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Bill Analysis

Version: As Introduced

Primary Sponsors: Reps. Skindell and Humphrey

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SUMMARY

- Establishes minimum direct-care registered nurse (RN) staffing requirements for hospitals, and requires the assignment of nurses who are not direct-care RNs to be consistent with the hospital's nursing services staffing plan required under existing law.
- Requires a hospital to post the staffing requirements (expressed as ratios) daily, on a shift-by-shift basis, in a conspicuous place visible to the public.
- Requires a hospital to provide inpatients with an existing Ohio Department of Health telephone number to report inadequate staffing.
- Confers certain rights on RNs affected by the bill's staffing requirements.
- Prohibits a hospital from violating the bill's staffing requirements or taking adverse action against an RN who exercises a right conferred by the bill, and specifies civil penalties for violations.
- Authorizes an RN to sue a hospital if it takes adverse action against the RN based on the RN's (1) refusal to complete an assignment or (2) objection to a hospital policy, practice, or action that violates the bill.
- Expresses the General Assembly's intent that direct-care RNs have certain rights regarding the care they provide and the duties they perform, and that only direct-care RNs may perform patient assessments in hospitals.

DETAILED ANALYSIS

NURSE STAFFING IN HOSPITALS

Overview

The bill establishes minimum direct-care registered nurse (RN) staffing requirements for hospitals. For nurses who are not direct-care RNs, the bill requires that their assignments be guided by a hospital's nursing services staffing plan required under existing law.

Direct-care RNs

Under the bill, a direct-care RN is a registered nurse licensed by the Ohio Board of Nursing who provides direct patient care. This type of care is described under existing law as care provided by a nurse with direct responsibility to carry out medical regimens or nursing care for one or more patients.[1]

The bill provides that the minimum staffing requirements for direct-care RNs in hospitals are established by doing the following:

1. Specifying the minimum ratios of direct-care RNs to patients that hospitals must maintain in certain units and under certain circumstances;
2. Requiring, for units and circumstances not covered by the bill's specified ratios, that ratios be established by the hospital's hospital-wide nursing care committee established under existing law.

Ratios for specified hospital units and circumstances

The bill requires each hospital to maintain at least the following direct-care RN-to-patient ratios in specified hospital units and circumstances:[2]

Hospital Direct-care RN-to-patient Ratios	
Ratio	**Units and Circumstances**
1:1	One direct-care RN to each of the following: ▪ A patient in an operating room; ▪ A patient receiving conscious sedation; ▪ A trauma or critical care patient in an emergency department; ▪ An active labor patient, patient with medical or obstetrical complications, or patient for whom the RN initiates epidural anesthesia and circulation for cesarean delivery;

[1] R.C. 3727.50(A) and (B) and 3727.81(B).

[2] R.C. 3727.83(A).

Hospital Direct-care RN-to-patient Ratios	
Ratio	**Units and Circumstances**
	▪ An unstable newborn or newborn in a resuscitation period; and ▪ Every three of the following groups: a healthy mother and her infant or, if the mother has delivered multiple infants, a healthy mother and up to three of her infants.
1:2	One direct-care RN to each two of the following (who are not listed above): ▪ Patients in each of the following units: ▫ An intensive care unit; ▫ A critical care unit for patients whose medical conditions require continuous monitoring, complex nursing interventions, restorative measures, and intensive nursing care through direct observation; ▫ A neonatal intensive care unit; ▫ A burn unit; and ▫ A post anesthesia recovery unit, regardless of the type of anesthesia patients receive. ▪ Patients in the immediate postpartum period.
1:3	One direct-care RN to each three of the following (who are not listed above): ▪ Patients in each of the following: ▫ A step-down unit for patients whose severity of illness, including all comorbidities, restorative measures, and level of nursing intensity, requires any of the following: intermediate intensive care, monitoring, multiple assessments, specialized nursing interventions, evaluations, education of the patient's family or other representatives, or technical support but not necessarily artificial life support as a result of moderate or potentially severe physiologic instability; ▫ A pediatric unit; and ▫ A telemetry unit designated for electronic monitoring, recording, retrieval, and display of cardiac electrical signals for patients whose severity of illness, including all comorbidities, restorative measures, and level of nursing intensity, requires intermediate intensive care, monitoring, multiple assessments, specialized nursing interventions, evaluation, or education of the patient's family or other representatives. ▪ Patients who are antepartum and not in active labor; or ▪ Mother-and-infant couplets in a postpartum area.

Hospital Direct-care RN-to-patient Ratios	
Ratio	**Units and Circumstances**
1:4	One direct-care RN to each four of the following (who are not listed above): ▪ Patients in each of the following: ▫ A medical-surgical unit for patients whose severity of illness requires continuous care through direct observation, including units for patients requiring less than intensive care or step-down care, receiving 24-hour inpatient general medical care, post-surgical care, or both, or with diverse diagnoses and diverse age groups (but not units with pediatric patients); ▫ A presurgical, admissions, or ambulatory surgical unit; ▫ A psychiatric unit; or ▫ Any other specialty unit. ▪ Patients in an emergency department who are not trauma or critical care patients; ▪ Mothers in an obstetrics unit who are not included in the 1:3 ratio group above; ▪ Postpartum or post gynecological surgery patients; or ▪ Recently born infants with no unusual medical needs who are not included in the 1:3 ratio group above.
1:5	One direct-care RN to each five of the following: ▪ Patients in each of the following: ▫ A rehabilitation unit that is used to restore an ill or injured patient to the highest level of self-sufficiency or gainful employment of which the patient is capable in the shortest possible time, compatible with the patient's physical, intellectual, emotional, and psychological capabilities, and in accordance with planned goals and objectives; and ▫ A skilled nursing unit that is used for the provision of skilled nursing care and supportive care to patients whose primary need is for skilled nursing care on a long-term basis and patients who are admitted after at least a – 48-hour period of continuous inpatient care and that provides activities and such services as medical, nursing, dietary, and pharmaceutic services. ▪ Infants in a well-baby nursery.

The bill specifies that identifying a unit or circumstance other than one shown in the table, above, does not affect a hospital's duty to maintain the ratios in the table.[3]

[3] R.C. 3727.83(C).

Ratios for unspecified hospital units and circumstances

For each hospital unit or circumstance not specified in the bill, the bill requires that the hospital's hospital-wide nursing care committee determine which specified unit has patient needs most similar to the needs of the unspecified unit.[4] When making this determination, the committee must consider the following factors:[5]

- The registered nursing care requirements for individual patients based on the severity of patient illness;
- The intensity of the nursing interventions and complexity of the professional judgment required to design, implement, and evaluate each patient's nursing care plan consistent with professional standards;
- The ability of each patient to provide self-care, regardless of motor, sensory, or cognitive deficits;
- The need for patient advocacy;
- The licensure of the personnel required for care;
- The patient care delivery system;
- The hospital's physical layout;
- The generally accepted standards of nursing practice; and
- The elements that are unique to the hospital's patient population.

The hospital-wide nursing care committee must communicate the results of its determination to hospital administrators. The hospital is then required by the bill to implement the appropriate direct-care RN-to-patient ratio within 30 days.[6]

Hospital-wide nursing care committee

Under existing law, each hospital must convene a hospital-wide nursing care committee. The hospital selects the committee's membership, subject to the following conditions: (1) the hospital's chief nursing officer must be a member and (2) at least 50% of the committee's membership must be direct-care RNs.

The bill additionally requires that if a hospital's direct-care RNs are represented under a collective bargaining agreement, the authorized collective bargaining agent for those RNs must appoint the committee members who are direct-care RNs.[7] Also, the bill requires that the entire committee (rather than only the hospital's chief nursing officer) establish a mechanism for

[4] R.C. 3727.84(A).

[5] R.C. 3727.84(B).

[6] R.C. 3727.84(C).

[7] R.C. 3727.51(A).

obtaining input on the hospital's nursing services staffing plan from direct-care RNs (see "**Nursing services staffing plan**," below).[8]

Public notification regarding the ratios

The bill requires each hospital to post daily, on a shift-by-shift basis and in a conspicuous place visible to the public, all of the following:[9]

1. The required number of direct-care RNs for each unit or circumstance described above;
2. The actual number of direct-care RNs for each unit for that shift; and
3. Any difference between the required number and the actual number.

The hospital must provide to each inpatient the telephone number of the toll-free patient safety telephone line that can be used for reporting inadequate staffing or care in a hospital. This number is made available to the public by the Ohio Department of Health under existing law.[10]

RN rights

The bill specifies that an RN employed by a hospital has the right and duty to act as an advocate for the RN's patients, as circumstances require, by doing any of the following:[11]

- Initiating action to improve health care practices in the hospital, including providing professional input on the methods of patient care documentation and the number of ancillary and support staff (such as physical therapists, respiratory therapists, social workers, and patient lifting, transportation, housekeeping, and security personnel) who should be available and present to supplement the work of RNs;
- Advocating and monitoring activities to ensure hospital compliance with implementation of the nursing services staffing plan and assuring safe RN staffing levels at the unit level;
- Determining whether a health information technology software program or tool displaces RNs from patient care, interferes with the nursing process, or otherwise compromises an RN's professional judgment; or
- Giving patients an opportunity to make informed decisions regarding their health care before the care is provided.

The bill also permits an RN employed by a hospital to object to, or refuse to participate in, any activity, policy, practice, assignment, or task if, in good faith, the RN believes that it violates the staffing requirements established by the bill or the rights conferred on RNs by the bill. With respect to an assignment, the bill permits an RN to refuse to complete it if the RN is not prepared by education, training, or experience to complete it without compromising patient

[8] R.C. 3727.51(B).

[9] R.C. 3727.85.

[10] R.C. 3701.91, not in the bill, and 3727.85.

[11] R.C. 3727.87(A).

safety or jeopardizing the RN's license by creating the potential for professional disciplinary action by the Ohio Board of Nursing.[12]

Prohibitions related to the ratios

The bill prohibits a hospital from knowingly doing any of the following regarding the ratios established by the bill:[13]

- Assigning a direct-care RN to a unit unless the hospital and RN jointly determine that the RN demonstrates competency in providing care in that unit and the RN has completed orientation to the unit sufficient to provide safe, therapeutic, and effective care to patients in that unit;
- Averaging the number of patients and the number of direct-care RNs on a unit during any one shift or over any period of time;
- Including in the calculation of the direct-care RN-to-patient ratio any of the following: nurse administrators, supervisors, managers, charge nurses, case managers, or triage, radio, or flight nurses;
- Imposing mandatory overtime on any direct-care RN in order to meet the required direct-care RN-to-patient ratio;
- Imposing layoffs of licensed practical nurses or other ancillary or supportive personnel within the hospital as a means of meeting the required ratios;
- Allowing a nurse who is not a direct-care RN to relieve a direct-care RN during a break, meal, or other routine, expected absence from a unit;
- Using video cameras or monitors or any other form of electronic visualization of a patient as a substitute for the direct observation that is needed for the assessment of a patient by a direct-care RN;
- Assigning a patient to a particular unit within the hospital unless the unit's level of intensity, type of care, and direct-care RN-to-patient ratio meets the patient's needs; or
- Creating or using units within the hospital that are adjustable according to patient acuity.

Regarding the first prohibition, the bill requires a hospital to establish criteria for determining a direct-care RN's competency. The hospital must include the criteria in the hospital's policies and procedures.[14]

Prohibitions related to RN rights

The bill prohibits a hospital from discharging, retaliating against, discriminating against, or otherwise taking adverse action against an RN with respect to any aspect of the RN's

[12] R.C. 3727.87(B).

[13] R.C. 3727.86(B).

[14] R.C. 3727.86(A) and (C).

employment based on his or her refusal to complete an assignment that he or she may refuse to complete under the bill. For example, a hospital is prohibited from demoting the RN, decreasing the RN's compensation, or negatively altering the terms, conditions, or privileges of employment.[15]

The bill also prohibits a hospital from (1) filing a complaint against an RN with the Nursing Board based on the RN's refusal to complete an assignment that he or she may refuse to complete under the bill or (2) discriminating or retaliating against any individual for opposing any hospital policy, practice, or action alleged to violate the bill.[16]

In addition, the bill prohibits a hospital or its representative from (1) interfering with, restraining, or denying the exercise of, or attempting to deny the exercise of, a right conferred by the bill or (2) coercing or intimidating an individual regarding the exercise of, or attempt to exercise, a right conferred by the bill.[17]

Civil lawsuit by an RN

The bill authorizes an RN to bring a civil lawsuit against a hospital that violates any of these prohibitions. The RN may file the lawsuit in the court of common pleas of the county in which the hospital is located.[18]

An RN who prevails in a lawsuit is entitled to any of the following remedies:[19]

- Reinstatement to the position the RN had before the hospital engaged in the violation;
- Reimbursement for lost wages, compensation, and benefits;
- Attorneys' fees;
- Court costs; or
- Any other damages the court considers appropriate.

Penalty – administrative fine

A hospital that fails to comply with the bill's provisions is subject to a fine to be imposed by the Ohio Department of Health. For each failure, the hospital is subject to a fine of not more than $25,000 and an additional fine of not more than $10,000 per nursing unit shift until the offense or violation is corrected.[20]

[15] R.C. 3727.88(A).

[16] R.C. 3727.88(B) and (C).

[17] R.C. 3727.88(D).

[18] R.C. 3727.90(A).

[19] R.C. 3727.90(B).

[20] R.C. 3727.89(A).

On the Director of Health's request, the Ohio Attorney General must bring a civil action to collect a fine that has been imposed but remains unpaid.[21] Fine money must be deposited in the existing General Operations Fund.[22]

General Assembly's intent

The bill specifies that it is the General Assembly's intent to recognize a number of policies regarding direct-care RNs.[23] These policies are identified as follows:

Rights involving patient care, assignments, and assessments: The General Assembly recognizes that each direct-care RN employed by a hospital has the right to do all of the following:

- Provide safe, therapeutic, effective, and competent nursing care to patients;
- Have the necessary knowledge, judgment, skills, and ability to provide the required care before accepting a patient assignment;
- Determine whether the nurse is clinically competent to perform the required care in a particular unit, or with a particular diagnosis, condition, prognosis, or other determinative characteristic of nursing care;
- Recognize that the nurse is not clinically competent to perform the required care and not accept the patient assignment;
- Assess each medical order, and prior to acting on the order, determine whether the order is in the best interest of the patient and was initiated by a person legally authorized to initiate it;
- Perform continuous and ongoing patient assessments of each patient's condition, including direct observation of the patient's signs and symptoms of illness; reaction to treatment; behavior and physical condition; interpretation of information obtained from the patient and others, including other caregivers on the health team; and data collection and analysis, synthesis, and evaluation of the data; and
- Plan, implement, and evaluate the nursing care provided to each patient.

Involvement in patient care: The General Assembly recognizes that the assessment, nursing diagnosis, planning, intervention, evaluation, and, as circumstances require, patient advocacy should be initiated by a direct-care RN at the time of the patient's admission to a hospital and continue as long as the patient remains in the hospital.

Patient assignment refusal: The General Assembly recognizes that the refusal to accept a patient care assignment is an exercise of the direct-care RN's duty and right of patient advocacy.

[21] R.C. 3727.89(B).

[22] R.C. 3727.89(C).

[23] R.C. 3727.82.

Patient assessments: The General Assembly recognizes that only direct-care RNs are authorized to perform patient assessments, although licensed practical nurses may assist direct-care RNs in data collection.

Nursing services staffing plan

Under existing law, each hospital must create an evidence-based, written nursing services staffing plan guiding the assignment of all nurses in a hospital. The plan must, at a minimum, reflect current standards established by private accreditation organizations or governmental entities.[24]

As part of establishing a system of direct-care RN-to-patient ratios, the bill limits the nursing services staffing plan to guiding the assignment of nurses who are not direct-care RNs. The bill also eliminates requirements that the staffing plan be "evidence-based" and reflect standards established by private accreditation organizations or governmental entities.[25]

HISTORY

Action	Date
Introduced	04-18-23

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[24] R.C. 3727.53.

[25] R.C. 3727.52 and 3727.53.