S-1760.3

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)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) Skill mix;

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

(v) The need for specialized or intensive equipment;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Form or establish a staffing committee;

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

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

(iv)((~~(A)~~)) Follow the nursing personnel assignments in a patient care unit in violation of RCW 70.41.420(7)(a) or shift-to-shift adjustments in staffing levels in violation of RCW 70.41.420(7)(b)<u>;</u>

<u>(v) Collect and review aggregate data on missed meal and rest breaks; or</u>

<u>(vi) Appropriately respond to complaints submitted to the nurse staffing committee regarding patterns of missed meal and rest breaks</u>.

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

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

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

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

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

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

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

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

(b) When a hospital disaster plan is activated;

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

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

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

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

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

(8) This section expires June 1, 2023.

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

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

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

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

(a) The delegating nurse shall:

(i) Determine the competency of the individual to perform the tasks;

(ii) Evaluate the appropriateness of the delegation;

(iii) Supervise the actions of the person performing the delegated task; and

(iv) Delegate only those tasks that are within the registered nurse's scope of practice.

(b) A registered nurse, working for a home health or hospice agency regulated under chapter 70.127 RCW, may delegate the application, instillation, or insertion of medications to a registered or certified nursing assistant under a plan of care.

(c) Except as authorized in (b) or (e) of this subsection, a registered nurse may not delegate the administration of medications. Except as authorized in (e) of this subsection, a registered nurse may not delegate acts requiring substantial skill, and may not delegate piercing or severing of tissues. Acts that require nursing judgment shall not be delegated.

(d) No person may coerce a nurse into compromising patient safety by requiring the nurse to delegate if the nurse determines that it is inappropriate to do so. Nurses shall not be subject to any employer reprisal or disciplinary action by the nursing care quality assurance commission for refusing to delegate tasks or refusing to provide the required training for delegation if the nurse determines delegation may compromise patient safety.

(e) For delegation in community-based care settings or in-home care settings, a registered nurse may delegate nursing care tasks only to registered or certified nursing assistants or home care aides certified under chapter 18.88B RCW. Simple care tasks such as blood pressure monitoring, personal care service, diabetic insulin device set up, verbal verification of insulin dosage for sight-impaired individuals, or other tasks as defined by the nursing care quality assurance commission are exempted from this requirement.

(i) "Community-based care settings" includes: Community residential programs for people with developmental disabilities, certified by the department of social and health services under chapter 71A.12 RCW; adult family homes licensed under chapter 70.128 RCW; and assisted living facilities licensed under chapter 18.20 RCW. Community-based care settings do not include acute care or skilled nursing facilities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) For purposes of this subsection:

(i) "Unforeseeable emergency circumstance" means any:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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