Legislative Analysis

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REGISTERED PROFESSIONAL NURSE STAFFING LEVELS; MANDATORY OVERTIME

House Bill 4629 as introduced
Sponsor: Rep. Jon Hoadley

House Bill 4630 as introduced
Sponsor: Rep. Stephanie Chang

House Bill 4631 as introduced
Sponsor: Rep. Aaron Miller

Committee: Health Policy
Complete to 11-28-17

SUMMARY:

House Bills 4629, 4630, and 4631 would amend the Public Health Code to require certain nursing staffing levels in hospitals, limit mandatory overtime for registered professional nurses (RNs) except in certain circumstances, and require hospitals to record nurse-to-patient levels and track those levels for at least 3 years. The bills would take effect 90 days after enactment.

House Bill 4629 (proposed MCL 333.21525)

House Bill 4629 would require hospitals to provide sufficient and qualified RNs at all times to ensure patient safety. Within 3 years after the date the bill takes effect (or 4 years for rural hospitals), hospitals must develop a ***staffing plan***, to be submitted annually to the Department of Licensing and Regulatory Affairs (LARA).

Staffing committee

The bill would require each hospital to establish a staffing committee for each unit in the hospital, in which at least half of the members are RNs who are direct care providers in the unit. If the RNs operate under a collective bargaining agreement, the collective bargaining representative must designate the committee members. Participation on the committee would be considered part of the members' regularly scheduled workweek, and the hospital may not retaliate against members who participate on the committee.

Nurse-to-patient ratios

Under the bill, a hospital's staffing plan could not assign more patients per RN than those in the ratios below for each of the corresponding units:

Nurse-to-patient ratio of 1 to 1	Intensive/critical care; operating room (if at least 1 additional individual serves as scrub assistant in the unit); labor and delivery during second and third stages of labor; emergency department: trauma or critical care (plus 1 RN for triage)

Nurse-to-patient ratio of 1 to 2	Labor and delivery during first stage of labor; postanesthesia care unit
Nurse-to-patient ratio of 1 to 3	Labor and delivery: intermediate care newborn nursery and postpartum mother baby couplet; emergency department: nontrauma or noncritical care (plus 1 RN for triage); stepdown; telemetry
Nurse-to-patient ratio of 1 to 4	Labor and delivery: noncritical antepartum patients; medical/surgical; pediatrics; behavioral health
Nurse-to-patient ratio of 1 to 5	Rehabilitation care
Nurse-to-patient ratio of 1 to 6	Labor and delivery: postpartum mother or well-baby care

The ratios must be in effect at all times, including during breaks, meals, and other routine, expected absences from a unit. Additionally, the staffing committee must establish a staffing strategy for the unit if the patients' needs within that unit exceed the required minimum ratios listed above.

If a unit not listed above provides a level of care to patients whose needs are similar to those in a listed unit, a hospital must apply the listed unit's ratio to the unlisted unit.

A hospital may not do any of the following:

- When computing the ratio required, include an RN who is not assigned to provide direct patient care in that unit or who is not oriented, qualified, and competent to provide safe patient care in that unit.
- Average the number of patients and the total number of RNs assigned to patients in a unit during 1 shift or over a period of time to meet the minimum ratios required.
- Except in an unforeseen emergent situation, impose mandatory overtime to meet the required ratios.

Allowable deviations from the minimum ratios

Under the bill, a hospital could decrease below the minimum ratio the number of patients per RN during a shift if the hospital considers it appropriate after considering the following factors and consulting with the RNs in the unit on that shift:

- The number of patients in the unit and acuity level of those patients as determined by applying the hospital's acuity tool on a shift-by-shift basis.
- The anticipated admissions, discharges, and transfers of patients in the unit during each shift that affects direct patient care.
- Specialized experience required of RNs in the unit.
- Staffing levels and services provided by RNs or other ancillary staff in meeting direct patient care needs that are not required to be met by an RN.
- The level of technology available that affects the delivery of direct patient care.

- The level of familiarity with hospital practices, policies, and procedures used during a shift by an RN who is employed by an outside agency.
- Obstacles to the efficient delivery of patient care caused by the physical layout of the unit or the hospital.

Re-evaluation of staffing plan

The bill would require staffing committees to re-evaluate the plan in relation to actual patient care requirements and the application of the hospital's acuity tool within 5 years, and annually thereafter. Hospitals must update their staffing plans as appropriate based on the committees' evaluation.

Requirements for LARA

Under the bill, a hospital must post in each unit a notice containing the requirements under the bill and an explanation of the rights of RNs, patients, and other individuals under the bill. The notice would also include a statement that any of those parties may file a complaint with LARA against a hospital that the party believes has violated the requirements under the bill, as well as instructions for filing a complaint.

Additionally, LARA must establish and maintain a toll-free telephone number to provide information about the ratios and to receive complaints. LARA must investigate each complaint received according to procedures established in Section 20176 of the Code.

Violations

If a hospital does not submit an annual staffing plan as required by the bill, or does not comply with the plan, each day or instance is a separate violation of the bill. If LARA determines that a hospital is in violation, LARA must require the hospital to establish a corrective action plan to prevent recurrence of the violation and assess an administrative fine of between $10,000 and $25,000 for each violation (or between $25,000 and $50,000 if the hospital has shown a pattern of violations). This fine will be retained by LARA subject to legislative appropriation for administration of the bill's provisions.

LARA must publish on its website a list of hospitals on which the administrative fine has been imposed, with any other information LARA deems appropriate. Additionally, LARA must consider violations when making licensure decisions.

Definitions

Acuity tool: a system for addressing fluctuations in patient acuity levels and assessing necessary nursing care for each unit to ensure safe patient care based on the severity of each patient's illness and need for specialized equipment and technology, the intensity of nursing interventions required for each patient, and the complexity of the clinical nursing judgment needed to design, implement, and evaluate each patient's care plan.

Registered professional nurse (as defined in Section 17201 of the Code): an individual who is licensed under Part 172 of the Code to engage in the practice of

nursing, which scope of practice includes the teaching, direction, and supervision of less skilled personnel in the performance of delegated nursing activities.

House Bill 4630 (MCL 333.20165 et al.)

House Bill 4630 would state that an RN's refusal to accept a hospital's request to work more than his or her regularly scheduled hours is not, by itself, grounds for administrative action under the Code. Additionally, it would provide that a hospital may not require an RN to work more than his or her regularly scheduled hours according to a predetermined work schedule. Moreover, if an RN works 12 or more consecutive hours at a hospital, the bill would require the hospital to provide the RN with 8 consecutive hours of off-duty time immediately after completing that shift.

However, the prohibition on mandatory overtime would not apply if an unforeseen emergent situation occurs; if the RN is assisting with a patient-care procedure that extends beyond the RN's shift and the RN's supervisor determines that the RN's absence could have an adverse effect on the patient; or if the RN accepts a work assignment that exceeds his or her regularly scheduled hours.

Under the bill, a hospital could not discharge or discipline, threaten to discharge or discipline, or otherwise discriminate against an RN because the RN refuses to complete mandatory overtime. Hospitals must post a notice that informs RNs of these provisions and how to file a complaint of violation with LARA, and must post the notice on their intranet site, if applicable.

If LARA determines that a hospital has violated the provisions described above, LARA must impose an administrative fine of $1,000 on the hospital for each violation, and may deny, limit, suspend, or revoke the hospital's license or certification after giving the hospital notice of its intent to do so.

(If a collective bargaining agreement is in effect for the employees of a hospital and would conflict with these provisions, the bill would not apply until the agreement has expired.)

House Bill 4631 (proposed MCL 333.21525a)

The bill would require hospitals to create an accurate record of actual direct care registered professional nurse-to-patient ratios in each unit for each shift, to be maintained for at least 3 years. The record must include the patient number for each unit and the number of applicable RNs assigned to each patient in each unit for each shift. Finally, each hospital must make these records available to LARA, RNs and any collective bargaining representatives, and the public under rules promulgated by LARA.

FISCAL IMPACT:

House Bill 4629 would have a significant but indeterminate fiscal impact on the Department of Licensing and Regulatory Affairs (LARA).

LARA would experience minor increases in costs for miscellaneous administrative activities that it would be tasked with undertaking, including approving various document forms, processing staffing plan submissions, and rules promulgation. These costs would likely be absorbed by existing appropriations. More significant administrative costs would arise from establishing the required toll-free telephone line and from publishing a list of hospitals that have been subjected to administrative fines. It is unclear whether the toll-free line (which would provide information regarding minimum nurse-to-patient ratios and receive complaints alleging violations) would require new infrastructure, or whether the system could be incorporated into existing systems. Costs for posting information regarding administrative fines to the department's website would be negligible. The Bureau of Community and Health Systems—within LARA—would also experience an increase in costs, of indeterminate magnitude, related to investigations into alleged violations. The investigatory cost would depend upon the number of complaints received, and is therefore unknown.

The bill would institute fines for hospitals that fail to submit annual staffing plans or fail to meet their established required staffing plans. Fines would range between $10,000 and $25,000 for each violation, although hospitals with patterns of violation would face fines of between $25,000 and $50,000. Each day that a staffing plan is not filed with the department and each shift that does not satisfy minimum staffing requirements would constitute a separate violation. Revenues from these fines would depend upon the number of violations, and it is impossible to definitively conclude what those numbers might be. Fees collected would be retained by the department and used, subject to legislative appropriation, for the administration of the section added by the bill. Since it is unknown how much revenue can be expected from these fines, it is equally unclear whether the fines will be sufficient to completely fund the activities required by the bill.

House Bill 4630 would have an indeterminate fiscal impact on LARA. The department would likely experience increased costs related to investigations of alleged violations of new provisions established by the bill. There would also likely be an increase in revenues from fines for violations of the bill's provisions, which would be $1,000 for each violation.

House Bill 4631 would not have a significant fiscal impact on any unit of state or local government.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.