

SUBJECT: Providing nurses employment protections regarding staffing and overtime

COMMITTEE: Public Health — committee substitute recommended

VOTE: 9 ayes — Kolkhorst, Naishtat, J. Davis, Gonzales, Hopson, S. King,
Laubenberg, Truitt, Zerwas

0 nays

2 absent — Coleman, McReynolds

SENATE VOTE: On final passage, March 25 — 31-0

WITNESSES: For — Susan Griffin, Memorial Hermann Healthcare System, Texas Hospital Association, Texas Organization of Nurse Executives; Michelle Newsom, Susan Sportsman, Texas Nurses Association; Elizabeth Sjoberg, Texas Hospital Association; (*Registered, but did not testify*: Carolyn Belk, The Methodist Hospital System; Pamela J. Bolton, Texas Watch; Garry Brydges; Shane Casady, Driscoll Children's Hospital; Jennifer Cook; Jennifer Cutrer, Parkland Health and Hospital System; Chuck Girard, Hospital Corporation of America; Michael Gutierrez; Anthony Haley, Baylor Health Care System; Jay Hopper; Kathy Hutto, Community Health Systems; Mazie Jamison, Children's Medical Center Dallas; Steven Leach; Don McBeath, Texas Organization of Rural and Community Hospitals; James M. McEwan, Texas Association of Nurse Anesthetists; Marcus Mitias, Texas Health Resources; Brinton Payne, Fort Worth Chamber of Commerce; Vicki Perkins, CHRISTUS Santa Rosa Health Care; Michelle Ryerson, on behalf of Robert Dent, Judy Roever, Diana Fancher, and Maria Dias; Rebekah Schroeder, Texas Children's Hospital; Andrew Smith, University Health System; Bryan Sperry, Children's Hospital Association of Texas; Ruth Stewart; Jon Weist, Arlington Chamber of Commerce; James Willmann, Nursing Legislative Agenda Coalition; Lynda Woolbert, Coalition for Nurses in Advanced Practice; Chris Yanas, Teaching Hospitals of Texas; Emilia Zeller)

Against — Karen Foster-Glass, Jesse Romero, National Nurses Organizing Committee; Kelly Green; (*Registered, but did not testify*: Gwendolyn Agbatekwe, Gerard Brogan, Melissa Gorbet, Tom Laughlin,

Beverly Leonard, Paula Littles, Megan Moon, Olga Perez, Sarah Power, David Smith, Susan Vande Hoef, Christopher Williams, National Nurses Organizing Committee; Douglas Barrera; Misty Breaux; Anne Dietz; Deborah D. Dietz, RNs from Harris County Psychiatric Hospital; Katie Jackson; Shannon LaVoie; Diana Pirzada; Veronica Rodriquez; Clarence Squyres; Joanne Thompson)

On — Patrick Waldron, Texas Department of State Health Services

BACKGROUND: In 2002, Texas adopted administrative regulations to create advisory nurse staffing committees in hospitals. In 2007, SB 993 by Nelson established nursing peer review committees to help facilitate a nursing mentor program.

DIGEST: CSSB 476 would establish a joint process for nurses and hospital management to make decisions about nurse staffing. The bill would set guidelines for a nurse staffing policy, create a committee composed of nurses representing the types of nursing services provided in the hospital, establish reporting requirements to the Department of State Health Services, and would prohibit, with exceptions, mandatory overtime.

Nurse staffing policy and plan. The governing body of a hospital would be required to adopt, implement, and enforce a written nurse staffing policy to ensure that an adequate number and skill mix of nurses would be available to meet the level of patient care needed. The policy would have to include a process for:

- requiring the hospital to give significant consideration to the nurse staffing plan;
- adopting, implementing, and enforcing an official nurse services staffing plan based on the needs of each patient care unit and shift and on evidence relating to patient care needs;
- using the official nurse services staffing plan as a component in setting the nurse staffing budget;
- encouraging nurses to provide input to the committee relating to nurse staffing concerns;
- protecting from retaliation nurses who provided input to the committee; and
- ensuring compliance with rules adopted by the Health and Human Services Commission relating to nurse staffing.

The official nurse services staffing plan adopted would have to:

- reflect current standards established by health professional organizations;
- set minimum staffing levels for patient care units;
- include a method for adjusting the staffing plan to provide staffing flexibility to meet patient needs; and
- include a contingency plan when patient care needs unexpectedly exceeded direct patient care staff resources.

A hospital would be required to:

- use the official nurse services staffing plan as a component in setting the nurse staffing budget and to guide the hospital in assigning nurses hospital-wide; and
- make readily available to nurses on each patient care unit the official nurse services staffing plan levels and current staffing levels for that unit and that shift.

Nurse staffing committee. A hospital would be required to establish a nurse staffing committee as a standing committee, to be composed of representatives of the types of nursing services provided in the hospital. The chief nursing officer of the hospital would be a voting member of the committee, and at least 60 percent of the members would have to be registered nurses who provided direct patient care during at least 50 percent of their work time and were selected by their peers.

The committee would be required to meet at least quarterly, and participation as a committee member would be part of the employee's work time. It also would be required to:

- develop and recommend to the hospital's governing body a nurse staffing plan;
- review, assess, and respond to staffing concerns expressed to the committee;
- identify the nurse-sensitive outcome measures the committee would use to evaluate the effectiveness of the official nurse services staffing plan;
- evaluate, at least semiannually, the effectiveness of the official nurse services staffing plan and variations; and

- submit to the hospital's governing body, at least semiannually, a report on nurse staffing and patient care outcomes.

In evaluating the effectiveness of the official nurse services staffing plan, the committee would be required to consider patient needs, nursing-sensitive quality indicators, nurse satisfaction measures collected by the hospital, and evidence-based nurse staffing standards.

Reporting of staffing information. A hospital would be required to report annually to the Department of State Health Services on:

- whether the hospital's governing body had adopted a nurse staffing policy;
- whether the hospital had established a nurse staffing committee that met the membership requirements;
- whether the nurse staffing committee had evaluated the hospital's official nurse services staffing plan and had reported the results to the hospital's governing body; and
- the nurse-sensitive outcome measures the committee adopted for use in evaluating the hospital's official nurse services staffing plan.

Prohibition of mandatory overtime. A hospital could not require a nurse to work hours or days that were in addition to what was scheduled, regardless of the length of a scheduled shift or the number of scheduled shifts each week, unless there was an emergency or the nurse was engaged in an ongoing procedure. This section would not prohibit a nurse from volunteering to work overtime. A hospital could not use on-call time as a substitute for mandatory overtime.

If a hospital determined that an exception existed, the hospital would be required to make a good faith effort to meet the staffing need through voluntary overtime, including calling per diems and agency nurses, assigning floats, or requesting an additional day of work from off-duty employees.

Refusal of mandatory overtime. A hospital could not suspend, terminate, or otherwise discipline or discriminate against a nurse who refused to work mandatory overtime. The refusal by a nurse to work mandatory overtime would not constitute patient abandonment or neglect.

The Health and Human Services Commission would be required to adopt rules for the Department of State Health Services by January 1, 2010.

Effective date. The bill would take effect September 1, 2009, and apply only to disciplinary actions taken on or after the effective date.

**SUPPORTERS
SAY:**

CSSB 476 would help improve the working environment for nurses and would create a nurse-centered approach to improving patient care. The bill would strengthen regulations established in 2002 by placing the nurse staffing committees in statute and provide the committees greater authority within the hospital system by ensuring that patient care nurses comprised a majority of the committee and that the hospital reported the recommendations to the Department of State Health Services.

Hospitals and nurses share a mutual interest in patient-safety initiatives that create a healthy environment for nurses and appropriate care for patients. In order to protect patients, support greater retention of registered nurses, and promote adequate nurse staffing, there should be a joint process regarding decisions about nurse staffing. This legislation would provide to nurses involved in direct patient care the opportunity to help determine appropriate staffing levels at each hospital, while taking into consideration the unique needs of each patient, the specific expertise and experience of each nurse on a particular shift, and the particular characteristics of each hospital.

The bill does not include mandated nurse-to-patient ratios because there is no one-size-fits-all solution. It is unlikely that any one nurse-to-patient ratio might accommodate all healthcare facilities or practice environments, because the patient demands on nurses can vary dramatically even within a healthcare facility. For example, an oncology department may need one nurse for every four patients, while an operating room might need four nurses for each patient. Also, fixed staffing ratios would not take into account patient acuity or nurse experience, and they would remove nurses from patient care decisions. Legislating specific ratios and staffing would undermine local autonomy and authority and keep nurses from being able to make professional judgments about staffing needs and patient case loads. California is the only state that has chosen to use mandated nurse-to-patient ratios, and there has been no data to support that these ratios have had any effect on patient care or the nurse retention rate.

OPPONENTS
SAY:

CSSB 476 would maintain the status quo by merely codifying what already exists in administrative rules. The staffing committees already exist, and they have been ineffective in creating a healthy environment for nurses and appropriate care for patients.

Mandated nurse-to-patient ratios are the only real way to ensure that nurses would be able adequately and safely to do their jobs. Without mandated safe-staffing ratios, patients are placed in jeopardy. When nurses are assigned more patients than they can provide proper care for, they do not have time to adequately assess their patients. This creates a bad work environment for the nurse and a dangerous situation for the patient. This eventually takes a toll, and often results in a nurse feeling unsatisfied and over-worked, eventually leaving the field altogether. CSSB 476 would not do anything to alleviate this situation. Texas needs mandated safe staffing ratios, not another staffing committee.

NOTES:

The committee substitute differs from the bill as filed by removing a requirement that the governing body of a hospital develop a nurse staffing policy and a provision that authorized a cause of action against a person who retaliated against a nurse for refusing to work mandatory overtime.