

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1923
91ST GENERAL ASSEMBLY

Reported from the Committee on Children, Families and Health, April 23, 2002, with recommendation that the House Committee Substitute for House Bill No. 1923 Do Pass.

TED WEDEL, Chief Clerk

2859L.02C

AN ACT

To amend chapter 197, RSMo, by adding thereto eleven new sections relating to nurse staffing plans.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 197, RSMo, is amended by adding thereto eleven new sections, to
2 be known as sections 197.650, 197.653, 197.656, 197.659, 197.662, 197.665, 197.668, 197.671,
3 197.674, 197.677, and 197.680, to read as follows:

197.650. 1. As used in sections 197.650 to 197.680, the following terms mean:

- 2 (1) "Acuity system", an established and valid measurement system that:
 - 3 (a) Predicts nursing care requirements for individual patients based on severity of
4 patient illness, need for specialized equipment and technology, and intensity of nursing
5 interventions required;
 - 6 (b) Determines the amount of nursing care needed, both in number and skill mix
7 of nursing staff required on a daily basis for each patient in a nursing; and
 - 8 (c) Is stated in terms that readily can be used and understood by direct care
9 nursing staff;
- 10 (2) "Assessment tool", a measurement system that compares the staffing level in
11 each nursing department or unit as determined by the acuity system against actual patient
12 nursing care requirements to assess the accuracy of the acuity system;
- 13 (3) "Department", the department of health and senior services;
- 14 (4) "Direct care nursing staff", any nurse who has direct responsibility to oversee
15 or carry out nursing care and treatment for one or more patients;
- 16 (5) "Director of nursing services", the person designated by a hospital as having
17 overall management responsibility for nursing services;

18 (6) "Hospital", the same meaning as such term is given in section 197.020;

19 (7) "Nurse", a registered professional nurse or licensed practical nurse as defined
20 in section 335.016, RSMo;

21 (8) "Public governmental body", the same meaning as such term is given in section
22 610.010, RSMo;

23 (9) "Retaliatory action", the discipline, discharge, suspension, demotion,
24 harassment, denial of employment or promotion, layoff, or any other adverse action taken
25 against a nurse as a result of a nurse taking any action described in sections 197.650 to
26 197.680;

27 (10) "Skill mix", refers to the differences in licensing, areas of specialization,
28 education, training, and experience among direct care nursing staff;

29 (11) "Staffing plan", a hospital's written plan for meeting the expected nursing
30 care requirements of its patients as described in subsection 4 of section 197.653;

31 (12) "Unforeseeable emergent circumstance", an unpredictable or unavoidable
32 occurrence of nature or catastrophic event which could not have been prevented by the
33 exercise of any reasonable foresight or precaution and which has an immediate adverse
34 impact on a hospital's staffing requirements;

35 (13) "Unit", a functional division or area of a hospital in which nursing care is
36 provided.

197.653. 1. Every hospital shall ensure that it is staffed at all times with sufficient
2 numbers and skill mix of appropriately qualified direct care nursing staff in each unit
3 within the hospital to meet the individualized care needs of the patients in such unit and
4 to meet the requirements set forth in this section.

5 2. By July 1, 2003, every hospital licensed in this state shall develop, implement, and
6 annually submit to the department a written hospital-wide staffing plan for nursing
7 services together with a written certification from its chief executive officer and director
8 of nursing services that the staffing plan is expected to provide sufficient numbers and skill
9 mix of appropriately qualified direct care nursing staff to meet the anticipated needs of its
10 patients for the ensuing year. Every hospital shall have a process that ensures the
11 consideration of input from nonsupervisory direct care nursing staff from each unit, within
12 the hospital or, when the direct care nursing staff is represented by a recognized or
13 certified collective bargaining representative, input shall be from such collective bargaining
14 representative, in the development, implementation, monitoring, evaluation, and
15 modification of the staffing plan. The staffing plan shall include the number, skill mix,
16 qualifications, and categories of direct care nursing staff needed for each unit of the
17 hospital.

18 **3. As a part of a hospital's quality assurance and quality improvement process, the**
19 **hospital shall, in consultation with its nonsupervisory direct care nursing staff, periodically**
20 **evaluate and monitor the staffing plan for effectiveness and revise the plan as necessary.**
21 **Each hospital shall maintain written documentation of such quality assurance and quality**
22 **improvement activities and upon request, shall provide such documentation to the**
23 **department. All revisions to a hospital's staffing plan shall be submitted to the department**
24 **within ten days of completion.**

25 **4. A hospital's staffing plan shall:**

26 **(1) Be based on the expected nursing care required by the aggregate and individual**
27 **needs of each patient. The expected aggregate and individual nursing care needs of each**
28 **patient shall be the major consideration in determining the number and skill mix of direct**
29 **care nursing staff needed;**

30 **(2) Employ an acuity system for addressing daily fluctuations in aggregate and**
31 **individual patient nursing care requirements necessitating adjustments in the staffing plan**
32 **to ensure that the nursing care needs of each patient is met;**

33 **(3) Be based on the specialized qualifications, skill mix, experience, and**
34 **competencies of the hospital's direct care nursing staff;**

35 **(4) Be consistent with the scopes of practice for registered nurses and licensed**
36 **practical nurses as provided by law;**

37 **(5) Factor in other nonpatient care duties, administrative and support tasks,**
38 **including arrangements for discharge, transfer, and admission of patients, that are to be**
39 **provided by direct care nursing staff;**

40 **(6) Incorporate an assessment tool;**

41 **(7) Provide for documentation of the actual staffing and patient acuity levels on a**
42 **daily basis within each unit of the hospital; and**

43 **(8) Identify the minimum number of direct care nursing staff, including both**
44 **registered nurses and licensed practical nurses, required on specific shifts. The actual**
45 **number of direct care nursing staff on duty for each shift shall be sufficient to ensure that**
46 **the nursing care needs of each patient are met. At least one registered nurse providing**
47 **direct patient care services must be on duty in each unit where a patient is present,**
48 **excluding long-term care units. A hospital may utilize unlicensed assistive personnel to**
49 **provide direct patient care services but at all times at least fifty percent of the individuals**
50 **providing direct patient care services in a unit, excluding skilled nursing units, must be**
51 **registered nurses.**

52 **5. The skill mix reflected in the staffing plan shall assure that each of the following**
53 **elements of the nursing process are performed by registered nurses in the planning and**

54 **delivery of care for each patient: assessment, nursing, diagnosis, planning, evaluation, and**
55 **patient advocacy. The skill mix shall not incorporate or provide that nursing care**
56 **functions required by law, regulation, or accepted standards of practice to be performed**
57 **by a registered nurse or licensed practical nurse are to be performed by unlicensed nursing**
58 **assistants.**

59 **6. Every hospital shall maintain and post a voluntary on-call list of qualified on-call**
60 **nurses, nursing services, nurse registries, and per diem nurses that may be called upon to**
61 **provide replacement staff in the event of sickness, vacations, vacancies, and other absences**
62 **of direct care nursing staff. The on-call list shall include a sufficient number and skill mix**
63 **of on-call nurses to meet the regular needs of the hospital for replacement staff.**

64 **7. Upon written request of a hospital and for good cause based on actual patient**
65 **care needs or the nursing practices of the hospital, the department of health and senior**
66 **services may grant variances to a hospital's staffing plan on a limited basis. If a hospital**
67 **is unable to meet its staffing plan on a particular shift, the hospital shall report to the**
68 **department by phone or electronically prior to the start of the shift the reason for the**
69 **staffing shortage and the individual who made the determination of such staffing shortage.**

197.656. 1. Unless the department has granted a written variance or the hospital
2 **has notified the department pursuant to section 197.653, a hospital shall at all times**
3 **provide direct caregivers in accordance with its staffing plan and the staffing standards**
4 **set forth in sections 197.650 to 197.680; provided that nothing herein shall be deemed to**
5 **preclude a hospital from implementing higher direct care nurse-to-patient staffing levels.**

6 **2. No nurse shall be assigned to or included in the count of direct care nursing staff**
7 **in a unit of a hospital for purposes of compliance with the staffing plan without**
8 **appropriate licensing, training, orientation, and verification that the nurse is capable of**
9 **providing competent nursing care to the patients in the unit.**

10 **3. No nurse assigned to or performing nonpatient care duties, administrative or**
11 **support tasks and who provides direct patient care for less than seventy-five percent of the**
12 **time on that shift shall be included in the count of direct care nursing staff in a unit of a**
13 **hospital for purposes of compliance with the staffing plan.**

197.659. 1. Immediately upon learning that staffing on any shift will fall below the
2 **minimum number of direct care nursing staff required for that shift by the hospital's**
3 **staffing plan and prior to requiring any direct care nursing staff or unlicensed assistive**
4 **personnel to work overtime, the hospital shall first attempt to fill its staffing needs through**
5 **other means, including requesting off-duty staff to voluntarily report to work and**
6 **requesting on-duty staff to volunteer for overtime hours and using the hospital's on-call**
7 **list. Each replacement direct care nursing staff shall have a skill mix appropriate to the**

8 unit to which assigned.

9 **2. Except as provided in subsections 4 and 5 of this section and in subsection 1 of**
10 **section 197.662, a hospital shall not mandate or otherwise require a nurse to work in excess**
11 **of any of the following:**

- 12 **(1) The nurse's regularly scheduled shift or duty period;**
13 **(2) More than twelve hours in a twenty-four hour time period;**
14 **(3) Eighty hours in a fourteen consecutive-day period.**

15

16 **As used in this subsection and section 197.662, "mandate" or "mandatory" means any**
17 **request which if refused or declined by the nurse may result in retaliatory action against**
18 **the nurse. Nothing in this subsection shall prohibit a nurse from voluntarily working in**
19 **excess of the provisions of this subsection.**

20 **3. Except as provided in subsection 2 of section 197.662, a hospital shall not**
21 **authorize or permit a nurse to perform patient care services for more than sixteen hours**
22 **in a twenty-four hour period. Any nurse performing patient care services for sixteen hours**
23 **in any twenty-four hour period must have at least eight consecutive hours off duty before**
24 **being authorized or permitted to return to patient care duties. No nurse shall be**
25 **authorized or permitted to provide patient care for more than seven consecutive days**
26 **without at least one consecutive twenty-four hour period off duty within such time. A**
27 **work schedule or on-call program established pursuant to a mutually agreed upon**
28 **employment agreement may provide for additional hours as a result of being on-call,**
29 **provided adequate measures are included in the agreement to ensure against fatigue.**

30 **4. The provisions of subsection 2 of this section shall not apply if a hospital has**
31 **made every reasonable effort to contact all of the nurses and nursing services on the on-call**
32 **list described in section 197.653 and is unable to obtain appropriate replacement staff in**
33 **a timely manner.**

34 **5. Direct care nursing staff shall not place a patient at risk of harm by abandoning**
35 **a patient care assignment during a shift or an extended shift without authorization from**
36 **the appropriate supervisory personnel.**

197.662. 1. During a declared national or state emergency or unforeseeable
2 **emergent circumstance in which a hospital has a direct role in responding to medical needs**
3 **resulting from the declared emergency or unforeseeable emergent circumstance, the**
4 **mandatory overtime prohibition in subsection 2 of section 197.659 shall not apply to the**
5 **following extent:**

- 6 **(1) Direct care nursing staff and unlicensed assistive personnel may be required to**
7 **work or be on duty up to the maximum hour limitations set forth in subsection 3 of section**

8 **197.659** provided the hospital has taken the steps set forth in subsection 4 of section
9 **197.659** and made reasonable efforts to fill its immediate staffing needs through alternative
10 efforts, including requesting off-duty staff to voluntarily report to work and requesting on-
11 duty nurses to volunteer for overtime hours; and

12 (2) The exemption granted by this section shall not exceed the duration of the
13 declared national or state emergency or unforeseeable emergent circumstance and the
14 hospital's direct role in responding to medical needs resulting from the declared state of
15 emergency or unforeseeable emergent circumstance.

16 2. During a declared national or state emergency or unforeseeable emergent
17 circumstance in which a hospital has a direct role in responding to medical needs resulting
18 from the declared emergency or unforeseeable emergent circumstance, the maximum hours
19 limitation set forth in subsection 3 of section 197.659 shall not apply if:

20 (1) The decision to work the additional time is voluntarily made by the affected
21 nurse;

22 (2) The nurse is given at least one uninterrupted four-hour rest period before
23 returning to patient care duties following the completion of a sixteen hour shift and an
24 uninterrupted eight-hour rest period before returning to patient care duties following the
25 completion of a twenty-four hour shift;

26 (3) Any nurse who has been on duty for more than sixteen hours in a twenty-four
27 hour period who informs appropriate advisory personnel that he or she needs immediate
28 rest shall be relieved from duty as soon thereafter as possible consistent with patient safety
29 needs and given at least eight uninterrupted hours off duty before being required to return
30 to duty;

31 (4) The exemption granted by this subsection shall not exceed the duration of the
32 declared national or state emergency or unforeseeable emergent circumstance and the
33 hospital's direct role in responding to medical needs resulting from the declared state of
34 emergency or unforeseeable emergent circumstance.

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36 As used in this subsection, "rest period" means a period in which an individual may be
37 required to remain on the premises of the hospital but is free of all restraint, duty, or
38 responsibility for work.

197.665. 1. Every licensed hospital shall adopt and disseminate to direct care
2 nursing staff a written policy that complies with the requirements of subsections 2 and 3
3 of this section detailing the circumstances under which a direct care nursing staff may
4 refuse a work assignment or continued duty.

5 2. At a minimum, the work assignment policy shall permit a direct care nurse to

6 refuse an assignment or continued duty in the following circumstances:

7 (1) The nurse is not prepared by licensure, education, training, experience, or unit
8 orientation to fulfill the assignment without compromising or jeopardizing patient safety
9 or the nurse's ability to meet foreseeable patient needs;

10 (2) The nurse has volunteered to work in excess of the time set forth in subsection
11 2 of section 197.659 but subsequently determines that his or her level of fatigue or
12 decreased alertness may compromise or jeopardize patient safety or the nurse's ability to
13 meet foreseeable patient needs;

14 (3) The assignment otherwise violates the requirements of sections 197.650 to
15 197.680.

16 3. At a minimum, the work assignment policy shall contain procedures for the
17 following:

18 (1) Reasonable requirements for notice to the director of nursing services, or the
19 director's designee, regarding the nurse's refusal of a work assignment or continued duty
20 and supporting reasons for refusing the assignment or continued duty;

21 (2) When time permits, an opportunity for the director of nursing services to review
22 the specific reasons supporting the nurse's refusal, and to decide whether to remedy the
23 conditions giving rise to the refusal, to relieve the nurse of the assignment or continued
24 duty, or to reject the nurse's reasons for refusal of the assignment or continued duty;

25 (3) Permits the nurse to refuse the assignment or continued duty without retaliatory
26 action when the director of nursing services rejects the nurse's reasons for refusal of the
27 assignment or continued duty and:

28 (a) The nurse in good faith believes that the assignment or continued duty meets
29 the conditions of this section and the hospital policy justifying refusal of the assignment or
30 continued duty;

31 (b) The director of nursing services fails to propose a remedy or the nurse in good
32 faith believes the proposed remedy will be inadequate or untimely; and

33 (c) Complaint and investigation process with the appropriate regulatory agency
34 will be untimely to address the concern.

197.668. 1. The department shall establish a toll-free telephone number for receipt
2 of confidential information on a hospital's failure to comply with sections 197.650 to
3 197.680.

4 2. Upon receipt of information that a hospital failed to comply or is deficient in
5 meeting the requirements of sections 197.650 to 197.680, the department shall conduct an
6 investigation and, if the noncompliance or deficiency is substantiated, the department shall
7 notify the hospital of the noncompliance or deficiency and provide the hospital with an

8 opportunity to develop and implement a plan of correction. If the plan of correction
9 proposed by the hospital is not acceptable to the department, the department may require
10 the hospital to implement a plan of correction developed by the department.

11 **3. If there is a continuing noncompliance or deficiency after the implementation of**
12 **the plan of correction, the department may restrict or suspend new patient admissions or**
13 **outpatient services in all units of the hospital affected by the noncompliance or deficiency.**

14 **4. If the noncompliance or deficiency continues after new patient admissions or**
15 **outpatient services have been restricted or suspended pursuant to subsection 3 of this**
16 **section, the department may deny, suspend, or revoke the hospital's license pursuant to**
17 **section 197.070.**

18 **5. A hospital aggrieved by a decision of the department requiring the hospital to**
19 **implement a plan of correction developed by the department pursuant to subsection 2 of**
20 **this section, or to restrict or suspend new patient admissions or outpatient services**
21 **pursuant to subsection 3 of this section may appeal such decision to the administrative**
22 **hearing commission pursuant to section 197.071 and seek judicial review pursuant to**
23 **section 621.145, RSMo. Any such appeal shall be heard on an expedited basis by the**
24 **administrative hearing commission. The hospital may apply to the administrative hearing**
25 **commission for an order to stay or suspend the department's action pending the**
26 **commission's decision on the appeal.**

27 **6. The department shall conduct an annual unannounced audit of not less than**
28 **seven percent of all hospitals in this state to verify compliance with the requirements of**
29 **sections 197.650 to 197.680. Surveys made by private accrediting organizations shall not**
30 **be used in lieu of the audit required by this subsection. The department shall compile and**
31 **maintain for public inspection an annual report of the audits conducted pursuant to this**
32 **subsection. If the audit reveals noncompliance with sections 197.650 to 197.680, the**
33 **department shall notify the hospital of the noncompliance or deficiency and shall ensure**
34 **that the noncompliance or deficiency is corrected following the procedures established in**
35 **subsections 2 to 5 of this section.**

36 **7. All findings of the department of deficiency or noncompliance with sections**
37 **197.650 to 197.680 and all plans of correction for such noncompliance or deficiency shall**
38 **be subject to public disclosure consistent with section 197.477.**

197.671. 1. No hospital shall take retaliatory action against a nurse because the
2 **nurse:**

3 **(1) Discloses or intends to disclose to the director of nursing services or the**
4 **director's designee, a private accreditation organization, the nurse's collective bargaining**
5 **agent, or a public governmental body any activity, policy, or practice of the hospital or a**

6 hospital that is in violation of sections 197.650 to 197.680, or any other law, rule, or
7 professional standard of practice and which the nurse reasonably believes poses a risk to
8 the health, safety, or welfare of a patient or the public;

9 (2) Provides information to or testifies before a private accreditation organization
10 or public governmental body conducting an investigation, hearing, or inquiry into an
11 alleged violation by a hospital of any law, rule, or professional standard of practice that
12 the nurse reasonably believes poses a risk to the health, safety, or welfare of a patient or
13 the public;

14 (3) Objects to or refuses to participate in any activity, policy, or practice of a
15 hospital that is in violation of sections 197.650 to 197.680, or any law, rule, or professional
16 standard of practice that the nurse reasonably believes poses a risk to the health, safety,
17 or welfare of a patient or the public;

18 (4) Participates in a committee or peer review process or files a report or complaint
19 that discusses allegations of unsafe, dangerous, or potentially dangerous care within the
20 hospital.

21 2. Except as provided in subsection 3 of this section, the protection against
22 retaliatory action in subsection 1 of this section does not apply to a nurse unless before
23 making a disclosure to a private accreditation organization or public governmental body
24 the nurse:

25 (1) Gives written notice to the director of nursing services, or the director's
26 designee, of the activity, policy, or practice that the nurse believes is in violation of sections
27 197.650 to 197.680, or any other law, rule, or professional standard of practice and which
28 the nurse reasonably believes poses a risk to health, safety, or welfare of a patient or the
29 public; and

30 (2) Provides the director of nursing services with a reasonable opportunity to
31 correct the activity, policy, practice, or violation.

32 3. A nurse is not required to comply with the provisions of subsection 2 of this
33 section to obtain the protection in subsection 1 of this section against retaliatory action if
34 the nurse:

35 (1) Reasonably believes that the activity, policy, practice, or violation is known to
36 the director of nursing services, or the director's designee, and the nurse reasonably
37 believes that the delay in compliance with subsection 2 of this section jeopardizes the life
38 or health of any person;

39 (2) Reasonably fears physical or other harm to a patient as a result of the
40 disclosure; or

41 (3) Makes the disclosure to a private accreditation organization or public body for

42 the purpose of providing evidence of an activity, policy, practice, or violation by the
43 hospital that the nurse reasonably believes is a crime.

197.674. 1. A nurse aggrieved by a retaliatory act prohibited by sections 197.650
2 to 197.680 may bring an action against the hospital in the circuit court of the county in
3 which the hospital is located. If the nurse prevails in such action, the nurse may recover
4 actual and punitive damages, attorney's fees, court costs, and expenses. In addition, the
5 court may:

6 (1) Issue a temporary restraining order, or a preliminary or permanent injunction
7 to restrain a continued violation of sections 197.650 to 197.680;

8 (2) Reinstate the nursing staff to the same or equivalent position that the nurse held
9 before the retaliatory action;

10 (3) Reinstate full benefits and seniority rights to the nurse as if the nurse had
11 continued in employment; or

12 (4) Order expungement of the all retaliatory action from the nurse's employment
13 records.

14 2. Except as provided in subsection 3 of this section, in any action brought by a
15 nurse pursuant to subsection 1 of this section, if the court finds that the nurse had no
16 objectively reasonable basis for filing the action, the court may award court costs, expert
17 witness fees, and reasonable attorney fees to the hospital.

18 3. A nurse shall not be assessed costs or fees pursuant to subsection 2 of this section
19 if, after filing the action, the nurse exercises reasonable and diligent efforts to ascertain the
20 facts and upon finding no objectively reasonable basis for continuing such action, dismisses
21 the action against the hospital.

197.677. 1. A hospital shall provide written notice to all direct care nursing staff
2 summarizing the provisions of sections 197.650 to 197.680 at the time a direct care nurse
3 is first employed by the hospital and annually thereafter. In addition:

4 (1) Each hospital shall post in a conspicuous place readily accessible to the general
5 public a notice prepared by the department setting forth in summary form the provisions
6 of sections 197.650 to 197.680;

7 (2) Upon request, the hospital shall provide the current staffing levels described in
8 the hospital's staffing plan and the hospital's actual staffing levels in each nursing unit;

9 (3) Upon request, the hospital shall make copies of its staffing plan as filed with the
10 department available to the public; and

11 (4) Every hospital shall post or make available within each nursing unit, the
12 following information:

13 (a) A copy of the current staffing plan for the unit;

14 **(b) The documentation of actual staffing and patient acuity on a daily basis as**
15 **provided in subdivision (7) of subsection 4 of section 197.653; and**

16 **(c) Identification of the minimum number of direct care nursing staff required on**
17 **each shift as provided in subdivision (8) of subsection 4 of section 197.653.**

18 **2. Any hospital that intentionally violates the provisions of this section is subject**
19 **to a civil penalty not to exceed five hundred dollars for each violation.**

20 **3. Any hospital that violates the staffing requirements of sections 197.650 to**
21 **197.680, and such violation is directly and substantially related to or results in, but does**
22 **not have to be the sole cause of, serious physical harm to or the death of a patient, shall be**
23 **subject to a civil penalty of one hundred thousand dollars for each such violation.**

197.680. 1. Nothing in section 197.674 shall diminish any rights, privileges, or
2 **remedies of a nurse under federal law or regulation, or under any collective bargaining**
3 **agreement or employment contract.**

4 **2. Section 197.674 provides the only remedies under state law for an alleged**
5 **violation of section 197.671 committed by a hospital.**