

BILL ANALYSIS

C.S.S.B. 476
By: Nelson
Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

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

C.S.S.B. 476 requires the governing body of a hospital to 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 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 the Department of State Health Services.

C.S.S.B. 476 prohibits a hospital from requiring nurses to work mandatory overtime, except in certain emergencies such as a natural disaster, authorizes a nurse to refuse to work such overtime, and provides that such a refusal does not constitute patient abandonment or neglect. The bill prohibits a hospital from retaliating against a nurse who refuses to work mandatory overtime.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTIONS 1, 4, and 5 of this bill.

ANALYSIS

C.S.S.B. 476 amends the Health and Safety Code to require the governing body of a hospital to 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. The bill requires the policy to include a process relating to: a hospital's consideration of the nurse staffing committee's recommendations and evaluations; adopting, implementing, and enforcing a staffing plan based on patient care needs; using the official nurse services staffing plan to set the nurse staffing budget; encouraging nurse input for staffing concerns; protecting nurses from retaliation for that input; and ensuring compliance with rules adopted by the executive commissioner of the Health and Human Services Commission (HHSC). The bill specifies required components for the staffing plan relating to reflecting current professional standards, setting minimum staffing levels, including a method to adjust for each patient care unit to provide staffing flexibility, and including a contingency plan for unexpected patient care needs. The bill requires the hospital to use the official nurse staffing plan as a component in setting the nurse staffing budget and guide the hospital in assigning nurses hospital-wide, and requires the hospital to make readily available to nurses on each patient care unit, at the beginning of each shift, the official staffing plan levels and current staffing levels of that unit and that shift.

C.S.S.B. 476 requires a hospital to establish a nurse staffing committee as a standing committee of the hospital that meets at least quarterly. The bill requires the committee to be composed of members who represent the types of nursing services provided in the hospital at least 60 percent of whom are registered nurses who provide direct patient care at least 50 percent of their work time and who are selected by peers who provide direct patient care at least 50 percent of their work time. The bill establishes that the chief nursing officer of the hospital is a voting member of the committee. The bill establishes that participation on the committee by a hospital employee is part of that employee's work time, and requires the hospital to compensate the member accordingly and relieve a committee member of other work duties during committee meetings. The bill requires the committee to develop and recommend to the hospital's governing body a nurse staffing plan that meets the bill's requirements; review, assess, and respond to staffing concerns expressed to the committee; identify the nurse-sensitive outcome measures the committee will use to evaluate the effectiveness of the official staffing plan; evaluate, at least semiannually, the effectiveness of the official staffing plan and variations between the plan and actual staffing; and submit to the hospital's governing body, at least semiannually, a report on nurse staffing and patient care outcomes. The bill requires the committee, in evaluating the effectiveness of the plan, to consider patient needs, nursing-sensitive quality indicators, nurse satisfaction measures collected by the hospital, and evidence-based nurse staffing standards.

C.S.S.B. 476 requires a hospital annually to report to the Department of State Health Services (DSHS) on whether the hospital's governing body has adopted the required nurse staffing policy and established a nurse staffing committee that meets the membership requirements, whether the nurse staffing committee has evaluated the hospital's official nurse services staffing plan and provided the results of the evaluation to the hospital's governing body, and the nurse-sensitive outcome measures the committee adopted for use in evaluating the hospital's nurse staffing plan. The bill clarifies that information included in the annual report is public information and requires DSHS, to the extent possible, to collect the data required for the annual report as part of a survey required under other law.

C.S.S.B. 476 prohibits a hospital from requiring a nurse to work mandatory overtime, authorizes a nurse to refuse to work mandatory overtime, and clarifies that a nurse is not prohibited from volunteering to work overtime. The bill prohibits a hospital from using on-call time as a substitute for mandatory overtime. The bill provides an exception to the prohibition against requiring a nurse to work mandatory overtime for certain health care and natural disaster and other emergencies, and for certain ongoing medical procedures for which a nurse's continued presence is required. The bill requires a hospital to make a good faith effort to meet staffing needs through voluntary overtime, including calling per diems and agency nurses, assigning floats, or requesting an additional day of work from off-duty employees if the hospital determines that an exception to the prohibition against mandatory overtime exists. The bill prohibits a hospital from suspending, terminating, or otherwise disciplining or discriminating against a nurse who refuses to work mandatory overtime.

C.S.S.B. 476 defines "committee," "department," "hospital," "patient care unit," "nurse," "on-call time," and "mandatory overtime."

C.S.S.B. 476 amends the Occupations Code to add a nurse's refusal to engage in conduct relating to patient care that would constitute grounds for reporting the nurse to the Texas Board of Nursing to the actions for which a person may not be suspended, terminated, or otherwise disciplined in retaliation and makes related conforming changes. The bill clarifies that the refusal by a nurse to work mandatory overtime does not constitute patient abandonment or neglect. The bill sets out legislative findings and states that it is not the intent of the legislature that the executive commissioner rewrite the current rules for DSHS relating to nurse staffing except to the extent the current rules conflict with the bill's provisions.

C.S.S.B. 476 requires the executive commissioner of HHSC to adopt the rules for DSHS as

required by the bill's provisions, as soon as practicable after the effective date of the bill, but not later than January 1, 2010.

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.S.B. 476 differs from the original by omitting the requirement that the governing body of a hospital develop, in addition to adopting, implementing, and enforcing, a written nurse staffing policy, and makes related conforming changes. The substitute omits provisions in the original authorizing a cause of action to be brought against a person who violates the prohibition against the suspension, termination, or other discipline or discrimination in retaliation for a nurse's refusal to work mandatory overtime and makes related conforming changes.