

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 106 Session of 2023

INTRODUCED BY MEHAFFIE, TOMLINSON, KOSIEROWSKI, KHAN, CIRESI, FIEDLER, FLEMING, HOGAN, HOHENSTEIN, ISAACSON, KIM, MATZIE, NEILSON, PROBST, RABB, SANCHEZ, SMITH-WADE-EL, SOLOMON, VENKAT, WARREN, MULLINS, DONAHUE, KRAJEWSKI, BENHAM, FREEMAN, HARKINS, ZABEL, KINKEAD, ORTITAY, OTTEN, KENYATTA, GALLOWAY, CEPEDA-FREYTIZ, McNEILL, GIRAL, O'MARA, WEBSTER, BOYLE, BOROWSKI, KINSEY, T. DAVIS, HANBIDGE, YOUNG, RADER, STRUZZI, ARMANINI, BRIGGS, LABS, CURRY, MUNROE, PASHINSKI, CERRATO, WAXMAN, GREEN, PARKER, CONKLIN, STEELE, SIEGEL, KULIK, BULLOCK, STURLA, SAPPEY, SHUSTERMAN, KAUFER, KRUEGER, GUENST, DALEY, BRENNAN, BURGOS, MADDEN, FRIEL, MALAGARI, MAYES, N. NELSON, D. MILLER, GALLAGHER, MERSKI, PISCIOTTANO, BELLMON, SCOTT, DELLOSO, KAZEEM, ROZZI, HADDOCK, MADSEN, C. WILLIAMS, CEPHAS, DEASY, ABNEY, WHITE, MARSHALL, GROVE, FLICK, MAJOR, DELOZIER, MUSTELLO, SMITH, EMRICK, McANDREW, D. WILLIAMS, SALISBURY, GERGELY, PIELLI, VITALI, MARKOSEK, TAKAC, FRANKEL, INNAMORATO, HOWARD, SCHWEYER, HILL-EVANS, SAMUELSON, DAWKINS AND GUZMAN, APRIL 28, 2023

REFERRED TO COMMITTEE ON HEALTH, APRIL 28, 2023

AN ACT

1 Amending the act of July 19, 1979 (P.L.130, No.48), entitled "An
 2 act relating to health care; prescribing the powers and
 3 duties of the Department of Health; establishing and
 4 providing the powers and duties of the State Health
 5 Coordinating Council, health systems agencies and Health Care
 6 Policy Board in the Department of Health, and State Health
 7 Facility Hearing Board in the Department of Justice;
 8 providing for certification of need of health care providers
 9 and prescribing penalties," providing for hospital patient
 10 protection provisions; and imposing penalties.

11 The General Assembly of the Commonwealth of Pennsylvania
 12 hereby enacts as follows:

13 Section 1. The act of July 19, 1979 (P.L.130, No.48), known
 14 as the Health Care Facilities Act, is amended by adding a

1 chapter to read:

2 CHAPTER 8-C

3 HOSPITAL PATIENT PROTECTION PROVISIONS

4 Section 801-C. Definitions.

5 The following words and phrases when used in this chapter
6 shall have the meanings given to them in this section unless the
7 context clearly indicates otherwise:

8 "Acuity." The measure of a patient's severity of illness or
9 medical conditions, including, but not limited to, the stability
10 of physiological and psychological parameters and the dependency
11 needs of the patient and the patient's family.

12 "Ancillary staff." Personnel employed by or contracted to
13 work at a facility who have an effect on the delivery of care to
14 patients. The term does not include physicians and registered
15 nurses.

16 "Charge nurse." A registered nurse responsible for the
17 management of a patient care unit.

18 "Department." The Department of Health of the Commonwealth.

19 "Direct care registered nurse." A registered nurse who is
20 engaged in direct patient care responsibilities in an inpatient
21 hospital unit setting for more than 50% of the registered
22 nurse's working hours.

23 "Direct care staff." Any of the following individuals who
24 are routinely assigned to patient care and are replaced when
25 they are absent:

26 (1) registered nurses;

27 (2) licensed practical nurses; or

28 (3) nursing assistants.

29 "Exclusive representative." A labor organization that is:

30 (1) certified as an exclusive representative by the

1 National Labor Relations Board; or

2 (2) a party to a collective bargaining agreement.

3 "Hospital." An institution licensed by this act as a health
4 care facility and having an organized medical staff established
5 for the purpose of providing, by or under the supervision of
6 physicians or advanced practice nurses, diagnostic and
7 therapeutic services for the care of individuals who are
8 injured, disabled, pregnant, diseased, sick or mentally ill or
9 rehabilitation services for the rehabilitation of individuals
10 who are injured, disabled, pregnant, diseased, sick or mentally
11 ill. The term includes a private psychiatric hospital and public
12 psychiatric hospital as defined by 55 Pa. Code § 1151.2
13 (relating to definitions).

14 "Intensive care unit." A unit of a hospital that provides
15 care to critically ill patients who require advanced treatments
16 such as mechanical ventilation, vasoactive infusions or
17 continuous renal replacement treatment or who require frequent
18 assessment and monitoring.

19 "Intermediate care unit." A unit of a hospital that provides
20 progressive care, intensive specialty care or step-down care.

21 "Medical-surgical unit." An inpatient unit in which general
22 medical or post-surgical level of care is provided, excluding a
23 critical care unit and any unit referred to in sections 802-C,
24 803-C, 804-C and 805-C.

25 "Safe harbor." A process that protects a direct care
26 registered nurse from adverse action by the health care facility
27 where the direct care registered nurse accepts an assignment
28 despite objection over the ratios prescribed in section 802-C or
29 the staffing requirements prescribed by the staffing plan in
30 section 804-C.

1 "Unit clerk." A worker on a nursing unit who schedules
2 patients for prescribed studies, prepares charts for patients,
3 answers the phone on the unit and handles other general clerical
4 tasks.

5 Section 802-C. Staffing ratios.

6 (a) General requirement.--A unit and criteria for patients
7 on units shall be consistent with the types of units and
8 patients contained in the Centers for Disease Control and
9 Prevention Locations and Descriptions and Instructions for
10 Mapping Patient Care Locations for types of hospital units.

11 (b) Direct care registered nurses.--A hospital nurse
12 staffing plan must ensure that at any given time:

13 (1) In an emergency department, a direct care registered
14 nurse is assigned to no more than four patients or no more
15 than one trauma patient.

16 (2) In an intensive care unit, a direct care registered
17 nurse is assigned to no more than two patients.

18 (3) In a labor and delivery unit, a direct care
19 registered nurse is assigned to no more than:

20 (i) two patients, if the patients are not in active
21 labor, experiencing complications or in immediate
22 postpartum;

23 (ii) one patient if:

24 (A) the patient is in active labor; or

25 (B) the patient is at any stage of labor and is
26 experiencing complications; or

27 (iii) one patient for the initiation of epidural
28 anesthesia and circulation for cesarean delivery.

29 (4) In a postpartum, antepartum and well-baby nursery, a
30 direct care registered nurse is assigned to no more than six

1 patients, counting mother and baby each as separate patients.

2 (5) In an operating room, a direct care registered nurse
3 is assigned to no more than one patient.

4 (6) In an oncology unit, a direct care registered nurse
5 is assigned to no more than four patients.

6 (7) In a post-anesthesia care unit, a direct care
7 registered nurse is assigned to no more than two patients.

8 (8) In an intermediate care unit, a direct care
9 registered nurse is assigned to no more than three patients.

10 (9) In a medical-surgical unit, a direct care registered
11 nurse is assigned to no more than four patients.

12 (10) In a cardiac telemetry unit, a direct care
13 registered nurse is assigned to no more than three patients.

14 (11) In a pediatric unit, a direct care registered nurse
15 is assigned to no more than three patients.

16 (12) In a presurgical and admissions unit or ambulatory
17 surgical unit, a direct care registered nurse is assigned to
18 no more than four patients.

19 (13) In a burn unit, a direct care registered nurse is
20 assigned to no more than two patients.

21 (14) Any other specialty unit, a direct care registered
22 nurse is assigned to no more than four patients.

23 (15) In an in-patient psychiatric unit, a direct care
24 registered nurse is assigned to no more than four patients.

25 (16) In an in-patient rehabilitation unit, a direct care
26 registered nurse is assigned to no more than five patients.

27 (17) In an operating room, a direct care registered
28 nurse is assigned to no more than one patient.

29 (18) In a unit where a patient is receiving conscious
30 sedation, a direct care registered nurse is assigned to no

1 more than one patient.

2 (c) Assignment of patients.--Patients must be assigned to
3 the appropriate unit to meet care needs.

4 (d) Minimums.--The direct care registered nurse ratios
5 specified in subsection (b) are the minimum required number of
6 nurses.

7 (e) Additional staff.--Additional registered nursing staff
8 in excess of the prescribed ratios in subsection (b) shall be
9 assigned to direct patient care in accordance with the patient's
10 acuity and care needs.

11 Section 803-C. Nurse staffing committee.

12 (a) Establishment.--

13 (1) A hospital shall establish a hospital nurse staffing
14 committee.

15 (2) The staffing committee shall:

16 (i) consist of hospital nurse managers and
17 registered nurse direct care staff;

18 (ii) include at least one direct care registered
19 nurse from each hospital nurse specialty or unit; and

20 (iii) include direct care registered nursing staff
21 who must comprise at least 50% of the total membership of
22 the committee.

23 (3) If any of the direct care registered nurses who work
24 at a hospital are represented under a collective bargaining
25 agreement, the exclusive representative shall select the
26 direct care registered nurse members of the committee.

27 (4) If the direct care registered nurses who work at a
28 hospital are not represented by an exclusive representative,
29 the direct care registered nurses belonging to a hospital
30 nurse specialty or unit shall elect each member of the

1 committee from their peers through an anonymous process.

2 (b) Staffing plan.--A hospital nurse staffing committee
3 shall develop a written hospital-wide staffing plan for direct
4 care staff in accordance with this section and sections 802-C
5 and 804-C. The committee's primary goal in developing the
6 staffing plan shall be to ensure that the hospital is staffed to
7 meet the health care needs of patients. The committee shall
8 review and modify the staffing plan in accordance with this
9 section.

10 (c) Quorum.--A majority of the members of a hospital nurse
11 staffing committee constitutes a quorum for the transaction of
12 business.

13 (d) Cochairs to be elected.--A hospital nurse staffing
14 committee must have two cochairs. One cochair must be a hospital
15 nurse manager elected by the members of the committee who are
16 hospital nurse managers and one cochair must be a direct care
17 registered nurse elected by the members of the committee who are
18 direct care staff.

19 (e) Voting.--A decision made by a hospital nurse staffing
20 committee must be made by a vote of a majority of the members of
21 the committee present at a meeting. If the members present at a
22 meeting consists of less than 50% direct care registered nurses,
23 the vote shall be held by a group of the members, who must be at
24 least 50% direct care registered nurses.

25 (f) Meetings.--A hospital nurse staffing committee shall
26 meet:

27 (1) At least once every three months.

28 (2) At any time and place specified by either cochair.

29 (g) Open meetings.--A hospital nurse staffing committee
30 meeting shall be open to:

1 (1) The hospital direct care staff, as observers.

2 (2) Other observers or presenters, upon invitation by
3 either cochair.

4 (h) Excluded individuals.--At any time, either cochair may
5 exclude individuals described in subsection (g) from a committee
6 meeting for purposes related to deliberation and voting.

7 (i) Minutes.--The minutes of a hospital nurse staffing
8 committee meeting shall:

9 (1) Include motions made and outcomes of votes taken.

10 (2) Summarize discussions.

11 (3) Be posted online and in a physical location visible
12 to hospital staff in a timely manner.

13 (j) Release required.--A hospital shall release a member of
14 a hospital nurse staffing committee from the member's duties to
15 attend a committee meeting and provide paid leave.

16 Section 804-C. Staffing plans.

17 (a) Duty of hospital.--A hospital shall implement the
18 written hospital-wide staffing plan for nursing services that
19 meets the requirements of this chapter and that has been
20 developed and approved by the hospital nurse staffing committee.

21 (b) Requirements.--The staffing plan shall:

22 (1) Be based on the specialized qualifications and
23 competencies of the nursing staff and provide for the skill
24 mix and level of competency necessary to ensure that the
25 hospital is staffed to meet the health care needs of
26 patients.

27 (2) Be based on the size of the hospital and a
28 measurement of hospital unit activity that quantifies the
29 rate of admissions, discharges and transfers for each
30 hospital unit and the time required for a direct care

1 registered nurse belonging to a hospital unit to complete
2 admissions, discharges and transfers for that hospital unit.

3 (3) Be based on total diagnoses for each hospital unit
4 and the nursing staff required to manage the set of diagnoses
5 and the unit's general and predominant patient population as
6 defined by the Medicare severity diagnosis-related groups
7 adopted by the Centers for Medicare and Medicaid Services, or
8 by other measures for patients who are not classified in the
9 Medicare severity diagnosis-related groups.

10 (4) Be consistent with any nationally recognized
11 evidence-based standards and guidelines established by
12 professional nursing specialty organizations and
13 credentialing bodies.

14 (5) Recognize differences in patient acuity.

15 (6) Recognize the availability of ancillary staff
16 support on the unit.

17 (7) Provide for additional registered nursing staff in
18 excess of the prescribed staffing ratios in section 802-C
19 when necessary, based on patient acuity and nursing care
20 requirements.

21 (8) Establish a minimum number of additional direct care
22 staff, unit clerks and charge nurses required on specified
23 shifts, provided that at least one direct care registered
24 nurse and one other nonregistered nurse direct care staff is
25 on duty in a unit when a patient is present. Additional
26 direct care staff requirements shall be based on the direct
27 care staff needs of individual patients, and patient nursing
28 care requirements and shall provide for shift-by-shift
29 staffing for each unit.

30 (9) Not base nursing staff requirements solely on

1 external benchmarking data.

2 (10) Comply with section 802-C.

3 Section 805-C. Staffing transparency.

4 (a) Duty of hospital.--A hospital shall maintain and post,
5 in a physical location in each unit and a publicly accessible
6 Internet website:

7 (1) A list of on-call nursing staff or staffing agencies
8 to provide replacement nursing staff in the event of a
9 vacancy. The list of on-call nursing staff or staffing
10 agencies shall be sufficient to provide for replacement
11 nursing staff.

12 (2) Staffing requirements, as determined by the staffing
13 plan for each unit, on a day-to-day, shift-by-shift basis.

14 (3) The actual staff and staff mix provided for each
15 unit, on a day-to-day, shift-by-shift basis.

16 (4) The variance between required and actual staffing
17 patterns, on a day-to-day, shift-by-shift basis.

18 (b) When notice of changes required.--If any of the direct
19 care staff who work at a hospital are represented under a
20 collective bargaining agreement, the hospital may not change the
21 direct care staff's wages, hours or other terms and conditions
22 of employment under the staffing plan unless the hospital first
23 provides notice to and, upon request, bargains with the direct
24 care staff in the bargaining unit and their exclusive
25 representative.

26 (c) Relationship of staffing plan to collective bargaining
27 agreement.--A staffing plan does not create, preempt or modify a
28 collective bargaining agreement or require a union or hospital
29 to bargain over the staffing plan while a collective bargaining
30 agreement is in effect.

1 (d) Submission of staffing plan to department.--A hospital
2 shall submit to the department a staffing plan adopted in
3 accordance with this section and submit any change to the plan
4 no later than 30 days after approval of the changes by the
5 hospital nurse staffing committee.

6 Section 806-C. Review of staffing plan.

7 (a) Duty of hospital nurse staffing committee.--A hospital
8 nurse staffing committee established in section 803-C shall
9 review the written hospital-wide staffing plan:

10 (1) At least once every year.

11 (2) At any other date and time specified by either
12 cochair of the committee.

13 (b) Matters to be reviewed.--In reviewing a staffing plan, a
14 hospital nurse staffing committee shall consider:

15 (1) Patient outcomes, including nursing quality
16 indicators.

17 (2) Complaints regarding staffing and reports of safe
18 harbor, including complaints about a delay in direct care
19 nursing or an absence of direct care nursing.

20 (3) The number of hours of nursing care provided through
21 a hospital unit compared with the number of patients served
22 by the hospital unit during a 24-hour period.

23 (4) The aggregate hours of mandatory overtime worked by
24 the nursing staff.

25 (5) The aggregate hours of voluntary overtime worked by
26 the nursing staff.

27 (6) The percentage of shifts for each hospital unit for
28 which staffing differed from what is required by the staffing
29 plan.

30 (7) Any other matter determined by the committee to be

1 necessary to ensure that the hospital is staffed to meet the
2 health care needs of patients.

3 (c) Outcome of review.--Upon conclusion of its review of a
4 staffing plan, a hospital nurse staffing committee shall:

5 (1) Report whether the staffing plan ensures that the
6 hospital is staffed to meet the health care needs of
7 patients.

8 (2) Modify the staffing plan as necessary to ensure that
9 the hospital is staffed to meet the health care needs of
10 patients.

11 Section 807-C. Safe harbor provisions.

12 (a) Duty of department.--The department shall develop a form
13 to be used by direct care registered nurses invoking safe
14 harbor. The form shall include the following information:

15 (1) The name and signature of the direct care registered
16 nurse making the request.

17 (2) The date and time of the request.

18 (3) The location where the conduct or assignment that is
19 the subject of the request occurred.

20 (4) The name of the individual who requested the direct
21 care registered nurse to engage in the conduct or made the
22 assignment that is the subject of the request.

23 (5) The name of the supervisor recording the request, if
24 applicable.

25 (6) An explanation of why the direct care registered
26 nurse is requesting safe harbor.

27 (7) A description of the collaboration between the
28 direct care registered nurse and the supervisor, if
29 applicable.

30 (b) Time period for suspension of form.--The direct care

1 registered nurse invoking safe harbor must submit the form
2 within 24 hours of the incident cited.

3 (c) Duty of facility to retain copy of form.--The facility
4 of the direct care registered nurse invoking safe harbor must
5 retain a copy of the request for safe harbor.

6 (d) Prohibited conduct.--A hospital may not discharge from
7 duty or otherwise retaliate against an employee for invoking
8 safe harbor or filing a complaint for violations of this
9 chapter.

10 Section 808-C. Enforcement.

11 (a) Duties of department.--The department shall:

12 (1) Establish a method by which a complaint may be filed
13 along with supporting documentation through the department's
14 publicly accessible Internet website regarding a violation
15 listed in section 807-C.

16 (2) No later than 30 days after receiving a complaint of
17 a violation listed in section 807-C, open an investigation of
18 the hospital and provide a notice of the investigation to the
19 complainant, the hospital and the cochairs of the nurse
20 staffing committee established under section 803-C, and to
21 the exclusive representative, if any, of the employee filing
22 the complaint. The notice shall include a summary of the
23 complaint but not the complainant's name or the specific
24 date, shift or unit, and the calendar week in which the
25 complaint arose.

26 (3) Conclude the investigation no later than 60 days
27 after opening the investigation. The department shall provide
28 a written report on the complaint to the cochairs of the
29 hospital staffing committee and the exclusive representative
30 if any, of the complainant. The report:

1 (i) Shall include a summary of the complaint.

2 (ii) Shall include the nature of the alleged
3 violation or violations.

4 (iii) Shall include the department's findings and
5 factual bases for the findings.

6 (iv) Shall include other information the department
7 determines is appropriate to include in the report.

8 (v) May not include the name of any complainant who
9 is a patient or the name of any individual that the
10 department interviewed in investigating the complaint.

11 (vi) Shall, if the department imposes one or more
12 civil penalties, include a notice of the civil penalties
13 that complies with this chapter.

14 (4) In conducting an investigation, make on-site
15 inspections of the unit, conduct interviews, compel the
16 production of documents and records pertaining to the
17 complaint and take any other steps deemed necessary to
18 investigate the complaint.

19 (b) Time period for filing complaints.--A complaint must be
20 filed no later than 60 days after the date of the violation
21 alleged in the complaint. The department may not investigate a
22 complaint or take enforcement action with respect to a complaint
23 that has not been filed in accordance with this chapter.

24 Section 809-C. Violations and right to issue penalties.

25 (a) Duty of department.--The department shall impose civil
26 penalties or suspend or revoke a license of a hospital for a
27 violation of any provision of this chapter. The department shall
28 adopt by rule a schedule establishing the amount of civil
29 penalty that may be imposed for a violation as described in this
30 section when there is a reasonable belief that safe patient care

1 has been or may be negatively impacted, except that a civil
2 penalty may not exceed \$15,000 per violation.

3 (b) Separate violations.--Each violation of a written
4 hospital-wide staffing plan shall be considered a separate
5 violation, and there is no cap on the times that a penalty may
6 be imposed for a repeat of a violation.

7 (c) Evidence that may be considered.--In determining whether
8 to impose a civil penalty, the department shall consider all
9 relevant evidence, including, but not limited to, witness
10 testimony, written documents and the observations of the
11 investigator.

12 (d) Penalties.--Following the receipt of a complaint and
13 completion of an investigation described in section 808-C for a
14 violation described in subsection (b), the department shall:

15 (1) Issue a warning for the first violation.

16 (2) Impose a civil penalty of \$7,500 for a second
17 violation of the same provision.

18 (3) Impose a civil penalty of \$15,000 for each third and
19 subsequent violation of the same provision.

20 (e) Other penalties.--

21 (1) The department shall take the actions described in
22 subsection (a) for any violation of this chapter, including,
23 but not limited to, the following:

24 (i) Failure to establish a nurse staffing committee.

25 (ii) Failure to adopt a staffing plan in a timely
26 manner.

27 (iii) Failure to comply with the staffing level in
28 the staffing plan, including the nurse-to-patient
29 staffing ratios prescribed in section 802-C, if
30 applicable.

1 (2) If a direct care registered nurse at a hospital is
2 unable to attend a staffing committee meeting because the
3 direct care registered nurse was not released from other
4 hospital duties to attend the committee, in violation of
5 section 803-C, the department shall:

6 (i) Issue a warning for the first violation.

7 (ii) Impose a civil penalty of up to \$1,500 for a
8 second and each subsequent violation.

9 (iii) Maintain for public inspection records of any
10 civil penalties or license suspensions or revocations
11 imposed on hospitals penalized under this chapter.

12 Section 810-C. Public posting.

13 The department shall post on a publicly accessible Internet
14 website maintained by the department:

15 (1) The hospital staffing plans received by the
16 department.

17 (2) Any report, described in section 806-C, made
18 pursuant to an investigation of a complaint for which the
19 department issued a warning or imposed a civil penalty under
20 sections 807-C and 808-C.

21 (3) Any order requiring a hospital to remedy a violation
22 as described in section 808-C.

23 (4) Any order imposing a civil penalty against a
24 hospital or suspending or revoking the license of a hospital
25 pursuant to the violations as described in section 808-C.

26 Section 811-C. Emergency declarations.

27 (a) Duty of hospital nurse staffing committee.--Upon the
28 occurrence of an emergency declaration either cochair of the
29 hospital nurse staffing committee may require the hospital nurse
30 staffing committee to meet to review and potentially modify the

1 staffing plan in response to the emergency declaration or
2 circumstances.

3 (b) Duties of hospital.--

4 (1) If an emergency causes a significant and atypical
5 change in the number of patients on a unit, the hospital
6 shall demonstrate that immediate and diligent efforts were
7 made to maintain required staffing levels.

8 (2) No later than 30 days after a hospital deviates from
9 a written hospital-wide staffing plan under section 804-C,
10 the hospital incident command shall report an assessment of
11 the nurse staffing needs arising from the emergency
12 declaration to the cochairs of the hospital nurse staffing
13 committee established under section 803-C.

14 (c) Limitations.--

15 (1) The hospital's deviation from the written hospital-
16 wide staffing plan under subsection (b) may not be in effect
17 for more than 90 days without the approval of the hospital
18 nurse staffing committee.

19 (2) Any contingency staffing plans or modified staffing
20 plans will terminate when the Federal Government or the head
21 of a State, local, county or municipal government ends the
22 emergency declaration.

23 (d) Definitions.--As used in this section, the following
24 words and phrases shall have the meanings given to them in this
25 subsection unless the context clearly indicates otherwise:

26 "Emergency." An event declared an emergency by the Federal
27 Government or the head of a State, local, county or municipal
28 government.

29 Section 812-C. Implementation.

30 The department may adopt regulations necessary to carry out

1 this chapter.

2 Section 2. This act shall take effect in six months.