

HOUSE BILL No. 1813

DIGEST OF INTRODUCED BILL

Citations Affected: IC 16-18-2; IC 16-28.

Synopsis: Health facility complaint resolution and staffing. Requires a health facility to have a registered nurse on duty at all times as a nursing supervisor, with a waiver allowed in some situations. Provides additional staffing requirements depending upon the number of beds in the health facility. Requires a health facility to maintain minimum ratios of staff to patients and to post various notices regarding staffing. Increases the number of hours of classroom instruction and supervised clinical experience required for nurse aides. Allows any allegation of breach at a health facility to be made orally or in writing. Requires the state department of health to investigate all oral allegations, not just oral allegations that the state department considers to have merit.
(Continued next page)

Effective: Upon passage; July 1, 1999.

Day

January 26, 1999, read first time and referred to Committee on Public Health.

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Digest Continued

Requires the state department of health to begin an investigation of an allegation within either 24 hours or 30 days after receiving the allegation, depending on the nature of the allegation. Requires that the investigation be unannounced and include interviews with all relevant witnesses. Imposes certain reporting requirements upon the completion of an investigation. Requires the state department of health to establish procedures for reconsideration of investigation results.

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Introduced

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

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HOUSE BILL No. 1813

A BILL FOR AN ACT to amend the Indiana Code concerning health.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 16-18-2-3.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 1999]: **Sec. 3.5. "Administrative personnel", for purposes of**
4 **IC 16-28-2.5, has the meaning set forth in IC 16-28-2.5-1.**

5 SECTION 2. IC 16-18-2-94.5 IS ADDED TO THE INDIANA
6 CODE AS A **NEW SECTION** TO READ AS FOLLOWS
7 [EFFECTIVE JULY 1, 1999]: **Sec. 94.5. "Direct caregiver", for**
8 **purposes of IC 16-28-2.5, has the meaning set forth in**
9 **IC 16-28-2.5-2.**

10 SECTION 3. IC 16-18-2-95.5 IS ADDED TO THE INDIANA
11 CODE AS A **NEW SECTION** TO READ AS FOLLOWS
12 [EFFECTIVE JULY 1, 1999]: **Sec. 95.5. "Directly supervised**
13 **practical training", for purposes of IC 16-28-2.5, has the meaning**
14 **set forth in IC 16-28-2.5-3.**

15 SECTION 4. IC 16-18-2-202.5 IS ADDED TO THE INDIANA



1 CODE AS A NEW SECTION TO READ AS FOLLOWS
 2 [EFFECTIVE JULY 1, 1999]: **Sec. 202.5. "Licensed supervisory**
 3 **personnel", for purposes of IC 16-28-2.5, has the meaning set forth**
 4 **in IC 16-28-2.5-4.**

5 SECTION 5. IC 16-18-2-359 IS AMENDED TO READ AS
 6 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 359. (a) "Unit", for
 7 purposes of IC 16-41-22, has the meaning set forth in IC 16-41-22-4.

8 (b) "Unit", for purposes of IC 16-28-2.5, has the meaning set
 9 forth in IC 16-28-2.5-5.

10 SECTION 6. IC 16-28-2-3 IS AMENDED TO READ AS
 11 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3. Before the director
 12 may issue a license to for a health facility to an applicant, the director
 13 must find that the health facility, within the care category for which a
 14 license is sought, is adequate in each of the following respects:

- 15 (1) The physical structure in which the service is to be performed.
- 16 (2) The educational level, number, and personal health of the
 17 staff. **The number of staff must comply with the requirements**
 18 **of IC 16-28-2.5.**
- 19 (3) The financial ability to provide the service to be performed.
- 20 (4) The equipment with which to perform the service.
- 21 (5) The operating history of other health facilities owned or
 22 managed by the same person who owns or manages the facility.
 23 The director may recommend denial of licensure to a new facility
 24 or facility applying for licensure under new ownership where the
 25 owner or manager has a record of operation of other health
 26 facilities in substantial breach of this chapter or any other law
 27 governing health facilities.

28 SECTION 7. IC 16-28-2.5 IS ADDED TO THE INDIANA CODE
 29 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 30 JULY 1, 1999]:

31 **Chapter 2.5. Staffing Requirements**

32 **Sec. 1. As used in this chapter, "administrative personnel"**
 33 **means an individual whose duties include administration, planning,**
 34 **coordination, or supervision at the facility level. The term includes**
 35 **the following:**

- 36 (1) **Director of nursing.**
- 37 (2) **Assistant director of nursing.**
- 38 (3) **Director of inservice education.**
- 39 (4) **Nursing supervisor.**

40 **The term does not include licensed supervisory personnel or a**
 41 **direct caregiver.**

42 **Sec. 2. As used in this chapter, "direct caregiver" means an**

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1 individual whose sole responsibility is to provide care directly to a
2 patient. The term includes:

- 3 (1) a registered nurse (as defined in IC 25-23-1-1.1);
4 (2) a licensed practical nurse (as defined in IC 25-23-1-1.2);
5 and
6 (3) a nurse aide (as defined in IC 16-28-13-1);

7 assigned to the direct care of a patient. The term does not include
8 administrative personnel or licensed supervisory personnel.

9 Sec. 3. As used in this chapter, "directly supervised practical
10 training" means training in a laboratory or other setting in which
11 the trainee demonstrates knowledge while performing tasks on an
12 individual under direct supervision of a registered nurse or
13 licensed practical nurse.

14 Sec. 4. As used in this chapter, "licensed supervisory personnel"
15 means an individual who:

- 16 (1) is a:
17 (A) registered nurse; or
18 (B) licensed practical nurse;
19 (2) plans, coordinates, or supervises the provision of patient
20 care at the unit level; and
21 (3) provides direct care to a patient.

22 The term does not include administrative personnel or a direct
23 caregiver.

24 Sec. 5. As used in this chapter, "unit" includes a floor, wing, or
25 other subdivision of a health facility.

26 Sec. 6. Subject to the requirements of this chapter, a health
27 facility licensed under IC 16-28-2 shall provide at all times a
28 staffing level adequate to meet the care needs of each patient,
29 including a patient who has special needs due to dementia, a
30 medical condition, an illness, or an injury.

31 Sec. 7. (a) This section applies to a health facility with fewer
32 than one hundred (100) beds.

33 (b) A health facility shall employ the following administrative
34 personnel:

- 35 (1) A registered nurse as a full-time director of nursing.
36 (2) A registered nurse as a part-time assistant director of
37 nursing.
38 (3) A registered nurse as a nursing supervisor.
39 (4) A registered nurse as a part-time director of inservice
40 education.

41 (c) The minimum number of hours that an assistant director of
42 nursing shall work per week is equal to the product of:



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- 1 **(1) the quotient of:**
 2 **(A) the number of beds in the health facility; divided by**
 3 **(B) one hundred (100); multiplied by**
 4 **(2) forty (40).**
 5 **(d) The minimum number of hours that a director of inservice**
 6 **education shall work per week is equal to the product of:**
 7 **(1) the quotient of:**
 8 **(A) the number of beds in the health facility; divided by**
 9 **(B) one hundred (100); multiplied by**
 10 **(2) forty (40).**
 11 **Sec. 8. (a) This section applies to a health facility with one**
 12 **hundred (100) or more beds.**
 13 **(b) A health facility shall employ the following administrative**
 14 **personnel:**
 15 **(1) A registered nurse as a full-time director of nursing.**
 16 **(2) A registered nurse as a full-time assistant director of**
 17 **nursing.**
 18 **(3) A registered nurse as a nursing supervisor.**
 19 **(4) A registered nurse as a full-time director of inservice**
 20 **education.**
 21 **Sec. 9. Except as provided in section 10 of this chapter, a health**
 22 **facility shall have a registered nurse on duty at all times as a**
 23 **nursing supervisor.**
 24 **Sec. 10. (a) The state department may grant a waiver of the**
 25 **requirement under section 9 of this chapter if the following**
 26 **conditions are met:**
 27 **(1) The facility demonstrates to the satisfaction of the state**
 28 **department that the facility has been unable, despite diligent**
 29 **efforts (including offering wages at the community prevailing**
 30 **rate for health facilities), to recruit appropriate personnel.**
 31 **(2) The state department determines that a waiver of the**
 32 **requirement will not endanger the health or safety of the**
 33 **patients of the facility.**
 34 **(3) The state department finds that, for any periods in which**
 35 **registered nursing services are not available, a registered**
 36 **nurse or a physician is obligated to respond immediately to**
 37 **telephone calls from the facility.**
 38 **(4) The state department provides notice of the waiver to the**
 39 **state long term care ombudsman and the protection and**
 40 **advocacy system in the state for the mentally ill and mentally**
 41 **retarded.**
 42 **(5) The facility that is granted a waiver under this section by**



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- 1 the state department notifies the patients of the facility.
- 2 (b) In granting or renewing a waiver, the state department may
3 require a facility to use other qualified, licensed personnel.
- 4 (c) A waiver granted under this section is subject to annual
5 review by the state department.
- 6 **Sec. 11. (a) The staffing level for a health facility must include,
7 at a minimum, both of the following ratios, rounded to the nearest
8 whole number:**
- 9 (1) Licensed supervisory personnel to patients:
10 (A) For the day shift, one (1) to fifteen (15);
11 (B) For the evening shift, one (1) to twenty-five (25); and
12 (C) For the night shift, one (1) to thirty-five (35).
- 13 (2) Direct caregivers to patients:
14 (A) For the day shift, one (1) to five (5);
15 (B) For the evening shift, one (1) to eight (8); and
16 (C) For the night shift, one (1) to twelve (12).
- 17 (b) The ratios required under subsection (a) apply to each unit
18 of a facility.
- 19 (c) Administrative or licensed supervisory personnel may not be
20 counted as a direct caregiver.
- 21 **Sec. 12. (a) In addition to the staffing ratios required under
22 section 11 of this chapter, a health facility shall maintain, at a
23 minimum, the following ratios of direct caregivers to patients at all
24 meal times, rounded to the nearest whole number:**
- 25 (1) Direct caregivers to patients entirely dependent upon
26 assistance, one (1) to three (3).
27 (2) Direct caregivers to patients partially dependent upon
28 assistance, one (1) to four (4).
- 29 (b) Licensed supervisory personnel shall provide supervision at
30 all meal times.
- 31 **Sec. 13. (a) A health facility shall post a notice containing the
32 following information regarding the nursing staff present and
33 working on a unit:**
- 34 (1) First and last names.
35 (2) The number of licensed supervisory personnel on duty.
36 (3) The number of direct caregivers on duty.
37 (4) The ratio of licensed supervisory personnel on duty to
38 patients.
39 (5) The ratio of direct caregivers on duty to patients.
- 40 (b) The notice required under subsection (a) must be posted:
41 (1) for each shift;
42 (2) on each unit of the health facility; and



1 (3) on a form prescribed by the state department and the long
2 term care ombudsman office.

3 (c) The information required under subdivision (a)(1) must be
4 printed in at least forty-eight (48) point type.

5 Sec. 14. (a) Before February 1 of each year, a health facility
6 shall post a notice for the most recently concluded calendar year.
7 The notice must contain the following information for each unit of
8 the facility and for the facility as a whole for that reporting period:

9 (1) The average daily number of licensed supervisory
10 personnel on duty.

11 (2) The average daily number of direct caregivers on duty.

12 (3) The average daily ratio of licensed supervisory personnel
13 on duty to patients.

14 (4) The average daily ratio of direct caregivers on duty to
15 patients.

16 (b) The notice required under this section shall:

17 (1) be on a form prescribed by the state department and the
18 long term care ombudsman office; and

19 (2) remain posted until replaced the following year by an
20 updated notice.

21 Sec. 15. The notices required under sections 13 and 14 of this
22 chapter must be visible and accessible to all patients, families of
23 patients, staff, and potential consumers.

24 Sec. 16. (a) A nurse aide who is hired to work in a health
25 facility:

26 (1) must have successfully completed a nurse aide training
27 program approved by the division; or

28 (2) shall enroll in the first available approved training
29 program scheduled to commence within sixty (60) days after
30 the nurse aide's employment begins.

31 (b) The training program for a nurse aide must consist of:

32 (1) at least sixty (60) hours of classroom instruction; and

33 (2) at least one hundred fifty (150) hours of supervised clinical
34 experience, at least thirty (30) hours of which must be in
35 directly supervised practical training.

36 (c) A health facility:

37 (1) may not count the hours under subsection (b)(1); and

38 (2) may count the hours under subsection (b)(2);

39 toward the facility's staffing requirements under sections 11 and
40 12 of this chapter.

41 SECTION 8. IC 16-28-4-1 IS AMENDED TO READ AS
42 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. A person who

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1 believes that this article or ~~rules a rule~~ adopted under this article ~~have~~
 2 **has** been breached may file an allegation of breach with the state
 3 department. The allegation ~~must may~~ be **made orally or** in writing.
 4 ~~unless the breach complained of is an offense or a deficiency. The~~
 5 **state department shall reduce** an oral allegation of breach ~~shall be~~
 6 **reduced** to writing. ~~by the state department.~~

7 SECTION 9. IC 16-28-4-2 IS AMENDED TO READ AS
 8 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. **(a)** The division shall
 9 **promptly thoroughly** investigate the following:

10 ~~(1) A written~~ **each** allegation of breach received under this
 11 chapter.

12 ~~(2) An oral allegation of breach that the director, in the director's~~
 13 ~~discretion, believes to have merit.~~

14 **(b) Except as provided in subsection (c), the division shall begin**
 15 **an investigation required under subsection (a) within thirty (30)**
 16 **days after receipt of the allegation.**

17 **(c) The division shall begin an investigation required under**
 18 **subsection (a) within twenty-four (24) hours after receipt of the**
 19 **allegation if the allegation asserts any of the following conditions:**

20 **(1) Physical abuse resulting in injury to a patient, including**
 21 **the following:**

22 **(A) Abuse of a patient by a staff member.**

23 **(B) Abuse of a patient by another patient.**

24 **(2) Sexual abuse, including the following:**

25 **(A) Sexual abuse of a patient by a staff member.**

26 **(B) Sexual abuse of a patient by another patient.**

27 **(C) Any sexual act with a patient without the patient's**
 28 **consent.**

29 **(3) Neglect, including the following:**

30 **(A) A malnourished patient.**

31 **(B) A patient left alone for an excessive amount of time.**

32 **(4) Unusual or unexpected death of a patient, including death**
 33 **from the following causes:**

34 **(A) Choking.**

35 **(B) Suicide.**

36 **(C) Poor care.**

37 **(5) Widespread rodent or insect infestation of the health**
 38 **facility.**

39 **(6) Life threatening environmental or sanitation conditions,**
 40 **including the following:**

41 **(A) Gas leaks.**

42 **(B) Nonfunctional heating or air conditioning systems.**

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- 1 **(7) Outbreaks of infections or contagious diseases.**
 2 **(8) Adverse reactions to medications that occur without:**
 3 **(A) staff awareness; and**
 4 **(B) notice to the:**
 5 **(i) patient's physician; or**
 6 **(ii) supervisor on duty.**
 7 **(9) Unexplained severe weight loss of a patient.**
 8 **(10) Lack of supervision or monitoring consistent with patient**
 9 **needs.**
 10 **(11) Lack of monitoring patient status to identify changes in**
 11 **conditions that could lead to patient harm.**
 12 **(12) Lack of emergency equipment or supplies.**
 13 **(13) Inappropriate restraints or restraints used as**
 14 **punishment.**

15 SECTION 10. IC 16-28-4-2.5 IS ADDED TO THE INDIANA
 16 CODE AS A NEW SECTION TO READ AS FOLLOWS
 17 [EFFECTIVE JULY 1, 1999]: **Sec. 2.5. In conducting the**
 18 **investigation required under section 2 of this chapter, the**
 19 **investigator shall do the following:**

- 20 **(1) Make an unannounced visit to the health facility.**
 21 **(2) Interview each available witness identified by any source**
 22 **as having personal knowledge relevant to the alleged breach,**
 23 **including the alleging party, if the identity of the alleging**
 24 **party is disclosed under section 5 of this chapter.**
 25 **(3) Personally inspect:**
 26 **(A) all relevant records and other documents; and**
 27 **(B) any observable physical circumstance that is relevant**
 28 **to the alleged breach.**

29 SECTION 11. IC 16-28-4-5.5 IS ADDED TO THE INDIANA
 30 CODE AS A NEW SECTION TO READ AS FOLLOWS
 31 [EFFECTIVE JULY 1, 1999]: **Sec. 5.5. Not more than thirty (30)**
 32 **days after the conclusion of the investigation of the alleged breach,**
 33 **the investigator shall submit a written report to the division. The**
 34 **report must include the following:**

- 35 **(1) The investigator's personal observations.**
 36 **(2) A summary of the records and other documents reviewed**
 37 **by the investigator.**
 38 **(3) A summary of all witness statements.**
 39 **(4) A statement of the factual basis for the findings for each**
 40 **incident or problem contained in the allegation.**

41 SECTION 12. IC 16-28-4-6 IS AMENDED TO READ AS
 42 FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 6. The report of a**



1 substantiated allegation of breach investigation, **required under**
 2 **section 5.5 of this chapter**, together with the response of the health
 3 facility and any enforcement action taken, shall be made a part of the
 4 health facility's record and shall be considered, together with the survey
 5 report, by the director at the time of relicensure of the facility.

6 SECTION 13. IC 16-28-4-7 IS AMENDED TO READ AS
 7 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 7. (a) **This section**
 8 **does not apply if an allegation of breach was filed anonymously.**

9 (b) **Upon request of the alleging party** The director shall report
 10 **provide all of the following documents** to the alleging party or the
 11 alleging party's designated relative, friend, or legal representative
 12 concerning the results of the investigation and the action taken:

13 (1) **A copy of the report required under section 5.5 of this**
 14 **chapter, with the names of all individuals, except the**
 15 **investigator, deleted.**

16 (2) **A notice informing the alleging party of the procedure to**
 17 **request a reconsideration of the result of the investigation,**
 18 **including the action taken by the state department against the**
 19 **facility. This notice must include the following:**

20 (A) **The name of the person to whom the alleging party**
 21 **may submit a request for reconsideration.**

22 (B) **The time in which the alleging party may submit a**
 23 **request for reconsideration.**

24 (C) **The type of evidence that may support the alleging**
 25 **party's allegation of breach and how to submit the**
 26 **information for consideration.**

27 (D) **The name of the person with supervisory authority**
 28 **over the investigator.**

29 SECTION 14. IC 16-28-4-8 IS ADDED TO THE INDIANA CODE
 30 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 31 1, 1999]: Sec. 8. (a) **The state department shall adopt rules under**
 32 **IC 4-22-2 to implement this chapter.**

33 (b) **The rules adopted under subsection (a) must include rules**
 34 **that establish a procedure to allow reconsideration of the results of**
 35 **an investigation of an alleged breach under this article.**

36 SECTION 15. [EFFECTIVE UPON PASSAGE] (a) **The state**
 37 **department of health shall adopt interim written guidelines to**
 38 **carry out the procedure described in IC 16-28-4-8(b), as added by**
 39 **this act. This SECTION expires the earlier of the following:**

40 (1) **The date rules are adopted under IC 16-28-4-8(b), as**
 41 **added by this act.**

42 (2) **July 1, 2000.**

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1 **(b) This SECTION expires July 2, 2000.**
2 SECTION 16. [EFFECTIVE UPON PASSAGE] (a) The state
3 department of health and the long term care ombudsman office
4 shall develop uniform forms to carry out the purpose of
5 IC 16-28-2.5-12 and IC 16-28-2.5-13, as added by this act.
6 (b) The state department and the long term care ombudsman
7 office may periodically revise the forms required under this
8 SECTION.
9 SECTION 17. [EFFECTIVE UPON PASSAGE] (a) The state
10 department of health shall revise the following rules to comply with
11 IC 16-28-5-4: 410 IAC 16.2-3.1-2(l); 410 IAC 16.2-5-1.1(l).
12 (b) This SECTION expires June 30, 2000.
13 SECTION 18. An emergency is declared for this act.

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