



State of Wisconsin
2023 - 2024 LEGISLATURE

LRB-4541/1
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2023 ASSEMBLY BILL 489

October 12, 2023 - Introduced by Representatives HONG, RATCLIFF, SHELTON, CABRERA, JOERS, J. ANDERSON, SINICKI, SUBECK, STUBBS, PALMERI, CLANCY, C. ANDERSON and ORTIZ-VELEZ, cosponsored by Senators LARSON, CARPENTER, HESSELBEIN and L. JOHNSON. Referred to Committee on Health, Aging and Long-Term Care.

1 **AN ACT** *to amend* 111.322 (2m) (a) and 111.322 (2m) (b); and *to create* 50.373,
2 103.035, 106.54 (10) (c) and 146.998 of the statutes; **relating to:** minimum
3 nurse staffing ratios in hospitals, registered nurses' right to refuse a work
4 assignment, prohibiting mandatory overtime for registered nurses, and
5 providing a penalty.

Analysis by the Legislative Reference Bureau

This bill requires hospitals to develop and adhere to a plan for staffing registered nurses. Under the bill, the nurse staffing plan must meet certain standards, including being created and approved by a nurse staffing committee, the majority of which must be registered nurses in nonsupervisory positions; reviewed annually by the hospital; provided to the Department of Health Services annually, by a deadline set by DHS; and posted in every unit of the hospital and on the DHS website. The bill establishes minimum nurse-to-patient ratios that the hospital must maintain for each unit in the hospital. Under the bill, hospitals must keep for at least three years records of its nurse staffing ratios and actual staffing numbers.

Under the bill, a hospital that fails to provide DHS with its nurse staffing plan by the deadline set by DHS is subject to a civil penalty of \$25,000. In addition, a hospital that fails to form a nurse staffing committee, annually review its nurse staffing plan, annually submit its nurse staffing plan to DHS, or adhere to required nurse-to-patient staffing ratios must submit a corrective action plan to DHS. Under the bill, a hospital may be subject to a civil penalty of \$5,000 for each day the hospital fails to submit or comply with a corrective action plan.

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In addition, the bill provides that registered nurses have the right to refuse a work assignment if the nurse, in good faith and in the nurse's professional judgment, finds that the nurse is unable to fulfill the assignment without compromising patient safety or the nurse's license. The bill creates a cause of action for a nurse against a hospital that disciplines, discharges, retaliates, discriminates, takes adverse action, or files a complaint with a disciplinary agency against a nurse that refuses to complete an assignment under those circumstances.

Under current law, subject to certain exceptions, an employer must pay an employee who receives an hourly wage one and one-half times the employee's regular rate of pay for all hours worked in excess of 40 hours per week, but current law, with exceptions under child labor laws, does not prohibit an employer from requiring an employee to work in excess of 40 hours per week.

This bill prohibits a hospital from requiring a registered nurse to work overtime. Under the bill, overtime is work in excess of any of the following: 1) a regularly scheduled predetermined shift immediately following that shift; 2) 12 hours in a 24-hour period; or 3) 40 hours in a scheduled workweek.

The prohibition on mandatory overtime under the bill does not apply in cases in which the registered nurse is involved in an ongoing surgical procedure, the registered nurse's presence is essential to the health and safety of a patient, the nurse is working in a critical care unit, or a public health emergency has been declared by the president of the United States or the governor, or during periods of adverse weather, catastrophe, or widespread illness within the hospital.

A registered nurse who is discharged or discriminated against for refusing to work overtime or for opposing a practice prohibited under the bill, for filing a complaint or attempting to enforce a right provided under the bill, or for testifying or assisting in any action or proceeding to enforce such a right may file a complaint with the Department of Workforce Development, and DWD must process the complaint in the same manner that employment discrimination complaints are processed under current law.

For further information see the state fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 **SECTION 1.** 50.373 of the statutes is created to read:
- 2 **50.373 Hospital nurse staffing requirements. (1) DEFINITIONS.** In this
- 3 section:

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1 (a) “Direct patient care” means any direct patient contact or treatment,
2 including consultation, diagnostic tests and procedures, therapeutic procedures,
3 pathological analyses and reports, and any other direct medical or health services.

4 (b) “Nurse staffing plan” means a plan developed and provided to the
5 department under sub. (2) (a).

6 (c) “Registered nurse” has the meaning given in s. 146.40 (1) (f).

7 **(2) SAFE NURSE STAFFING STANDARDS; NURSE STAFFING PLAN.** (a) A hospital shall
8 provide to the department, by a date determined by the department, a nurse staffing
9 plan for the upcoming year.

10 (b) A hospital shall, in its nurse staffing plan, provide for a collaborative
11 practice in the hospital that enhances patient care and the level of services provided
12 by nurses and other members of the hospital’s patient care team.

13 (c) A hospital shall include all of the following in its nurse staffing plan:

14 1. A written certification that the nurse staffing plan is sufficient to provide
15 adequate and appropriate delivery of health care services to patients during the year.

16 2. The hospital’s employment practices concerning the use of temporary and
17 traveling nurses.

18 3. The hospital’s process for internal review of the nurse staffing plan.

19 4. The hospital’s mechanism for obtaining input from staff that provide direct
20 patient care, including registered nurses and other members of the hospital’s patient
21 care team, in the development of the nurse staffing plan.

22 5. The minimum registered nurse skill mix for each patient care unit in the
23 hospital, including inpatient, critical care, and emergency department staffing.

24 6. The method used by the hospital to determine and adjust direct patient care
25 nurse staffing levels.

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1 7. The supporting personnel assisting on each patient care unit of the hospital.

2 8. The number of registered nurses providing direct patient care and the ratio
3 of registered nurses to patients in each care unit of the hospital.

4 (d) A hospital shall provide in its nurse staffing plan that, at all times during
5 each shift within a hospital unit, a registered nurse providing direct patient care is
6 assigned to not more than the following number of patients in that hospital unit:

7 1. Four patients in an emergency unit.

8 2. Two patients in an intensive care emergency unit.

9 3. Two trauma patients in a trauma emergency unit.

10 4. Two patients in an intensive care unit.

11 5. Three patients in a progressive care unit.

12 6. Four patients in a telemetry unit.

13 7. Five patients in a medical-surgical unit.

14 8. Four patients in a pediatric unit.

15 9. One patient in an operating room unit.

16 10. Two patients in a postanesthesia care unit.

17 11. Five patients in an oncology unit.

18 12. Five patients in an orthopedic unit.

19 13. Six patients in a psychiatry unit.

20 14. Four patients in a labor obstetrics unit.

21 15. Four patients in a postpartum obstetrics unit.

22 16. Four patients in a nursery obstetrics unit.

23 17. Two patients in a neonatal intensive care unit.

24 (e) A hospital's nurse staffing plan shall be approved by a majority vote of the
25 members of the hospital's nurse staffing committee under sub. (3).

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1 (f) A hospital, in collaboration with its nurse staffing committee, shall
2 implement to the best of its ability the nurse staffing plan.

3 (g) If staffing falls below the levels proposed in the nurse staffing plan for the
4 previous reporting period, a hospital shall include, in its nurse staffing plan for the
5 subsequent reporting period, a description of any differences between the staffing
6 levels described in the previous staffing plan and the actual staffing levels for each
7 patient care unit and any actions the hospital intends to take to address the
8 differences or adjust staffing levels in future staffing plans.

9 (h) A hospital shall post its nurse staffing plan on each unit of the hospital in
10 a location that is visible, conspicuous, and accessible to staff, patients, and the public.

11 (i) The department shall post each hospital's nurse staffing plan on the
12 department's website.

13 **(3) NURSE STAFFING COMMITTEE.** (a) A hospital shall maintain a nurse staffing
14 committee to assist in the preparation of its nurse staffing plan. The majority of the
15 nurse staffing committee members shall be nonsupervisory registered nurses who
16 are employed by the hospital and whose primary responsibility is to provide direct
17 patient care.

18 (b) In a hospital in which registered nurses providing direct patient care are
19 included in a collective bargaining unit established under ch. 111, the representative
20 of the collective bargaining unit shall select the registered nurse members of the
21 nurse staffing committee, subject to the requirements under par. (a).

22 **(4) NURSE STAFFING RECORDS.** (a) A hospital shall maintain accurate records of
23 the actual ratios of registered nurses providing direct patient care to patients in each
24 unit of the hospital during each shift for at least 3 years. The records must include
25 the number of patients in each unit during each shift and the number of registered

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1 nurses assigned to provide direct patient care to each patient in each unit during
2 each shift.

3 (b) A hospital shall make the records under par. (a) available to the department
4 and, upon request, to hospital staff, to a collective bargaining representative of
5 hospital staff, to patients, and to the public.

6 (5) COMPLAINTS. A hospital employee, patient, or member of the public may file
7 a complaint with the department to report any suspected violation of subs. (2) to (4).

8 (6) HOSPITAL FAILURE TO COMPLY WITH NURSE STAFFING PLAN AND REPORTING
9 REQUIREMENTS; CORRECTIVE ACTION; PENALTIES. (a) *Nurse staffing plan deadline;*
10 *penalty.* The department shall review each nurse staffing plan provided by a hospital
11 under sub. (2) (a) to ensure it is received by the date determined by the department
12 under sub. (2) (a). A hospital that fails to submit a nurse staffing plan by the date
13 determined by the department under sub. (2) (a) shall forfeit \$25,000.

14 (b) *Corrective plan of action; penalty.* 1. The department shall investigate a
15 complaint received under sub. (5) that is accompanied with documented evidence of
16 a hospital's failure to establish a nurse staffing committee, conduct an annual review
17 of a nurse staffing plan, submit a nurse staffing plan on an annual basis, or meet the
18 nurse staffing levels provided under sub. (2) (d) in violation of sub. (2), (3), or (4).

19 2. If, after an investigation, the department determines a violation has
20 occurred, the department shall present its findings to the hospital and require the
21 hospital to submit a corrective plan of action within 45 days from the time the
22 department presented its findings to the hospital.

23 3. If a hospital fails to submit or follow a corrective plan of action, the hospital
24 may be required to forfeit \$5,000 for each day that the hospital fails to submit or
25 follow the corrective plan of action. The forfeitures under this subdivision shall

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1 accrue until the hospital submits and follows for 90 days a corrective plan of action
2 that has been approved by the department. If the hospital follows the corrective plan
3 of action for 90 days, the department may reduce the forfeiture amount accrued
4 under this subdivision.

5 (c) *Posting violations.* The department shall post on its website a report of
6 violations of subs. (2) to (4) and maintain for public inspection records of any civil
7 penalties and administrative actions imposed on hospitals under this subsection.

8 **SECTION 2.** 103.035 of the statutes is created to read:

9 **103.035 Mandatory overtime for registered nurses in hospitals**
10 **prohibited; exceptions. (1) DEFINITIONS.** In this section:

11 (a) "Hospital" has the meaning given in s. 50.33 (2).

12 (b) "Overtime" means any of the following:

13 1. Time worked in excess of a regularly scheduled daily work shift that has been
14 determined and agreed to before the performance of the work, immediately following
15 the regularly scheduled daily work shift.

16 2. Time worked in excess of 12 hours in a 24-hour period.

17 3. Time worked in excess of 40 hours in a previously determined workweek.

18 (c) "Registered nurse" has the meaning given in s. 146.40 (1) (f).

19 **(2) MANDATORY OVERTIME PROHIBITED.** (a) Except as provided in par. (b), no
20 hospital may require a registered nurse to work overtime.

21 (b) A hospital may require a registered nurse to work overtime only in one of
22 the following instances:

23 1. The hospital has determined that the safety of a patient requires that a
24 registered nurse work overtime and the hospital has found that no reasonable
25 alternative exists.

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1 2. The registered nurse is working in an ongoing surgical procedure at the time
2 the hospital requires the nurse to work overtime.

3 3. The registered nurse is working in a critical care unit and is required to work
4 overtime until the nurse is relieved by another scheduled registered nurse.

5 4. During any time that the president of the United States declares a public
6 health emergency under 50 USC 1621 that affects the region of this state in which
7 the hospital is located.

8 5. During any time that the governor declares a public health emergency under
9 s. 323.10 that affects the region of this state in which the hospital is located.

10 6. During any time of adverse weather conditions, catastrophe, or widespread
11 illness within the hospital.

12 **(3) VOLUNTARY COVERAGE.** Before requiring a registered nurse to work overtime
13 under sub. (2) (b), the hospital shall make a good faith effort to have those work hours
14 covered on a voluntary basis.

15 **(4) RIGHT TO REFUSE MANDATORY OVERTIME.** A registered nurse may refuse to
16 work overtime if the nurse believes in good faith that the hospital has not made a
17 good faith effort to fill the work hours covered by the overtime mandate. A hospital
18 may not discharge, retaliate, or discriminate in promotion, in compensation, or in the
19 terms, conditions, or privileges of employment against the registered nurse for
20 refusing to work the overtime.

21 **(5) ENFORCEMENT.** A registered nurse who is discharged, retaliated, or
22 discriminated against in violation of sub. (4) may file a complaint with the
23 department, and the department shall process the complaint in the same manner
24 that employment discrimination complaints are processed under s. 111.39. If the
25 department finds that a hospital has violated sub. (4), the department may order the

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1 hospital to take such action under s. 111.39 as will effectuate the purpose of this
2 section. Section 111.322 (2m) applies to discharge or other discriminatory acts
3 arising in connection with any proceeding under this subsection.

4 **SECTION 3.** 106.54 (10) (c) of the statutes is created to read:

5 106.54 (10) (c) The division shall receive complaints under s. 103.035 (5) and
6 shall process the complaints in the same manner as employment discrimination
7 complaints are processed under s. 111.39.

8 **SECTION 4.** 111.322 (2m) (a) of the statutes is amended to read:

9 111.322 (2m) (a) The individual files a complaint or attempts to enforce any
10 right under s. 103.02, 103.035, 103.10, 103.11, 103.13, 103.28, 103.32, 103.34,
11 103.455, 104.12, 109.03, 109.07, 109.075, 146.997, 146.998, or 995.55, or ss. 101.58
12 to 101.599 or 103.64 to 103.82.

13 **SECTION 5.** 111.322 (2m) (b) of the statutes is amended to read:

14 111.322 (2m) (b) The individual testifies or assists in any action or proceeding
15 held under or to enforce any right under s. 103.02, 103.035, 103.10, 103.11, 103.13,
16 103.28, 103.32, 103.34, 103.455, 104.12, 109.03, 109.07, 109.075, 146.997, 146.998,
17 or 995.55, or ss. 101.58 to 101.599 or 103.64 to 103.82.

18 **SECTION 6.** 146.998 of the statutes is created to read:

19 **146.998 Nurse rights regarding safe nursing standards; cause of**
20 **action. (1) DEFINITIONS.** In this section:

21 (a) "Hospital" has the meaning given in s. 50.33 (2).

22 (b) "Registered nurse" has the meaning given in s. 146.40 (1) (f).

23 **(2) RIGHT TO REFUSE.** A registered nurse may object to or refuse to participate
24 in an activity, policy, practice, assignment, or task if, in good faith and in the
25 registered nurse's professional judgment, the registered nurse is not prepared by

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1 education, training, or experience to fulfill the activity, policy, practice, assignment,
2 or task without compromising the safety of a patient or jeopardizing the registered
3 nurse's license. A registered nurse's professional judgment under this subsection
4 shall be based upon the registered nurse's application of knowledge, expertise, and
5 experience in conducting a comprehensive nursing assessment of a patient and
6 making independent decisions about patient care in accordance with state law and
7 administrative rules, including the need for additional staff.

8 **(3) DISCIPLINARY ACTION PROHIBITED.** A hospital may not do any of the following
9 in response to a registered nurse's refusal to participate in an activity, policy,
10 practice, assignment, or task under this section:

11 (a) Discharge, retaliate, or discriminate against, or otherwise subject the
12 registered nurse to an adverse action with respect to any aspect of the registered
13 nurse's employment, including actions related to promotion, compensation, or terms,
14 conditions, or privileges of employment.

15 (b) File a complaint or report against a registered nurse with a state
16 professional disciplinary entity.

17 **(4) CAUSE OF ACTION.** A registered nurse or the collective bargaining
18 representative or legal representative of a nurse who has been discharged,
19 retaliated, or discriminated against, subjected to an adverse action, or the subject of
20 a complaint or report filed with a state professional disciplinary entity in violation
21 of sub. (3) may bring a cause of action against the hospital that violated sub. (3). A
22 registered nurse who prevails in a cause of action under this subsection is entitled
23 to at least one of the following:

24 (a) Reinstatement.

25 (b) Reimbursement of lost wages, compensation, and benefits.

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1 (c) Reasonable attorney fees, notwithstanding s. 814.04 (1).

2 (d) Court costs.

3 (e) Any other reasonable damages.

4 **SECTION 7. Initial applicability.**

5 (1) COLLECTIVE BARGAINING AGREEMENTS. This act first applies to a registered
6 nurse, as defined in s. 146.40 (1) (f), who is affected by a collective bargaining
7 agreement that contains provisions inconsistent with this act on the day on which
8 the collective bargaining agreement expires or is extended, modified, or renewed,
9 whichever occurs first.

10 **SECTION 8. Effective dates.** This act takes effect on the day after publication,
11 except as follows:

12 (1) NURSE STAFFING RECORDS. The treatment of s. 50.373 (4) takes effect on the
13 first day of the 4th month beginning after publication.

14 (END)