

1 HOUSE BILL NO. 568  
2 INTRODUCED BY M. CAFERRO

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4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING SAFE NURSING STANDARDS FOR HOSPITALS;  
5 REQUIRING DEVELOPMENT OF AND REPORTING ON IMPLEMENTATION OF A NURSE STAFFING  
6 PLAN; ESTABLISHING MINIMUM REGISTERED NURSE-TO-PATIENT RATIOS; PROHIBITING THE USE  
7 OF MANDATORY OVERTIME EXCEPT IN CERTAIN CIRCUMSTANCES; ESTABLISHING NURSING  
8 RIGHTS REGARDING STAFFING STANDARDS; PROVIDING REMEDIES; PROVIDING PENALTIES; AND  
9 PROVIDING DEFINITIONS."

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11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12  
13 NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 7], the following definitions  
14 apply:

15 (1) "Department" means the department of public health and human services provided for in 2-15-  
16 2201.

17 (2) "Hospital" means a hospital or critical access hospital as those terms are defined in 50-5-101.

18 (3) "Overtime" means working:

19 (a) in excess of a predetermined scheduled work shift, regardless of the length of the shift;

20 (b) more than 12 hours in a 24-hour period; or

21 (c) more than 40 hours in any hospital-defined workweek.

22 (4) "Professional judgment" means the application of knowledge, expertise, and experience by a  
23 registered nurse in conducting a comprehensive nursing assessment of a patient and making independent  
24 decisions about patient care in accordance with state law and administrative rule, including the need for  
25 additional staff.

26 (5) "Registered nurse" means any person who provides direct care to patients and is licensed to  
27 engage in the practice of professional nursing as defined in 37-8-102.

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1            NEW SECTION. **Section 2. Safe nurse staffing standards -- prospective nurse staffing plan.** (1)

2 Each hospital licensed by the department shall provide to the department, by a date determined by the  
3 department, a prospective nurse staffing plan for the upcoming calendar year. The plan must include a written  
4 certification that the nurse staffing plan is sufficient to provide adequate and appropriate delivery of health care  
5 services to patients during the calendar year.

6            (2) The nurse staffing plan shall promote a collaborative practice in the hospital that enhances  
7 patient care and the level of services provided by nurses and other members of the hospital's patient care team.

8            (3) The plan must:

9            (a) identify the hospital's employment practices concerning the use of temporary and traveling  
10 nurses;

11            (b) specify the hospital's process for internal review of the nurse staffing plan;

12            (c) include the hospital's mechanism for obtaining input from direct-care staff, including nurses and  
13 other members of the hospital's patient care team, in the development of the nurse staffing plan; and

14            (d) specify the minimum registered nurse skill mix for each patient care unit in the hospital,  
15 including but not limited to inpatient, critical care, and emergency department staffing. The plan must detail:

16            (i) the method used by the hospital to determine and adjust direct patient care nurse staffing  
17 levels;

18            (ii) a description of supporting personnel assisting on each patient care unit; and

19            (iii) the number of registered nurses providing direct patient care and the ratio of registered nurses  
20 to patients in each patient care unit.

21            (4) The staffing plan must meet or exceed the following ratios of registered nurses to patients:

Unit	Registered Nurse to Patient Ratio
Emergency department	1:4
Intensive care patients in emergency department	1:2
Trauma patients in emergency department	1:2
Intensive care unit	1:2

Progressive care unit	1:3
Telemetry	1:4
Medical and surgical units	1:5
Pediatrics	1:4
Operating room	1:1
Postanesthesia care unit	1:2
Oncology unit	1:5
Orthopedics unit	1:5
Psychiatry unit	1:6
Obstetrics unit - labor	1:2
Obstetrics unit - postpartum	1:4
Obstetrics unit - nursery	1:4
Neonatal intensive care unit	1:2

1           (5)     The nurse staffing plan must be approved by a majority vote by the staffing committee. Each  
2 member of the committee is a voting member.

3           (6)     Each hospital, in collaboration with its staffing committee, shall implement to the best of its  
4 ability the prospective nurse staffing plan. If staffing fell below the levels proposed in the plan during the  
5 previous reporting period, the prospective nurse staffing plan must include a description of any differences  
6 between the staffing levels described in the previous staffing plan and actual staffing levels for each patient  
7 care unit and any actions the hospital intends to take to address the differences or adjust staffing levels in  
8 future staffing plans.

9           (7)     The nurse staffing plan must be posted:

10          (a)     by the hospital on each unit in a location that is visible, conspicuous, and accessible to staff,  
11 patients, and the public; and

12          (b)     by the department on the department's website.

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14           NEW SECTION. Section 3. Nurse staffing committee. (1) Each hospital shall establish a nurse  
15 staffing committee to assist in the preparation of the nurse staffing plan required under [section 2]. At least half

1 of the committee members must be registered nurses who are employed by the hospital and whose primary  
2 responsibility is to provide direct patient care.

3 (2) A hospital may use an existing committee or committees to assist in the preparation of the  
4 nurse staffing plan if at least half of the members of the existing committee are nonsupervisory registered  
5 nurses employed by the hospital and whose primary responsibility is to provide direct patient care.

6 (3) In a hospital in which registered nurses providing direct patient care are represented by a  
7 collective bargaining unit, the unit's agent shall select the nurse members of the committee.

8 (4) Nothing in this section may be construed to permit conduct prohibited under the National Labor  
9 Relations Act, 29 U.S.C. 151, et seq., or Title 5, chapter 71, of the United States Code.

10

11 **NEW SECTION. Section 4. Nurse staffing records -- reports of deviation from nurse staffing**

12 **plan.** (1) Each hospital shall maintain accurate records of actual direct-care registered nurse-to-patient ratios in  
13 each unit for each shift for no less than 3 years. The records must include the number of patients in each unit  
14 on each shift and the number of direct-care registered nurses assigned to each patient in each unit on each  
15 shift.

16 (2) A hospital shall make the records available to the department and, on request, to the hospital  
17 staff, to any collective bargaining representative of staff, to patients, and to the public.

18 (3) A hospital employee, patient, or member of the public may report to the department any  
19 suspected deviation from the nurse staffing plan.

20

21 **NEW SECTION. Section 5. Mandatory overtime -- exception.** (1) Except as provided in subsection

22 (2), a hospital may not require a registered nurse to work overtime. Any nurse may volunteer or agree to work  
23 overtime.

24 (2) When the safety of a patient requires it and when no reasonable alternative exists, a hospital  
25 may require a registered nurse to work overtime:

26 (a) when the nurse is participating in an ongoing surgical procedure, until the procedure is  
27 completed;

28 (b) when the nurse is working in a critical care unit, until the nurse is relieved by another nurse who

1 is beginning a scheduled work shift;

2 (c) in the case of a public health emergency declared pursuant to section 319 of the federal Public  
3 Health Service Act or by the governor in accordance with 10-3-104; or

4 (d) in the case of an institutional emergency, including but not limited to adverse weather  
5 conditions, catastrophe, or widespread illness, provided the hospital administrator has made a good faith effort  
6 to mitigate the impact of the institutional emergency on the availability of nurses.

7 (3) Before requiring a registered nurse to work overtime, the hospital shall make a good faith effort  
8 to have the hours covered on a voluntary basis. Mandatory overtime may not be required as a regular practice  
9 for providing appropriate staffing for the necessary level of patient care or in any situation that is the result of  
10 routine staffing needs caused by typical staffing patterns, expected levels of absenteeism, or time off typically  
11 approved by the hospital for vacation, holidays, sick leave, and personal leave.

12 (4) The provisions of this section may not be construed to alter or impair the terms of any bona fide  
13 collective bargaining agreement that places additional restrictions or limitations on the use of mandatory  
14 overtime.

15 (5) It is unlawful to discriminate, discharge, discipline, threaten to discipline or discharge, or  
16 otherwise retaliate against a nurse for refusing to work overtime.

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18 **NEW SECTION. Section 6. Nurse rights regarding safe nursing standards.** (1) A registered nurse  
19 may object to or refuse to participate in any activity, policy, practice, assignment, or task if, in good faith and in  
20 the nurse's professional judgment, the nurse:

21 (a) is not prepared by education, training, or experience to fulfill the assignment without  
22 compromising the safety of a patient or jeopardizing the nurse's license; or

23 (b) reasonably believes the action would violate [sections 1 through 7].

24 (2) A hospital may not:

25 (a) discharge, retaliate, discriminate, or otherwise take an adverse action in any manner with  
26 respect to any aspect of a registered nurse's employment based on the nurse's refusal of a work assignment in  
27 accordance with this section, including actions related to promotion, compensation, or terms, conditions, or  
28 privileges of employment; or

1 (b) file a complaint or a report against a nurse with a state professional disciplinary entity because  
2 of the nurse's refusal of a work assignment in accordance with this section.

3 (3) A registered nurse or the collective bargaining representative or legal representative of a  
4 registered nurse who has been discharged, discriminated against, or retaliated against in violation of this  
5 section or against whom a complaint or report has been filed in violation of this section may bring a cause of  
6 action. A nurse who prevails on the cause of action is entitled to one or more of the following:

7 (a) reinstatement;

8 (b) reimbursement of lost wages, compensation, and benefits;

9 (c) attorney fees;

10 (d) court costs; and

11 (e) other damages.

12

13 **NEW SECTION. Section 7. Hospital failure to comply with staffing plan and reporting**

14 **requirements -- corrective action -- penalties.** (1) The department shall review each nurse staffing plan  
15 submitted by a hospital to ensure it is received by the appropriate deadline. Failure to submit the staffing plan  
16 by the appropriate deadline will result in a violation and a civil penalty of \$25,000.

17 (2) The department shall investigate a complaint of a violation of [sections 1 through 7] upon  
18 receiving a complaint accompanied with documented evidence of a hospital's failure to:

19 (a) form or establish a nurse staffing committee;

20 (b) conduct an annual review of a prospective nurse staffing plan;

21 (c) submit a prospective nurse staffing plan on an annual basis; or

22 (d) follow the safe nurse staffing levels in violation of [sections 1 through 7].

23 (3) If after an investigation the department determines a violation has occurred, the department  
24 shall present its findings to the hospital and require the hospital to submit a corrective plan of action within 45  
25 days from the time the department presented its findings to the hospital.

26 (4) (a) If a hospital fails to submit or follow a corrective plan of action, the department may impose  
27 a civil penalty of \$5,000 a day for each day that the hospital fails to submit the corrective plan of action. Civil  
28 penalties apply until the hospital submits and follows for 90 days a corrective plan of action that has been

1 approved by the department.

2 (b) If the hospital follows the corrective plan of action for 90 days, the department may reduce the  
3 accumulated fine.

4 (5) The department shall post on its website a report of violations of [sections 1 through 7] and  
5 maintain for public inspection records of any civil penalties and administrative actions imposed on hospitals  
6 under this section.

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8 **NEW SECTION. Section 8. Codification instruction.** [Sections 1 through 7] are intended to be  
9 codified as a new part in Title 50, chapter 5, and the provisions of Title 50, chapter 5, apply to [sections 1  
10 through 7].

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12 **COORDINATION SECTION. Section 9. Coordination instruction.** If both House Bill No. 312 and  
13 [this act] are passed and approved, then [section 1(2)] of this bill must be amended to read as follows:

14 "(2) "Hospital" means a hospital, critical access hospital, or rural emergency hospital as those terms  
15 are defined in 50-5-101."

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