

SECOND REGULAR SESSION

HOUSE BILL NO. 1923

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES BARRY, O'CONNOR, HAYWOOD, SELBY, LOWE,
KELLY (36), MOORE (Co-sponsors), FARNEN, WAGNER, HICKEY, KELLY (27), REID, WHORTON,
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TED WEDEL, Chief Clerk

2859L.011

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 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, intensity of nursing**
5 **interventions required, and the complexity of clinical nursing judgment needed to design,**
6 **implement, and evaluate the patient's nursing care plan;**

7 **(b) Determines the amount of nursing care needed, both in number and skill mix**
8 **of nursing staff required on a daily basis for each patient in a nursing department, unit,**
9 **or clinical area; and**

10 **(c) Is stated in terms that readily can be used and understood by direct care**
11 **nursing staff;**

12 **(2) "Assessment tool", a measurement system that compares the staffing level in**
13 **each nursing department or unit as determined by the acuity system against actual patient**
14 **nursing care requirements to assess the accuracy of the acuity system;**

15 **(3) "Department", the department of health and senior services;**

16 **(4) "Direct care nursing staff", any nurse who has direct responsibility to oversee**

- 17 or carry out nursing care and treatment for one or more patients;
- 18 (5) "Director of nursing services", the person designated by a hospital as having
19 overall management responsibility for nursing services;
- 20 (6) "Hospital", the same meaning as such term is given in section 197.020;
- 21 (7) "Nurse", a registered professional nurse or licensed practical nurse as defined
22 in section 335.016, RSMo;
- 23 (8) "Public body", the same meaning as such term is given in section 290.210,
24 RSMo;
- 25 (9) "Retaliatory action", the discipline, discharge, suspension, demotion,
26 harassment, denial of employment or promotion, layoff, or any other adverse action taken
27 against a nurse as a result of a nurse taking any action described in sections 197.650 to
28 197.680;
- 29 (10) "Skill mix", refers to the differences in licensing, areas of specialization,
30 education, training, and experience among direct care nursing staff;
- 31 (11) "Staffing plan", a hospital's written plan for meeting the expected nursing
32 care requirements of its patients as described in subsection 4 of section 197.653.

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
3 department, unit, or clinical area within the facility to meet the individualized care needs
4 of the patients in such department, unit, or clinical area and to meet the requirements set
5 forth in this section.

6 2. Every hospital licensed in this state shall develop, implement, and annually
7 submit to the department a written hospital-wide staffing plan for nursing services
8 together with a written certification from its chief executive officer and director of nursing
9 services that the staffing plan is sufficient to provide adequate and appropriate delivery
10 of nursing care to its patients for the ensuing year. Every hospital shall have a process that
11 ensures the consideration of input from direct care nursing staff from each department,
12 unit, or clinical area in the development, implementation, monitoring, evaluation, and
13 modification of the staffing plan. The staffing plan shall include the number, skill mix,
14 qualifications, and categories of direct care nursing staff needed for each department, unit,
15 or clinical area of the hospital.

16 3. As a part of a hospital's quality assurance and quality improvement process, the
17 hospital shall, in consultation with its direct care nursing staff, periodically evaluate and
18 monitor the staffing plan for effectiveness and revise the plan as necessary. Each hospital
19 shall maintain written documentation of such quality assurance and quality improvement
20 activities and upon request, shall provide such documentation to the department. All

21 revisions to a hospital's staffing plan shall be submitted to the department within ten days
22 of completion.

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

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

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

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

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

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

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

39 **(7) Provide for documentation of the actual staffing and patient acuity levels on a**
40 **daily basis within each department, unit or clinical area of the hospital; and**

41 **(8) Identify the minimum number of direct care nursing staff, including both**
42 **registered nurses and licensed practical nurses, required on specific shifts. The actual**
43 **number of direct care nursing staff on duty for each shift shall be sufficient to ensure that**
44 **the nursing care needs of each patient are met. At least one registered nurse and one other**
45 **direct care nursing staff member must be on duty when a patient is present in a**
46 **department, unit, or clinical area of a hospital. A hospital may utilize unlicensed assistive**
47 **personnel to provide direct patient care services but at all times at least fifty percent of the**
48 **individuals providing direct patient care services must be registered nurses.**

49 **5. The skill mix reflected in the staffing plan shall assure that each of the following**
50 **elements of the nursing process are performed by registered nurses in the planning and**
51 **delivery of care for each patient: assessment, nursing, diagnosis, planning, evaluation, and**
52 **patient advocacy. The skill mix shall not incorporate or provide that nursing care**
53 **functions required by law, regulation, or accepted standards of practice to be performed**
54 **by a licensed nurse or licensed practical nurse are to be performed by unlicensed nursing**
55 **assistants.**

56 **6. Every hospital shall maintain and post a list of qualified on-call nurses and**

57 nursing services that may be called upon to provide replacement staff in the event of
58 sickness, vacations, vacancies, and other absences of direct care nursing staff. The on-call
59 list shall include a sufficient number and skill mix of on-call nurses to meet the regular
60 needs of the hospital for replacement staff.

61 7. Upon written request of a hospital and for good cause based on actual patient
62 care needs or the nursing practices of the hospital, the department of health and senior
63 services may grant variances to a hospital's staffing plan.

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

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

10 3. No nurse assigned to or performing nonpatient care duties, administrative or
11 support tasks shall be included in the count of direct care nursing staff in a nursing
12 department, unit, or clinical area of a hospital for purposes of compliance with the staffing
13 plan.

197.659. 1. Immediately upon learning of the need for direct care nursing staff, the
2 hospital shall make every reasonable effort to obtain nurses with appropriate skill mix
3 from the on-call list to fill staffing shortages before requiring a nurse already on duty to
4 work overtime.

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

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

11

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

16 3. Except as provided in subsection 2 of section 197.662, a hospital shall not

17 authorize or permit a nurse to perform patient care services for more than sixteen hours
18 in a twenty-four hour period. Any nurse performing patient care services for sixteen hours
19 in any twenty-four hour period must have at least eight consecutive hours off duty before
20 being authorized or permitted to return to patient care duties. No nurse shall be
21 authorized or permitted to provide patient care for more than seven consecutive days
22 without at least one consecutive twenty-four hour period off duty within such time.

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

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

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

5 (1) Direct care nursing staff may be required to work or be on duty up to the
6 maximum hour limitations set forth in subsection 3 of section 197.659 provided the hospital
7 has taken the steps set forth in subsection 4 of section 197.659 and made reasonable efforts
8 to fill its immediate staffing needs through alternative efforts, including requesting off-duty
9 staff to voluntarily report to work, requesting on-duty nurses to volunteer for overtime
10 hours, and recruiting per diem and registry staff to report to work; and

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

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

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

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

23 (3) Any nurse who has been on duty for more than sixteen hours in a twenty-four

24 **hour period who informs appropriate advisory personnel that he or she needs immediate**
25 **rest shall be relieved from duty as soon thereafter as possible consistent with patient safety**
26 **needs and given at least eight uninterrupted hours off duty before being required to return**
27 **to duty;**

28 **(4) The exemption granted by this subsection shall not exceed the duration of the**
29 **declared national or state emergency and the hospital's direct role in responding to medical**
30 **needs resulting from the declared state of emergency.**

31

32 **As used in this subsection, "rest period" means a period in which an individual may be**
33 **required to remain on the premises of the hospital but is free of all restraint, duty, or**
34 **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 of health and senior services may suspend, revoke, or
2 otherwise discipline the license of a hospital for a violation of any provision of sections
3 197.650 to 197.680. Any license that is suspended or revoked pursuant to this subsection
4 shall be suspended or revoked as provided in section 197.070.

5 2. The department shall maintain for public inspection the records of any license
6 suspensions or revocations imposed on hospitals pursuant to this section.

7 3. The department shall conduct an annual unannounced random audit of not less
8 than seven percent of all hospitals in this state solely to verify compliance with the
9 requirements of sections 197.650 to 197.680. Surveys made by private accrediting
10 organizations shall not be used in lieu of the audit required by this subsection. The
11 department shall compile and maintain for public inspection an annual report of the audit
12 conducted pursuant to this subsection.

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, a private
4 accreditation organization, the nurse's collective bargaining agent, or a public body any
5 activity, policy, or practice of the hospital or a hospital that is in violation of sections
6 197.650 to 197.680, or any other law, rule, or professional standard of practice and which
7 the nurse reasonably believes poses a risk to the health, safety, or welfare of a patient or
8 the public;

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

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

16 or welfare of a patient or the public;

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

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

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

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

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

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

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

38 (3) Makes the disclosure to a private accreditation organization or public body for
39 the purpose of providing evidence of an activity, policy, practice, or violation by the
40 hospital that the nurse reasonably believes is a crime.

41 4. The department shall establish a toll-free telephone number for receipt of
42 information on a hospital's violation of sections 197.650 to 197.680.

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 post a notice approved by the department summarizing
2 **the provisions of sections 197.650 to 197.680 in a conspicuous place on the premises of the**
3 **hospital. The notice shall be posted where notices to employees and applicants for**
4 **employment are customarily displayed.**

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