities shall have sufficient nursing staff with the appropriate
12 competencies and skill sets to provide nursing and related services to ensure resident
13 safety and attain or maintain the highest practicable physical, mental, and psychosocial
14 well-being of each resident by maintaining on a twenty-four-hour basis the following
15 types of personnel:

16 (1) Registered nurses. Each assisted living facility shall comply with the
17 following staffing requirements for registered nurses:

18 (a) Each assisted living facility shall provide care by registered nurses for a
19 minimum of fifty-five hundredths of one hour per resident day; and

20 (b) At least one registered nurse shall be on site twenty-four hours a day, seven
21 days a week; and

22 (2) Other nursing personnel. Each assisted living facility shall provide care by
23 certified nursing assistants for a minimum of two and forty-four hundredths hours per
24 resident day.

25 3. Assisted living facilities shall electronically submit to CMS complete and
26 accurate direct care staffing information, including information for agency and contract
27 staff, based on payroll and other verifiable and auditable data in a uniform format
28 according to specifications established by CMS in accordance with 42 CFR 483.70(p).

29 4. Determinations of compliance with hours per resident day specified in
30 subsection 2 of this section shall be made by the department based on the most recent
31 available quarter of Payroll-Based Journal System data maintained by CMS.

32 5. The department may impose appropriate sanctions and assess an
33 administrative penalty under this section on an administrator of a facility who fails to
34 meet the minimum staffing standards two quarters in a row as determined by rule.

35 6. (1) An assisted living facility may be exempted from the minimum staffing
36 requirements of subdivisions (1) and (2) of subsection 2 of this section by the department
37 if a verifiable hardship exists that prohibits the facility from achieving or maintaining
38 compliance as demonstrated by meeting the following criteria:

39 (a) The facility is located in an area where:

40 a. The supply of applicable health care staff, either registered professional
41 nurses or certified nursing assistants or both, is not sufficient to meet area needs as
42 evidenced by a provider-population ratio for nursing workforce that is medium, twenty
43 percent below the national average, or low, forty percent below the national average;
44 and

45 b. The facility is at least twenty miles from another assisted living facility;

46 (b) The facility demonstrates that it has been unable, despite diligent efforts,
47 including offering at least prevailing wages, to recruit and retain appropriate personnel
48 as verified by:

49 a. Job listings in commonly used recruitment forums found online at American
50 Job Centers, coordinated by the United States Department of Labor's Employment and
51 Training Administration; MoJobs, coordinated by the department of higher education
52 and workforce development; and other forums as appropriate;

53 b. Documented job vacancies, including the number and duration of the
54 vacancies and documentation of offers made, including that they were made at least at
55 prevailing wages;

56 c. Data on the average wages in the metropolitan statistical area in which the
57 facility is located and vacancies by industry as reported by the department of labor and
58 industrial relations; and

59 d. The facility's staffing plan, which shall be developed and maintained to
60 maximize recruitment and retention of direct care staff; and

61 (c) The facility demonstrates through documentation the amount of financial
62 resources that the facility expends on nurse staffing relative to revenue.

63 (2) A facility shall not be eligible for a hardship waiver from the minimum
64 staffing requirements if the facility:

65 (a) Has been cited within the twelve months preceding the survey during which
66 the facility's noncompliance is identified:

67 a. For having widespread insufficient staffing with resultant resident actual
68 harm;

69 b. For a pattern of insufficient staffing with resultant resident actual harm; or

70 c. As at the immediate jeopardy level of severity with respect to insufficient
71 staffing as determined by CMS; or

72 (b) Has failed to submit data to CMS under subsection 3 of this section.

73 7. In order to appropriately manage required nursing staff, an assisted living
74 facility shall:

75 (1) Designate a registered professional nurse as the director of nursing on a full-
76 time basis; and

77 (2) Designate a registered professional nurse to serve as a charge nurse for each
78 nursing shift. The director of nursing designated in subdivision (1) of this subsection
79 may serve as a charge nurse only if the facility has an average daily occupancy of sixty
80 or fewer residents.

Section B. The repeal and reenactment of section 197.289 and the enactment of
2 sections 197.1000 to 197.1025 and 198.043 of this act shall become effective on January 1,
3 2029.

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