



H.B. 78

124th General Assembly

(As Introduced)

Reps. Womer Benjamin, Goodman, Hollister, Kearns, Allen, Barrett, Fedor, Redfern, S. Smith, Woodard

BILL SUMMARY

- Requires that health care facilities meet or exceed minimum staffing requirements.
- Requires each health care facility to establish a patient classification committee to select a patient classification system to be used in developing a staffing plan.
- Prohibits a health care facility from requiring a registered nurse to work overtime.
- Prohibits a health care facility from permitting a registered nurse to work more than 18 consecutive hours.
- Requires the Department of Health to investigate violations of the bill's staffing requirements and work scheduling limitations and give the health care facility the opportunity for a hearing.
- Specifies fines the Department may impose for violations of the bill's staffing requirements and work scheduling limitations.
- Permits the Department to initiate a court action for violations of the bill's staffing requirements and work scheduling limitations.
- Requires a health care facility to make available a monthly report comparing staffing requirements to actual staffing for the preceding month.
- Requires a health care facility to implement policies to maintain the quality of care provided by registered nurses.

CONTENT AND OPERATION

Minimum staffing requirements

(secs. 3728.02 and 3728.03)

Under the bill, a health care facility must require each patient care unit in the facility to meet or exceed minimum staffing requirements established for each work shift.¹ To determine minimum staffing requirements, a registered nurse must assess patient health care needs using a patient classification system selected by the facility.² If the assessment results in a staffing requirement that is less stringent than a staffing requirement established under another provision of the Revised Code or an administrative rule, the facility must comply with the more stringent staffing requirement. Similarly, if the assessment results in a staffing requirement that is more stringent than the other provision of the Revised Code or an administrative rule, the facility must comply with the more stringent staffing requirement.

Meeting the staffing requirements required by the bill is the minimum action a health care facility may take. The facility may employ additional registered nurses to ensure that the facility's patients receive quality health care. The staffing requirements must be implemented through a staffing plan that is developed for each patient care unit.

Staffing plan

(sec. 3728.02)

A staffing plan must be developed under the direction of the health care facility's chief nurse administrator or nurse executive. To determine the appropriate application of the staffing plan, the chief nurse administrator or nurse executive must develop the plan in collaboration with nursing staff who are

¹ A "health care facility" is any of the following: a hospital, nursing facility, nursing home or home for the aging, residential care facility, county home or district home that provides skilled nursing care, intermediate care facility for the mentally retarded, ambulatory surgical facility, freestanding dialysis center, freestanding inpatient rehabilitation facility, freestanding birthing center, or freestanding radiation therapy center (Revised Code § 3728.01(A)).

² "Registered nurse" means an individual who holds a license under Ohio law to practice nursing as a registered nurse (R.C. 4723.01; not in bill). A "patient classification system" is a mechanism used by a health care facility to determine and differentiate the health care needs of all patients receiving care in the facility (R.C. 3728.01(C)).

consistently involved in direct patient care. The plan must be developed in a manner that enables the patient care unit to meet or exceed the staffing requirements derived from the computations used in the patient classification system.

Mandatory considerations in developing the staffing plan

The staffing plan developed for each patient care unit for each work shift must be consistent with acceptable and prevailing standards of safe nursing care and with the American Nursing Association's Principles for Nurse Staffing.³ The plan must take into account all of the following:

- (1) Severity of the patients' illnesses;
- (2) Use of specialized equipment and technology in providing patient care;
- (3) Complexity of clinical judgment needed to design, implement, and evaluate patient care plans;
- (4) Ability of the patients to provide self-care;
- (5) Patient care delivery systems at the facility;
- (6) Health care facility-based patient outcome indicators, as developed by nationally recognized nursing organizations, including the American Nurses Association;
- (7) Educational needs of the patients and their family member or others who may assist in the patient's care;
- (8) Cognitive needs of the patients;
- (9) Risk management needs resulting from the facility's record of malpractice and other incidents;
- (10) Functions necessary to support the delivery of quality patient care;
- (11) Clinical competencies required to meet the specific needs of the patient population;
- (12) Experience level and education of the facility's registered nurses;

³ *The Principles for Nurse Staffing were adopted by the American Nurses Association's Board of Directors on November 24, 1998.*

(13) State and federal laws and regulatory requirements regarding patient care;

(14) State and federal labor laws and ratified collective bargaining agreements;

(15) Any other elements considered appropriate and specified in rules the Department of Health adopts.

Patient classification system

Patient classification committee

(sec. 3728.04)

Each health care facility must establish a committee to select the patient classification system used in establishing staffing requirements. At least one-half of the committee's membership must be registered nurses who provide direct care to patients.⁴ The remaining half of the membership must include at least one registered nurse who is employed by the health care facility as a nurse administrator. The committee must be co-chaired by one registered nurse and another member the facility selects.

Criteria for selection of patient classification system

(sec. 3728.05)

The patient classification system selected by the committee must do all of the following:

(1) Compute staffing requirements that are appropriate to ensure that all patients in the facility receive quality health care according to an analysis of their individual and aggregate patient care needs;

(2) Specify staffing requirements to be filled by registered nurses, licensed practical nurses, and other personnel used in the provision of direct patient care or the support of other unit activities;⁵

⁴ This means that the registered nurse must hold a position in which direct patient care assignments make up at least half of the position's duties.

⁵ A "licensed practical nurse" is an individual who holds a license under Ohio law to practice nursing as a licensed practical nurse (R.C. 4723.01; not in bill).

(3) Include methods to ensure the validity and reliability of its projection of staffing requirements;

(4) Incorporate standards that are consistent with acceptable and prevailing standards of safe nursing care and with the American Nursing Association's Principles for Nurse Staffing.

Internal review of patient classification system

(sec. 3728.06)

Each health care facility's patient classification committee is required by the bill to develop an internal review mechanism for the committee to use to evaluate whether the patient classification system results in sufficient staffing requirements to meet the health care needs of the facility's patients. The committee must develop a review mechanism that takes into account changes in the characteristics of the facility's work environment, as well as changes that may have occurred in the overall health acuity level of the patients being treated in the facility. Evaluation tools the committee may use include the following:

- Patient outcome indicators developed by nationally recognized nursing organizations that have been shown to correlate with nurse staffing.
- Acceptable and prevailing standards of safe nursing care.
- Facility reports and analyses of incidents, adverse actions, and injuries involving the care provided by nursing staff and other health care personnel.
- Available surveys of patient satisfaction and nurse satisfaction that correlate to the quality of nursing care provided in the facility.
- Criteria required by state or federal law for assessing the quality of patient care provided by a health care facility.
- Any other criteria the committee considers appropriate.

Within six months of the bill's effective date, each committee must finish developing its internal review mechanism and conduct an internal review of the system it has selected. Thereafter, the committee must conduct an internal review at least annually. If the committee determines at any time that the patient classification system no longer meets the staffing requirements necessary to meet the health care needs of the facility's patients, the committee must select a different system.

Work scheduling limitations

(sec. 3728.10)

The bill prohibits a health care facility from requiring a registered nurse to work overtime.⁶ It also provides that a health care facility cannot permit a registered nurse to work more than 18 consecutive hours.

Prohibitions and emergency or disaster exception

(secs. 3728.15 and 3728.16)

A health care facility must comply with the staffing requirements established pursuant to the bill, as well as the bill's work scheduling limitations. A violation of the staffing requirements and work scheduling limitations in the same work shift constitute separate violations. Similarly, violations of the staffing requirements and work scheduling limitations in different patient care units at the same time are separate violations.

These prohibitions do not apply when a staffing shortage results from an occasion or instance that has been publicly declared as an emergency or disaster by the Governor of Ohio or the President of the United States. Each facility must develop and implement policies that establish mechanisms for rapid deployment of personnel during a publicly declared emergency or disaster. The policies must promote the identification and use of appropriate mixes of nursing staff and other personnel.

Violation of staffing requirements and work scheduling limitations

Department of Health's duties

(sec. 3728.17)

If the Department of Health determines that a health care facility has violated the staffing requirements and work scheduling limitations required by the bill, it must notify the facility and give the facility the opportunity for a hearing under the Administrative Procedure Act (R.C. Chapter 119.). If the facility does not request a hearing, or the Department determines after the hearing that the violation occurred, the Department must fine the facility. In deciding on the amount of the fine, the Department must consider the severity of the violation, the facility's efforts to correct the violation, whether the violation has been corrected,

⁶ "Overtime" means an amount of time that is worked in excess of an agreed upon, predetermined, regularly scheduled full-time or part-time workweek (R.C. 3728.01(B)).

and, if not, whether the failure to correct the violation results from willful disregard of the staffing requirements and work scheduling limitations.

For an initial violation, the Department must fine the facility \$2,500-\$10,000 for each week in which the violation occurs. For subsequent violations, for each day of the first week in which the violation occurs, the fine must be \$8,000-\$15,000. During each subsequent week, the Department is required to fine the facility for each day of violation in an amount that is three times the amount imposed per day in the immediately preceding week. The Department must deposit the fines in its general operations fund and use them only for administering and enforcing the law and regulations governing staffing requirements and work scheduling limitations.

Court action

(sec. 3728.18)

The Department of Health, through the Attorney General or an appropriate prosecuting attorney, may apply for an order enjoining a person from violating the staffing requirements and work scheduling limitations established by the bill. After receiving a verified petition, the court must conduct a hearing and give the same preference to the proceeding as is given to all proceedings under the Administrative Procedure Act, regardless of the position of the proceeding on the court's calendar. On a showing that the violation occurred, the court must grant an order enjoining the violation and may do either of the following:

(1) If the violation was willful, terminate the facility's authority to participate in any state-funded program that reimburses the facility for providing health services;

(2) If the violation resulted in imminent danger of harm or death to a patient, issue an order requiring the facility to close the patient care unit in which the violation occurred.

These remedies are in addition to any other penalties and remedies available in the Revised Code.

Board of Nursing's duties

(sec. 3728.18)

If the Board of Nursing, through an investigation under the Nurse Practice Act, finds that a person violated the bill's staffing requirements and work scheduling limitations, the Board must notify the Department of Health. On

receiving such notice, the Department may apply to the court for an injunction (see "*Court action*," above).

Monthly staffing report

(sec. 3728.07)

A health care facility must make available in a convenient location a monthly report that describes the preceding month's staffing requirements. The report must compare the staffing requirements to the actual staffing that occurred for that month. For at least three years, the facility must make the monthly report available to any interested party for inspection and copying.

Quality of care policies

(sec. 3728.11)

The bill requires a health care facility to implement policies to maintain the quality of care provided by registered nurses that ensure all of the following:

- That a registered nurse is competent to perform the activities that facility has authorized the nurse to perform.
- That a registered nurse is given an appropriate orientation to a patient care unit when first assigned to the unit.
- That clinical support from a proficient registered nurse is readily available to a registered nurse who may be less proficient.

These policies also apply to a registered nurse used by the facility who is not considered part of the facility's regular nursing staff, such as a supplemental registered nurse or a registered nurse obtained from a temporary agency. The bill prohibits a facility from assigning a person to perform a task unless the person is adequately trained to perform the task.

Work environment policies

(sec. 3728.12)

With respect to the work environment created by a health care facility for its registered nurses and other personnel who assist in providing patient care, the bill requires the facility to do all of the following:

- Implement policies that reflect an organizational climate committed to filling in a timely manner the jobs that have been included in the facility's budget.
- Employ a sufficient number of employees to perform duties that are not nursing functions, such as housekeeping, clerical duties, and administrative duties. The facility may not eliminate those non-nursing positions if the result is that registered nurses are required to carry out the duties of the individuals whose positions have been eliminated.
- Refrain from engaging in a pattern of scheduling an insufficient number of registered nurses to comply with the facility's staffing plan if the result is that registered nurses are routinely scheduled to work overtime in order for the facility to comply with the staffing plan.
- Ensure that registered nurses have nursing management support and representation at the operational and executive level.

Rulemaking

(sec. 3728.21)

The Department of Health is required to adopt rules, in accordance with the provisions of the Administrative Procedure Act that require public hearings, that it considers necessary to implement the bill.

Effective date

(Section 3)

The provisions of the bill are to take effect one year after its effective date.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02/07/01	p. 142

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