

## BILL ANALYSIS

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S.B. 476  
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Health & Human Services  
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### AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2006, the turnover rate among nurses in Texas hospitals was 18.2 percent. Research has shown that grueling schedules and mandatory overtime are primary causes of this turnover. Hospital nurse staffing committees are established by agency rule and there is no state statute addressing nurse staffing committees and no statute addressing mandatory overtime by nurses.

As proposed, S.B. 476 requires the governing body of a hospital to develop, adopt, implement, and enforce a written nurse staffing policy to ensure that an adequate number and skill mix of nurses are available to meet the level of patient care needed and sets forth the required content of and standards for such policies. The bill requires a hospital to establish a nurse staffing committee (committee) as a standing committee of the hospital and sets forth the composition, duties, and responsibilities for the committee. The bill requires a hospital to annually report certain information relating to the committee and its findings and recommendations to DSHS. S.B. 476 prohibits a hospital from requiring nurses to work mandatory overtime, except in certain emergency situations, such as a natural disaster, and authorizes a nurse to refuse to work such overtime, providing that such refusal does not constitute patient abandonment or neglect. The bill prohibits a hospital from retaliating against a nurse who refuses to work mandatory overtime and authorizes a cause of action against a person who violates those provisions. Finally the bill requires the executive commissioner of the Health and Human Services Commission to adopt rules to implement the provisions of this Act not later than January 1, 2010.

### RULEMAKING AUTHORITY

Rulemaking authority previously granted to the executive commissioner of the Health and Human Services Commission is modified in SECTION 4 of this bill.

### SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle B, Title 4, Health and Safety Code, by adding Chapters 257 and 258, as follows:

#### CHAPTER 257. NURSE STAFFING

Sec. 257.001. DEFINITIONS. Defines "committee," "department," "hospital," and "patient care unit."

Sec. 257.002. LEGISLATIVE FINDINGS. (a) Provides that the legislature finds that research supports a conclusion that adequate nurse staffing is directly related to positive patient outcomes and nurse satisfaction with the practice environment; that nurse satisfaction with the practice environment is in large measure determined by providing an adequate level of nurse staffing based on research findings and patient intensity; that nurse satisfaction and patient safety can be adversely affected when nurses work excessive hours; and that hospitals and nurses share a mutual interest in patient safety initiatives that create a healthy environment for nurses and appropriate care for patients.

(b) Provides that the legislature intends, in order to protect patients, support greater retention of registered nurses, and promote adequate nurse staffing, to establish a mechanism whereby nurses and hospital management are required to participate in a joint process regarding decisions about nurse staffing.

Sec. 257.003. NURSE STAFFING POLICY AND PLAN. (a) Requires the governing body of a hospital to develop, adopt, implement, and enforce a written nurse staffing policy to ensure that an adequate number and skill mix of nurses are available to meet the level of patient care needed. Requires that the policy include a process for:

- (1) requiring the hospital to give significant consideration to the nurse staffing plan recommended by the hospital's nurse staffing committee and to that committee's evaluation of any existing plan;
- (2) developing, adopting, implementing, and enforcing an official nurse services staffing plan that is based on the needs of each patient care unit and shift and on evidence relating to patient care needs;
- (3) using the official nurse services staffing plan as a component in setting the nurse staffing budget;
- (4) encouraging nurses to provide input to the committee relating to nurse staffing concerns;
- (5) protecting from retaliation nurses who provide input to the committee; and
- (6) ensuring compliance with rules adopted by the executive commissioner of the Health and Human Services Commission (HHSC) relating to nurse staffing.

(b) Requires that the official nurse services staffing plan developed under Subsection (a) reflect current standards established by private accreditation organizations, governmental entities, national nursing professional associations, and other health professional organizations; set minimum staffing levels for patient care units that meet certain considerations and standards; include a method for adjusting the staffing plan for each patient care unit to provide staffing flexibility to meet patient needs; and include a contingency plan when patient care needs unexpectedly exceed direct patient care staff resources.

(c) Requires the hospital 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 to make readily available to nurses on each patient care unit at the beginning of each shift the official nurse services staffing plan levels and current staffing levels for that unit and that shift.

Sec. 257.004. NURSE STAFFING COMMITTEE. (a) Requires a hospital to establish a nurse staffing committee as a standing committee of the hospital.

(b) Requires the committee to be composed of members who are representative of the types of nursing services provided in the hospital.

(c) Provides that the chief nursing officer of the hospital is a voting member of the committee.

(d) Requires that at least 50 percent of the members of the committee be registered nurses who provide direct patient care during at least 50 percent of their work time, and are selected by their peers who provide direct patient care during at least 50 percent of their work time.

(e) Requires the committee to meet at least quarterly.

(f) Provides that participation on the committee by a hospital employee as a committee member is part of the employee's work time, and that the hospital is required to compensate that member for that time accordingly. Requires the

hospital to relieve a committee member of other work duties during committee meetings.

(g) Requires the committee to:

(1) develop and recommend to the hospital's governing body a nurse staffing plan that meets the requirements of Section 257.003;

(2) review, assess, and respond to staffing concerns expressed to the committee;

(3) identify the nurse-sensitive outcome measures the committee will use to evaluate the effectiveness of the official nurse services staffing plan;

(4) evaluate, at least semiannually, the effectiveness of the official nurse services staffing plan and variations between the plan and the actual staffing; and

(5) submit to the hospital's governing body, at least semiannually, quality indicators, nurse satisfaction measures collected by the hospital, and evidence-based nurse staffing standards.

(h) Requires the committee, in evaluating the effectiveness of the official nurse services staffing plan, to consider patient needs, nursing-sensitive quality indicators, nurse satisfaction measures collected by the hospital, and evidence-based nurse staffing standards.

Sec. 257.005. REPORTING OF STAFFING INFORMATION TO DEPARTMENT. (a) Requires a hospital to annually report to the Department of State Health Services (DSHS) on whether the hospital's governing body has adopted a nurse staffing policy as required by Section 257.003; whether the hospital has established a nurse staffing committee as required by Section 257.004 that meets the membership requirements of that section; whether the nurse staffing committee has evaluated the hospital's official nurse services staffing plan as required by Section 257.004 and has reported the results of the evaluation to the hospital's governing body as provided by that section; and the nurse-sensitive outcome measures the committee adopted for use in evaluating the hospital's official nurse services staffing plan.

(b) Provides that information reported under Subsection (a) is public information.

(c) Requires DSHS, to the extent possible, to collect the data required under Subsection (a) as part of a survey required by DSHS under other law.

## CHAPTER 258. MANDATORY OVERTIME FOR NURSES PROHIBITED

Sec. 258.001. DEFINITIONS. Defines "hospital," "nurse," and "on-call time."

Sec. 258.002. MANDATORY OVERTIME. Defines "mandatory overtime."

Sec. 258.003. PROHIBITION OF MANDATORY OVERTIME. (a) Prohibits a hospital from requiring a nurse to work mandatory overtime, and authorizes a nurse to refuse to work mandatory overtime.

(b) Provides that this section does not prohibit a nurse from volunteering to work overtime.

(c) Prohibits a hospital from using on-call time as a substitute for mandatory overtime.

Sec. 258.004. EXCEPTIONS. (a) Provides that Section 258.003 does not apply if:

(1) a health care disaster, such as a natural or other type of disaster that increases the need for health care personnel, unexpectedly affects the county in which the nurse is employed or affects a contiguous county;

(2) a federal, state, or county declaration of emergency is in effect in the county in which the nurse is employed or is in effect in a contiguous county;

(3) there is an emergency or unforeseen event of a kind that does not regularly occur, increases the need for health care personnel at the hospital to provide safe patient care, and could not prudently be anticipated by the hospital; or

(4) the nurse is actively engaged in an ongoing medical or surgical procedure and the continued presence of the nurse through the completion of the procedure is necessary to ensure the health and safety of the patient.

(b) Requires a hospital, if the hospital determines that an exception exists under Subsection (a)(3), to the extent possible, 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.

Sec. 258.005. RETALIATION PROHIBITED. Prohibits a hospital from suspending, terminating, or otherwise disciplining or discriminating against a nurse who refuses to work mandatory overtime. Provides that Section 301.413 (Retaliatory Action), Occupations Code, applies to an action that violates this section.

SECTION 2. Amends Subchapter H, Chapter 301, Occupations Code, by adding Section 301.356, as follows:

Sec. 301.356. REFUSAL OF MANDATORY OVERTIME. Provides that the refusal by a nurse to work mandatory overtime as authorized by Chapter 258, Health and Safety Code, does not constitute patient abandonment or neglect.

SECTION 3. Amends Section 301.413, Occupations Code, by amending Subsections (b), (c), and (e), and adding Subsection (g), as follows:

(b) Prohibits a person from suspending, terminating, or otherwise disciplining or discriminating against a person who:

(1) reports, without malice, under this subchapter;

(2) requests, in good faith, a nursing peer review committee determination under Section 303.005 (Request for Peer Review Committee Determination),

(3) refuses to engage in conduct as authorized by Section 301.352 (Protection for Refusal to Engage in Certain Conduct), or

(4) refuses to work mandatory overtime as authorized by Chapter 258, Health and Safety Code. Deletes existing text prohibiting a person from suspending or terminating the employment of or otherwise disciplining or discriminating against certain persons. Makes nonsubstantive changes.

(c) Provides that a person who reports under this subchapter, refuses to engage in a conduct as authorized by Section 301.352, refuses to work mandatory overtime as authorized by Chapter 258, Health and Safety Code, or requests a nursing peer review committee determination under Section 303.005 has a cause of action against a person who violates Subsection (b), and may recover certain damages, court costs, and reasonable attorney's fees.

(e) Provides that a person who brings an action under this section has the burden of proof. Provides that it is a rebuttable presumption that the person, rather than person's employment, was suspended, terminated, or otherwise disciplined or discriminated against for reporting under this subchapter, for refusing to engage in conduct as authorized by Section 301.352, for refusing to work mandatory overtime as authorized by Chapter 258, Health and Safety Code, or for requesting a peer review committee determination under Section 303.005 if certain actions were taken, including that the person was suspended, terminated, or otherwise disciplined or discriminated against within 60 days after the date the report, refusal, or request was made, and the refusal to work mandatory overtime was authorized by Chapter 258, Health and Safety Code.

(g) Authorizes a nurse employed by a hospital operated by or on behalf of a state or local governmental entity who alleges a violation of Subsection (b) to sue the state or local governmental entity for the relief provided by this section and provides that the sovereign immunity of the state or local governmental entity from suit and from liability is waived for the limited purpose of allowing the nurse to maintain a lawsuit in a state court to obtain that relief. Provides that the provisions of Section 554.003 (Relief Available to Public Employee), Government Code, relating to the type of relief and the amount of damages available to a public employee apply to a lawsuit under this subsection. Provides that the relief provided by this section is in addition to any other remedies a nurse is authorized to have under state or federal law as a public employee. Defines "local governmental entity," "public employee," "state governmental entity," and "hospital."

SECTION 4. Provides that it is not the intent of the legislature that the executive commissioner of HHSC rewrite the current rules of DSHS relating to nurse staffing except to the extent the current rules conflict with this Act.

SECTION 5. (a) Requires the executive commissioner of HHSC to adopt rules for DSHS as required by this Act as soon as practicable after the effective date of this Act, but not later than January 1, 2010.

(b) Makes application of this Act prospective.

SECTION 6. Effective date: September 1, 2009.