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## A BILL FOR AN ACT

RELATING TO LABOR STANDARDS AT HEALTH CARE FACILITIES.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that the public health  
2 emergency caused by the coronavirus disease 2019 (COVID-19)  
3 pandemic has pushed our health care system to its breaking  
4 point. In particular nurses, nurse aides, and other health care  
5 workers who directly care for and support patients at hospitals  
6 and care homes have continued to provide high quality care  
7 despite the incredible challenges posed by the pandemic.  
8 However, the COVID-19 pandemic has also caused significant costs  
9 to our health care professionals. Although health care workers  
10 have faced high levels of stress and job turnover before the  
11 COVID-19 pandemic began, the pandemic greatly exacerbated these  
12 issues.

13           The legislature finds that improving nurse and health care  
14 worker safety and working conditions leads to better patient  
15 care. Specifically, establishing minimum staff-to-patient  
16 ratios, ensuring that health care workers have adequate break  
17 and overtime protections, and requiring hospitals to create



1 staffing plans, all of which are subject to enforcement and  
2 penalties for violations, will allow the health care system to  
3 better serve patients and our community.

4 Accordingly, the purpose of this Act is to:

- 5 (1) Establish minimum staffing standards for hospitals,  
6 care homes, and dialysis facilities;
- 7 (2) Require hospitals to create hospital staffing  
8 committees;
- 9 (3) Establish certain meal break, rest break, and overtime  
10 standards applicable to health care personnel; and
- 11 (4) Appropriate moneys to the department of labor and  
12 industrial relations to enforce these requirements.

13 SECTION 2. The Hawaii Revised Statutes is amended by  
14 adding a new chapter to be appropriately designated and to read  
15 as follows:

16 **"CHAPTER**

17 **MINIMUM STAFFING STANDARDS FOR HEALTH CARE FACILITIES**

18 **PART I. GENERAL PROVISIONS**

19 **§ -1 Definitions.** As used in this chapter, unless the  
20 context otherwise requires:

21 "Care home" includes:



- 1 (1) Nursing homes as defined in section 457B-2;
- 2 (2) Skilled nursing facilities and intermediate care
- 3 facilities as referenced in section 321-11(10); and
- 4 (3) Hospice homes, as defined in 321-15.1.

5 "Department" means the department of labor and industrial  
6 relations.

7 "Dialysis facility" means a facility that provides services  
8 for the treatment of irreversible kidney failure involving the  
9 removal of waste from a patient's blood by hemodialysis or  
10 peritoneal dialysis.

11 "Director" means the director of labor and industrial  
12 relations.

13 "Health care facility" means a hospital, care home, or  
14 dialysis facility.

15 "Hospital" means a hospital regulated by the department of  
16 health under sections 321-11(10) and 321-14.5.

17 "Nurse aide" means a nurse aide, as defined in  
18 section 457A-1.5, who provides direct care to patients.

19 "Dialysis nurse" means a nurse who monitors a patient  
20 throughout their dialysis treatment and reports any changes to  
21 the patient's medical team.



1 "Dialysis technician" means a technician who works with a  
2 dialysis nurse during a patient's dialysis treatment and who  
3 helps to monitor the patient and dialysis equipment.

4 "Health care personnel" includes registered nurses, nurse  
5 aides, respiratory therapists, dialysis technicians, and  
6 dialysis nurses to whom minimum staffing levels apply pursuant  
7 to section -11.

8 "Hospital staffing committee" means the committee  
9 established by a hospital under section -21.

10 "Intensity" means the level of patient need for nursing  
11 care, as determined by a nursing assessment.

12 "Nursing and ancillary health care personnel" means a  
13 person who is providing direct care or supportive services to  
14 patients but is not a physician licensed under chapter 453; a  
15 physician assistant licensed under chapter 453; or an advanced  
16 practice registered nurse licensed under chapter 457, unless  
17 working as a registered nurse who provides direct care to  
18 patients.

19 "Patient care unit" means any unit or area of the health  
20 care facility that provides patient care.



1 "Reasonable efforts" means that the health care facility  
2 exhausts and documents all of the following but is unable to  
3 obtain staffing coverage:

4 (1) Seeks individuals to volunteer to work extra time from  
5 all available qualified staff who are working;

6 (2) Contracts qualified employees who have made themselves  
7 available to work extra time;

8 (3) Seeks the use of per diem staff; and

9 (4) Seeks personnel from a contracted temporary agency:

10 (A) To the extent this staffing is permitted by law  
11 or an applicable collective bargaining agreement;  
12 and

13 (B) When the health care facility regularly uses a  
14 contracted temporary agency.

15 "Registered nurse" means a "nurse", as defined in  
16 section 457-2, who provides direct care to patients.

17 "Respiratory therapist" means a "licensed respiratory  
18 therapist" as defined in section 466D-1 who provides direct care  
19 to patients.

20 "Skill mix" means the experience of, and number and  
21 relative percentages of, nursing and ancillary health personnel.



- 1 "Unforeseeable emergent circumstances" means:
- 2 (1) Any unforeseen national, state, or county emergency;
- 3 or
- 4 (2) When a health care facility's disaster plan is
- 5 activated.

6 § -2 **Rules.** The department shall adopt rules pursuant

7 to chapter 91 to effectuate the purposes of this chapter.

8 **PART II. MINIMUM STAFFING STANDARDS**

9 § -11 **Minimum staffing standards.** (a) A health care

10 facility shall comply with the minimum staffing standards

11 established in this section.

12 (b) Health care personnel shall not be assigned more

13 patients than the following for any shift:

- 14 (1) For an emergency department:
- 15 (A) One registered nurse to three non-trauma or
- 16 non-critical care patients, or one registered
- 17 nurse to one trauma or critical care patient; and
- 18 (B) One nurse aide to eight patients;
- 19 (2) For an intensive care unit, such as a critical care
- 20 unit, special care unit, coronary care unit, pediatric



- 1 intensive care, neonatal intensive care, neurological  
2 critical care unit, or burn unit:
- 3 (A) One registered nurse to two patients or one  
4 registered nurse to one patient, depending on the  
5 stability of the patient as assessed by the  
6 registered nurse on the unit; and
- 7 (B) One nurse aide to eight patients;
- 8 (3) For a cardiac unit: One nurse aide to four patients;
- 9 (4) For labor and delivery:
- 10 (A) One registered nurse to two patients; provided  
11 that the ratio shall be one registered nurse to  
12 one patient for active labor and in all stages of  
13 labor for any patient with complications; and
- 14 (B) One nurse aide to eight patients; provided that  
15 the ratio shall be one nurse aide to four  
16 patients for active labor and in all stages of  
17 labor for any patient with complications;
- 18 (5) For postpartum, antepartum, and well-baby nursery:  
19 One registered nurse to six patients in postpartum,  
20 antepartum, and well-baby nursery; provided that the  
21 mother and the baby shall be each counted as separate



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- 1 patients for purposes of this paragraph. This would  
2 mean, for example, one registered nurse to three  
3 mother-baby couplets;
- 4 (6) For an operating room: One registered nurse to one  
5 patient;
- 6 (7) For oncology: One registered nurse to four patients;
- 7 (8) For a post-anesthesia care unit:
- 8 (A) One registered nurse to two patients; and  
9 (B) One nurse aide to eight patients;
- 10 (9) For a progressive care unit, intensive specialty care  
11 unit, or stepdown unit:
- 12 (A) One registered nurse to three patients; and  
13 (B) One nurse aide to eight patients;
- 14 (10) For a medical-surgical unit:
- 15 (A) One registered nurse to five patients; and  
16 (B) One nurse aide to eight patients;
- 17 (11) For a telemetry unit:
- 18 (A) One registered nurse to four patients; and  
19 (B) One nurse aide to eight patients;
- 20 (12) For a psychiatric unit:
- 21 (A) One registered nurse to six patients; and





- 1 (B) One nurse aide to eight patients;
- 2 (13) For pediatrics:
- 3 (A) One registered nurse to three patients; and
- 4 (B) One nurse aide to thirteen patients;
- 5 (14) For a telesitting unit: One nurse aide to eight
- 6 patients;
- 7 (15) For care of patients in a skilled nursing facility or
- 8 intermediate care facility on a ventilator or who
- 9 require care from respiratory care nurses:
- 10 (A) One registered nurse to eight patients;
- 11 (B) One nurse aide to six patients; and
- 12 (C) One respiratory therapist to fifteen patients;
- 13 (16) For dialysis in a health care facility:
- 14 (A) One dialysis nurse to eight patients; and
- 15 (B) One dialysis technician to three patients; and
- 16 (17) For all other care in a nursing home:
- 17 (A) One registered nurse to ten patients; and
- 18 (B) One nurse aide to six patients.
- 19 (c) The personnel assignment limits established in this
- 20 section:



1           (1) Are based on the type of care provided in these  
2           patient care units, regardless of the specific name or  
3           reference by the health care facility for these units;  
4           and

5           (2) Represent the maximum number of patients to which the  
6           specified health care personnel may be assigned at any  
7           time during a shift.

8           (d) A health care facility shall not average the number of  
9 patients and the total number of health care personnel assigned  
10 to patients in a patient care unit during any one shift or over  
11 any period of time in order to meet the personnel assignment  
12 limits established in this section.

13           (e) Nothing in this section precludes a health care  
14 facility from assigning fewer patients to health care personnel  
15 than the limits established in this section.

16           (f) The personnel assignment limits established in this  
17 section do not decrease any health care personnel-to-patient  
18 staffing levels:

19           (1) In effect pursuant to a collective bargaining  
20           agreement; or



1 (2) Established under a hospital's staffing plan, except  
2 by a majority vote of the staffing committee.

3 (g) Health care personnel shall not be assigned to a  
4 patient care unit or clinical area unless those personnel have  
5 first received orientation in that clinical area sufficient to  
6 provide competent care to patients in that area and have  
7 demonstrated current competence in providing care in that area.

8 (h) The department shall enforce compliance with this  
9 section under section -28 or part V of this chapter, as  
10 appropriate.

11 § -12 **Variances.** (a) The department may grant a  
12 variance from the minimum staffing standards of section -11  
13 if the department determines there is good cause for doing so.  
14 For purposes of this subsection, "good cause" means situations  
15 where a health care facility can establish that compliance with  
16 the minimum staffing standards is not feasible, and that  
17 granting a variance does not have a significant harmful effect  
18 on the health, safety, and welfare of the involved employees and  
19 patients.



1           (b) A health care facility may seek a variance from the  
2 minimum staffing standards by submitting a written application  
3 to the department. The application shall contain:

4           (1) A justification that establishes good cause for the  
5 variance and for not complying with minimum staffing  
6 standards;

7           (2) The alternative minimum staffing standards that will  
8 be imposed;

9           (3) The group of employees for whom the variance is  
10 sought;

11          (4) For hospitals, evidence that infeasibility, along with  
12 underlying data supporting the claim of infeasibility,  
13 were discussed at least twice by the hospital staffing  
14 committee and a statement from the staffing committee  
15 where consensus exists or statements where there is  
16 dispute; and

17          (5) Evidence that the health care facility provided to the  
18 involved employees and, if applicable, to their union  
19 representatives, including the following:

20           (A) A copy of the written request for a variance;



1 (B) Information about the right of the involved  
2 employees and, if applicable, their union  
3 representatives, to be heard by the department  
4 during the variance application review process;

5 (C) Information about the process by which involved  
6 employees and, if applicable, their union  
7 representatives, may make a written request to  
8 the director for reconsideration, subject to the  
9 provisions established in subsection (g); and

10 (D) The department's address and phone number, or  
11 other contact information.

12 (c) The department shall allow the health care facility,  
13 any involved employees and, if applicable, their union  
14 representatives, the opportunity for oral or written  
15 presentation during the variance application review process  
16 whenever circumstances of the application warrant it.

17 (d) No later than sixty days after the date on which the  
18 department received the application for a variance, the  
19 department shall issue a written decision either granting or  
20 denying the variance. The department may extend the sixty-day  
21 time period by providing advance written notice to the health



1 care facility and, if applicable, the union representatives of  
2 any involved employees, setting forth a reasonable justification  
3 for an extension of the sixty-day time period, and specifying  
4 the duration of the extension. The health care facility shall  
5 provide involved employees with notice of any extension.

6 (e) Variances shall be granted if the department  
7 determines that there is good cause for allowing a health care  
8 facility to not comply with the minimum staffing standards in  
9 section -11. The variance order shall state the following:

- 10 (1) The alternative minimum staffing standards approved in  
11 the variance;
- 12 (2) The basis for a finding of good cause;
- 13 (3) The group of employees impacted; and
- 14 (4) The period of time for which the variance will be  
15 valid, not to exceed five years from the date of  
16 issuance.

17 (f) Upon making a determination for issuance of a  
18 variance, the department shall provide notification in writing  
19 to the health care facility and, if applicable, the union  
20 representatives of any involved employees. If the variance is



1 denied, the written notification shall include a stated basis  
2 for the denial.

3 (g) A health care facility, involved employee, and, if  
4 applicable, their union representative, may file with the  
5 director a request for reconsideration within fifteen days after  
6 receiving notice of the variance determination. The request for  
7 reconsideration shall set forth the grounds upon which the  
8 request is being made. If reasonable grounds exist, the  
9 director may grant a review and, to the extent deemed  
10 appropriate, afford all interested parties an opportunity to be  
11 heard. If the director grants a review, the written decision of  
12 the department shall remain in place until the reconsideration  
13 process is complete.

14 (h) Unless subject to the reconsideration process, the  
15 director may revoke or terminate the variance order at any time  
16 after giving the hospital at least thirty days' notice before  
17 revoking or terminating the order.

18 (i) Where immediate action is necessary pending further  
19 review by the department, the department may issue a temporary  
20 variance. The temporary variance will remain valid until the  
21 department determines whether good cause exists for issuing a



1 variance. A hospital need not meet the requirement in  
2 subsection (b)(4) in order to be granted a temporary variance.

3 (j) If a health care facility obtains a variance under  
4 this section, the health care facility shall provide the  
5 involved employees with information about the minimum staffing  
6 standards that apply within fifteen days of receiving  
7 notification of approval from the department. A health care  
8 facility shall make this information readily available to all  
9 employees.

10 (k) Variances under this section may be renewed.

11 (l) The director may adopt rules to establish additional  
12 variance eligibility criteria.

13 **PART III. STAFFING PLANS FOR HOSPITALS**

14 **§ -21 Hospital staffing committee; membership.** (a) No  
15 later than September 1, 2023, each hospital shall establish a  
16 hospital staffing committee.

17 (b) At least fifty per cent of the members of the hospital  
18 staffing committee shall be nursing and ancillary health care  
19 personnel, who are nonsupervisory, nonmanagerial, and currently  
20 providing direct patient care. The selection of the nursing and  
21 ancillary health care personnel shall be according to the





1 collective bargaining representative or representatives if there  
2 is one or more at the hospital. If there is no collective  
3 bargaining representative, the members of the hospital staffing  
4 committee who are nursing and ancillary health care personnel  
5 providing direct patient care shall be selected by their peers.

6 (c) Up to fifty per cent of the members of the hospital  
7 staffing committee shall be determined by the hospital  
8 administration and shall include the chief financial officer,  
9 chief nursing officer, and patient care unit directors or  
10 managers or their designees.

11 (d) Participation in the hospital staffing committee by a  
12 hospital employee shall be on scheduled work time and  
13 compensated at the appropriate rate of pay. Hospital staffing  
14 committee members shall be relieved of all other work duties  
15 during meetings of the committee. Additional staffing relief  
16 shall be provided if necessary to ensure committee members are  
17 able to attend hospital staffing committee meetings.

18 **§ -22 Hospital staffing plan; committee**

19 **responsibilities.** (a) The primary responsibilities of the  
20 hospital staffing committee shall include:



1           (1) Development and oversight of an annual patient care  
2           unit and shift-based staffing plan, in accordance with  
3           the minimum staffing standards established in  
4           section       -11 and based on the needs of patients, to  
5           be used as the primary component of the staffing  
6           budget. The hospital staffing committee shall use a  
7           uniform format or form, created by the department in  
8           consultation with stakeholders from hospitals and  
9           labor organizations, for complying with the  
10          requirement to submit the annual staffing plan. The  
11          uniform format or form shall provide space to include  
12          the factors considered under this section and allow  
13          patients and the public to clearly understand and  
14          compare staffing patterns and actual levels of  
15          staffing across facilities. Hospitals may include a  
16          description of additional resources available to  
17          support unit-level patient care and a description of  
18          the hospital, including the size and type of facility.  
19          Factors to be considered in the development of the  
20          plan shall include:



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- 1 (A) Census, including total numbers of patients on
- 2 the unit on each shift and activity such as
- 3 patient discharges, admissions, and transfers;
- 4 (B) Level of intensity of all patients and nature of
- 5 the care to be delivered on each shift;
- 6 (C) Skill mix;
- 7 (D) Level of experience and specialty certification
- 8 or training of nursing personnel providing care;
- 9 (E) The need for specialized or intensive equipment;
- 10 (F) The architecture and geography of the patient
- 11 care unit, including but not limited to placement
- 12 of patient rooms, treatment areas, nursing
- 13 stations, medication preparation areas, and
- 14 equipment;
- 15 (G) Availability of other personnel supporting
- 16 nursing services on the unit; and
- 17 (H) Ability to comply with the terms of an applicable
- 18 collective bargaining agreement, if any, and
- 19 relevant state and federal laws and rules,
- 20 including those regarding meals and rest breaks
- 21 and use of overtime and on-call shifts;



1           (2) Semiannual review of the staffing plan against the  
2           ability to meet the staffing standards established by  
3           section -11, patient need, and known evidence-based  
4           staffing information, including the nursing sensitive  
5           quality indicators collected by the hospital; and  
6           (3) Review, assessment, and response to staffing  
7           variations or complaints presented to the committee.  
8           (b) In addition to the factors listed in subsection  
9           (a) (1), hospital finances and resources shall be taken into  
10          account in the development of the staffing plan.  
11          (c) The staffing plan shall not diminish other standards  
12          contained in state or federal law and rules or the terms of an  
13          applicable collective bargaining agreement.  
14          (d) The committee shall produce the hospital's annual  
15          staffing plan. If this staffing plan is not adopted by  
16          consensus of the hospital staffing committee, the prior annual  
17          staffing plan shall remain in effect and the hospital shall be  
18          subject to daily fines of \$5,000 until the adoption of a new  
19          annual staffing plan by consensus of the committee; provided  
20          that the following hospitals shall be subject to daily fines of



1 \$100 until the adoption of a new annual staffing plan by  
2 consensus of the committee:

- 3 (1) Hospitals certified as critical access hospitals;
- 4 (2) Hospitals having fewer than twenty-five acute care  
5 beds in operation; and
- 6 (3) Hospitals certified by the centers for medicare and  
7 medicaid services as sole community hospitals that:
  - 8 (A) Have less than one hundred acute care licensed  
9 beds;
  - 10 (B) Have a level III adult trauma service designation  
11 from the department of health; and
  - 12 (C) Are owned and operated by the State.

13 (e) The chief executive officer of the hospital shall  
14 provide feedback to the hospital staffing committee on a  
15 semiannual basis, prior to the committee's semiannual review and  
16 adoption of an annual staffing plan. The feedback shall:

- 17 (1) Identify those elements of the staffing plan the chief  
18 executive officer requests changes to, if any; and
- 19 (2) Provide a status report on the implementation of the  
20 staffing plan, including nursing sensitive quality



1 indicators collected by the hospital, patient surveys,  
2 and recruitment and retention efforts.

3 (f) Beginning July 1, 2024, each hospital shall submit its  
4 staffing plan to the department. Thereafter, each hospital  
5 shall submit its staffing plan to the department on an annual  
6 basis and at any time that the plan is updated.

7 § -23 **Implementation; complaints.** (a) Beginning  
8 July 1, 2024, each hospital shall implement the staffing plan  
9 and assign personnel to each patient care unit in accordance  
10 with the plan.

11 (b) A registered nurse, ancillary health care personnel,  
12 collective bargaining representative, patient, or other person  
13 may report to the staffing committee any variations where the  
14 personnel assignment in a patient care unit is not in accordance  
15 with the adopted staffing plan and may make a complaint to the  
16 committee based on the variations.

17 (c) Shift-to-shift adjustments in staffing levels required  
18 by the plan may be made by the appropriate hospital personnel  
19 overseeing patient care operations. If a person who is covered  
20 by a staffing plan on a patient care unit objects to a



1 shift-to-shift adjustment, the person may submit the complaint  
2 to the staffing committee.

3 (d) Staffing committees shall develop a process to examine  
4 and respond to data submitted under subsections (b) and (c),  
5 including the ability to determine if a specific complaint is  
6 resolved or dismissing a complaint based on unsubstantiated  
7 data. All complaints submitted to the hospital staffing  
8 committee shall be reviewed, regardless of what format the  
9 complainant uses to submit the complaint.

10 § -24 **Notice.** Each hospital shall post, in a public  
11 area on each patient care unit, the staffing plan and the  
12 staffing schedule for that shift on that unit, as well as the  
13 relevant clinical staffing for that shift. The staffing plan  
14 and current staffing levels shall also be made available to  
15 patients and visitors upon request.

16 § -25 **Retaliation prohibited.** A hospital may not  
17 retaliate against or engage in any form of intimidation of:

18 (1) An employee for performing any duties or  
19 responsibilities in connection with the staffing  
20 committee; or



1           (2) An employee, patient, or other individual who notifies  
2           the staffing committee or the hospital administration  
3           of that person's concerns on nurse or ancillary health  
4           care personnel staffing.

5           § -26 **Critical access hospitals.** This part is not  
6           intended to create unreasonable burdens on critical access  
7           hospitals under title 42 United States Code section 1395i-4.  
8           Critical access hospitals may develop flexible approaches to  
9           accomplish the requirements of this section that may include but  
10          are not limited to having hospital staffing committees work by  
11          video conference, telephone, or email.

12          § -27 **Charter; filing requirements.** The hospital  
13          staffing committee shall file with the department a charter that  
14          shall include:

15           (1) Roles, responsibilities, and processes by which the  
16           hospital staffing committee functions, including  
17           processes to ensure adequate quorum and ability of  
18           committee members to attend;

19           (2) A schedule for monthly meetings, with more frequent  
20           meetings as needed, that ensures committee members  
21           have thirty days' notice of meetings;





- 1           (3) Processes by which all staffing complaints will be  
2           reviewed, noting the date received as well as initial,  
3           contingent, and final disposition of complaints and  
4           corrective action plan where applicable;
- 5           (4) Processes by which complaints will be resolved within  
6           ninety days of receipt, or longer with a majority  
7           approval of the committee, and processes to ensure the  
8           complainant receives a letter stating the outcome of  
9           the complaint;
- 10          (5) Processes for attendance by any employee, and a labor  
11          representative if requested by the employee, who is  
12          involved in a complaint;
- 13          (6) Processes for the hospital staffing committee to  
14          conduct quarterly reviews of staff turnover rates,  
15          including new hire turnover rates during the first  
16          year of employment and hospital plans regarding  
17          workforce development;
- 18          (7) Standards for the hospital staffing committee's  
19          approval of meeting documentation, including meeting  
20          minutes, attendance, and actions taken; and



1 (8) Policies for retention of meeting documentation for a  
2 minimum of three years; provided that the policy shall  
3 be consistent with each hospital's document retention  
4 policies.

5 § -28 Department investigations. (a) The department  
6 shall investigate a complaint submitted under this section for  
7 alleged violations of this part following receipt of a complaint  
8 with documented evidence of failure to:

- 9 (1) Form or establish a hospital staffing committee;
- 10 (2) Conduct a semiannual review of a staffing plan;
- 11 (3) Submit a staffing plan on an annual basis and any  
12 updates; or
- 13 (4) Follow the personnel assignments in a patient care  
14 unit in violation of section -11 or  
15 section -23(a), or shift-to-shift adjustments in  
16 staffing levels in violation of section -23(c).

17 (b) After an investigation conducted pursuant to  
18 subsection (a), if the department determines that there has been  
19 a violation, the department shall require the hospital to submit  
20 a corrective plan of action within forty-five days of the  
21 presentation of findings from the department to the hospital.



1 (c) Hospitals shall not be found in violation of  
2 section -11 or section -23(a) if the department  
3 determines, following an investigation, that:

4 (1) There were unforeseeable emergent circumstances; or

5 (2) The hospital, after consultation with the hospital  
6 staffing committee, documents that the hospital has  
7 made reasonable efforts to obtain and retain staffing  
8 to meet required personnel assignments but has been  
9 unable to do so.

10 (d) No later than thirty days after a hospital deviates  
11 from its staffing plan as adopted by the staffing committee, the  
12 hospital incident command shall report to the hospital staffing  
13 committee an assessment of the staffing needs arising from the  
14 unforeseeable emergent circumstance and the hospital's plan to  
15 address those identified staffing needs. Upon receipt of the  
16 report, the hospital staffing committee shall convene to develop  
17 a contingency staffing plan to address the needs arising from  
18 the unforeseeable emergent circumstance. The hospital's  
19 deviation from its staffing plan may not be in effect for more  
20 than ninety days without the approval of the hospital staffing  
21 committee.



1 (e) If a hospital fails to submit, or submits but fails to  
2 follow, a corrective plan of action in response to a violation  
3 or violations found by the department based on a complaint filed  
4 pursuant to subsection (a), the department may impose, for all  
5 violations asserted against a hospital at any time, a civil  
6 penalty of \$5,000 per day; provided that the fine shall be \$100  
7 per day for hospitals:

- 8 (1) Certified as critical access hospitals;  
9 (2) Having fewer than twenty-five acute care beds in  
10 operation; and  
11 (3) Certified by the centers for medicare and medicaid  
12 services as sole community hospitals that:  
13 (A) Have less than one hundred fifty acute care  
14 licensed beds;  
15 (B) Have a level III adult trauma service designation  
16 from the department of health; and  
17 (C) Are owned and operated by the State.

18 Civil penalties shall apply until the hospital submits a  
19 corrective plan of action that has been approved by the  
20 department and follows the corrective plan of action for ninety  
21 days. Once the approved corrective action plan has been



1 followed by the hospital for ninety days, the department may  
2 reduce the accumulated fine. The fine shall continue to  
3 accumulate until the ninety days has passed.

4 (f) The department shall:

5 (1) Maintain for public inspection records of any civil  
6 penalties and administrative actions imposed on  
7 hospitals under this section; and

8 (2) Report violations of this section on its website.

9 (g) Nothing in this section shall be construed to preclude  
10 the ability to otherwise submit a complaint to the department  
11 for failure to follow this chapter.

12 § -29 **Review of staffing plans by the department.** (a)

13 The department shall review each hospital staffing plan  
14 submitted by a hospital to ensure it is received by the  
15 appropriate deadline and is completed on the department-issued  
16 staffing plan form.

17 (b) A hospital shall complete all portions of the staffing  
18 plan form issued by the department. The department may  
19 determine that a hospital has failed to timely submit its  
20 staffing plan if the staffing plan form is incomplete.



1 (c) Failure to submit the staffing plan or staffing  
2 committee charter by the appropriate deadline shall be a  
3 violation and shall be punishable by a civil penalty of \$25,000  
4 issued by the department.

5 (d) The department shall post on its website:

- 6 (1) Hospital staffing plans;
- 7 (2) Staffing committee charters; and
- 8 (3) Violations of this section.

9 **PART IV. MEAL AND REST BREAKS**

10 **§ -31 Definitions.** As used in this part, unless the  
11 context otherwise requires:

12 "Employee" means a person who is employed by a health care  
13 facility who is involved in direct patient care activities or  
14 clinical services and who receives an hourly wage or is covered  
15 by a collective bargaining agreement.

16 "On-call time" means time spent by an employee who is not  
17 working on the premises of the place of employment but who is  
18 compensated for availability or who, as a condition of  
19 employment, has agreed to be available to return to the premises  
20 of the place of employment on short notice if the need arises.



1 "Overtime" means the hours worked in excess of an  
2 agreed-upon, predetermined, regularly scheduled shift within a  
3 twenty-four-hour period, not to exceed twelve hours in a  
4 twenty-four-hour period or forty hours in a week.

5 § -32 **Meal and rest breaks.** (a) A health care facility  
6 shall provide employees with meal and rest breaks as required by  
7 law; provided that:

8 (1) Rest periods shall be scheduled at any point during  
9 each work period during which the employee is required  
10 to receive a rest period;

11 (2) A health care facility shall provide employees with  
12 uninterrupted meal and rest breaks; provided that this  
13 paragraph shall not apply in cases of:

14 (A) An unforeseeable emergent circumstance;

15 (B) A clinical circumstance, as determined by the  
16 employee, that may lead to a significant adverse  
17 effect on a patient's condition; or

18 (C) A clinical circumstance, as determined by the  
19 health care facility or the health care  
20 facility's designee, that may lead to



1                   life-threatening adverse effects for the patient;  
2                   and

3           (3) For any work period for which an employee is entitled  
4           to one or more meal period and more than one rest  
5           period, the employee and the health care facility may  
6           agree that a meal period may be combined with a rest  
7           period; provided further that:

8                   (A) This agreement may be revoked at any time by the  
9                   employee;

10                   (B) If the employee is required to remain on duty  
11                   during the combined meal and rest period, the  
12                   time shall be paid; and

13                   (C) If the employee is released from duty for an  
14                   uninterrupted combined meal and rest period, the  
15                   time corresponding to the meal period shall be  
16                   unpaid but the time corresponding to the rest  
17                   period shall be paid.

18           (b) A health care facility shall provide a mechanism to  
19           record when an employee misses a meal or rest period and  
20           maintain these records.





1           §   -33 **Overtime.** (a) No employee of a health care  
2 facility shall be required to work overtime. Attempts to compel  
3 or force employees to work overtime are contrary to public  
4 policy, and any requirement to compel overtime that is contained  
5 in a contract, agreement, or understanding shall be void.

6           (b) The acceptance by any employee of overtime shall be  
7 strictly voluntary, and the refusal of an employee to accept  
8 overtime work shall not be grounds for discrimination,  
9 dismissal, discharge, or any other penalty, threat of reports  
10 for discipline, or employment decision adverse to the employee.

11           (c) This section shall not apply to overtime work that  
12 occurs:

13           (1) Because of any unforeseeable emergent circumstance;

14           (2) Because of prescheduled on-call time not to exceed  
15 more than twenty-four hours per week; provided that:

16           (A) Mandatory prescheduled on-call time shall not be  
17 used in lieu of scheduling employees to work  
18 regularly scheduled shifts when a staffing plan  
19 indicates the need for a scheduled shift; and

20           (B) Mandatory prescheduled on-call time shall not be  
21 used to address regular changes in patient census



1                   or acuity or expected increases in the number of  
2                   employees not reporting for predetermined  
3                   scheduled shifts;

4           (3)   When the health care facility documents that the  
5           health care facility has used reasonable efforts to  
6           obtain and retain staffing; provided further that a  
7           health care facility has not used reasonable efforts  
8           if overtime work is used to fill vacancies resulting  
9           from chronic staff shortages that persist longer than  
10          three months; or

11          (4)   When an employee is required to work overtime to  
12          complete a patient care procedure already in progress  
13          where the absence of the employee could have an  
14          adverse effect on the patient.

15          (d)   An employee accepting overtime who works more than  
16          twelve consecutive hours shall be provided the option to have at  
17          least ten consecutive hours of uninterrupted time off from work  
18          following the time worked.

19          (e)   The department shall investigate complaints of  
20          violations of this section under part V of this chapter.



**PART V. COMPLAINTS**

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§ -41 **Complaints.** (a) If a complainant files a complaint with the department alleging a violation of this chapter, the department shall investigate the complaint; provided that nothing in this part shall prohibit the department from taking any other enforcement action authorized elsewhere in this chapter or pursuant to any other law.

(b) The department shall not investigate any alleged violation of rights that occurred more than three years before the date on which the complainant filed the complaint.

(c) Upon the investigation of a complaint, the department shall issue either a citation and notice of assessment or a closure letter, within ninety days after the date on which the department received the complaint, unless the complaint is otherwise resolved. The department may extend the period by providing advance written notice to the complainant and the health care facility setting forth good cause for an extension of the period and specifying the duration of the extension.

(d) The department shall send a citation and notice of assessment or the closure letter to both the health care facility and the complainant by service of process or using a



1 method by which the mailing can be tracked or the delivery can  
2 be confirmed to their last known addresses.

3 (e) If the department's investigation finds that the  
4 complainant's allegation cannot be substantiated, the department  
5 shall issue a closure letter to the complainant and the health  
6 care facility detailing that finding.

7 (f) If the department finds a violation of this chapter,  
8 the department shall order the health care facility to pay the  
9 department a civil penalty. Except as provided otherwise in  
10 this chapter, the maximum penalty is \$1,000 for each violation  
11 of the first three violations. If there are four or more  
12 violations of this chapter for a health care facility, the  
13 health care facility shall be subject to a civil penalty of  
14 \$2,500 for the fourth violation, and \$5,000 for each subsequent  
15 violation.

16 (g) At any time, the department may waive or reduce a  
17 civil penalty assessed under this section if the director  
18 determines that the health care facility has taken corrective  
19 action to resolve the violation.

20 § -42 Appeals. (a) A person aggrieved by a citation  
21 and notice of assessment by the department under this chapter



1 may appeal the citation and notice of assessment to the director  
2 by filing a notice of appeal with the director within thirty  
3 days of the department's issuance of the citation and notice of  
4 assessment. A citation and notice of assessment not appealed  
5 within thirty days is final and binding, and not subject to  
6 further appeal.

7 (b) A notice of appeal filed with the director under this  
8 section shall stay the effectiveness of the citation and notice  
9 of assessment pending final review of the appeal by the  
10 director.

11 (c) Upon receipt of a notice of appeal, the director shall  
12 assign the hearing to a hearings officer to conduct a hearing  
13 and issue an initial order. The hearing and review procedures  
14 shall be conducted in accordance with chapter 91, and the  
15 standard of review by the hearings officer of an appealed  
16 citation and notice of assessment shall be de novo. Any party  
17 who seeks to challenge an initial order shall file a petition  
18 for administrative review with the director within thirty days  
19 after service of the initial order. The director shall conduct  
20 administrative review in accordance with chapter 91.



1 (d) The director shall issue all final orders after appeal  
2 of the initial order. The final order of the director is  
3 subject to judicial review in accordance with chapter 91.

4 (e) Orders that are not appealed within the time period  
5 specified in this section and chapter 91 are final and binding  
6 and not subject to further appeal.

7 (f) A health care facility that fails to allow adequate  
8 inspection of records in an investigation by the department  
9 under this chapter within a reasonable time period may not use  
10 those records in any appeal under this section to challenge the  
11 correctness of any determination by the department of the  
12 penalty assessed."

13 SECTION 3. There is appropriated out of the general  
14 revenues of the State of Hawaii the sum of \$ or so  
15 much thereof as may be necessary for fiscal year 2023-2024 and  
16 the same sum or so much thereof as may be necessary for fiscal  
17 year 2024-2025 to implement and enforce section 2 of this Act.

18 The sums appropriated shall be expended by the department  
19 of labor and industrial relations for the purposes of this Act.





# H.B. NO. 1378

**Report Title:**

Health; DLIR; Staffing; Work Environment; Nurses; Nurse Aides; Hospitals; Care Homes; Dialysis Facilities; Appropriations

**Description:**

Establish certain minimum staff-to-patient ratios for hospitals, care homes, and dialysis facilities. Requires hospitals to create hospital staffing committees and staffing plans. Establishes certain meal break, rest break, and overtime provisions applicable to health care personnel at hospitals, care homes, and dialysis facilities. Appropriates moneys to the Department of Labor and Industrial Relations for implementation and enforcement.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

