

As Introduced

131st General Assembly

Regular Session

2015-2016

S. B. No. 324

Senator Skindell

Cosponsors: Senators Yuko, Cafaro, Williams

A BILL

To amend sections 3727.50, 3727.51, 3727.52, and 1
3727.53 and to enact sections 3727.70 to 3727.78 2
of the Revised Code to establish minimum ratios 3
of direct-care registered nurses to patients in 4
hospitals, to specify rights of registered 5
nurses working in hospitals, and to prohibit 6
retaliatory actions by hospitals against 7
registered nurses. 8

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 3727.50, 3727.51, 3727.52, and 9
3727.53 be amended and sections 3727.70, 3727.71, 3727.72, 10
3727.73, 3727.74, 3727.75, 3727.76, 3727.77, and 3727.78 of the 11
Revised Code be enacted to read as follows: 12

Sec. 3727.50. As used in this section and sections 3727.51 13
to 3727.57 of the Revised Code: 14

(A) "Direct patient care" means care provided by a nurse 15
with direct responsibility to carry out medical regimens or 16
nursing care for one or more patients. 17

(B) "Direct-care registered nurse" means a registered 18

nurse who provides direct patient care. 19

(C) "Inpatient care unit" means a hospital unit, including 20
an operating room or other inpatient care area, in which nursing 21
care is provided to patients who have been admitted to the 22
hospital. 23

~~(C)~~ (D) "Nurse" means a person who is licensed to practice 24
as a registered nurse under Chapter 4723. of the Revised Code 25
or, if the hospital employs licensed practical nurses, a person 26
who is licensed to practice as a licensed practical nurse under 27
that chapter. 28

Sec. 3727.51. (A) Each hospital shall convene a hospital- 29
wide nursing care committee not later than ninety days after ~~the~~ 30
~~effective date of this section~~ September 12, 2008, or, if the 31
hospital is not treating patients on ~~the effective date of this~~ 32
~~section~~ September 12, 2008, ninety days after the hospital 33
begins to treat patients. The hospital shall select the members 34
of the committee, subject to all of the following: 35

(1) The hospital's chief nursing officer shall be included 36
as a member of the committee. 37

(2) At least fifty per cent of the committee's membership 38
shall consist of direct-care registered nurses ~~who provide~~ 39
~~direct patient care in the hospital.~~ If the direct-care 40
registered nurses are represented under a collective bargaining 41
agreement, the authorized collective bargaining agent shall 42
appoint the committee members who are direct-care registered 43
nurses. 44

(3) The number of registered nurses included as members of 45
the committee shall be sufficient to provide adequate 46
representation of all types of nursing care services provided in 47

the hospital. 48

(B) The committee ~~member who is the hospital's chief-~~ 49
~~nursing officer~~ shall establish a mechanism for obtaining input 50
from nurses in all inpatient care units who provide direct 51
patient care regarding what the nursing services staffing plan 52
recommendations described in division (B) of section 3727.52 of 53
the Revised Code should include. 54

Sec. 3727.52. A hospital-wide nursing care committee 55
convened pursuant to section 3727.51 of the Revised Code shall 56
do both of the following: 57

(A) If one exists, evaluate the hospital's current nursing 58
services staffing plan; 59

(B) Recommend a nursing services staffing plan that ~~is, at-~~ 60
~~a minimum, consistent with current standards established by-~~ 61
~~private accreditation organizations or governmental entities and-~~ 62
addresses all of the following: 63

(1) The selection, implementation, and evaluation of 64
minimum staffing levels for all inpatient care units that ensure 65
that the hospital has a staff of competent nurses with the 66
specialized skills needed to meet patient needs ~~in accordance-~~ 67
~~with evidence-based safe nurse staffing standards;~~ 68

(2) The complexity of complete care, assessment on patient 69
admission, volume of patient admissions, discharges and 70
transfers, evaluation of the progress of a patient's problems, 71
the amount of time needed for patient education, ongoing 72
physical assessments, planning for a patient's discharge, 73
assessment after a change in patient condition, and assessment 74
of the need for patient referrals; 75

(3) Patient acuity and the number of patients for whom 76

care is being provided; 77

(4) The need for ongoing assessments of a unit's patients 78
and its nursing staff levels; 79

(5) The hospital's policy for identifying additional 80
nurses who can provide direct patient care when patients' 81
unexpected needs exceed the planned workload for direct care 82
staff. 83

Sec. 3727.53. (A) In accordance with division (B) of this 84
section, each hospital shall create ~~an evidence-based~~ a written 85
nursing services staffing plan guiding the assignment of nurses 86
hospital-wide other than direct-care registered nurses assigned 87
pursuant to sections 3727.71 and 3727.72 of the Revised Code. 88
~~The~~ 89

The staffing plan shall be implemented not later than 90
ninety days after the hospital-wide nursing care committee is 91
convened pursuant to section 3727.51 of the Revised Code, except 92
that if the hospital's next fiscal year starts not later than 93
one hundred eighty days after the date on which the committee 94
convenes, implementation may be delayed until the first day of 95
that fiscal year. 96

(B) The staffing plan created under this section ~~shall, at~~ 97
~~a minimum, reflect current standards established by private~~ 98
~~accreditation organizations or governmental entities. The plan~~ 99
shall be based on multiple nurse and patient considerations that 100
yield minimum staffing levels for inpatient care units that 101
ensure that the hospital has a staff of competent nurses with 102
specialized skills needed to meet patient needs. These 103
considerations shall include both of the following: 104

(1) The recommendations of the hospital-wide nursing care 105

committee made under section 3727.52 of the Revised Code, which 106
shall be given significant consideration; 107

(2) All of the matters listed in divisions (B) (1) to (5) 108
of section 3727.52 of the Revised Code. 109

Sec. 3727.70. As used in sections 3727.70 to 3727.78 of 110
the Revised Code: 111

(A) "Artificial life support" means a technological system 112
used to aid, support, or replace a vital function of the body. 113

(B) "Direct-care registered nurse" has the same meaning as 114
in section 3727.50 of the Revised Code. 115

(C) "Nursing intervention" means a determination by a 116
direct-care registered nurse, before a medical order or 117
treatment plan is implemented, that the order or plan is in the 118
best interest of the patient. 119

(D) "Professional judgment" means application of a direct- 120
care registered nurse's knowledge, skill, expertise, and 121
experience in making decisions about patient care. 122

(E) "Technical support" means specialized equipment; 123
providing for invasive monitoring, telemetry, or mechanical 124
ventilation; or the immediate amelioration or remediation of 125
severe pathology for a patient requiring less care than that 126
provided by an intensive care unit but more than that provided 127
by a medical-surgical unit. 128

Sec. 3727.71. (A) Each hospital shall maintain the 129
following direct-care registered nurse-to-patient ratios: 130

(1) One direct-care registered nurse for each of the 131
following: 132

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| <u>(a) A patient in an operating room;</u> | 133 |
| <u>(b) A patient receiving conscious sedation;</u> | 134 |
| <u>(c) A trauma or critical care patient in an emergency department;</u> | 135 136 |
| <u>(d) An active labor patient, patient with medical or obstetrical complications, or patient for whom the nurse initiates epidural anesthesia and circulation for cesarean delivery;</u> | 137 138 139 140 |
| <u>(e) An unstable newborn or newborn in a resuscitation period;</u> | 141 142 |
| <u>(f) Every three of the following: a healthy mother-infant couplet or, if a mother has delivered multiple infants, a healthy mother-infant group that includes not more than three of her infants.</u> | 143 144 145 146 |
| <u>(2) (a) One direct-care registered nurse for every two patients in each of the following units who is not a patient listed in division (A) (1) of this section:</u> | 147 148 149 |
| <u>(i) An intensive care unit;</u> | 150 |
| <u>(ii) A critical care unit for patients whose medical conditions require continuous monitoring, complex nursing interventions, restorative measures, and intensive nursing care through direct observation;</u> | 151 152 153 154 |
| <u>(iii) A neonatal intensive care unit;</u> | 155 |
| <u>(iv) A burn unit;</u> | 156 |
| <u>(v) A postanesthesia recovery unit, regardless of the type of anesthesia patients receive.</u> | 157 158 |
| <u>(b) One direct-care registered nurse for every two</u> | 159 |

patients during the immediate postpartum period. 160

(3) (a) One direct-care registered nurse for every three 161
patients in each of the following units who is not a patient 162
listed in division (A) (1) or (2) (b) of this section: 163

(i) A step-down unit for patients whose severity of 164
illness, including all comorbidities, restorative measures, and 165
level of nursing intensity, requires any of the following: 166
intermediate intensive care, monitoring, multiple assessments, 167
specialized nursing interventions, evaluations, education of the 168
patient's family or other representatives, or technical support 169
but not necessarily artificial life support as a result of 170
moderate or potentially severe physiologic instability; 171

(ii) A pediatric unit; 172

(iii) A telemetry unit designated for electronic 173
monitoring, recording, retrieval, and display of cardiac 174
electrical signals for patients whose severity of illness, 175
including all comorbidities, restorative measures, and level of 176
nursing intensity, requires intermediate intensive care, 177
monitoring, multiple assessments, specialized nursing 178
interventions, evaluation, or education of the patient's family 179
or other representatives. 180

(b) One direct-care registered nurse for every three 181
antepartum patients who are not in active labor or three mother- 182
and-infant couplets in a postpartum area. 183

(4) (a) One direct-care registered nurse for every four 184
patients in each of the following units who is not a patient 185
listed in division (A) (1), (2) (b), or (3) (b) of this section: 186

(i) A medical-surgical unit for patients whose severity of 187
illness requires continuous care through direct observation, 188

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| <u>including units for patients requiring less than intensive care</u> | 189 |
| <u>or step-down care, receiving twenty-four-hour inpatient general</u> | 190 |
| <u>medical care, post-surgical care, or both general medical and</u> | 191 |
| <u>post-surgical care, or with diverse diagnoses and diverse age</u> | 192 |
| <u>groups, but not units with pediatric patients;</u> | 193 |
| <u>(ii) A presurgical, admissions, or ambulatory surgical</u> | 194 |
| <u>unit;</u> | 195 |
| <u>(iii) A psychiatric unit;</u> | 196 |
| <u>(iv) Any other specialty unit.</u> | 197 |
| <u>(b) One direct-care registered nurse for every four of the</u> | 198 |
| <u>following patients:</u> | 199 |
| <u>(i) Patients in an emergency department who are not trauma</u> | 200 |
| <u>or critical care patients;</u> | 201 |
| <u>(ii) Mothers in an obstetrics unit who are not included in</u> | 202 |
| <u>division (A) (1) (f) of this section;</u> | 203 |
| <u>(iii) Postpartum or postgynecological surgery patients;</u> | 204 |
| <u>(iv) Recently born infants with no unusual medical needs</u> | 205 |
| <u>who are not included in division (A) (1) (f) of this section.</u> | 206 |
| <u>(5) (a) One direct-care registered nurse for every five</u> | 207 |
| <u>patients in each of the following units:</u> | 208 |
| <u>(i) A rehabilitation unit that is used to restore an ill</u> | 209 |
| <u>or injured patient to the highest level of self-sufficiency or</u> | 210 |
| <u>gainful employment of which the patient is capable in the</u> | 211 |
| <u>shortest possible time, compatible with the patient's physical,</u> | 212 |
| <u>intellectual, emotional, and psychological capabilities, and in</u> | 213 |
| <u>accordance with planned goals and objectives;</u> | 214 |
| <u>(ii) A skilled nursing unit that is used for the provision</u> | 215 |

of skilled nursing care and supportive care to patients whose 216
primary need is for skilled nursing care on a long-term basis 217
and patients who are admitted after at least a forty-eight-hour 218
period of continuous inpatient care and that provides activities 219
and such services as medical, nursing, dietary, and pharmaceutic 220
services. 221

(b) One direct-care registered nurse for every five 222
infants in a well-baby nursery. 223

(6) The ratios determined in accordance with section 224
3727.72 of the Revised Code for units and circumstances not 225
specified in divisions (A) (1) to (5) of this section. 226

(B) The ratios listed in division (A) of this section are 227
the minimum ratios of direct-care registered nurses to patients 228
that a hospital is required to maintain at all times. 229

(C) Identifying a unit or circumstance other than as 230
described in division (A) of this section does not affect the 231
duty of a hospital to maintain the direct-care registered nurse- 232
to-patient ratios listed in division (A) of this section. 233

Sec. 3727.72. (A) For each hospital unit not listed in 234
section 3727.71 of the Revised Code, the hospital-wide nursing 235
care committee convened under section 3727.51 of the Revised 236
Code shall, using the factors specified in division (B) of this 237
section, determine which unit listed in section 3727.71 of the 238
Revised Code has patient needs most similar to those of the unit 239
that is not listed in that section. The committee shall 240
communicate the results of the determination to the administrators 241
of the hospital. The hospital administrators shall ensure that 242
the appropriate direct-care registered nurse-to-patient ratio is 243
implemented for the unit not later than thirty days after the 244

committee makes the determination. 245

(B) The hospital-wide nursing care committee shall 246
consider all of the following factors when making a 247
determination required by division (A) of this section: 248

(1) The registered nursing care requirements for 249
individual patients based on the severity of patient illness; 250

(2) The intensity of the nursing interventions and 251
complexity of the professional judgment required to design, 252
implement, and evaluate each patient's nursing care plan 253
consistent with professional standards; 254

(3) The ability of each patient to provide self-care, 255
regardless of motor, sensory, and cognitive deficits; 256

(4) The need for patient advocacy; 257

(5) The licensure of the personnel required for care; 258

(6) The patient care delivery system; 259

(7) The hospital's physical layout; 260

(8) The generally accepted standards of nursing practice; 261

(9) The elements that are unique to the hospital's patient 262
population. 263

(C) A hospital shall implement the ratios established 264
under this section not later than thirty days after the hospital 265
administrators are informed of them. 266

Sec. 3727.73. Each hospital shall post daily, on a shift- 267
by-shift basis, in a conspicuous place visible to the public, 268
the required number of direct-care registered nurses for each 269
patient and unit as determined under sections 3727.71 and 270
3727.72 of the Revised Code, the actual number of direct-care 271

registered nurses for each patient and unit for that shift, and 272
any difference between the two. 273

Each hospital shall provide each patient admitted to the 274
hospital for inpatient care the telephone number of the toll- 275
free patient safety telephone line made available to the public 276
by the department of health under section 3701.91 of the Revised 277
Code for reporting inadequate staffing or care in the hospital. 278
The patient may use the telephone number to report inadequate 279
staffing or care at the hospital. 280

Sec. 3727.74. (A) As used in this section, "competency" 281
means the ability of a direct-care registered nurse to act and 282
integrate the knowledge, skills, abilities, and professional 283
judgment in a manner that promotes safe, therapeutic, and 284
effective patient care. 285

(B) No hospital shall knowingly do any of the following 286
regarding the direct-care registered nurse-to-patient ratios 287
required by sections 3727.71 and 3727.72 of the Revised Code: 288

(1) Assign a direct-care registered nurse to a unit unless 289
the hospital and nurse jointly determine that the nurse 290
demonstrates competency in providing care in that unit and the 291
nurse has completed orientation to the unit sufficient to 292
provide safe, therapeutic, and effective care to patients in 293
that unit; 294

(2) Average the number of patients and the number of 295
direct-care registered nurses on a unit during any one shift or 296
over any period of time; 297

(3) Include in the calculation of the direct-care 298
registered nurse-to-patient ratio any of the following: nurse 299
administrators, supervisors, managers, charge nurses, case 300

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| <u>managers, or triage, radio, or flight nurses;</u> | 301 |
| <u>(4) Impose mandatory overtime on any direct-care</u> | 302 |
| <u>registered nurse in order to meet the required direct-care</u> | 303 |
| <u>registered nurse-to-patient ratio;</u> | 304 |
| <u>(5) Impose layoffs of licensed practical nurses or other</u> | 305 |
| <u>ancillary or supportive personnel within the hospital as a means</u> | 306 |
| <u>of meeting the required ratios;</u> | 307 |
| <u>(6) Allow a nurse who is not a direct-care registered</u> | 308 |
| <u>nurse to relieve a direct-care registered nurse during a break,</u> | 309 |
| <u>meal, or other routine, expected absence from a unit;</u> | 310 |
| <u>(7) Use video cameras or monitors or any other form of</u> | 311 |
| <u>electronic visualization of a patient as a substitute for the</u> | 312 |
| <u>direct observation that is needed for the assessment of a</u> | 313 |
| <u>patient by a direct-care registered nurse;</u> | 314 |
| <u>(8) Assign a patient to a particular unit within the</u> | 315 |
| <u>hospital unless the unit's level of intensity, type of care, and</u> | 316 |
| <u>direct-care registered nurse-to-patient ratio meet the patient's</u> | 317 |
| <u>needs;</u> | 318 |
| <u>(9) Create or use units within the hospital that are</u> | 319 |
| <u>adjustable according to patient acuity.</u> | 320 |
| <u>(C) Each hospital shall establish criteria for determining</u> | 321 |
| <u>competency for purposes of division (B)(1) of this section. The</u> | 322 |
| <u>hospital shall include the criteria in the hospital's policies</u> | 323 |
| <u>and procedures.</u> | 324 |
| <u>Sec. 3727.75. (A) A registered nurse employed by a</u> | 325 |
| <u>hospital has the right and duty to act as an advocate for the</u> | 326 |
| <u>nurse's patients, as circumstances require, by doing any of the</u> | 327 |
| <u>following:</u> | 328 |

(1) Initiating action to improve health care practices in 329
the hospital, including providing professional input on the 330
methods of patient care documentation and the number of 331
ancillary and support staff, such as physical therapists, 332
respiratory therapists, social workers, and patient lifting, 333
transportation, housekeeping, and security personnel, who should 334
be available and present to supplement the work of registered 335
nurses; 336

(2) Advocating and monitoring activities to ensure 337
hospital compliance with implementation of the nursing services 338
staffing plan created under section 3727.53 of the Revised Code 339
and assuring safe registered nurse staffing levels at the unit 340
level; 341

(3) Determining whether a health information technology 342
software program or tool displaces registered nurses from 343
patient care, interferes with the nursing process, or otherwise 344
compromises a registered nurse's professional judgment; 345

(4) Giving patients an opportunity to make informed 346
decisions regarding their health care before the care is 347
provided. 348

(B) A registered nurse employed by a hospital may object 349
to, or refuse to participate in, any activity, policy, practice, 350
assignment, or task if, in good faith, the nurse believes the 351
activity, policy, practice, assignment, or task violates 352
sections 3727.71 to 3727.74 of the Revised Code or division (A) 353
of this section. With respect to an assignment, the nurse may 354
refuse to complete the assignment if the nurse is not prepared 355
by education, training, or experience to complete the assignment 356
without compromising patient safety or jeopardizing the nurse's 357
license to practice by creating the potential for professional 358

disciplinary action by the board of nursing. 359

Sec. 3727.76. (A) A hospital shall not discharge, 360
retaliate against, discriminate against, or otherwise take 361
adverse action against a registered nurse with respect to any 362
aspect of the nurse's employment based on the nurse's refusal to 363
complete an assignment as described in division (B) of section 364
3727.75 of the Revised Code. Actions prohibited under this 365
division include demoting the nurse, decreasing the nurse's 366
compensation, and negatively altering the terms, conditions, or 367
privileges of employment. 368

(B) A hospital shall not file a complaint against a 369
registered nurse with the board of nursing based on the nurse's 370
refusal to complete an assignment as described in division (B) 371
of section 3727.75 of the Revised Code. 372

(C) A hospital shall not discriminate or retaliate against 373
any individual for opposing any hospital policy, practice, or 374
action that is alleged to violate sections 3727.71 to 3727.75 of 375
the Revised Code. 376

(D) A hospital, or an individual representing a hospital, 377
shall not do either of the following: 378

(1) Interfere with, restrain, or deny the exercise of, or 379
attempt to deny the exercise of, a right conferred by sections 380
3727.71 to 3727.75 of the Revised Code. 381

(2) Coerce or intimidate any individual regarding the 382
exercise of, or an attempt to exercise, a right conferred by 383
sections 3727.71 to 3727.75 of the Revised Code. 384

Sec. 3727.77. (A) A hospital that fails to comply with 385
sections 3727.71 to 3727.76 of the Revised Code is subject to a 386
fine imposed by the department of health. For each failure, the 387

department shall impose a fine of not more than twenty-five 388
thousand dollars and an additional fine of not more than ten 389
thousand dollars per nursing unit shift until the offense or 390
violation is corrected. 391

(B) On request of the director of health, the attorney 392
general shall bring and prosecute to judgment a civil action to 393
collect any fine imposed under division (A) of this section that 394
remains unpaid. 395

(C) All fines collected under this section shall be 396
deposited into the state treasury to the credit of the general 397
operations fund created under section 3701.83 of the Revised 398
Code. 399

Sec. 3727.78. (A) A registered nurse has a cause of action 400
against a hospital for violation of section 3727.76 of the 401
Revised Code. The nurse may commence the action by filing a 402
civil action in the court of common pleas of the county in which 403
the hospital is located. 404

(B) A nurse who prevails on a cause of action commenced 405
under this section is entitled to any one or more of the 406
following remedies: 407

(1) Reinstatement to the position the nurse had before the 408
hospital violated section 3727.76 of the Revised Code; 409

(2) Reimbursement of lost wages, compensation, and 410
benefits; 411

(3) Attorneys' fee; 412

(4) Court costs; 413

(5) Any other damages the court considers appropriate. 414

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| Section 2. That existing sections 3727.50, 3727.51, | 415 |
| 3727.52, and 3727.53 of the Revised Code are hereby repealed. | 416 |
| Section 3. It is the intent of the General Assembly to | 417 |
| recognize all of the following: | 418 |
| (A) That each direct-care registered nurse employed by a | 419 |
| hospital in this state has the right to do all of the following: | 420 |
| (1) Provide safe, therapeutic, effective, and competent | 421 |
| nursing care to patients; | 422 |
| (2) Have the necessary knowledge, judgment, skills, and | 423 |
| ability to provide the required care before accepting a patient | 424 |
| assignment; | 425 |
| (3) Determine whether the nurse is clinically competent to | 426 |
| perform the required care in a particular unit, or with a | 427 |
| particular diagnosis, condition, prognosis, or other | 428 |
| determinative characteristics of nursing care; | 429 |
| (4) Recognize that the nurse is not clinically competent | 430 |
| to perform the required care and not accept the patient care | 431 |
| assignment; | 432 |
| (5) Assess each medical order, and prior to acting on the | 433 |
| order, determine whether the order is in the best interest of | 434 |
| the patient and was initiated by a person legally authorized to | 435 |
| initiate it; | 436 |
| (6) Perform continuous and ongoing patient assessments of | 437 |
| each patient's condition, including direct observation of the | 438 |
| patient's signs and symptoms of illness; reaction to treatment; | 439 |
| behavior and physical condition; interpretation of information | 440 |
| obtained from the patient and others, including other caregivers | 441 |
| on the health team; and data collection and analysis, synthesis, | 442 |

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| and evaluation of the data; | 443 |
| (7) Plan, implement, and evaluate the nursing care provided to each patient. | 444 445 |
| (B) That the assessment, nursing diagnosis, planning, intervention, evaluation and, as circumstances require, patient advocacy, should be initiated by a direct-care registered nurse at the time of the patient's admission to a hospital and continue as long as the patient remains in the hospital; | 446 447 448 449 450 |
| (C) That the refusal to accept a patient care assignment is an exercise of the direct-care registered nurse's duty and right of patient advocacy; | 451 452 453 |
| (D) That only direct-care registered nurses are authorized to perform patient assessments, although licensed practical nurses may assist direct-care registered nurses in data collection. | 454 455 456 457 |