Title 25 Texas Administrative Code
Chapter 133
Hospital Licensing

§133.41 Hospital Function and Services.

(a) – (n) (No change.)

(o) Nursing services. The hospital shall have an organized nursing service that provides 24-hour nursing services as needed.

(1) Organization. The hospital shall have a well-organized service with a plan of administrative authority and delineation of responsibilities for patient care.

(A) Nursing services shall be under the administrative authority of a chief nursing officer (CNO) who shall be an RN and comply with one of the following:

(i) possess a master's degree in nursing;

(ii) possess a master's degree in health care administration or business administration;

(iii) possess a master's degree in a health-related field obtained through a curriculum that included courses in administration and management; or

(iv) be progressing under a written plan to obtain the nursing administration qualifications associated with a master's degree in nursing. The plan shall:

(I) describe efforts to obtain the knowledge associated with graduate education and to increase administrative and management skills and experience;

(II) include courses related to leadership, administration, management, performance-improvement and theoretical approaches to delivering nursing care; and

(III) provide a time-line for accomplishing skills.

(B) The CNO in hospitals with 100 or fewer licensed beds and located in counties with a population of less than 50,000, or in hospitals that have been certified by the Centers for Medicare and Medicaid Services as critical access hospitals in accordance with the Code of Federal Regulations, Title 42, Volume 3, Part 485, Subpart F, §485.606(b), shall be exempted from the requirements in subparagraph (A)(i) - (iv) of

this paragraph effective September 1, 2002.

(i) The staffing plan referenced in paragraph (2)(I)(i) of this subsection will apply to hospitals listed in this subparagraph beginning April 1, 2003.

(ii) The annual evaluation required by paragraph (2)(I)(ii) of this subsection will apply to hospitals listed in this subparagraph beginning April 1, 2004.

(C) The CNO shall be responsible for the operation of the services, including determining the types and numbers of nursing personnel and staff necessary to provide nursing care for all areas of the hospital.

(D) The CNO shall report directly to the individual who has authority to represent the hospital and who is responsible for the operation of the hospital according to the policies and procedures of the hospital's governing board.

(E) The CNO shall participate with leadership from the governing body, medical staff, and clinical areas, in planning, promoting and conducting performance-improvement activities.

(2) Staffing and delivery of care.

(A) The nursing services shall adopt, implement and enforce a procedure to verify that hospital nursing personnel for whom licensure is required have valid and current licensure.

(B) There shall be adequate numbers of RNs, licensed vocational nurses (LVNs), and other personnel to provide nursing care to all patients as needed.

(C) There shall be supervisory and staff personnel for each department or nursing unit to provide, when needed, the immediate availability of an RN for bedside care of any patient.

(D) An RN shall supervise and evaluate the nursing care for each patient and assign the nursing care to other nursing personnel in accordance with the patient's needs and the specialized qualifications and competence of the nursing staff available.

(E) The nursing staff shall develop and keep current a nursing plan of care for each patient which addresses the patient's needs.

(F) At a minimum, the following critical factors shall be considered in the determination of staffing levels:

(i) patient characteristics and number of patients for whom care is being provided, including number of admissions, discharges and transfers on a unit;

(ii) intensity of patient care being provided and variability of patient care across a nursing unit;

(iii) scope of services provided;

(iv) context within which care is provided, including architecture and geography of the environment, and the availability of technology; and

(v) nursing staff characteristics, including staff consistency and tenure, preparation and experience, and the number and competencies of clinical and non-clinical support staff the nurse must collaborate with or supervise.

(G) The hospital shall adopt, implement and enforce a written process for setting staffing levels that takes into account the critical factors specified in subparagraph (F) of this paragraph. The process shall include:

(i) establishing presumptive or initial staffing levels that are recalculated at least annually or as necessary;

(ii) setting staffing levels on a unit by unit basis or other bases appropriate to the hospital;

(iii) adjusting of staffing levels from shift to shift based on factors, such as, the intensity of patient care; and

(iv) reporting to the advisory committee, as referenced in subparagraph (H) of this paragraph, showing variance between desired and actual staffing levels, and an explanation for the variance. The reports shall be confidential and not subject to disclosure under Government Code, Chapter 552 and not subject to disclosure, discovery, subpoena or other means of legal compulsion for their release.

(H) The hospital shall designate an advisory committee established in accordance with Health and Safety Code (HSC) §§161.031-161.033 to be responsible for soliciting and receiving input from nurses on the development, on-going monitoring, and evaluation of the staffing plan. As provided by HSC §161.032, the hospital's records and review relating to evaluation of these outcomes and indicators are confidential and not subject to disclosure under Government Code, Chapter 552 and not subject to disclosure, discovery, subpoena or other means of legal compulsion for their release. The committee shall:

(i) have, as one-third of its members, registered nurses who are involved in direct patient care at least 50% of their work time;

(ii) include at least one RN from either infection control, quality assurance or risk management; and

(iii) to the extent feasible, represent multiple areas of nursing practice.

(I) The hospital shall adopt, implement and enforce a written staffing plan.

(i) The staffing plan shall:

(I) be consistent with standards established by the Texas nurse licensing boards and should be developed based upon a review of the codes of ethics developed by the nursing profession through national nursing organizations;

(II) utilize outcomes and nursing-sensitive indicators as an integral role in setting and evaluating the adequacy of the staffing plan. At least one from each of the following three types of outcomes shall be correlated to the adequacy of staffing:

(-a-) patient outcomes that are nursing-sensitive, such as, patient falls, adverse drug events, injuries to patients, skin breakdown, pneumonia, infection rates, upper gastrointestinal bleeding, shock, cardiac arrest, length of stay, or patient readmissions;

(-b-) operational outcomes, such as, work-related injury or illness, vacancy and turnover rates, nursing care hours per patient day, on-call use, or overtime rates; and

(-c-) validated patient complaints related to staffing levels;

(III) incorporate a process that facilitates the timely and effective identification of concerns about the adequacy of the staffing plan by the advisory committee established pursuant to subparagraph (H) of this paragraph. This process shall include:

(-a-) a prohibition on retaliation for reporting concerns;

(-b-) a requirement that nurses report concerns timely through appropriate channels within the hospital;

(-c-) orientation of nurses on how to report concerns and to whom;

(-d-) a process for providing feedback during the advisory committee meeting on how concerns are addressed by the advisory committee established under subparagraph (H) of this paragraph; and

(-e-) use of the nurse safe harbor peer review process pursuant to Occupations Code, §303.005;

(IV) include policies and procedures that require:

(-a-) orientation of nurses and other personnel who provide nursing care to all units to which they are assigned on either a temporary or permanent basis;

(-b-) that the orientation of nurses and other personnel and the competency to perform nursing services is documented in accordance with hospital policy;

(-c-) that nursing assignments be congruent with documented competency; and

(V) when utilized as a means for meeting staffing needs, include policy and procedures for mandatory overtime. The policy and procedures shall include:

(-a-) documentation of the basis and justification for mandatory overtime;

(-b-) an action plan for the reduction or elimination of the use of mandatory overtime to meet staffing needs;

(-c-) a process for monitoring and evaluating the use of mandatory overtime; and

(-d-) procedures for notifying nurses and other personnel who provide nursing care of the mandatory overtime policy. As used in this subsection, "mandatory overtime" means being required to work, other than on call time, when not scheduled including beyond hours or days scheduled. Neither the length of the shift (whether 4, 8, 12, or 16 hours) nor the number of shifts scheduled to work (whether 4, 5, or 6 a week) is the determinative factor in defining mandatory overtime.

(ii) There shall be an annual evaluation of the nurse staffing plan, including an evaluation of the outcomes and nursing-sensitive indicators as set out in clause (i)(II) of this subparagraph. This evaluation shall be documented in the minutes of the advisory committee established under subparagraph (H) of this paragraph. Hospitals may determine whether this evaluation is done on a unit or facility level basis.

(iii) The staffing plan shall be retained for a period of two years.

(J) Non-employee licensed nurses who are working in the hospital shall adhere to the policies and procedures of the hospital. The CNO shall provide for the adequate orientation, supervision, and evaluation of the clinical activities of non-employee nursing personnel which occur within the responsibility of the nursing services.

(3) (No change.)

(4) Blood transfusions.

(A) – (E) (No change.)

(F) When warming of blood is indicated, this shall be accomplished during its passage through the transfusion set. The warming system shall be equipped with a visible thermometer and may have an audible warning system. Blood shall not be warmed above 42 degrees Celsius.

(G) – (I) (No change.

(5) Professional nurse reporting and peer review. A hospital shall adopt, implement, and enforce a policy to ensure that the hospital complies with the Occupations Code §§301.401–301.403, 301.405 and Chapter 303 (respectively Professional Nurse Reporting and Peer Review), and with the rules adopted by the Board of Nurse Examiners at 22 TAC, §217.17 (relating to Minimal Procedural Standards During Peer Review) and 22 TAC §217.16 (relating to Minor Incidents).

(p) – (x) (No change.)

§133.43. Discrimination or Retaliation Standards.

(a) (No change.)

(b) Discrimination relating to employee reporting a violation of law. In accordance with §161.134(a) of the HSC, and 25 TAC, §133.41(o)(2)(I)(i)(III), a hospital may not suspend or terminate the employment of, discipline, or otherwise discriminate against an employee for reporting in good faith to the employee's supervisor, an administrator of the hospital, a state or federal regulatory agency, a national accrediting organization or a law enforcement agency a violation of law, including a violation of the Act or this chapter. For purposes of this subsection, a report is not made in good faith if there is not a reasonable factual or legal basis for making the report.

(c) (No change.).

§133.45. Miscellaneous Policies and Protocols.

(a) – (e) (No change.)

(f) Harassment and abuse. A hospital shall have a written policy for identifying and addressing instances of alleged verbal or physical abuse or harassment of hospital employees or contracted personnel by other hospital employees or contracted personnel or by a health care provider who has clinical privileges at the hospital.