

By: Coleman

H.B. No. 1707

A BILL TO BE ENTITLED

AN ACT

relating to the practice of nursing; providing civil penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. HOSPITAL PATIENT PROTECTION ACT

SECTION 1.01. Chapter 241, Health and Safety Code, is amended by adding Subchapter I to read as follows:

SUBCHAPTER I. HOSPITAL PATIENT PROTECTION

Sec. 241.251. SHORT TITLE. This subchapter may be cited as the Hospital Patient Protection Act.

Sec. 241.252. DEFINITIONS. In this subchapter:

(1) "Direct care registered nurse" means a nurse described by Section 301.651, Occupations Code.

(2) "Nurse" has the meaning assigned by Section 301.002, Occupations Code.

Sec. 241.253. HOSPITAL NURSING SERVICE REQUIRED. Each hospital shall maintain an organized nursing service. The hospital shall ensure that the nursing service:

(1) is available 24 hours each day;

(2) is adequately organized, equipped, and staffed to meet the needs of the hospital's patients; and

(3) meets the requirements of this subchapter and rules adopted by the department.

Sec. 241.254. ORGANIZATION OF NURSING SERVICE. (a) Each hospital's nursing service must be under the direction of a chief

1 nursing officer. To qualify as chief nursing officer a person must
2 be currently licensed to practice professional nursing under
3 Chapter 301, Occupations Code, and must meet the requirements under
4 rules adopted by the department and the Board of Nurse Examiners.

5 (b) The chief nursing officer shall report directly to the
6 senior manager of the hospital.

7 (c) A hospital's governing board shall adopt the following
8 written policies:

9 (1) an unconditional assurance that the chief nursing
10 officer has authority over the hospital's nursing service and is
11 responsible and accountable for the operation of the nursing
12 service;

13 (2) a complete description of the structure of the
14 hospital nursing service, including any committees or nursing
15 service units, and a designation of the person accountable for the
16 operation of each part of the nursing service;

17 (3) a clear definition of the relationship between the
18 hospital nursing service, hospital administration, hospital
19 departments, and medical staff; and

20 (4) a requirement that a committee in the hospital may
21 not consider an issue affecting nursing care unless the committee
22 includes at least one direct care registered nurse as a full
23 participating and voting member.

24 Sec. 241.255. COMPETENCY. A hospital may not assign a
25 nurse or unlicensed nursing staff member to a nursing unit or
26 clinical area unless:

27 (1) the hospital and the nurse or staff member

1 determine under written guidelines developed by the hospital that
2 the nurse or staff member is currently competent to provide care in
3 the unit or area; and

4 (2) the nurse or staff member has received training
5 with regard to the unit or area sufficient to allow the nurse or
6 staff member to provide safe, therapeutic, and competent care to
7 the patients in the unit or area.

8 Sec. 241.256. NURSE STAFFING. (a) Each hospital shall
9 have on duty at all times:

10 (1) a sufficient number of direct care registered
11 nurses to meet the requirements of this section; and

12 (2) any additional nurses and unlicensed nursing staff
13 members required under the hospital's patient classification
14 system.

15 (b) The chief nursing officer for a hospital or a person
16 designated by the chief nursing officer shall develop a written
17 nurse staffing plan for each shift in each patient care unit in the
18 hospital, based on the validated output of the hospital's patient
19 classification system. The plan shall specify the number of direct
20 care registered nurses, other nurses, and unlicensed nursing staff
21 members required to meet the needs of the patients in each patient
22 care unit.

23 (c) Each hospital's nurse staffing plan must anticipate
24 fluctuations in the number of patients in each patient care unit
25 from routine causes, including admissions, discharges, and
26 transfers. If an emergency declared by a federal, state, or local
27 government causes a sudden change in the number of patients in a

1 patient care unit, the hospital shall make an immediate and
2 diligent effort to maintain the staffing levels required by this
3 section and shall document that effort.

4 (d) The hospital may not designate the chief nursing officer
5 as a charge nurse or as a direct care registered nurse in the nurse
6 staffing plan.

7 (e) Each hospital shall develop a process by which any staff
8 member can provide feedback and make a recommendation regarding the
9 nurse staffing plan.

10 (f) A hospital may use an unlicensed nursing staff member to
11 assist with simple nursing procedures. Each unlicensed nursing
12 staff member must meet the competency requirements under Section
13 241.255. The hospital shall develop policies to define the
14 responsibilities of an unlicensed nursing staff member and to limit
15 the unlicensed nursing staff member's duties to tasks that do not
16 require a license as a nurse.

17 (g) A hospital may not permit an unlicensed nursing staff
18 member to perform any function that requires a substantial amount
19 of scientific knowledge or technical skill, including:

- 20 (1) administration of medication;
- 21 (2) venipuncture or intravenous therapy;
- 22 (3) parenteral or tube feedings;
- 23 (4) moderately complex laboratory tests;
- 24 (5) invasive procedures, including inserting
25 nasogastric tubes, inserting catheters, or tracheal suctioning;
- 26 (6) assessing a patient's condition; and
- 27 (7) educating a patient or a patient's family about the

1 patient's health care problem or post-discharge care instructions.

2 (h) A hospital may use a nurse or an unlicensed nursing
3 staff member from a temporary nursing agency only if:

4 (1) the nurse or unlicensed nursing staff member meets
5 the competency requirements under Section 241.255;

6 (2) the hospital develops and follows a written
7 procedure to train and evaluate a nurse or unlicensed nursing staff
8 member from a temporary nursing agency; and

9 (3) the hospital evaluates a nurse or unlicensed
10 nursing staff member from a temporary nursing agency at least as
11 often as it evaluates a nurse or unlicensed nursing staff member who
12 is permanently employed by the hospital.

13 (i) Each hospital shall verify and document that each nurse
14 employed permanently or temporarily by the hospital is currently
15 licensed.

16 Sec. 241.257. MINIMUM NURSE STAFFING LEVELS. (a) Each
17 hospital shall have on duty at all times at least one direct care
18 registered nurse for each:

19 (1) patient care unit in the hospital;

20 (2) operating room to serve as circulating nurse who
21 is not otherwise assisting with the surgery;

22 (3) emergency department to triage a patient when the
23 patient arrives in the emergency department;

24 (4) two patients in a critical care unit, including an
25 intensive care unit, burn center, coronary care unit, or acute
26 respiratory unit that provides care to patients who require:

27 (A) continuous monitoring;

- 1 (B) complex nursing interventions;
2 (C) direct observation by a direct care
3 registered nurse;
4 (D) intensive assessment or evaluation; or
5 (E) specialized education for the patient or the
6 patient's family or representative;
7 (5) two patients in a newborn intensive care unit;
8 (6) patient who is in active labor or has medical or
9 obstetrical complications;
10 (7) patient who is undergoing cesarean delivery or for
11 whom epidural anesthesia is being initiated;
12 (8) three antepartum patients who are not in active
13 labor;
14 (9) three mother-baby couplets in a postpartum area of
15 the perinatal service, not to exceed six patients for each direct
16 care registered nurse in the event of a multiple birth;
17 (10) four mothers on a postpartum service for a direct
18 care registered nurse assigned to mothers only;
19 (11) five well babies in a nursery;
20 (12) newborn who is undergoing resuscitation or who
21 the direct care registered nurse determines is unstable;
22 (13) four recently born infants;
23 (14) three patients on a combined labor, delivery, and
24 postpartum area of the perinatal service, consisting of one woman
25 who is not in active labor and one postpartum mother-baby couplet;
26 (15) three patients in a pediatric service unit;
27 (16) two patients in a postanesthesia recovery unit;

- 1 (17) patient who is receiving conscious sedation;
2 (18) three patients in an emergency department when
3 patients are receiving treatment;
4 (19) two patients in an emergency department who are
5 eligible for admission to a critical care unit;
6 (20) trauma patient who has an injury that:
7 (A) requires a live-saving intervention; or
8 (B) poses an immediate threat to life or limb;
9 (21) three patients in a step-down unit who require:
10 (A) intermediate intensive care;
11 (B) direct monitoring by a direct care registered
12 nurse;
13 (C) multiple assessments;
14 (D) a specialized intervention, evaluation, or
15 education;
16 (E) invasive monitoring, telemetry, or
17 mechanical ventilation, but not necessarily artificial life
18 support; or
19 (F) more care than can be provided in a medical or
20 surgical care unit;
21 (22) three patients in a telemetry unit who are
22 receiving intermediate intensive care through electronic
23 monitoring and observation of cardiac electrical signals;
24 (23) four patients in a medical or surgical care unit
25 who require continuous care through direct observation and are
26 receiving 24-hour inpatient general medical care or postsurgical
27 care;

1 (24) four patients in a specialty care unit designed
2 to provide care to a specific patient population or for a specific
3 medical condition;

4 (25) four patients in a psychiatric unit;

5 (26) five patients in a rehabilitation unit designed
6 to restore an ill or injured patient to self-sufficiency or gainful
7 employment; and

8 (27) five patients in a skilled nursing facility
9 designed to provide care to a patient on a long-term basis after
10 being discharged from another hospital unit.

11 (b) Each hospital shall ensure that at least two direct care
12 registered nurses are physically present in an emergency department
13 at all times when a patient is present.

14 (c) A hospital may not at any time make any direct care
15 registered nurse responsible for the care of a greater number of
16 patients than the number specified in Subsection (a). A hospital
17 may not average the number of patients and direct care registered
18 nurses to determine compliance with Subsection (a).

19 (d) A hospital shall assign a patient to a unit or service
20 based only on the health care needs of the patient and not to affect
21 compliance with this section.

22 (e) The staffing requirements of this section apply to a
23 unit or service of a hospital that provides services similar or
24 identical to the services customarily provided by a unit or service
25 specifically named in this section, regardless of the name given to
26 the unit or service by the hospital.

27 Sec. 241.258. REQUIRED POSTING OF STAFFING PLAN;

1 RECORDS. (a) A hospital shall ensure that the following
2 information from the nurse staffing plan is posted for public view
3 at the beginning of each shift in each patient care unit:

4 (1) the nurse staffing requirement for the unit as
5 determined by the patient classification system;

6 (2) the actual nurse staffing provided on the unit;
7 and

8 (3) any variance between the nurse staffing required
9 by the patient classification system and the actual nurse staffing
10 provided on the unit.

11 (b) A hospital shall maintain a record of each direct care
12 registered nurse and licensed vocational nurse assigned to each
13 patient for each shift.

14 (c) A hospital shall:

15 (1) retain the information required to be posted under
16 Subsection (a) for a period of two years; and

17 (2) permanently retain the information required to be
18 maintained under Subsection (b).

19 Sec. 241.259. HOSPITAL PATIENT CLASSIFICATION
20 SYSTEM. (a) Each hospital shall develop and use a patient
21 classification system to determine the number of nurses and
22 unlicensed nursing staff members required for each shift in each
23 patient care unit in the hospital. The patient classification
24 system shall consider:

25 (1) the nursing care requirements of each patient in
26 the unit, based on an assessment by the patient's direct care
27 registered nurse of:

1 (A) the severity of the patient's illness or
2 injury, including any secondary diagnosis;

3 (B) the patient's need for any specialized
4 equipment or technology;

5 (C) the complexity of the clinical judgment
6 required to assess, plan, implement, and evaluate the care plan for
7 the patient;

8 (D) the patient's ability for self-care,
9 including any motor, sensory, or cognitive deficit;

10 (E) the need for patient advocacy services
11 provided by a direct care registered nurse; and

12 (F) the type of license required by the staff who
13 will care for the patient;

14 (2) the patient care delivery system in the hospital;

15 (3) the physical layout of the nursing unit;

16 (4) generally accepted standards of nursing practice;

17 (5) unique characteristics of the hospital's patient
18 population; and

19 (6) the ability of the direct care registered nursing
20 staff to effectively provide assessment, nursing diagnosis,
21 planning, and intervention to each patient.

22 (b) A hospital may not consider any fiscal or budget issue
23 in developing and implementing the patient classification system.

24 (c) The patient classification system must include a method
25 to validate the amount of nursing care needed for each category of
26 patient.

27 (d) The hospital shall develop a mechanism to test the

1 accuracy of the validation method in Subsection (c). This mechanism
2 must address the amount of nursing care needed by patient category
3 and by pattern of care delivery. The hospital shall test the
4 accuracy of the validation method at least annually, and more
5 frequently when warranted by changes in the patient population,
6 skill mix of the staff, or patient care delivery model.

7 (e) The patient classification system must be fully
8 transparent. The hospital shall submit the following information
9 to the department:

10 (1) the methodology used by the system to predict
11 nurse staffing requirements;

12 (2) each factor, assumption, and value used in the
13 methodology;

14 (3) an explanation of the scientific and empirical
15 basis for each assumption and value used in the methodology; and

16 (4) a report by a committee of direct care registered
17 nurses who work in units covered by the system on the adequacy and
18 accuracy of the information submitted by the hospital under this
19 section.

20 (f) The committee under Subsection (e)(4) shall be
21 appointed by:

22 (1) the chief nursing officer, if direct care
23 registered nurses in the hospital are not represented under a
24 collective bargaining agreement; or

25 (2) the collective bargaining agent, if direct care
26 registered nurses in the hospital are represented under a
27 collective bargaining agreement.

1 (g) The information required under Subsection (e) must be
2 accompanied by a statement by a representative of the hospital that
3 the information submitted by the hospital completely and accurately
4 reflects the implementation of a valid patient classification
5 system used to determine nurse staffing for each shift in each
6 patient care unit in the hospital. The statement must be
7 acknowledged under oath and contain an express acknowledgement that
8 a false statement constitutes fraud and a violation of Section
9 37.10, Penal Code.

10 (h) The department shall make the information submitted
11 under Subsection (e) available to the public.

12 (i) A hospital may not use any methodology, technology,
13 system, device, or computer hardware or software to determine nurse
14 staffing requirements that:

15 (1) considers any factor other than individual patient
16 need;

17 (2) employs any method or uses any information to
18 determine a patient's health care requirements other than an
19 assessment performed by the patient's direct care registered nurse;

20 (3) purports to be proprietary; or

21 (4) restricts the complete transparency and
22 disclosure of each operational element, methodology, formula,
23 assumption, and value used by the system.

24 (j) Each hospital shall develop a process by which any
25 interested staff member can provide feedback and make a
26 recommendation regarding the patient classification system.

27 Sec. 241.260. REVIEW OF PATIENT CLASSIFICATION

1 SYSTEM. (a) Each hospital shall submit its patient
2 classification system to an annual review to determine whether the
3 system accurately measures the health care needs of individual
4 patients and predicts direct care registered nurse staffing
5 requirements.

6 (b) The review shall be conducted by a committee, at least
7 half of the members of which are direct care registered nurses who
8 provide patient care in the units covered by the system. The chief
9 nursing officer of the hospital shall appoint the members of the
10 committee, except that if the direct care registered nurses in the
11 hospital are represented under a collective bargaining agreement,
12 the authorized collective bargaining agent shall appoint the direct
13 care registered nurse members of the committee.

14 (c) The committee shall report its findings to the hospital.
15 If the committee cannot agree on its findings, then the findings of
16 a majority of the direct care registered nurse members of the
17 committee shall be the committee's findings.

18 (d) The hospital shall implement any change to the patient
19 classification system recommended by the committee to improve the
20 accuracy of the system in measuring patient care needs not later
21 than the 30th day after the date the hospital receives the
22 recommendation.

23 Sec. 241.261. UNIFORM STATEWIDE PATIENT CLASSIFICATION
24 SYSTEM. The executive commissioner of the Health and Human
25 Services Commission and the Board of Nurse Examiners shall jointly
26 adopt rules implementing a uniform patient classification system
27 that meets the requirements for a hospital patient classification

1 system under Section 241.259 for use by each hospital in this state.

2 Sec. 241.262. UNIFORM STATEWIDE PATIENT CLASSIFICATION
3 SYSTEM ADVISORY COMMITTEE. (a) In this section, "committee"
4 means the Uniform Statewide Patient Classification System Advisory
5 Committee.

6 (b) The committee consists of 35 members appointed jointly
7 by the department and the Board of Nurse Examiners. At least 18
8 members of the committee must be direct care registered nurses. The
9 committee shall include technical and scientific experts who are
10 capable of providing advice on the technical design and
11 implementation of a patient classification system.

12 (c) A person is not eligible to serve on the committee if the
13 person has an interest in the development, marketing, or purchasing
14 of a private patient classification system product. A person who is
15 nominated to be a member of the committee shall file with the
16 department a sworn statement disclosing any interest the person has
17 in a private patient classification system product.

18 (d) The committee shall advise the department on the design
19 and implementation of a uniform patient classification system for
20 use by each hospital in this state. Not later than the first
21 anniversary of its initial meeting, the committee shall submit a
22 report to the department and the Board of Nurse Examiners with
23 recommended standards for a patient classification system for use
24 by each hospital in this state. The report must be sufficiently
25 detailed to allow the department to review and implement the
26 recommended standards. The department shall make the report
27 available to the public.

1 (e) Chapter 2110, Government Code, does not apply to the
2 size or composition of the committee.

3 (f) This section expires September 1, 2010.

4 SECTION 1.02. Sections 241.256(a)-(d), 241.257, 241.258,
5 241.259, and 241.260, Health and Safety Code, as added by this Act,
6 do not apply to a facility designated as a critical access hospital
7 by the United States Department of Health and Human Services before
8 March 1, 2009.

9 SECTION 1.03. The executive commissioner of the Health and
10 Human Services Commission and the Board of Nurse Examiners shall
11 jointly adopt rules under Section 241.261, Health and Safety Code,
12 as added by this Act, not later than March 1, 2009.

13 ARTICLE 2. OTHER AMENDMENTS TO HEALTH AND SAFETY CODE

14 SECTION 2.01. Section 161.0315, Health and Safety Code, is
15 amended by adding Subsection (b-1) to read as follows:

16 (b-1) A medical peer review committee or medical committee
17 may not conduct peer review of a direct care registered nurse or
18 evaluate the license, employment, or practice of a direct care
19 registered nurse, as that term is defined by Section 241.252.

20 SECTION 2.02. Section 241.026, Health and Safety Code, is
21 amended by amending Subsections (a) and (c) and adding Subsection
22 (g) to read as follows:

23 (a) The board shall adopt and enforce rules to further the
24 purposes of this chapter. The rules at a minimum shall address:

25 (1) minimum requirements for staffing by physicians
26 [~~and nurses~~];

27 (2) hospital services relating to patient care;

1 (3) fire prevention, safety, and sanitation
2 requirements in hospitals;

3 (4) patient care and a patient bill of rights;

4 (5) compliance with other state and federal laws
5 affecting the health, safety, and rights of hospital patients;
6 ~~[and]~~

7 (6) implementation and enforcement of the minimum
8 requirements for staffing by nurses under Section 241.257; and

9 (7) implementation and enforcement of the minimum
10 standards for competent practice by a nurse or unlicensed nursing
11 staff member under Section 241.255 ~~[compliance with nursing peer~~
12 ~~review under Subchapter I, Chapter 301, and Chapter 303,~~
13 ~~Occupations Code, and the rules of the Board of Nurse Examiners~~
14 ~~relating to peer review].~~

15 (c) Except as provided by Subsection (g), on ~~[Upon]~~ the
16 recommendation of the hospital licensing director and the council,
17 the board by order may waive or modify the requirement of a
18 particular provision of this Act or minimum standard adopted by
19 board rule under this section to a particular general or special
20 hospital if the board determines that the waiver or modification
21 will facilitate the creation or operation of the hospital and that
22 the waiver or modification is in the best interests of the
23 individuals served or to be served by the hospital.

24 (g) The board may not waive or modify the requirements of
25 Section 241.257 unless the board makes express written findings,
26 supported by a written record and issued after public notice and a
27 reasonable opportunity for public comment, that the waiver:

1 (1) will not jeopardize the health, safety, and
2 well-being of patients affected by the waiver; and

3 (2) is needed to increase the operational efficiency
4 of the hospital.

5 SECTION 2.03. Section 241.051(a), Health and Safety Code,
6 is amended to read as follows:

7 (a) The department may make any inspection, survey, or
8 investigation that it considers necessary. A representative of the
9 department may enter the premises of a hospital at any [~~reasonable~~
10 time, with or without advance notice, to make an inspection, a
11 survey, or an investigation to assure compliance with or prevent a
12 violation of this chapter, the rules adopted under this chapter, an
13 order or special order of the commissioner of health, a special
14 license provision, a court order granting injunctive relief, or
15 other enforcement procedures. The department shall maintain the
16 confidentiality of hospital records as applicable under state or
17 federal law.

18 SECTION 2.04. Section 241.052, Health and Safety Code, is
19 amended to read as follows:

20 Sec. 241.052. COMPLIANCE WITH RULES AND STANDARDS. (a) A
21 hospital that is in operation when an applicable rule or minimum
22 standard is adopted under this chapter must be given a reasonable
23 amount of additional time [period] within which to comply with the
24 rule or standard if the hospital applies to the department for a
25 waiver of the immediate application of the rule and the department
26 determines that good cause exists to delay the application of the
27 rule to the hospital.

1 (b) The period for compliance may not exceed six months,
2 except that the department may extend the period for compliance in
3 30-day increments up to an additional [~~beyond~~] six months if the
4 hospital sufficiently shows the department that it requires
5 additional time to complete compliance with the rule or standard
6 due to a circumstance beyond the hospital's control. The board may
7 not extend the period for compliance with Section 241.257 beyond
8 six months.

9 SECTION 2.05. Section 241.055, Health and Safety Code, is
10 amended by amending Subsections (b) and (c) and by adding
11 Subsections (b-1), (b-2), and (e) to read as follows:

12 (b) A hospital that violates Chapter 301, Occupations Code,
13 Subsection (a) of this section, another provision of this chapter,
14 or a rule adopted or enforced under this chapter is liable for a
15 civil penalty of not more than \$25,000 [~~\$1,000~~] for each day of
16 violation and for each act of violation. A hospital that violates
17 this chapter or a rule or order adopted under this chapter relating
18 to the provision of mental health, chemical dependency, or
19 rehabilitation services is liable for a civil penalty of not more
20 than \$25,000 for each day of violation and for each act of
21 violation.

22 (b-1) A hospital that violates Subchapter I is liable for a
23 civil penalty of not more than \$25,000 for each act of violation of
24 that subchapter. The hospital is liable for an additional \$10,000
25 for each shift in each patient care unit that has staffing levels in
26 violation of Sections 241.256 and 241.257.

27 (b-2) A hospital that interferes with a nurse's duty and

1 right of patient advocacy under Section 301.355, Occupations Code,
2 is liable for a civil penalty of not more than \$25,000 for each act
3 of violation.

4 (c) In determining the amount of the penalty, the district
5 court shall consider:

6 (1) the hospital's degree of culpability and history
7 of prior offenses [~~previous violations~~];

8 (2) the seriousness of the violation, including the
9 nature, circumstances, extent, and gravity of the violation;

10 (3) whether the health and safety of the public was
11 threatened by the violation;

12 (4) any actual harm or injury caused or threatened by
13 the violation, including any exposure of licensed personnel to:

14 (A) a breach of professional responsibility;

15 (B) potential license suspension or revocation;

16 or

17 (C) malpractice liability; [~~the demonstrated~~
18 ~~good faith of the hospital, and]~~

19 (5) the amount necessary to deter future violations;

20 (6) the effort and expense incurred by a person
21 presenting, providing essential information for, or assisting in
22 the presentation of the claim; and

23 (7) any other matter that justice may require.

24 (e) The court may order any additional remedy, sanction, or
25 corrective action that the court finds is necessary to remedy the
26 violation and prevent future violations.

27 SECTION 2.06. Section 241.056, Health and Safety Code, is

1 amended by amending Subsection (a) and adding Subsection (a-1) to
2 read as follows:

3 (a) A person who is harmed by a violation under Section
4 241.028 or 241.055 or Subchapter I, and a person exposed to a risk
5 of harm by a violation of Subchapter I, may petition a district
6 court for appropriate injunctive relief.

7 (a-1) In addition, a nurse or other person who is harmed or
8 exposed to a risk of harm by a violation of Subchapter I may file a
9 suit to recover:

10 (1) the greater of:

11 (A) the actual damages incurred by the person,
12 including damages for mental anguish, regardless of whether other
13 injury is shown; or

14 (B) \$25,000 per violation;

15 (2) exemplary damages;

16 (3) court costs; and

17 (4) reasonable attorney's fees.

18 SECTION 2.07. Section 241.059(a), Health and Safety Code,
19 is amended to read as follows:

20 (a) The commissioner of health may assess an administrative
21 penalty against a hospital that violates this chapter, a rule
22 adopted pursuant to this chapter, a special license provision, an
23 order or emergency order issued by the commissioner or the
24 commissioner's designee, or another enforcement procedure
25 permitted under this chapter. The commissioner shall assess an
26 administrative penalty against a hospital that violates Section
27 166.004. The penalty under this section may be assessed in addition

1 to any penalty assessed under Section 241.055.

2 SECTION 2.08. The executive commissioner of the Health and
3 Human Services Commission shall adopt rules required under Section
4 241.026(a), Health and Safety Code, as added by this Act, not later
5 than December 1, 2007.

6 ARTICLE 3. DIRECT CARE REGISTERED NURSES

7 SECTION 3.01. Chapter 301, Occupations Code, is amended by
8 adding Subchapter N to read as follows:

9 SUBCHAPTER N. DIRECT CARE REGISTERED NURSE

10 Sec. 301.651. DIRECT CARE REGISTERED NURSE. (a) A person is
11 a direct care registered nurse if the person:

12 (1) is currently licensed to practice professional
13 nursing under this chapter;

14 (2) has documented clinical competence under Section
15 241.255, Health and Safety Code; and

16 (3) accepts a direct, hands-on patient care
17 assignment.

18 (b) A manager or supervisor is not a direct care registered
19 nurse.

20 Sec. 301.652. PRACTICE BY DIRECT CARE REGISTERED NURSE. (a)
21 A direct care registered nurse shall:

22 (1) employ scientific knowledge and experience in the
23 physical, social, and biological sciences;

24 (2) exercise independent judgment in applying the
25 nursing process; and

26 (3) directly provide:

27 (A) continuous assessment of each patient's

1 condition based on the direct care registered nurse's independent
2 professional judgment;

3 (B) planning, clinical supervision,
4 implementation, and evaluation of the nursing care provided to each
5 patient, or assign these tasks under the guidelines prescribed by
6 Subsection (b); and

7 (C) assessment, planning, implementation, and
8 evaluation of patient education, including discharge instructions
9 for each patient, or personally assign these tasks to another nurse
10 or to an unlicensed nursing staff member.

11 (b) A direct care registered nurse may assign the
12 implementation of nursing care to another licensed nurse or to an
13 unlicensed nursing staff member if:

14 (1) the direct care registered nurse does not assign a
15 task to a person who is not licensed to perform the task;

16 (2) the person to whom the task is assigned is prepared
17 to and capable of competently performing the task;

18 (3) the assignment of the task is not prohibited by
19 law; and

20 (4) the direct care registered nurse is able to
21 effectively supervise the nursing care provided by the person
22 assigned the task.

23 (c) A direct care registered nurse shall initiate the
24 planning and delivery of patient care at the time a patient is
25 admitted. The direct care registered nurse shall ensure that the
26 planning and delivery of patient care reflects all elements of the
27 nursing process, including assessment, planning, intervention,

1 evaluation, and patient advocacy.

2 (d) A direct care registered nurse shall develop a nursing
3 care plan for each patient through coordination with the patient,
4 the patient's family, or the patient's representative, as
5 appropriate, and other health care professionals involved in the
6 care of the patient.

7 (e) A direct care registered nurse shall evaluate the
8 effectiveness of each patient's nursing care plan through
9 communication with the patient and other health care professionals
10 and through assessment of the patient's physical condition,
11 behavior, signs and symptoms of illness, and reactions to
12 treatment. The direct care registered nurse shall modify the
13 nursing care plan when necessary.

14 (f) A direct care registered nurse may not engage in the
15 practice known as "charting by exception." The direct care
16 registered nurse shall permanently record in each patient's medical
17 record information about:

- 18 (1) the nursing diagnosis;
- 19 (2) the nursing plan;
- 20 (3) interventions made by the nurse;
- 21 (4) patient advocacy undertaken by the nurse;
- 22 (5) evaluations of the patient made by the nurse;
- 23 (6) the patient's initial assessment;
- 24 (7) reassessments of the patient;
- 25 (8) the patient's condition;
- 26 (9) observations of the patient; and
- 27 (10) data about the patient's care.

1 Sec. 301.653. PATIENT ASSESSMENT. (a) A nurse may not
2 perform patient assessment unless the nurse is a direct care
3 registered nurse. A nurse, other than a direct care registered
4 nurse, or an unlicensed nursing staff member may assist a direct
5 care registered nurse with data collection.

6 (b) Patient assessment includes:

7 (1) direct observation of the patient's:

8 (A) signs and symptoms of illness;

9 (B) reaction to treatment;

10 (C) behavior; and

11 (D) physical condition;

12 (2) interpretation of information obtained from the
13 patient and others, including other health care professionals; and

14 (3) collection, analysis, synthesis, and evaluation
15 of data about a patient.

16 Sec. 301.654. INDEPENDENT JUDGMENT. (a) A direct care
17 registered nurse shall exercise independent judgment in the best
18 interest of the patient.

19 (b) A direct care registered nurse may not allow a
20 commercial or revenue generation motive of the hospital or of a
21 person employing the direct care registered nurse to encumber the
22 independent judgment of the direct care registered nurse.

23 Sec. 301.655. CLINICAL SUPERVISION. (a) A direct care
24 registered nurse who assigns a nursing care task to another nurse or
25 to an unlicensed nursing staff member shall:

26 (1) ensure that the person to be assigned the task
27 possesses the necessary training, experience, and capability to

1 competently and safely perform the task to be assigned; and

2 (2) effectively supervise the clinical functions and
3 nursing care tasks performed by the person assigned the task.

4 (b) A direct care registered nurse shall provide clinical
5 supervision in the best interest of the patient and may not allow a
6 commercial or revenue generation motive of the hospital or a person
7 employing the direct care registered nurse to encumber the
8 performance of clinical supervision by the direct care registered
9 nurse.

10 Sec. 301.656. PATIENT CARE ASSIGNMENTS. (a) A direct
11 care registered nurse is always responsible for providing safe,
12 therapeutic, and competent nursing care to each patient assigned to
13 the direct care registered nurse.

14 (b) A direct care registered nurse may not accept a patient
15 assignment unless the direct care registered nurse reasonably
16 believes the direct care registered nurse has the knowledge,
17 judgment, skills, and ability necessary to provide the care
18 required by the patient. A direct care registered nurse may not
19 accept a patient in any clinical unit or with any diagnosis,
20 condition, prognosis, or other determinative characteristic of
21 nursing care for which the direct care registered nurse does not
22 reasonably believe the direct care registered nurse can provide
23 clinically competent nursing care.

24 (c) The refusal by a direct care registered nurse to accept
25 a patient care assignment under this section is an exercise of the
26 duty and right of patient advocacy under Section 301.355 and is
27 entitled to the protections provided by Section 301.356.

1 Sec. 301.657. ACCEPTANCE OF ORDERS. (a) Before
2 implementation, a direct care registered nurse must review each
3 order for patient care services, including an order for the
4 administration of medication, a therapeutic agent, treatment,
5 disease prevention, or rehabilitative regimen, to determine if the
6 order is:

7 (1) in the best interest of the patient;

8 (2) initiated by a person legally authorized to issue
9 the order; and

10 (3) in accordance with the law.

11 (b) If a direct care registered nurse determines that an
12 order does not meet the requirements of Subsection (a) or has doubt
13 regarding the meaning of the order or the conformance of the order
14 with the requirements of Subsection (a), the direct care registered
15 nurse shall seek clarification from the person who initiated the
16 order, the patient's physician, or another appropriate health care
17 professional. The direct care registered nurse may not implement
18 the order until the direct care registered nurse has obtained
19 clarification sufficient to determine that the order meets the
20 requirements of Subsection (a).

21 (c) If, after receiving clarification of an order under
22 Subsection (b), a direct care registered nurse continues to believe
23 that the requirements for implementation of the order under
24 Subsection (a) have not been satisfied, the direct care registered
25 nurse may refuse to implement the order on the basis that the order
26 is not in the best interest of the patient.

27 (d) A direct care registered nurse who seeks clarification

1 of an order under Subsection (b) or refuses to implement an order
2 under Subsection (c) is exercising the duty and right of patient
3 advocacy under Section 301.355 and is entitled to the protections
4 provided by Section 301.356.

5 Sec. 301.658. WHISTLE-BLOWER PROTECTION. (a) A direct
6 care registered nurse may report to the hospital, an outside
7 authority, or the public an action, policy, or condition created by
8 a hospital or other person in the health care industry that the
9 direct care registered nurse believes:

- 10 (1) violates the law;
11 (2) breaches professional ethics;
12 (3) impedes competent and safe nursing practice or
13 patient care;
14 (4) contributes to an adverse patient outcome or
15 incident;
16 (5) contributes to a sentinel or reportable event;
17 (6) is an issue that must be reported to satisfy the
18 direct care registered nurse's duty and right of patient advocacy
19 under Section 301.355; or
20 (7) is a valid argument in support of or against a
21 hospital policy or practice relating to the delivery of nursing
22 care.

23 (b) A person may not take an adverse personnel action or
24 discriminate against a direct care registered nurse who makes a
25 report authorized under Subsection (a).

26 (c) A direct care registered nurse who makes a report
27 authorized under Subsection (a) is exercising the duty and right of

1 patient advocacy under Section 301.355 and is entitled to the
2 protections provided by Section 301.356.

3 (d) This section does not authorize the disclosure of
4 confidential patient information, unless the disclosure is:

5 (1) consented to by the patient;

6 (2) required by law; or

7 (3) provided in confidence to a government,
8 regulatory, or accreditation agency as part of a complaint or
9 investigation.

10 Sec. 301.659. COLLECTIVE PATIENT ADVOCACY. (a) Direct
11 care registered nurses may work collectively to exercise the duty
12 and right of patient advocacy.

13 (b) In collectively exercising the duty and right of patient
14 advocacy, direct care registered nurses have the right to:

15 (1) self-organize;

16 (2) seek representation to engage in collective
17 bargaining with their hospital employer;

18 (3) seek any form of mutual aid or protection; and

19 (4) form, join, or participate in:

20 (A) an independent hospital-based professional
21 practice committee;

22 (B) a general or specialty registered nursing
23 professional association;

24 (C) a patient advocacy organization; or

25 (D) a labor organization.

26 (c) A direct care registered nurse who engages in patient
27 advocacy collectively with other direct care registered nurses is

1 exercising the duty and right of patient advocacy under Section
2 301.355 and is entitled to the protections provided by Section
3 301.356.

4 ARTICLE 4. OTHER AMENDMENTS TO OCCUPATIONS CODE

5 SECTION 4.01. Section 301.352, Occupations Code, is amended
6 by amending Subsections (a), (b), and (e) to read as follows:

7 (a) A person may not suspend, terminate, take an adverse
8 personnel action against, or otherwise discipline or discriminate
9 against a nurse who refuses to engage in an act or omission relating
10 to patient care if the nurse reasonably believes the act or omission
11 would:

12 (1) be harmful to the patient;

13 (2) not be in the best interest of the patient;

14 (3) constitute grounds for reporting the hospital to
15 the Department of State Health Services under Section 301.402; or

16 (4) violate any provision of [~~that would constitute~~
17 ~~grounds for reporting the nurse to the board under Subchapter I,~~
18 ~~that constitutes a minor incident, or that violates]~~ this chapter
19 or a board rule [~~if the nurse notifies the person at the time of the~~
20 ~~refusal that the reason for refusing is that the act or omission:~~

21 [~~(1) constitutes grounds for reporting the nurse to~~
22 ~~the board, or~~

23 [~~(2) is a violation of this chapter or a rule of the~~
24 ~~board].~~

25 (b) Subsection (a) applies only if the nurse notifies the
26 person of the reason for refusing to engage in the act or omission
27 at the time of the refusal [~~An act by a person under Subsection (a)~~

1 ~~does not constitute a violation of this section if a nursing peer~~
2 ~~review committee under Chapter 303 determines:~~

3 ~~[(1) that the act or omission the nurse refused to~~
4 ~~engage in was:~~

5 ~~[(A) not conduct reportable to the board under~~
6 ~~Section 301.403,~~

7 ~~[(B) a minor incident, or~~

8 ~~[(C) a violation of this chapter or a board rule,~~

9 ~~or~~

10 ~~[(2) that:~~

11 ~~[(A) the act or omission in which the nurse~~
12 ~~refused to engage was conduct reportable to the board, a minor~~
13 ~~incident, or a violation of this chapter or a board rule, and~~

14 ~~[(B) the person:~~

15 ~~[(i) rescinds any disciplinary or~~
16 ~~discriminatory action taken against the nurse,~~

17 ~~[(ii) compensates the nurse for lost wages,~~

18 ~~and~~

19 ~~[(iii) restores to the nurse any lost~~
20 ~~benefits].~~

21 (e) A nurse who refuses to engage in an act or omission under
22 this section is exercising the duty and right of patient advocacy
23 under Section 301.355 and is entitled to the protections provided
24 by Section 301.356 ~~[In this section, "minor incident" has the~~
25 ~~meaning assigned by Section 301.419].~~

26 SECTION 4.02. Subchapter H, Chapter 301, Occupations Code,
27 is amended by adding Section 301.355 to read as follows:

1 Sec. 301.355. DUTY AND RIGHT OF PATIENT ADVOCACY. (a) A
2 nurse has the duty and the right to act as an advocate for each
3 patient assigned to the nurse.

4 (b) As circumstances require, a nurse shall:

5 (1) take action to improve the care provided to the
6 patient;

7 (2) try to change a decision or action that is not in
8 the best interest of the patient; and

9 (3) give the patient the opportunity to make an
10 informed decision about the care to be provided to the patient.

11 SECTION 4.03. Subchapter H, Chapter 301, Occupations Code,
12 is amended by adding Section 301.356 to read as follows:

13 Sec. 301.356. CAUSE OF ACTION FOR INTERFERENCE WITH PATIENT
14 ADVOCACY. (a) A person may not take an adverse personnel action or
15 discriminate against a nurse who exercises the duty and right of
16 patient advocacy under Section 301.355.

17 (b) A nurse may bring a cause of action against a person who
18 violates Subsection (a) to recover:

19 (1) the greater of:

20 (A) the actual damages incurred by the nurse,
21 including damages for mental anguish regardless of whether other
22 injury is shown; or

23 (B) \$10,000;

24 (2) exemplary damages;

25 (3) court costs; and

26 (4) reasonable attorney's fees.

27 (c) In addition to the amount recovered under Subsection

1 (b), a nurse whose employment is suspended or terminated in
2 violation of Subsection (a) is entitled to:

3 (1) reinstatement in the nurse's former position, or
4 severance pay in an amount equal to three months of the nurse's most
5 recent salary; and

6 (2) compensation for wages lost during the period of
7 suspension or termination.

8 (d) A nurse who brings an action under this section has the
9 burden of proving that:

10 (1) the nurse engaged in an act or omission that
11 constituted an exercise of the duty and right of patient advocacy;
12 and

13 (2) the nurse's exercise of the duty and right of
14 patient advocacy was a substantial factor in the person's decision
15 to take an adverse personnel action or discriminate against the
16 nurse.

17 (e) There is a rebuttable presumption that a nurse's
18 exercise of the duty and right of patient advocacy was a substantial
19 factor in a person's decision to take an adverse personnel action or
20 discriminate against the nurse if the person took the adverse
21 personnel action or discriminated against the nurse on or before
22 the 60th day after the date the nurse engaged in the act or omission
23 constituting an exercise of the duty and right of patient advocacy.

24 (f) An action under this section may be brought in the
25 district court of the county in which:

26 (1) the plaintiff resides;

27 (2) the plaintiff was employed by the defendant; or

1 (3) any defendant conducts business.

2 SECTION 4.04. Subchapter H, Chapter 301, Occupations Code,
3 is amended by adding Section 301.357 to read as follows:

4 Sec. 301.357. FIDUCIARY DUTY. (a) A nurse owes a fiduciary
5 duty to each patient assigned to the nurse to act exclusively in the
6 best interest of the patient. A nurse may not be influenced in the
7 provision of nursing care to the patient by:

8 (1) the nurse's own interests;

9 (2) the interests of any third party;

10 (3) the directives of any interested third party; or

11 (4) any motive other than the nurse's responsibility
12 to provide safe and competent nursing care in the best interest and
13 for the benefit of the patient.

14 (b) A nurse may refuse to engage in conduct that violates
15 the nurse's fiduciary duty to a patient. A nurse who refuses to
16 engage in conduct that violates the fiduciary duty owed to a patient
17 is exercising the duty and right of patient advocacy under Section
18 301.355 and is entitled to the protections provided by Section
19 301.356.

20 SECTION 4.05. Sections 301.402(b) and (d), Occupations
21 Code, are amended to read as follows:

22 (b) A nurse who provides or supervises the care of a patient
23 in a hospital shall report to the Department of State Health
24 Services [~~board~~] in the manner prescribed under Subsection (d) when
25 [~~if~~] the nurse has reasonable cause to suspect that the hospital has
26 policies or is engaging in practices that:

27 (1) interfere with the ability of a nurse to perform

1 the duties of professional nursing [~~another nurse is subject to a~~
2 ~~ground for reporting under Section 301.401~~]; [~~or~~]

3 (2) discourage a nurse through intimidation or
4 coercion from exercising the duty and right of patient advocacy
5 under Section 301.355;

6 (3) violate a standard of safe, competent, and
7 therapeutic nursing care established by law; or

8 (4) expose a patient to a substantial risk of harm [~~the~~
9 ~~ability of a nursing student to perform the services of the nursing~~
10 ~~profession would be, or would reasonably be expected to be,~~
11 ~~impaired by chemical dependency)].~~

12 (d) A report by a nurse under Subsection (b) must:

13 (1) be written and signed; and

14 (2) include the following information:

15 (A) the name and address of the hospital;

16 (B) the name of the most senior manager of the
17 hospital;

18 (C) the name of the chief nursing officer;

19 (D) a description of the policy or practice the
20 nurse is reporting; [~~identity of the nurse or student~~] and

21 (E) any additional information required by the
22 board.

23 SECTION 4.06. Section 301.411(a), Occupations Code, is
24 amended to read as follows:

25 (a) A nurse [~~person~~] is not liable in a civil action for
26 failure to file a report required by this subchapter.

27 SECTION 4.07. Section 301.412, Occupations Code, is amended

1 to read as follows:

2 Sec. 301.412. REPORTING IMMUNITY. A nurse [~~person~~] who[
3 ~~without malice,~~] makes a report required or authorized, or
4 reasonably believed to be required or authorized, under this
5 subchapter and a person who provides records, information, or
6 assistance to the nurse making the report:

7 (1) is immune from civil liability based on:

8 (A) the act of making the report; and

9 (B) the contents of the report; and

10 (2) may not be subjected to other retaliatory action
11 as a result of making the report.

12 SECTION 4.08. Section 301.413, Occupations Code, is amended
13 by amending Subsections (a) through (e) and adding Subsection (b-1)
14 to read as follows:

15 (a) A person named as a defendant in a civil action or
16 subjected to other retaliatory action as a result of making
17 [~~filing~~] a report or providing records, information, or assistance
18 in support of a report required, authorized, or reasonably believed
19 to be required or authorized under this subchapter may file a
20 counterclaim in the pending action or prove a cause of action in a
21 subsequent suit to recover defense costs, including reasonable
22 attorney's fees and actual and punitive damages, if the suit or
23 retaliatory action is determined to be frivolous, unreasonable, or
24 taken in bad faith.

25 (b) A person may not suspend or terminate the employment of,
26 or otherwise discipline or discriminate against, a nurse [~~person~~]
27 who reports, without malice, under this subchapter.

1 (b-1) A nurse reports with malice under Subsection (b) if,
2 at the time the nurse makes the report, the nurse:

- 3 (1) knows the report is false; or
4 (2) has serious doubts about whether the report is
5 true.

6 (c) A nurse [~~person~~] who reports under this subchapter has a
7 cause of action against a person who violates Subsection (b), and
8 may recover:

- 9 (1) the greater of:
10 (A) actual damages, including damages for mental
11 anguish even if no other injury is shown; or
12 (B) \$1,000;
13 (2) exemplary damages;
14 (3) court costs; and
15 (4) reasonable attorney's fees.

16 (d) In addition to the amount recovered under Subsection
17 (c), a nurse [~~person~~] whose employment is suspended or terminated
18 in violation of this section is entitled to:

- 19 (1) reinstatement in the nurse's [~~employee's~~] former
20 position or severance pay in an amount equal to three months of the
21 nurse's [~~employee's~~] most recent salary; and
22 (2) compensation for wages lost during the period of
23 suspension or termination.

24 (e) A nurse [~~person~~] who brings an action under this section
25 has the burden of proof. It is a rebuttable presumption that the
26 nurse's [~~person's~~] employment was suspended or terminated for
27 reporting under this subchapter if:

1 (1) the nurse [~~person~~] was suspended or terminated
2 within 60 days after the date the report was made; and

3 (2) the board, the commissioner of the Department of
4 State Health Services, or a court determines that the report that is
5 the subject of the cause of action was[+]

6 [~~(A)~~] authorized or required under Section
7 301.402[~~, 301.403, 301.405, 301.406, 301.407, 301.408, 301.409, or~~
8 ~~301.410; and~~

9 [~~(B) made without malice~~].

10 SECTION 4.09. Section 301.452(b), Occupations Code, is
11 amended to read as follows:

12 (b) A person is subject to denial of a license or to
13 disciplinary action under this subchapter for:

14 (1) a violation of this chapter, a rule or regulation
15 not inconsistent with this chapter, or an order issued under this
16 chapter;

17 (2) fraud or deceit in procuring or attempting to
18 procure a license to practice professional nursing or vocational
19 nursing;

20 (3) a conviction for, or placement on deferred
21 adjudication community supervision or deferred disposition for, a
22 felony or for a misdemeanor involving moral turpitude;

23 (4) conduct that results in the revocation of
24 probation imposed because of conviction for a felony or for a
25 misdemeanor involving moral turpitude;

26 (5) use of a nursing license, diploma, or permit, or
27 the transcript of such a document, that has been fraudulently

1 purchased, issued, counterfeited, or materially altered;

2 (6) impersonating or acting as a proxy for another
3 person in the licensing examination required under Section 301.253
4 or 301.255;

5 (7) directly or indirectly aiding or abetting an
6 unlicensed person in connection with the unauthorized practice of
7 nursing;

8 (8) revocation, suspension, or denial of, or any other
9 action relating to, the person's license or privilege to practice
10 nursing in another jurisdiction;

11 (9) intemperate use of alcohol or drugs that the board
12 determines endangers or could endanger a patient;

13 (10) unprofessional or dishonorable conduct that, in
14 the board's opinion, is likely to deceive, defraud, or injure a
15 patient or the public;

16 (11) adjudication of mental incompetency;

17 (12) lack of fitness to practice because of a mental or
18 physical health condition that could result in injury to a patient
19 or the public; ~~or~~

20 (13) failure to care adequately for a patient or to
21 conform to the minimum standards of acceptable nursing practice in
22 a manner that, in the board's opinion, exposes a patient or other
23 person unnecessarily to risk of harm; or

24 (14) failure to take an action that is reasonable for
25 the nurse to take considering the nurse's position in the hospital
26 to correct a policy or practice in the administration of nursing
27 care in the hospital that:

1 (A) does not conform to a reasonable minimum
2 standard of nursing practice and safe patient care;
3 (B) violates a law or accreditation standard; or
4 (C) exposes a patient to a substantial risk of
5 harm.

6 SECTION 4.10. The following sections of the Occupations
7 Code are repealed:

- 8 (1) Section 301.401;
- 9 (2) Sections 301.402(a), (c), (e), and (f);
- 10 (3) Section 301.403;
- 11 (4) Section 301.404;
- 12 (5) Section 301.405;
- 13 (6) Section 301.406;
- 14 (7) Section 301.407;
- 15 (8) Section 301.408;
- 16 (9) Section 301.409;
- 17 (10) Section 301.410;
- 18 (11) Section 301.411(b);
- 19 (12) Section 301.414;
- 20 (13) Section 301.415;
- 21 (14) Section 301.416;
- 22 (15) Section 301.417;
- 23 (16) Section 301.418; and
- 24 (17) Section 301.419.

25 SECTION 4.11. Chapter 303, Occupations Code, is repealed.

26 ARTICLE 5. EFFECTIVE DATE

27 SECTION 5.01. (a) Except as provided by Subsections (b) and

1 (c) of this section, this Act takes effect September 1, 2007.

2 (b) Section 241.254, Health and Safety Code, as added by
3 this Act, takes effect January 1, 2008.

4 (c) Sections 241.256(a), 241.257, 241.258, 241.259, and
5 241.260, Health and Safety Code, as added by this Act, take effect
6 March 1, 2008.